Dealing with Communist Legacies: The Politics of Lustration in Eastern Europe

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Dedication

For my parents, who always encourage me

Abstract

Many of the post-Communist states of Eastern Europe have chosen to enact a vetting procedure known as *lustration* to ban former secret police agents and their informants from holding public office. This practice is part of a global trend toward increasing accountability for human rights violations. In this dissertation, lustration policies are examined within this context. First, an original dataset covering all post-Communist states in Europe and the former Soviet Union for the period 1989 to 2012 is used to analyze competing explanations for the proposal and enactment of lustration laws. Discrete-time logistic regression shows that democratization and control of the government by Left parties are strong predictors of lustration. Second, the extended case method is applied to the case of lustration to resolve a theoretical paradox. World polity neoinstitutionalist theory would predict that lustration should not be occurring. Drawing on insights and concepts from other areas within sociology, the paradox is resolved and a revised theoretical framework is proposed. Third, the cases of Croatia, Serbia, and Macedonia are examined using the strategic narrative method of historical sociology. The cases were chosen because of their varied outcomes with lustration—no law in Croatia, a law without enforcement in Serbia, and a law with enforcement in Macedonia. Analyses of these cases show both the power and the limits of path-dependent explanations in historical sociology. Finally, the implications of lustration for democratization and transitional justice are discussed.

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Chapter 1.
Lustration: An Introduction

"Yet they lie deadly that tell you have good faces."
William Shakespeare, *Coriolanus*, Act II, scene i

"We are living through an epochal transformation, one as yet young but already showing its muscle. … Yet if this transformation is indeed epochal, it has to engage the most complex institutional architecture we have ever produced: the national state." So opens renowned sociologist Saskia Sassen's (2006:1) monograph *Territory Authority Rights*. Sassen is speaking of the profound changes to the global order that have occurred since about 1980, induced by what is often described as neoliberal economic globalization. In her research, Sassen documents, among other phenomena, a hollowing out of democracy in liberal states that results from shifts in the balance of power within government. She finds that executive branches of government have been greatly expanding their power, with legislatures increasingly losing power and abdicating oversight responsibilities. Sassen's opening words, however, could just as easily have been referring to another epochal transformation that has developed over roughly the same period: the emergence of transitional justice.

From the mid-1970s to the present, nation-states are increasingly likely to hold perpetrators of human rights abuses accountable for their actions. This trend, which has been labeled the "justice cascade" (Lutz and Sikkink 2001; Sikkink 2011), is an epochal transformation. Only in the twentieth century was the notion that governments' actions could be deemed criminal instantiated (Savelsberg 2010). Thus, when Greece put its deposed military junta on trial for torture in 1975, a new era of accountability for state

crimes was realized. Beginning with the post-World War II trials against the Axis powers in Nuremberg and Tokyo,[1] and continuing with the creation of the United Nations and the promulgation of an international legal architecture that codified human rights norms (Lauren 2003), the human rights regime has had powerful consequences for the national state. Recall Max Weber's (1978 [1956]:54) famous definition of the state as that entity whose administrative staff "successfully upholds the claim to the *monopoly* of the *legitimate* use of physical force in the enforcement of its order" [emphasis in the original]. I argue that, by redefining the scope of what counts as "legitimate," the human rights regime has altered the very nature of the state. Moreover, the phenomenon of transitional justice may be read as a countervailing trend to the one described by Sassen. Instead of executives gaining power, as engendered by economic globalization, executive branches of government have had their power curtailed by and subordinated to judiciaries—and, as this dissertation will show, sometimes to legislatures—due to transitional justice. This represents a reconfiguration of the balance of power within nations.

This dissertation is an examination of one modality of transitional justice: lustration, or the disqualification from public office of human rights abusers. In the context of my research, lustration specifically refers to the disqualification from office of former secret police agents and their informants in post-Communist Europe. The secret police in the Communist states engaged in a range of abusive behavior designed to repress dissent and, in some cases, to instill terror in the population. They carried out assassinations and kidnappings; engaged in extensive surveillance of persons suspected

[1] Sikkink (2011) describes these important precursors as "streams" that fed into the eventual "cascade."

of political disloyalty; coerced testimony about potential targets from friends, neighbors, and relatives via blackmail, torture, and deception; and collected other kinds of intelligence (Adelman 1984). Table 1.1 below lists the relevant organizations from Communist Europe.

Country	Secret Police, Original Name	Secret Police, English Name	Common Name
Albania	Drejtoria e Sigurimit të Shtetit	Directorate of State Security	Sigurimi
Bulgaria	Комитет за държавна сигурност	Committee for State Security	CSS
Czechoslovakia	Státní bezpečnost	State Security	StB
German Democratic Republic	Ministerium für Staatssicherheit	Ministry for state Security	Stasi
Hungary	Államvédelmi Hatóság	State Protection Authority	ÁVH
Poland	Służba Bezpieczeństwa Ministerstwa Spraw Wewnętrznych	Security Service of the Ministry of Internal Affairs	SB
Romania	Departamentul Securităţii Statului	Department of State Security	Securitate
Soviet Union	Комитет государственной безопасности	Committee for State Security	KGB
Yugoslavia	Uprava državne bezbednosti	State Security Administration	UDBa

Table 1.1 List of secret police organizations in Communist Europe

In subsequent sections of this dissertation, one can find an implicit critique that lustration is often neither transitional nor just, leaving one to question the soundness of its ubiquitous inclusion in the academic literature on transitional justice. There are multiple reasons that a country, or a political party, might pursue lustration: to hold perpetrators of human rights violations accountable, to stabilize the new regime, to discredit potential rivals, or to settle old scores (Nalepa 2010). In fact, as will be shown in later chapters of this research, there is strong evidence that lustration is itself abusive and unlikely to contribute to goals of either justice or stability. But before offering further description of the dissertation, I will summarize how lustration is carried out. My account of the *how* of lustration will focus on one country, Macedonia, and should be regarded as illustrative rather than representative, as the details of lustration's enactment vary by country. I will

then describe the fieldwork that was undertaken for this project and provide a synopsis of the empirical chapters that follow.

How It Works: The Process of Lustration in the Republic of Macedonia[2]

Under Macedonia's most recent lustration law,[3] adopted in June 2012, candidates for certain public offices must file an affidavit swearing that they were not collaborators with the UDBa, Yugoslavia's secret police. Section 1, Article 3 of the law enumerates 30 categories of public offices and other jobs that require candidates to be vetted. Examples of covered jobs include members of parliament, city mayors, senior employees of the national bank, members of the Macedonian Academy of Arts and Sciences, foreign diplomats sent from Macedonia to other countries, and representatives to international organizations. In addition to those offices, the law allows for the investigation of the country's oligarchs who obtained enormous wealth in the 1990's during the introduction

[2] As of this writing, there is no politically neutral name for this country located in Southeastern Europe. The country that I will call "Macedonia" has been locked in a dispute over its name with neighboring Greece since the former gained independence from Yugoslavia in 1991. Greece insists that use of the name Macedonia by the Republic implies a territorial claim over the northern Greek province of the same name. There are real-world consequences to this disagreement. Greece has used its position as a member of the European Union and NATO to block Macedonia's entry to those bodies on the basis of the name dispute (Marusic 2013). A recent proposal is to name the country "Upper Republic of Macedonia," but this was rejected by Greece. The latter country has offered "Republic of Upper Macedonia" and "Slavic-Albanian Macedonia" as alternatives (B92 2013). Until a final resolution is reached, some international organizations, such as the United Nations, refer to Macedonia as the Former Yugoslav Republic of Macedonia, or FYROM. The Macedonians I spoke to for this research indicated their deep disapproval with this appellation. The current Macedonian Prime Minister, Nicola Gruevski, gave a speech in October 2013 in which he referred to Greece as the "Former Ottoman Province of Greece," or FOPOG (clip available at http://www.youtube.com/watch?v=r099oSbl_NQ). Thus, no matter which name I use for Macedonia, I risk offending one side or the other.

[3] "Law to Determine the Condition of Limitation for Public Office, Access to Documents and Publication of Cooperation with the Organs of State Security," *Official Gazette of the Republic of Macedonia*, No.86, July 9, 2012. Available at www.kvf.org.mk

of a market economy and allows citizens to request lustration of persons suspected of complicity with the UDBa (Marusic 2012).

An 11-member regulatory body, known as the Data Verification Commission, is appointed by parliament to conduct screenings of candidates for the covered offices. The ruling right-wing VMRO-DPMNE[4] party appoints most members of the commission, but there is also representation from their junior coalition partner DUI,[5] an ethnic Albanian party, and a representative backed by the opposition parties (Marusic 2013). In addition to current and prospective holders of the covered offices, the Commission also requires documentation from former public office holders to be lustrated retroactively. The Commission enlists the cooperation of other government agencies to provide names, fathers' names, and identification numbers, and employment information on former office holders. The Commission screens applicants' backgrounds by searching through the relevant UDBa dossiers for evidence of collaboration. These files are the result of the UDBa's surveillance and other information-gathering activities. One person's file can be several thousand pages long depending on how long a person was under surveillance and the type of activities that person engaged in. In response to a ruling by the Constitutional Court in early 2012[6] that struck down several provisions of an earlier lustration law and in a bid to increase transparency in the lustration process, the Commission posts relevant excerpts from the secret police files on its website[7] for persons found to have been

[4] Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity
[5] Democratic Union for Integration
[6] Case 76/2011-0-0; judgment rendered on January 25, 2012
[7] www.kvf.org.mk

collaborators. As of November 2013, the Commission had posted such "evidence"[8] of secret police collaboration relating to 73 persons. High profile persons have been removed from office, including former president of the Constitutional Court Trendafil Ivanovski, who denies the Commission's findings (Marusic 2010).

Research Questions

This dissertation was motivated by three questions related to lustration.

1. *"Why is lustration, rather than some other mechanism, the predominant method of transitional justice in the post-Communist states?"*

I address this question in Chapter 3 by employing a version of Michael Burawoy's extended case method to the diffusion of lustration laws. I emphasize cultural and historical reasons why lustration is the preferred method, as well as the structural reasons that foreclose other options, particularly trials. I use documentary evidence from NGOs, courts, parliaments, and other official bodies, as well as interview excerpts as the data for chapter 3.

2. *"Why do some states lustrate, while others do not?"*

I address this question in two different ways, relying on both variable-oriented and case-oriented methods (Ragin 1987). First, in chapter 2, I use discrete-time event history models, a variable-oriented method, to assess the utility of five explanatory theories about

[8] It must be noted that claims as to the truth-revelatory nature of the secret police files in any post-Communist country are debatable at best. Further elaboration of this point will be made in Chapter 3.

factors leading to the implementation of lustration. The original quantitative dataset used in chapter 2 covers all post-Communist states.

Second, in chapter 4, I use strategic narrative (Stryker 1996), a case-oriented method, to elaborate on mechanisms that can explain the statistical associations found in chapter 2. In the later set of chapters, I focus on two former Yugoslav republics--Croatia and Serbia--and use interview, survey, and historical data to analyze the cases.

3. *"What are the consequences of lustration?"*

Chapters 3 addresses the consequences of lustration, with a particular focus on its negative consequences. I do not attempt to answer the question of whether lustration is "good" for democracy, but its potential for abuse is clear—perhaps more so than with any other method of transitional justice.

By addressing these research questions, this project sheds additional light on transitional justice, generally, and its relationship to the institutions of democracy. In the conclusion, I will offer reflections on the categorization of lustration with the transitional justice paradigm, the type of institutional reform that may be fostered by lustration policies in comparison to the kinds of reforms to which it is not suited, and the effects of transitional justice on the interrelationships among the branches of government in liberal democracies.

Methods

Undergirding this research is fieldwork conducted on two trips to Southeastern Europe during the winter and summer of 2011. I conducted semi-structured interviews with 30 key informants in four cities: Belgrade, Serbia; Skopje, Macedonia; Thessaloniki, Greece; and Zagreb, Croatia. Among those interviewed were lawyers, academics, members of parliament, civil servants, NGO representatives, and a member of the Macedonian lustration commission. The initial interviewees were chosen for their participation in a lustration-promotion project headed by the Thessaloniki-based Center for Democracy and Reconciliation in Southeast Europe (CDRSEE). The project, known as "Disclosing Hidden History: Lustration in the Western Balkans," was a collaboration among NGOs from Albania, Bosnia-Herzegovina, Croatia, Macedonia, and Serbia in the early 2000's. The NGOs organized several meetings in the region, bringing together academics, lawyers, journalists, and politicians to discuss the pros and cons of lustration for the Western Balkans. Materials from the project are available online (www.lustration.net). Using those materials, I assembled a list of approximately 90 participants in the project that I would like to interview. I contacted as many of the persons for whom I could find an e-mail address, phone number, LinkedIn profile, or other online presence to arrange interviews during my two trips to Southeastern Europe. Of those who responded to me, all agreed to be interviewed. There were many potential informants who did not respond, either because they did not want to be interviewed or because my contact information for them was out of date, and some for whom I could not find any contact information.

I interviewed 20 CDRSEE participants. At each interview, I asked if there was someone else who they recommended that I should speak to. In some cases, they recommended people with whom I already had spoken to. In other cases, they provided me with new contacts. In total, I spoke with 30 informants. The interviewees had a range of opinion on lustration—some supported it, some opposed it, and some had altered their position on the matter over time. The interviews lasted from 30 minutes to 2.5 hours and, with one exception,[9] were conducted in English. The interviews, again with one exception,[10] were recorded, transcribed, and analyzed for key themes. I refer to the interviews throughout the dissertation, particularly in chapters 3-6. Where possible, I identify the informants by name and position, but several informants requested anonymity.

In addition to the interviews, I obtained numerous documents from NGOs and parliaments while in Southeastern Europe. These documents include reports from CDRSEE's partner NGOs, parliamentary records from the Croatian Sabor and the Serbian National Assembly, and filings made by the Macedonian lustration commission. I have also made judicious use of news sources from the region, particularly online sources such as Balkan Insight. Balkan Insight provides original reporting on the entire Balkan region and has as part of its mission a focus on transitional justice. It was, therefore, an indispensable source of information on contemporaneous developments with respect to

[9] The interview that relied on an interpreter was with Novica Veljanovski, a member of the Macedonian lustration commission. Because my spoken Macedonian is not adequate for an interview on the subject of lustration, Dr. Veljanovski arranged to have an interpreter who normally works for the parliament available for our meeting.

[10] For the one interview that was not recorded, I must rely on notes that I took during the interview. Thus, any quotations from that informant have been rendered in *oratio obliqua*. The interview was with an eminent historian of Croatia who preferred not to be recorded.

lustration in the region, particularly in Macedonia, and the "Lex Perkovic" scandal in Croatia.

Finally, I relied on secondary sources to provide historical context to post-Communist politics and to provide the basis for original analysis. In particular, the historiography of the former Yugoslavia developed by such scholars as John Lampe (2000) and Ivo Goldstein (1999) was foundational to my understanding of my cases. Case studies by other scholars who have written about lustration, specifically, served as valuable sources of information on dates of proposal and adoption of lustration laws, which were used for the quantitative analysis in Chapter 2. The edited volume by Stan (2008) was especially useful in this regard. The other significant secondary data that I make use of is the Quality of Government (Teorell, et al 2013) dataset, which compiles country-year data on a range of important variables that I use in the analysis in Chapter 2.

The use of these assorted approaches classifies this dissertation as one of the "mixed-methods" variety. My research design is both "concurrent" and "complementary" (Small 2011). By *concurrent*, I mean that the data need not have been gathered in any particular order. Sufficient background investigation was necessary to conduct useful semi-structured interviews with key informants, but I did not conduct formal qualitative analysis of documents—such as those from parliaments or NGOs—prior to the interviews. Readers may find fault with this approach, but concurrent collection of various forms of data was necessary due to the relatively short amount of time that I was able to spend in the Western Balkans. By *complementary*, I mean that I use multiple kinds of data so as to build arguments from many directions at once, rather than for

purposes of confirmation or triangulation. Different kinds of data are necessary for answering different kinds of questions. The quantitative data are useful for showing the interrelationships of variables over many countries and years, but they do not provide rich detail as to the enactment (or lack thereof) of lustration policies. Qualitative data, on the other hand, are able to fill out the picture that can only briefly be sketched by numeric data. A mixed-methods approach, therefore, enabled me to answer questions that could not have been answered with any one method of analysis or any one type of data.

Chapter 2.
The Consideration and Adoption of Lustration, 1989-2012

"Is it not strange that desire should so many years outlive performance?"
William Shakespeare, *Henry IV Part II*

Research seeking to explain the enactment of lustration laws in Eastern Europe has paid little attention to issues of time and has been based on a limited set of cases. Early work by scholars of democratic transitions (e.g., Huntington 1991; Elster 1996) posited that transitional justice mechanisms like lustration, if they were to happen at all, would happen shortly after the collapse of state socialism in 1989 and 1991, and their enactment would be dependent on the mode of exit from authoritarianism. More recent scholarship on this subject has also focused on time-invariant explanations, such as the level of Communist-era repression (Nedelsky 2004), the extent of pre-Communist experience with political pluralism (Stan 2008), or deals made by elites at the time of transition (Nalepa 2010). The emphasis in the literature on these explanations is puzzling. Although lustration was sometimes employed in the transitional years of the early 1990s, lustration efforts have not been confined to that period. More than two decades after transition, lawmakers in countries like Bulgaria, Macedonia, and Georgia, continue to renew lustration legislation, change the scope of existing legislation, and propose and adopt new legislation.

Moreover, the literature has tended to focus on only a handful of positive cases of lustration—that is, countries that have formally enacted some version of the policy. Some countries' policies have received extensive scholarly, media, and civil society attention—most notably, Czechoslovakia/the Czech Republic, Poland, and Hungary (see, for

example, David 2003; Williams, Sczerbiak, and Fowler 2005; Barrett et al. 2007; Czarnota 2007; Priban 2007; Nalepa 2010; Choi and David 2012) and, to a lesser extent, the former German Democratic Republic (Milosavljevic and Pavicevic 2002; Wilke 2007). The experience of lustration in most other countries, particularly in Southeastern Europe and the Baltic states, has received comparatively little scholarly attention. When such attention does occur, it is often from a narrow range of analysts. For example, one scholar, Lavinia Stan, has produced most of the research on Romanian lustration (e.g, Stan 2006, 2011, 2012). The analysis of negative cases (Emigh 1997) of lustration—that is, countries that might be expected to adopt the policy but have not done so—has been ignored almost entirely. A notable exception is the research of Nedelsky (2004), who analyzes Slovakia's initial lack of lustration after separating from the Czech Republic in 1993, despite its inheritance of the 1991 Czechoslovak screening law. From one point of view, the large literature on the Central European cases is to be expected given that those are the countries that have pursued lustration policies most vigorously. I argue, however, that more can be learned by incorporating the experiences of other countries into our analysis of these laws.

This chapter fills some of the gaps created by previous scholarship. It examines the temporal dimensions of lustration by employing discrete-time logistic regression on a new dataset covering 29 post-Communist states from 1989 to 2012. This method allows for the evaluation of competing explanations about the enactment of lustration and, by encompassing the entirety[11] of the European and Soviet post-Communist space, includes

[11] The dataset does not include the Republic of Kosovo, a partially recognized state that unilaterally declared independence from Serbia in 2008. Kosovo exists as a *de facto* independent state with its own

all positive and negative cases of lustration. The chapter provides further methodological innovation on the subject of lustration by separately analyzing two aspects of the legislative process—the proposal of a lustration bill and its adoption into law. Prior research has not adequately addressed these separate processes. It may be the case that the factors that drive the proposal of a bill are not the same factors that lead to a bill's adoption as law. This chapter answers the question, "What conditions affect whether and when lustration policies are considered and adopted?"

Overview of Explanatory Models of Lustration

Table 2.1 shows the date of the first known proposal of a lustration bill in a country's parliament and the date of the passage of the first known lustration law.[12] It should be made clear that these are not necessarily the same piece of legislation. That is, the first proposed bill might not be the bill that is ultimately enacted into law. The information contained in the table was gathered from a number of sources, including scholarly case studies and online news sources.

The table highlights the dynamic nature of the adoption of lustration policies. Perhaps the most striking fact revealed by the table is that most countries that have adopted one lustration law have adopted at least one other such law. Often successive

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parliament that, hypothetically, could have adopted a lustration law in the past 5 years—just as it adopted a controversial amnesty law in 2013 aimed at easing the integration process of its Serb minority population (Peci 2013). It, therefore, could reasonably be considered as a negative case of lustration. However, its disputed legal status means that it is not included in many of the widely used cross-national datasets. Thus, Kosovo's omission from the analysis as an independent entity is due to the lack of available data on most covariates and should not be taken as indicative of the author's personal views on the status of the territory.

[12] Appendix 2.1 is attached to the end of this chapter and contains the names of the first lustration laws. Readers will note that there is a wide range of ways that lustration laws are framed. Because almost every country offers a different framing for the laws, it is not possible to use statistical analysis to determine which kinds of framings are most associated with passage of the laws.

laws are adopted because the first law has expired, is struck down through judicial review, or is modified by the legislature in some way. Also worthy of mention is that fact that the adoption of these laws continues many years after the collapse of state socialism and single-party Communist party rule. Such persistence is notable given the nature of who is targeted by lustration policies and the sanctions they administer. Given that lustration is meant to remove certain persons from public office, one might expect that the passage of time should lead to natural attrition and make the laws less necessary as targeted persons leave public life through retirement, career transitions, death, or emigration. This point was made by the European Court of Human Rights (ECtHR) in their ruling on the 2008 case *Ādamsons v Latvia*[13]

> Finally, national authorities must keep in mind that lustration measures are, by their nature temporary, the objective necessity of a restriction of individual rights resulting from this procedure decreases with time (Sweeney 2013: 143).

Despite this natural attrition, the analysis below shows that the odds of considering or adopting lustration do not decrease with time. Such a finding suggests that motives other than achieving stability in new democracies by cleansing the state of personnel from the previous regime may be behind these policies. The topics of motives and consequences will be explored with respect to the former Yugoslavia in Chapters 4-6.

[13] Mr. Ādamsons was a former KGB border guard in Latvia who was denied the ability to stand for elections under the 1995 Latvian lustration law. The ECtHR ruled that a blanket ban on seeking office for KGB employees was not acceptable. Instead, disqualification must be considered on a case-by-case basis and depend on the nature of a person's work for the KGB. The case also provided an occasion for the ECtHR to summarize their collective jurisprudence to date on lustration, as seen in the above quotation.

State	Year Enters Dataset	Year Lustration First Proposed	Year of First Lustration Law Enacted	Year(s) of Successive Lustration Laws
Albania	1991	1995	1995	1995, 1998, 2008
Armenia	1991	2011		
Azerbaijan	1991			
Belarus	1991			
Bosnia-Herzegovina	1992			
Bulgaria	1989	1991	1992	1992, 1997, 2002
Croatia	1991	1998		
Czechoslovakia	1989	1990	1991	1991
Czech Republic	1993	1995	1995	2000, 2007
Slovak Republic	1993	2002	2002	
Estonia	1991	1991	1995	1995
Georgia	1991	2005	2011	
(East) Germany	1989	1990	1990	
Hungary	1989	1989	1994	1996, 2000, 2001
Kazakhstan	1991			
Kyrgyzstan	1991	2010		
Latvia	1991	1991	1994	1994, 1995
Lithuania	1991	1991	1991	1991, 1999
Macedonia	1991	2006	2008	2011, 2012
Moldova	1991	2000		
Montenegro	2006	2007		
Poland	1989	1989	1997	2006
Romania	1989	1990	1999	2006, 2008, 2010, 2012
Russia	1991	1992		
Serbia	1991	2003	2003	
Slovenia	1991	1990		
Tajikistan	1991			
Turkmenistan	1991			
Ukraine	1991	2005		
Uzbekistan	1991			

Table 2.1. Timing of Lustration Consideration and Adoption in Post-Communist State

"Politics of the Past" Explanations[14]

Samuel Huntington's (1991) study of the "third wave" of democracy—that is, the many cases of (re)democratization that began in Southern Europe in 1974 and eventually spread to Latin America, Eastern Europe, and parts of Africa and Asia—develops a classification scheme for transitions to democracy. He identifies three kinds of transition: replacement, transformation, and transplacement. A replacement transition is one in which the push for democracy comes mostly from the opposition, and the authoritarian regime collapses or is overthrown. A transformation transition occurs when reformers within the authoritarian regime lead the transition to democracy. A transplacement transition is a combination of the two other types, involving negotiations between the authoritarian regime and the opposition for the former's exit. Huntington argues that transitional justice—or, in his words, "dealing with the torturer problem"—is most likely to occur when there has been a replacement transition. A regime that has been replaced is one that has been defeated and discredited. In brief, it lacks any ability to protect itself from retaliation. Such is not the case in the other types of transitional societies. In the context of a transformation transition, a regime that maintains power while introducing liberalizing reforms is unlikely to punish itself. In the transplacement transition context, where both the regime and opposition are weak, an outgoing regime has the opportunity to negotiate amnesty for itself, thereby escaping punishment.

With regard to timing, Huntington argues, "In new democracies, justice comes quickly, or it does not come at all" (1991:228). While it is clear from Table 1 that it is not

[14] I borrow the terms "politics of the past" and "politics of the present" from Stan (2008).

true that justice—in the form of lustration—must come quickly or not at all,[15] it remains possible that countries experiencing a replacement transition may propose or adopt lustration earlier than countries undergoing other types of transitions. Thus, from Huntington's work we derive the following hypothesis:

> **Hypothesis 1:** Lustration will be both considered and adopted earlier in countries with transitions characterized by replacement. Lustration will be both considered and adopted later in countries with transitions characterized by transformation or transplacement and in those countries where democracy has not been established.

Replacement	**Transformation**	**Transplacement**	**No Sustained Democracy**
Armenia	Albania	Czechoslovakia	Azerbaijan
Bosnia	Bulgaria	Poland	Belarus
Croatia	Hungary	Slovenia	Kazakhstan
East Germany	Macedonia		Kyrgyzstan
Estonia	Moldova		Tajikistan
Georgia	Russia		Turkmenistan
Latvia	Ukraine		Uzbekistan
Lithuania			
Romania			
Serbia/Montenegro			

Table 2.2. Author's classification of post-Communist regime transitions using Huntington's Third Wave typology

Comparative research by Stan (2008, 2009) argues that the pursuit of lustration is determined by the institutionalization of anti-Communist groups. Such institutionalization is best achieved through a combination of three factors: the strength of the anti-Communist opposition both pre- and post-1989, the relationship of elites to the Communist system (either repression or co-optation), and the extent of a country's pre-Communist experience with political pluralism. Stan proposes two groups of countries,

[15] Huntington's argument is also debunked with respect to trials and truth commissions by Sikkink (2011).

identified below. Group 1[16] is characterized by a strong pre-Communist experience of democracy; a relatively broad-based and strong opposition consisting of dissidents, mass mobilization, and internally exiled technocrats; and repression of elites. These countries include the Czech Republic, Germany, Estonia, Latvia, Lithuania, Poland, and Hungary. Group 2 is characterized by little pre-Communist experience with democracy, weak opposition, and co-optation of elites. This group includes Bulgaria, Romania, Slovakia, and the former Soviet Union other than the Baltic States (Estonia, Latvia, and Lithuania).

Stan's research, and thus her categorization, does not include the former Yugoslavia or Albania. It is necessary, therefore, to accommodate those states in her paradigm in order to test the applicability of her findings to the entire post-Communist region. Yugoslavia, in particular, defies easy categorization. Despite the early co-optation of elites, later events, such as the Croatian Spring roughly from 1969-1972, led to a break of the elites with the regime and resulted in their widespread repression, particularly intellectuals and artists (Burg 1983; Lampe 2000), suggesting categorization with Group 1. However, the anti-Communist opposition movement in Yugoslavia was relatively weak due in large part to ethnic fractionalization (Simons 1990). Further, there is relatively little pre-Communist experience with democracy. To the extent that such experience exists anywhere in the former Yugoslavia, it would be in Slovenia and Croatia, due to their inclusion in the Austro-Hungarian Empire rather than the Ottoman Empire, which subsumed the other Yugoslav republics. However, Allcock (2000:252) argues that Slovenia and Croatia's history of democracy is "an ideological distortion of history" and that they "displayed relatively rudimentary development of a culture of

[16] "Group 1" and "Group 2" are my terms, not Stan's.

democratic representation before unification [i.e., before 1918]." Later, ethnic fractionalization between Croats and Serbs during the interwar period led to the failure of democratic institutions in Yugoslavia's federalist system (Djokic 2007). These factors suggest it is more appropriate to place Yugoslavia into Stan's Group 2. Thus, because these countries share features of both Group 1 and Group 2, I place the former Yugoslav republics and Albania into their own category, Group 3.

> **Hypothesis 2:** Lustration will be both considered and adopted earlier in Group 1 countries due to their broad-based and organized opposition, repressed rather than co-opted elites, and relatively deep history of political pluralism. Lustration will be both considered and adopted later in both Group 2 and Group 3 countries, which have less conducive configurations of the aforementioned characteristics.

"Politics of the Present" Explanations

In contrast to explanations of lustration that emphasize country histories up to the point of transition, other authors have privileged post-Communist factors in the adoption of lustration, such as coalition building and legislative framing (Williams et al 2005). Welsh (1994) argues that the adoption of lustration is most dependent on the electoral success of Communist successor political parties. Those that are able to maintain power in the post-Communist period are unlikely to adopt lustration legislation, as it would likely have a disproportionate impact on members of their own coalitions and their supporters. As a corollary, lustration is more likely to be adopted when anti-Communist parties are in power, as they would like to punish the former regime.

> **Hypothesis 3A:** The ideology of the largest political party will have no bearing on whether or when lustration bills are *proposed* because such proposals can come from minority parties.

> **Hypothesis 3B:** Lustration is more likely to be *adopted* when Right political parties are the largest in parliament than when Left or centrist parties are the largest.

One of the few studies to analyze negative cases of lustration is the comparison of the Czech and Slovak Republics by Nedelsky (2004). Although Slovakia did eventually adopt a limited lustration system in 2002, it initially opted upon gaining independence in 1993 not to enforce the 1991 lustration law it inherited from Czechoslovakia. She argues that an important factor explaining the difference was the perceived legitimacy of the former regime.

> The higher a society's view of the previous regime's legitimacy, the lower its motivation to pursue justice for its authorities and the higher the likelihood … that it will allow elites associated with the former regime to return to the political stage. (ibid, p. 88).

> **Hypothesis 4:** Lustration will be more likely to be proposed and adopted in countries that perceive the Communist regime to be illegitimate.

Finally, scholars operating in the world polity neoinstitutionalist tradition argue that policies are most likely to be adopted when they are promoted by transnational actors, including intergovernmental organizations and nongovernmental organizations (Meyer et al 1997). In the case of lustration, many of the messages provided by transnational actors emphasize the drawbacks and potential abuses of lustration systems.[17] In particular, ratification of the European Convention on Human Rights (ECHR) and the International Labor Organization's (ILO) Convention No. 111 on Employment and Occupation Discrimination should be associated with *not* adopting

[17] The world polity perspective and the attitudes of transnational actors toward lustration will be addressed in lingering detail in Chapter 3.

lustration policies, or at least adopting such policies at a slower rate. As I will show in the following chapter, the bodies tasked with enforcing both of these treaties have consistently delivered anti-lustration findings and advisory opinions.

> **Hypothesis 5A:** Ratification of the European Convention on Human Rights will be associated with a lower likelihood of proposing or adopting lustration.
>
> **Hypothesis 5B:** Ratification of ILO Convention No. 111 will be associated with a lower likelihood of proposing or adopting lustration.

Data, Methods, and Measures

To test whether and how the "politics of the past" and the "politics of the present" explanations affect the proposal and passage of lustration legislation, I employ an event history analysis that demonstrates if key variables, derived from the above hypotheses, affect these disqualifying measures. For covariates, I use country-year data taken from the Quality of Government (QoG) Standard Dataset (Teorell, et al 2013), the Life in Transition Survey (EBRD 2006), and secondary sources, especially Stan (2008). For the dependent variables, I rely on the same sources that produced Table 2.1 above.

Covariates

I test the seven hypotheses[18] described above within the limits of the available data for 1989 to 2012. For Hypotheses 1 and 2, I constructed dummy variables that group

[18] It is perhaps worthwhile to reflect on alternative explanations of lustration that are not covered in this chapter, as they do not lend themselves to statistical analysis or because the data are not available on a sufficient number of countries. An obvious omission is the degree of repression that each state faced under Communism. One might hypothesize that the desire for retribution would be strongest in states that experienced the worst repression at the hands of the secret police. The data that are normally used to measure such repression, the Political Terror Scale (PTS), have a couple of problems that prevent their use in this chapter. 1) The data only go back to 1976. This means that much of the worst repression in the Soviet Union, for example, is not captured. 2) Countries that have been newly created since the end of the

countries into the relevant categories. Thus, Hypothesis 1 is tested with a dichotomous variable that indicates whether the country experienced a replacement transition. The reference category is, therefore, countries that experienced any other kind of transition. For Hypothesis 2, the omitted reference category is Group 1—that is, countries with a history of democracy and well-developed opposition.

For Hypotheses 3A and 3B, I use the variable labeled *dpi_gprlc1* in the QoG dataset. The variable indicates whether the largest government party is left, right, or center with respect to economic policy. The QoG (2013:153) codebook enumerates the following criteria for coding the ideology of political parties:

> Right: for parties that are defined as conservative, Christian democratic, or right-wing.
>
> Left: for parties that are defined as communist, socialist, social democratic, or left-wing.
>
> Center: for parties that are defined as centrist or when party position can best be described as centrist (e.g. party advocates strengthening private enterprise in a social-liberal context). Not described as centrist if competing factions "average out" to a centrist position (e.g. a party of "right-wing Muslims and Beijing-oriented Marxists").

There are no Center parties in the dataset for the country-years included in this analysis. The reference category in the analysis is Right. I have also included a category for

---

Cold War do not exist in the data as independent states. This means there is no way to tell from PTS data whether, for example, Macedonia was subjected to more or less repression than Slovenia. There is only a single score for all of Yugoslavia for each country-year.

Another possible explanation for lustration's implementation in some countries rather than others is the extent to which Communist personnel still permeate the agencies of power, including the legislature and other bodies. It is easy to find individual examples of this in any country (e.g., Vladimir Putin in Russia, who is a former KGB agent); it is much harder, though, to determine to what extent it is the case in any given country or to devise a metric that would allow one to gauge the relative degrees of such permeation across countries.

"Unclassified" political parties to reduce the amount of missing data on the *dpi_gprlc1* variable.

For Hypothesis 4, I measure the legitimacy of the Communist regime using a variable constructed from data taken from the 2006 Life in Transition Survey (LITS). The survey included two questions asking respondents what type of economy (market vs. planned) and what type of government (democratic vs. authoritarian) they prefer.[19] I assess the legitimacy of the Communist regime as the percentage of respondents who prefer a planned economy combined with an authoritarian government.

For Hypotheses 5A and 5B, I used the websites of the Council of Europe and the International Labor Organization, respectively, to create dummy variables indicating whether the relevant treaty had been ratified in a given year.

Control Variables

I control for per capita gross domestic product (taken from QoG); level of democratization (taken from QoG); and time measured as a dummy variable representing the years 2000-2012.[20] The per capita GDP measure has been logged to reduce skewness. The democratization measure ranges from 0 to 10 and uses imputed values from the Freedom House political rights and civil liberties scores when data are missing from the Polity IV democratization variable. These scores are assigned on a country-year basis and are meant to indicate the competitiveness of political participation, the regulation of

[19] Both survey items allow respondents to choose a third option: "For people like me it does not matter"
[20] The omitted reference category is 1989-1999. I use this cut point because Resolution 1096 from the Parliamentary Assembly of the Council of Europe (1996) declares that lustration systems should be complete by December 31, 1999.

political participation, the openness and competitiveness of executive recruitment, and constraints on the chief executive (Center for Systemic Peace 2013). Higher scores indicate higher levels of democracy. While such measures are sometimes criticized for being a static checklist that ignores the important processes that shape relations between citizens and the state in liberal democracies (Tilly 2007), they are the best measures available for quantitative research that examines multiple countries over multiple years.

Dependent Variables

I code a country-year as "1" to indicate when a lustration bill is first known to be proposed and, separately, when a lustration law is first known to be adopted. Years before a lustration bill is proposed or a law is adopted are coded as "0." This data is taken from secondary sources such as Stan (2008), Mayer-Rieckh and de Greiff (2007), Nalepa (2010), and online news sources including Balkan Insight[21].

Statistical Models

I model the proposal and adoption of lustration laws using event history analysis because the method allows for the easy incorporation of right-censored cases—that is, those countries that have not yet proposed or adopted lustration as of the last year in the data, 2012—and time-varying covariates (Allison 1984; Box-Steffensmeier and Jones 2004; Behrens, Uggen, and Manza 2003). To correctly handle censored cases, countries are only included in the data when they are at risk of proposing or adopting a lustration measure. Thus, countries enter the risk set upon the collapse of the Communist system in

[21] www.balkaninsight.com

that state, when a state becomes independent, or when free elections are first held. For example, Montenegro is not at risk of either proposing or adopting a lustration law until its secession from Serbia in 2006. Montenegro is, therefore, not in the data until 2006. Conversely, Czechoslovakia disappears from the dataset after 1992 due to its dissolution on January 1, 1993. The ability to include time-varying covariates is important for assessing the impact of "the politics of the present" because variables like the ideology of the largest political party in government change over the period 1989-2012.

I estimate the effects of the independent variables described above using a discrete-time logistic regression model with the following equation:

$$log\left|\frac{P_{it}}{1-P_{it}}\right| = \alpha_t + \beta_1 X_{it1} + \cdots + \beta_k X_{itk}.$$

The function specifies P_{it} in terms of the log-odds ratio of the probability of an event (i.e., that a lustration bill is proposed or that a lustration law is passed) occurring in country *i* at time *t* to the probability of a nonevent. β is the effect of the independent variables; X_1, X_2, … X_k denote independent variables; and α_t represents a set of constants corresponding to each discrete-time unit (i.e., 1989-1999, 2000-2012).[22]

Results

Bivariate Analysis: Proposal of Lustration Bills

Table 2.3 presents the results of 10 separate discrete-time logistic event history models predicting the proposal of a country's first lustration bill. These models do not include

[22] I also estimated models using a linear time variable. The results did not change.

statistical controls, except for time measured as a dummy variable for the period 2000-2012.[23]

Variable	Model	Dichotomous Year	S.E.	Events	Cases
Politics of the Past:					
replacement transition	1	3.05*	1.51	23	292
(vs. non-replacement transition)					
strong opposition, repressed elites, history of democracy	2	ref.		23	292
weak opposition, co-opted elites, little hist of democracy	2	0.03***	0.02	23	292
weak opposition, repressed elites, short hist of democracy	2	0.11**	0.09	23	292
Politics of the Present					
Right party	3	ref.		23	280
Left party	3	0.55	0.41	23	280
Unclassified	3	1.35	0.88	23	280
Legitimacy of Communism	4	0.97	0.37	23	292
European Convention on Human Rights	5	2.85*	1.18	23	292
ILO Convention 111	6	0.82	0.51	23	292
Controls					
GDP (logged)	7	2.89**	1.09	23	246
Democracy	8	1.64***	0.18	23	272
Timing					
Time since Communism	9	0.89	0.07	23	292
Time					
2000-12 (ref. 1989-1999)	10	0.71	0.33	23	292
+p<.10, *p<.05, **p<.01, ***p<.001					

Table 2.3 Bivariate event history models showing factors affecting the proposal of lustration laws.

The bivariate results show that the "politics of the past" arguments are associated with the proposal of lustration. Consistent with Hypothesis 1, countries that experienced a replacement transition are more likely to propose lustration than those that did not. There is also support for Hypothesis 2: countries characterized by strong opposition

[23] Because the data contain repeated observations on the same cases (i.e., countries), the observations are not independent and are, therefore, subject to autocorrelation of error terms. This is a problem for probabilistic analyses, as it results in inaccurate variance estimation. Underestimated standard errors run the risk of conferring statistical significance where in fact none exists. To correct for autocorrelation, all statistical models presented in the chapter make use of robust standard errors, clustered at the country level. Analyses were conducted with Stata 12 using the *stset*, *logistic*, and *cluster* commands.

movements, repressed elites, and a history of political pluralism are more likely to propose lustration than countries with other configurations of those three factors.

There is mixed support for the "politics of the present" arguments. Consistent with Hypothesis 3A, there is no relationship between the ideology of the largest party in parliament and the likelihood of proposing a lustration bill. However, there is no support for Hypothesis 4. The results show that there is no relationship between lustration proposal and support for a combination of authoritarian governance and a planned economy.[24] There is no support for Hypotheses 5A. Countries that have ratified the European Convention on Human Rights are more likely to have proposed lustration bills. Under the tenets of world polity neoinstitutionalism, ratification should make countries less likely to support lustration. Similarly, there is no support for Hypothesis 5B. WPN suggests that ratification of ILO Convention No. 111 should be negatively associated with proposal of lustration laws. The results show there to be no statistical relationship between the two variables when controlling for time. Finally, the control variables suggest positive relationships between a country's wealth and level of democracy on the likelihood of proposing a lustration bill.

[24] Ideally, this measure would be time varying, as it is likely to change depending on the political and economic circumstances at any given time. It is also likely to change depending on how much time has elapsed since the collapse of Communism. However, I was only able to obtain data for all countries at two time points, 2006 and 2010. I decided to use 2006 data on the assumption that responses to the 2010 data, particularly on the question dealing with the preferred type of economy, would have been affected by the 2007-8 global financial crisis.

Multivariate Analysis: Proposal of Lustration Bills[25]

	Odds Ratio	S.E.
replacement transition (vs. non-replacement transition)	3.89*	2.27
strong opposition, repressed elites, history of democracy	ref.	
weak opposition, co-opted elites, little hist of democracy	0.47	0.43
weak opposition, repressed elites, short hist of democracy	0.83	0.80
European Convention on Human Rights	0.56	0.45
GDP (logged)	2.24	1.50
Democracy	1.47**	0.19

+p<.10, *p<.05, **p<.01, ***p<.001

Table 2.4 Trimmed multivariate model predicting the odds of proposing a lustration bill, N=264

The trimmed multivariate model in Table 2.4 shows results with full controls for both the "politics of the past" and the "politics of the present" approaches. Huntington's (1991) argument about countries that experience replacement transitions being more likely to adopt transitional justice holds true with respect to the proposal of lustration bills in parliament. A country with a replacement transition, such as Romania, is 289% more likely, net of other factors, to propose lustration than a country that underwent a different type of transition. While Stan's arguments about the strength of the political opposition, the relationship between the government and elites, and a country's history of political pluralism received bivariate support, this support disappears in the multivariate model. This is likely due to the introduction of the level of democratization as a control variable

[25] Due to the relatively small sample size, only variables with bivariate effects are included in this "trimmed" model.

because countries with a history of democracy and well-organized opposition are going to have higher levels of democracy in the present than those that lack such an infrastructure. Each one-point increase on QoG's 10-point democratization scale is associated with a 47% increase in the odds of proposing a lustration bill. This finding will be explored in the discussion section of this chapter.

Bivariate Analysis: Lustration Law Adoption

Next, I present bivariate results that model the adoption of a lustration law, controlling for time period, in Table 2.5.

Variable	Model	Dichotomous Year	S.E.	Events	Cases
Politics of the Past:					
replacement transition	1	2.42+	1.3	15	412
(vs. non-replacement transition)					
strong opposition, repressed elites, history of dem	2	ref.		15	412
weak opposition, co-opted elites, little hist of dem	2	0.13**	0.09	15	412
weak opposition, repressed elites, short hist of dem	2	0.65	0.38	15	412
Politics of the Present					
Right party	3	ref.		15	379
Left party	3	0.06**	0.06	15	379
Unclassified	3	0.40	0.24	15	379
Legitimacy of Communism	4	0.92+	0.04	15	412
European Convention on Human Rights	5	3.42*	1.92	15	412
ILO Convention 111	6	0.77	0.52	15	412
Controls					
GDP (logged)	7	2.57*	1.03	15	354
Democracy	8	1.90***	0.37	15	392
Timing					
Time since Communism	9	0.98	0.08	15	412
Time					
2000-12 (ref. 1989-1999)	10	0.49	0.28	15	412
+p<.10, *p<.05, **p<.01, ***p<.001					

Table 2.5 Bivariate event history models showing factors affecting the adoption of lustration laws.

With respect to the adoption by parliament of a lustration law, there is only marginal support for Huntington's argument that countries undergoing a replacement transition are more likely to adopt such a measure than countries with other kinds of transitions (Hypothesis 1). The odds ratio is not statistically significant at conventional levels. Stan's arguments about the strength of the political opposition and history of democracy (Hypothesis 2) are supported. The odds of adopting a lustration law in countries with a weak opposition, co-opted elites, and little history of democracy are 87% lower than in other countries. There is also support for Hypothesis 3B: when a Left party is in power, the odds of adopting a lustration law are 94% lower than when a Right party is in power. There is no support for Hypotheses 4, 5A, or 5B. The coefficient for Communist legitimacy is not significant at conventional levels, and the coefficients for treaty ratification are not significant in the direction that would be consistent with world polity theory. There are positive and statistically significant bivariate relationships between lustration adoption and both logged GDP and level of democratization.

Multivariate Analysis: Lustration Law Adoption

The multivariate model presented in Table 2.6 shows odds ratios for the likelihood of adopting a lustration law. This analysis shows that only Hypothesis 3B is supported. Net of other factors, Left parties are 96% less likely than Right parties to adopt a lustration law. The only other statistically significant result is level of democratization. Each one-point increase on the 10-point democracy scale is associated with a 208% increase in the odds of adopting lustration.

Politics of the Past:	Odds Ratio	S.E.
replacement transition	0.77	0.61
(vs. non-replacement transition)		
strong opposition, repressed elites, history of democracy	ref.	
weak opposition, co-opted elites, little hist of democracy	2.08	1.63
weak opposition, repressed elites, short hist of democracy	2.09	2.26
Politics of the Present		
Right party	ref.	
Left party	0.04*	0.06
Unclassified	0.36	0.27
Legitimacy of Communism	0.89	0.08
European Convention on Human Rights	1.63	2.20
ILO Convention 111	0.44	0.65
Controls		
GDP (logged)	0.53	0.42
Democracy	3.08**	1.12
+p<.10, *p<.05, **p<.01, ***p<.001		

Table 2.6 Multivariate models showing odds ratios for adopting a lustration law

Discussion and Conclusion

This chapter has examined the merits of five arguments about the consideration and adoption of lustration measures in the post-Communist region. Three of the arguments, advanced by Huntington (1991), Stan (2008, 2009), and Welsh (1994), received at least some support in either the bivariate or multivariate models. The arguments that did not receive support from the evidence tested here are the world polity neoinstitutionalist model and the legitimacy argument put forth by Nedelsky (2004). With respect to the former, I argue that the lack of support is because lustration actually presents a paradox for the WPN theoretical perspective. That is, lustration is a policy that does diffuse when

WPN suggests it should not. I develop this argument in the following chapter and offer suggestions about how WPN can be retooled to account for the diffusion of lustration policies. As for Nedelsky's legitimacy argument, it is only marginally significant at the $p<.10$ level in bivariate analyses for the adoption of lustration. There is a possible 8% decrease in the odds of adopting lustration for every 1% increase in support for autocratic governance in combination with a planned economy. However, the p-value is large enough that this finding could be due to random variation. It could be argued that there is a better way of operationalizing "legitimacy of the Communist regime" than the approach I have taken, but I have not found other survey data that approximates this variable and is available for every country in the region.

With respect to the three arguments that each receive at least some support from the evidence presented in this chapter, it is clear that there is a mixture of both the politics of the past and the politics of the present that affect the consideration and adoption of lustration measures. In particular, the politics of the past are important predictors for the proposal of lustration. Countries that undergo replacement transitions, have a strong opposition, and have a history of democracy are more likely to propose lustration bills. The finding about replacement transitions, in particular, is consistent with research on other forms of transitional justice. Sikkink (2011) found that countries that experienced "ruptured" transitions to democracy, like Greece, Portugal, and Argentina, were more likely to prosecute former leaders for human rights abuses than countries like Spain and Uruguay that experienced "negotiated" democratic transitions around the same time.

This chapter shows the "politics of the present" to be more important than the politics of the past when it comes to the adoption, rather than the consideration, of lustration laws. Consistent with Welsh's (1994) research, Left political parties are less likely to adopt lustration than Right political parties. Importantly, the level of democratization is also significant. At first glance, this finding appears intuitive: democratic states should be more likely to reckon with their abusive pasts, as they should have more respect for human rights than autocratic states. In the case of lustration, though, this finding about democracy is curious because the laws themselves are in a sense anti-democratic. They are designed to limit participation in government, something that is not conducive to "free and fair" elections.

The strong finding that democracy matters must be explained. It is a particularly striking in light of the fact that Huntington's argument about the mode of establishing democracy does not hold up under multivariate scrutiny. An alternative view of democracy is offered by Tilly (1995), who provides a series of images of democracy that represent the way researchers have studied democratization. At one extreme, democracy is an oilfield; at the other, it is a cultivated garden. An oilfield develops over millennia through a series of rare coincidences. A scientist may be able to theorize about where an untapped oilfield is likely to be found, and she is also able to explain how an oil well works. Such an expert, however, is incapable of producing a new oilfield at will. At the other pole is the image of a garden. Not all environments are equally hospitable to cultivating a thriving garden, but there are many varieties of environments that produce different types of gardens, as long as they are nourished by sufficient sun, precipitation,

and appropriate soil. A botanist, like the oilfield expert, is able to explain how the garden works, but the garden is amenable to intervention in ways that an oilfield is not because it is not the rare product of the ages.

Tilly finds both of these conceptualizations of democracy to be inadequate because "no one has so far succeeded in separating common correlates of democratic arrangements from non-tautologically necessary, sufficient, or contingently causal conditions" (1995:381). This problem persists because democracy, he argues, is a lake. Lakes form in many ways (manmade, melting glaciers, etc.), but once a lake exists, it has characteristic properties—particular ecosystems, for example. Tilly uses this metaphor to make a theoretical point: studying particular cases of democratization can, at most, provide us with a set of possible paths to democracy, some sufficient (but not necessary) conditions for transition, and an understanding of the mechanisms that maintain democratic institutions once they are formed.

It follows that there must be some common feature of democracy, some mechanism, that promotes lustration regardless of *how* a country transitions to democracy. While the analysis presented in this chapter cannot offer such a mechanism, I can offer one possible explanation that arises from my case studies: policy feedback. My analyses of Croatia and Serbia, presented in chapters 4 and 5, show that a country's history of regulating and using its security sector constrain and condition future options for further regulation. The constraining effects of policy feedback are likely to be stronger in democratic rather than autocratic states, as the former is explicitly designed with mechanisms to limit the power of its decision makers.

In closing, I will suggest future directions for quantitative research on lustration. Cross-national comparative studies of lustration should examine the extent to which lustration laws are enforced. Some, particularly the early adopters, pursue lustration quite vigorously, with many thousands of persons screened and lengthy disqualifications meted out. Germany, Czechoslovakia, and Estonia are examples of such cases. Other countries with lustration laws, like Poland, have taken a more moderate approach. One obstacle to this kind of research is that there does not seem to be high quality data that is publicly available on enforcement—such as the number of people screened and the number of people found to be lustration-positive in a given year—for most countries. Macedonia provides such data on a website,[26] but cross-national quantitative studies will require access to the records of national or local lustration commissions, particularly if features of the screened persons are to be taken into account.

[26] www.kvf.org.mk

Appendix 2.1: List of First Lustration Laws in Post-Communist States

1990	Germany	"Germany Unification Treaty"
1991	Czechoslovakia	"Czech and Slovak Federal Republic Screening Law no. 451/4"
1991	Lithuania	"Decree Banning KGB Employees and Informers from Government Positions no. 418"
1992	Bulgaria	"Law on Banks and Credit Activity"
1994	Hungary	"Act XXIII on the Screening of Holders of Some Important Positions, Holders of Positions of Public Trust, and Opinion-Leading Public Figures"
1994	Latvia	"The Election Law on City and Town Councils, District Councils, and Pagasts Councils"
1995	Albania	"Law on Genocide and Crimes Against Humanity Committed During the Communist Regime for Political, Ideological, and Religious Motives"
1995	Bosnia-Herzegovina	"General Framework Agreement for Peace in Bosnia and Herzegovina" (aka "Dayton Accords")
1995	Czech Republic	"Act No. 254/1995, Amending the Large Lustration Act"
1995	Estonia	"Citizenship Law"
1997	Poland	"Lustration Law"
2002	Slovak Republic	"Law on National Memory"
2003	Serbia	"Law on Accountability for Human Rights Violations"
2006	Romania	"Emergency Ordinance No. 16, Amending Law No. 187 of 1999 on Access to One's Own File and the Unveiling of the Securitate As a Political Police"
2008	Macedonia	"Law on Additional Requirements for Public Office"
2011	Georgia	"Freedom Charter"

Chapter 3.
The Diffusion of Lustration Laws: An Exercise in Theory Revision

"What's past is prologue"
William Shakespeare, *The Tempest* Act II, scene i

Introduction

Lustration policies have received much scholarly attention for their perceived utility as instruments of rehabilitation, retribution, truth revelation, and trust building in the post-Communist states (Letki 2002; Horne and Levi 2003; Mayer-Reickh and de Greiff 2007; Stan 2008; Horne 2012; Choi and David 2012). Despite these supposed benefits, the implementation of lustration has been met with skepticism, uneasiness, and opposition from many international actors, who view lustration proceedings variously as a smear tactic used for political revenge, a witch hunt based on secretive evidence of questionable veracity, or an impediment to democratic elections, among other objections. Despite the misgivings of many international institutions and their repeated efforts to establish acceptable parameters for lustration, the practice has dominated as the primary method of transitional justice in Eastern Europe. Since 1989, lustration has been proposed, if not adopted, by legislators from most post-Communist states (see Table 2.1 in the previous chapter).

This chapter addresses the question of how laws to cleanse the public sector of secret police agents and collaborators have diffused throughout post-Communist Eastern Europe. I argue that this phenomenon challenges the theory of policy diffusion put forward by John Meyer and colleagues, who propose that a common world culture,

disseminated through international organizations, explains such diffusion in the post-World War II era. This theory, known as world polity neoinstitutionalism (WPN),[27] seeks to explain how global models and discourses diffuse to nation-states. The theory does not, however, account for how a phenomenon diffuses *in spite of* its incongruence with such models and discourses.

The diffusion of lustration, then, is a paradox when refracted against the extant neoinstitutionalist literature. This chapter explores the paradox by first briefly outlining the main concepts and arguments of WPN. Then, I review the stance of the relevant, significant international actors toward lustration as a practice that must be tightly corralled, and contrast that insistence on regulation with states' often unrestrained implementation of lustration policies. I argue that, despite this discrepancy, concepts from world polity neoinstitutionalism can nevertheless be employed to account for lustration's diffusion when the theory is revised and complemented with concepts from the sociology of culture, social movements, and comparative law.

World Polity Neoinstitutionalism: An Overview

World polity neoinstitutionalism is a theoretical perspective developed initially by sociologist John Meyer at Stanford University. In contrast to the many social theories whose insights are geared toward explaining differences across groups, categories, time, or place, WPN is a theory of sameness. In the 1970s, Meyer noticed that schools in sub-Saharan Africa had begun to model themselves on Western educational systems. This

[27] The theory is sometimes known as "world society theory," but I find the term *polity*, with its connotation of power, to be more precise.

observation belied prevailing theories of the day, such as modernization theory and world-systems theory, which suggested that educational systems would be of a form more closely tied to the needs of the labor market in a given location. Meyer developed WPN in response to the shortcomings of other perspectives by focusing on culture and phenomenology, rather than economics and functionalism (Meyer et al. 1997). In short, WPN was developed as an alternative theory of globalization that filled an analytical gap by providing a framework for explaining the isomorphic tendencies of nation-states, particularly in the period since World War II.

WPN argues that culture is an engine of globalization that provides *norms*, supplies *scripts*, and generates *cognitive models*, all of which are used to guide the behavior of nation-states (Meyer 2010). Consider briefly the decision-making process of liberal democratic societies as an example to illustrate these concepts. *Norms* are rules that govern behavior in a given setting. In a liberal democracy, it is normative for citizens to be able to decide who will form a government in their name (or, in some countries, in the sovereign's name). A *script* provides the recipe by which this norm is achieved. In the liberal democratic context, the decision about who governs is made via an election, with its attendant properties of regular- or fixed-interval recurrence, multi-party participation, universal adult suffrage, and full accounting of votes cast. Finally, *cognitive models* are shared mental frameworks that provide the blueprint for enacting a script. They tell us, in this case, what an election looks like. Elections of a large scale in liberal democracies are usually conducted at multiple sites and rely on some version of a secret ballot procedure, rather than on another polling method, such as acclamation.

WPN posits as its central premise that a common global culture that influences the behavior of nation-states has been forged over the past several decades (Boli and Thomas 1999). The theory argues that the essential elements of this culture—its norms, scripts, and cognitive models—are promulgated through intergovernmental organizations (IGOs) and international nongovernmental organizations (INGOs). In the case of elections, IGOs, such as the Organization for American States, the European Union, and the Organization for Security and Co-operation in Europe, and INGOs, such as the Carter Center and the National Democratic Institute, regularly engage in democratic capacity building, political party development, and election monitoring. They observe the conduct and process of elections, particularly in emerging democracies, to assess whether a given election meets international standards (Santa Cruz 2005).

IGOs and INGOs constitute the "polity" in world polity neoinstitutionalism. The imprimatur of such organizations gives the appearance of consensus and universality around policies, thereby conferring legitimacy on the policies and on the states that adopt them. IGOs and INGOs convey to national governments what they believe to be appropriate models not only of decision-making, but also of environmental protections, human rights policies, market deregulation, and more. Arguments about the capacities of IGOs and INGOs to transmit a global culture have been articulated in abundant detail (Krucken and Drori 2009; Schofer et al 2010; Schofer and Longhofer 2011) and have been buttressed by copious illustrative application to a range of cross-nationally diffusive phenomena, such as anti-female genital cutting laws (Boyle 2002), civil war (Hironaka

2005), geological science (Schofer 2003), and educational curricula (Meyer and Ramirez 2000).

The Lustration Paradox

International institutions and organizations have rigidly defined the boundaries of what constitutes an acceptable lustration system by international standards and have repeatedly determined that lustration policies, in practice, routinely exceed those limits. In general, the international legal objections to lustration's excesses fall into the following four categories: information problems, particularly those resulting from a reliance on secret police dossiers[28]; due process violations; employment discrimination; and bureaucratic loyalty concerns (Horne 2009). The official pronouncements of individual organizations on the parameters of lustration merit further exposition, but I shall begin this section by first reviewing a single, prominent legal case (*Matyjek v. Poland* 2007) in which some of the problematic tendencies of lustration are illustrated.

The Matyjek *case—the right to a fair trial*

[28] The problems associated with the secret police files are numerous. There are concerns regarding the truthfulness of the information contained within, the lack of potentially mitigating information about circumstances under which named informants collaborated with the secret police (coercion, threats, and blackmail of informants is often not noted in the files), the completeness of the files (many were destroyed in the waning days of Communism or since), their continued classification in some countries as state secrets—leaving many accused persons ignorant of the evidence tying them to the secret police, and the availability of enough files to conduct a thorough lustration process (Verdery 2009; Nalepa 2010). The last point is especially a problem in newly independent states. For example, many of the Yugoslav secret police files were held in Belgrade, the federal capital of Yugoslavia. Now that Macedonia, a former republic of Yugoslavia, has instigated lustration, it would like access to relevant files on Macedonians that remain in Belgrade. Currently, Macedonia has access only to those files that were left behind in its capital city, Skopje. Belgrade, now the capital of an independent Serbia, has not been willing to share classified files with another state—even one that used to be part of Yugoslavia. Thus, evidence of an explanatory or even exculpatory nature is denied to lustration applicants in Macedonia. Similar problems have arisen involving the lustration systems in the Baltic States, with many KGB files still being housed in Moscow.

The European Court of Human Rights (ECtHR), established in 1959, is the judicial arm of the Council of Europe (CoE). Located in Strasbourg, France, the Court hears cases to determine whether its 47 member states are meeting their obligations under the European Convention on Human Rights (ECHR).[29] Similar to the Inter-American Court of Human Rights, the ECtHR operates on a *state*, rather than individual, and *civil*, rather than criminal, model of accountability (Sikkink 2009). States found to have violated the Convention could be forced to pay damages to applicants. The ECtHR is a court of last resort, meaning that applicants must first exhaust all domestic remedies for their grievances before seeking a judgment from Strasbourg.

It is under such circumstances that Mr. Tadeusz Matyjek, a member of the lower house of Poland's parliament (the *Sejm*), alleged in 2003 that the lustration proceedings to which he had been subjected[30] were unfair and violated Article 6 of the ECHR. Article 6 establishes the right to a fair trial, including a presumption of innocence and certain other "minimum rights," like the right to examine accusing witnesses (ECHR 1950). Under the terms of Poland's 1997 Lustration Act, Matyjek and other members of

[29] The previous chapter showed that ratification of the ECHR to have a positive bivariate relationship to the proposal of lustration bills. I argue that, under the propositions of WPN, the opposite should be the case.

[30] Poland's lustration system is unique among those of the post-Communist states in that it punishes not the act of collaboration with the secret police, but instead punishes *lying* about such collaboration. The 1997 Lustration Act requires those subject to it, such as candidates for and members of the parliament, to declare whether they were collaborators with—or members of—the Polish Security Service (*Służba Bezpieczeństwa*, or "SB"). Unlike the lustration systems of other countries, persons in Poland who confess to collaboration with the SB are not banned from public office. Rather, their admission is made public, and the electorate does with this information what it will. Only persons who are found to have lied about their collaboration are punished. A person who claims not to have been a collaborator, but is determined after investigation into the SB's dossiers to have been a collaborator, is banned from public office for 10 years (Czarnota 2007; Choi and David 2012). It is in this way that, in my view, Poland's lustration law is, perversely, both the most Stalinist and the most liberal-democratic of laws in the region. It is Stalinist in its insistence on confession, even in cases when the "evidence" of collaboration is deeply problematic; it is liberal-democratic in that confession does not prohibit one from standing for election or holding other public office.

parliament were required to disclose whether they had served in or worked for the secret police (SB) between 1944 and 1990; Matyjek declared that he had not. In 1999, Matyjek was accused by the Commissioner of the Public Interest of having lied about his collaboration. In December of that year, the Warsaw Court of Appeals found that Matyjek "had been a deliberate and secret collaborator with the Security Service" and had lied in his declaration (p. 2). Part of the evidence that the Warsaw court relied on was testimony that Matyjek's signature was found on his secret police file, but this evidence, given its classification as a state secret, was not available to Matyjek. Matyjek appealed, claiming that he did not know he had been registered as a collaborator. He requested to have testimony entered from the SB agent who had allegedly recruited Matyjek, but that agent was deceased. Several further appeals were lodged in Polish courts, but they were unsuccessful. In February 2000, Matyjek was relieved of his seat in parliament and barred from standing for election, or from holding other public offices, for 10 years.

The ECtHR was sympathetic to Matyjek's claims and ruled that Poland had gone beyond what was acceptable in the implementation of its lustration law. In its opinion, the ECtHR (2007:17-18) wrote:

> … [The Court] reiterates that if a state is to adopt lustration measures, it must ensure that the persons affected thereby enjoy all procedural guarantees under the Convention in respect of any proceedings relating to the application of such measures. …
>
> …the Court considers that due to the confidentiality of the documents, … the applicant's ability to prove that the contacts he had had with the communist-era secret services did not amount to "intentional and secret collaboration" within the meaning of the Lustration Act were severely curtailed. …
>
> In these circumstances the Court concludes that the lustration proceedings against the applicant, taken as a whole, cannot be considered as fair within the meaning of

> Article 6 § 1 of the Convention taken together with Article 6 § 3. There has accordingly been a breach of those provisions.

The ECtHR's holdings in the *Matyjek* case are but one instance in a line of jurisprudence that has sought to reign in the excesses of Eastern Europe's lustration processes. In addition to violations of Article 6 of the ECHR, other court cases have found there to be violations of the right to respect for private and family life (Article 8), the right to freedom of expression (Article 10), the right to freedom of assembly and association (Article 11), the right to an effective remedy (Article 13), the prohibition of discrimination (Article 14), and the right to free elections (Protocol 1, Article 3). In every case brought before the ECtHR through 2008, the Court found lustration to have been implemented in a way that is inconsistent with the Convention, and has ruled in favor of the lustrated person[31] (Horne 2009). But the ECtHR is not the only international actor to reach this conclusion. Other actors have also determined that, in their efforts to navigate a course between the Scylla of permitting impunity for past human rights violations and the Charybdis of committing further human rights violations, states with lustration policies have repeatedly veered toward the latter.

The Council of Europe

In addition to the ECtHR, other international governmental organizations have weighed in on lustration. In 1996, the Parliamentary Assembly of the Council of Europe issued Resolution 1096, detailing its position "on measures to dismantle the heritage of

[31] This uniformity is particularly striking given the ECtHR's tendency to rule against states with unique policies that place them outside the consensus of the rest of Europe (Boyle and Meyer 1998), rather than against states with policies as widespread as lustration.

former communist totalitarian systems." The resolution does not require states to adopt lustration laws. Rather, it stresses that when such laws are adopted, as eight states had done at the time of its issuance, they must conform to certain democratic standards. These criteria were spelled out in a separate document and state that "revenge may never be a goal of such laws, nor should political or social misuse of the resulting lustration process be allowed" (CoE 1996). The document, included as Appendix A, then lists 13 specific requirements for lustration laws. Many of these guidelines are routinely violated. For example, Guideline E, which prohibits lustration for elective office, is violated in the Czech Republic, Poland, Lithuania, Latvia, Estonia, Germany, and Macedonia. Guideline G, which limits bans from office to 5 years and sets an expiration date of December 31, 1999, has been violated by all countries with lustration systems.

Despite the clarity of the CoE resolutions that they do not confer a duty to lustrate, they have been deployed as the *sine qua non* of lustration by at least one state. The website of Macedonia's lustration body, known as the Data Verification Commission, states that the "obligation"[32] to adopt a lustration law arises from Resolution 1096. Thus, a resolution that was intended as an effort to reign in lustration systems for states that chose to adopt them has been misinterpreted as an order compelling states to implement lustration. It is not clear whether this is a deliberate or unintentional misreading of the CoE resolution, but the 12-year interval between the adoption of the resolution in 1996 and the passage of Macedonia's first lustration law in 2008 suggests that the supposed obligation was not felt with a great deal of urgency and instead operates as a *post hoc* justification.

[32] "обврската" (http://www.kvf.org.mk/index.php/mk/2012-11-15-10-08-40)

As with the ECHR, the International Labor Organization's (ILO) Convention No. 111 on Discrimination in the Workplace is a treaty that limits the reach of lustration systems. Persons seeking legal remedy through this treaty make application to the ILO Committee of Experts on the Application of Conventions and Recommendations, an organ of the United Nations. As with the ECtHR, every case brought before the ILO regarding lustration has been decided in favor of the applicant. The ILO Committee of Experts has held that states do have a right to screen for loyalty, but has found in every lustration case brought before it that the state has, in practice, exceeded its rights in this regard (Horne 2009). The ILO has issued Comments stating that lustration, by banning persons from holding certain jobs, violates the prohibition on employment discrimination. Similar to the ECtHR, the ILO finds fault with the information used to make determinations about one's status as a collaborator—that is, the secret police dossiers.

The ILO's opposition to lustration was evident in the early post-Communist years, even before official challenges to the laws were brought before it. On March 5, 1992, the ILO's Governing Body issued an opinion on the then-recently adopted Czechoslovakian lustration law, writing,

> The Committee set up under article 24 of the Constitution examined the compatibility with the Convention of Act No. 451/1991 of 4 October 1991, known as the "Screening Act" [i.e., the lustration law], with respect to exclusions of specified categories of persons from a wide range of functions and occupations, mostly in public institutions but also in the private sector. People liable to such exclusions include persons who were engaged in the past in specified functions, or were associated with or members of specified bodies or organisations of the former political system, in a period of over 40 years from 25 February 1948 to 12 November 1989.
>
> The Committee was of the view that the exclusions established by Act No. 451/1991 may be deemed inherent requirements of particular jobs and therefore

> admissible under Article 1, paragraph 2, of the Convention only in a certain number of cases. It further found that the exclusions under the Act cannot be regarded as measures concerning activities prejudicial to the security of the State within the meaning of Article 4 of the Convention [No. 111]. It therefore was bound to conclude that, to the extent indicated, **the exclusions imposed by Act No. 451/1991 constitute discrimination on the basis of political opinion under the terms of the Convention.** It also found that the appeals procedures under Act No. 451/1991 did not fully meet the requirements of the Convention. (ILO 1992, emphasis added)

The ILO further called on the Czechoslovakian government to "repeal or modify any legal provisions which are incompatible with the Convention [No. 111]."

International Non-Governmental Organizations

Like the ILO, the influential INGO Human Rights Watch was derisive of the 1991 Czechoslovakian lustration law—the first such law to receive widespread international attention. Then known as Helsinki Watch, the organization wrote in a 1993 report on human rights in Czechoslovakia,

> In the view of Helsinki Watch, the Czechoslovakian government and the Constitutional Court should repeal the lustration law. … Helsinki Watch is concerned that with respect to past violations of human rights, persons are not charged with having violated a particular law or standard, but instead are being persecuted merely for having belonged to a now-discredited group.

The report concludes with the suggestion that Czechoslovakia should reject lustration and instead pursue a truth commission or criminal prosecutions, indicating the international consensus for those transitional justice mechanisms over vetting procedures.

On January 1, 1993, Czechoslovakia peacefully dissolved into two separate nations—the Czech Republic and the Slovak Republic. The 1991 lustration law, adopted when there was still one Czechoslovakia, was inherited by both successor states. Only the

Czech Republic, however, continued to enforce the law. In 1995, with the law set to expire the following year in both countries, the Czech Republic renewed the law for a further four years (and ultimately extended the law indefinitely), while the Slovak Republic allowed the law to expire quietly (Nedelsky 2004; Priban 2007) before adopting its own lustration law in 2002.

In its 1996 report on the Czech Republic, which had recently renewed its lustration law for the first time, Human Rights Watch repeated its earlier position.

> Human Rights Watch/Helsinki is concerned that persons prosecuted under the lustration law are not being prosecuted for acts that were criminal at the time they were committed, but for having belonged to a now-discredited group.

Another prominent INGO, Amnesty International, has, by its own admission, issued "virtually no" reports on lustration. I interpret Amnesty's relative silence on lustration as further evidence that lustration does not have support in the INGO community. The one report that does exist was issued by the Dutch affiliate of AI in 2006. The report, anodyne by Amnesty International's standards, summarized the status of lustration laws in Central Europe, but advocated neither for nor against their implementation. For example, of Serbia the report indicates:

> A lustration law was passed, the 'Accountability for Human Rights Violations Act', in May 2003. It applies to all human rights violations that occurred after 23 March 1976, the day that the International Covenant on Civil and Political Rights came into effect. The overall number of affected persons is unknown. The Commission for Investigation of Accountability for Human Rights Violations has nine members. Three members are judges of the Supreme Court of Serbia, three members are prominent legal experts, one member is a deputy public prosecutor of the Republic of Serbia and two members are deputies of the National Assembly holding a degree in law, elected from different electoral lists.

Accurate as this concise summary of the Serbian lustration law and its implementing body may be, no indication is given of Amnesty's attitude toward the law. Unlike Human Rights Watch, Amnesty is not applying negative pressure on states to avoid lustration; but Amnesty is not promoting lustration, either.

Resolving the Paradox by Reformulating WPN

Working in the tradition of Burawoy's (1991) extended case method, which sees the exploration of anomalous cases as the key avenue for revising and improving theories (Shor 2008), I argue that the paradox I have developed thus far can be used for reconstructing WPN theory. Burawoy describes the method as follows,

> We begin with our favorite theory but seek not confirmations but refutations that inspire us to deepen that theory. Instead of discovering grounded theory we elaborate existing theory. We do not worry about the uniqueness of our case since we are not as interested in its 'representativeness' as its contribution to 'reconstructing' theory" (1998:16).

Although the current formulations of WPN are unable to account for the diffusion of lustration laws, the theory can be revised in such a way as to accommodate the special situation engendered by the case of lustration. In the sections that follow, I introduce the concepts of *legal constraint structure* and *schematic antecedent* to demonstrate their utility in reformulating WPN. Drawing on the work of comparative legal scholars, I suggest that *prestige*, rather than consensus and universality, can be an alternative source of legitimacy that leads to diffusion when coupled with *mimetic bridging*.

Rewriting the Script

WPN scholars often make use of the concept of *legal origin*. This concept is used to denote the type of legal system employed by a particular country. The simplest categorization of legal origins is into those countries governed by *common law* versus those governed by *civil law*.[33] Such a division is often a marker of a country's colonial history: common law systems are prevalent in England, Wales, and former British colonies, whereas civil law systems are prevalent in continental Europe and its former colonies. Research has found that legal diffusion is common among countries that share the same legal origin (Spamann 2009; Goderis and Versteeg 2013). While a shared legal origin may provide avenues that enable the borrowing of laws, it is equally important to understand the ways that legal systems may close off other, possibly more preferable, avenues of legal action.

To make this point, I build on and expand the concept of "political opportunity structures" to include its ontological other—that is, constraint. Political opportunity structure is a concept used by social movement scholars to describe both the relative openness of political systems to change/be changed and their capacity to resist change, the stability/instability of political alignments, the availability of strategic partners, and the potential for exploitation of conflicts among political elites (Tarrow 1983, 1989; McAdam 1999). Building on this idea, Andersen (2004) introduced the term "legal opportunity structure" to analyze the way that social change—in his case, the advancement of gay rights—can be achieved through litigation. For my purposes, I focus

[33] Civil law systems are characterized by their reliance on codification. Common law systems, by contrast, are based on the principle of *stare decisis*, which gives primacy to precedent as a source of law Shapiro (1981).

not on opportunities, but on constraint. By constraint, I refer to the limits of possible change. Constraint is not conceptually the same as a low level of opportunity because, as I conceive it, it applies not only to persons agitating on the outside of a system of power, but also to persons working within a system of power.[34] Thus, I use the term *legal constraint structure*[35] to describe the legal predicament encountered by many East European countries when it comes to holding persons accountable for human rights abuses committed under Communism.

Before the imposition of single-party Communist rule, the nations of Eastern Europe, as with the rest of continental Europe, had legal systems based in civil law. In the Communist countries, civil law was replaced with socialist law[36], which sought to abolish private property rights and, importantly for the case of lustration, allowed great latitude in the power of the secret police (Sypnowich 1990). Socialist law was characterized by an

[34] Prudence, if not the arbiters of authoritative sociological claims-making themselves, compels further explication of this concept beyond the immediate case at hand (i.e., lustration), so I will provide an example that continues the reasoning begun by Andersen (2004). When litigants are able to achieve the vindication of gay rights through a court system, then they are operating within a legal opportunity structure best described as permissive. If one imagines, conversely, a legal system that does not countenance such remedy because, for example, it does not grant *locus standi* to persons of unorthodox erotic predilection to bring claims against the state, then one is contending with a legal opportunity structure that can most charitably be designated as tyrannous. This hypothetical legal system, however unyielding, does not, in my conceptual formulation, represent a legal constraint structure. Rather, a legal constraint structure *vis-à-vis* gay rights is better illustrated by the circumstances borne by the administration of U.S. President Barack Obama, at least through early 2013. The administration would have preferred to extend federal legal recognition of same-sex marriage to persons contracted into such unions as defined by the laws of certain states, but was unable to do so because of the 1996 law known as the "Defense of Marriage Act." This law constrained those with executive power, even as the less politically powerful litigants took advantage of the United States' permissive legal opportunity structure to challenge DOMA at the Supreme Court. Thus, in the present framework, constraint and opportunity structures are analytically distinct and not mere inversions of one another.

[35] One might argue that by my concept of legal constraint I am merely invoking what is sometimes termed the *rule of law* (see, for example, Uzelac 2007, who makes a similar point). I do not find that term to be useful, though, because it is too capacious and, as such, is a tool easily wielded by the political class.

[36] Many legal scholars consider socialist law to be a variant of civil law rather than an altogether different legal system. I wish not to enter that debate. For my purposes, I want to establish that socialist law is *different enough* from (other types of) civil law so as to trigger the applicability of *nullum crimen*.

"obsessive secrecy" in which legislation was published "for internal use only" (Loeber 1970) and distributed, if at all, on a "need-to-know" basis (Markovits 2006). Thus, in Western views, socialist law was "state-serving and contemptuous of individual rights, ignorant of due process, ranking collective over person interest, subservient to the Party, and administered by a distrusted and pliable judiciary" (Markovits 2007:237).

When state socialism collapsed in Eastern Europe, so, too, did most aspects of socialist law. The post-Communist states reverted to legal systems based in civil law, often adopting what political scientist Kim Scheppele (2004) refers to as "not-like-that constitutions." These codifications were meant to establish a secure rule of law that eschewed the pernicious aspects of their socialist, and sometimes Stalinist, predecessor systems.

It is the replacement of socialist law with civil law that results in the aforementioned legal constraint structure for the post-Communist states. A foundational principle of civil law systems is expressed by the Latin phrase *nullum crimen sine lege*—that is, there is no crime without a law[37]. Because socialist law was, by its nature, repressive, most of what may be regarded by the collective memory as the "crimes" of the secret police *were not illegal* at the time they were committed.[38] This fact has severely restricted the ability of East European states to seek accountability through

[37] The principle is also enshrined in Article 7 of the ECHR. It states in part, "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed."

[38] There are exceptions—for example, assassinations, which were illegal, particularly when carried out in the West. Even those kinds of prosecutions, though, are sometimes hampered by concerns about the statute of limitations (Uzelac 2007; Bumin 2010). See the following chapter for a discussion of the controversy around the Croatian secret police regarding assassinations they carried out in West Germany and France.

prosecutions in the criminal justice system (Bruce 2008).[39] A Serbian NGO project designed to investigate and determine best practices for dealing with the past in that country summarized the region-wide problem and the decision to pursue lustration, rather than prosecution, as follows:

> The limited options for criminal punishment … apply in the end to the heads of the regime and a limited number of their closest associates who have severely violated human rights. … It is, however, well known that the planning, organization and application of repression in communist and other totalitarian regimes is based on the participation of a large number of institutions and employees of these regimes (Milosavljevic and Pavicevic 2002:101).

Portugal, an early adopter of transitional justice, provides a useful contrast to the East European experience and illustrates what can be achieved in the absence of such legal constraints. A right-wing authoritarian regime ruled Portugal from 1933 to 1974, a period known as the *Estado Novo*. When junior military officers staged a 1974 coup to restore democracy, they unknowingly launched an expansive global episode of democratization that spread out from Portugal through Southern Europe, Latin America,

[39] Hungary's Constitutional Court thwarted early attempts at prosecutions in that country. Decision No. 11/1992 struck down "An Act Concerning the Right to Prosecute Serious Criminal Offences committed between 21 December 1944 and 2 May 1990 that Had Not Been Prosecuted for Political Reasons of 4 November 1991" (Bumin 2010). In early 2013, the government of Hungary, formed by the Fidesz political party, after a series of Constitutional Court rulings that did not go in their favor, attempted to push through a 15-page series of constitutional amendments that, among other power-grabbing interventions, violates the *nullum crimen* principle. Scheppele described the amendment as a "toxic waste dump of bad constitutional ideas." She added, "The amendment also announces as a constitutional fact that the communist party and its associated groups were 'criminal organizations.' Those who were associated [with] them are now responsible for a long list of offenses including maintaining the regime, betraying the nation, ending freedom of property, putting the country into debt, depriving citizens of human rights, and undermining national identity" (2013). The response of the international community to these changes has been swift and unsubtle. The U.S. State Department says the amendments "could threaten the principles of institutional independence and checks and balances that are the hallmark of democratic governance" (Nuland 2013). The CoE Secretary General issued a statement saying, in part, "I am concerned about the compatibility of the constitutional amendments with the principle of the rule of law, as set out in the Statute of the Council of Europe" (Holtgen 2013). He further called on Hungary to delay the vote on the amendments. This incident illustrates the international policing of legal constraint structures and the seriousness with which they are taken.

and ultimately Eastern Europe (Markoff 2005). Having retained its civil law system throughout the *Estado Novo*, Portugal found itself unchecked by the *nullum crimen* principle of civil law and thus was able to put members of its secret police, the PIDE, on trial for their crimes *qua* crimes (Raimundo 2007; Sikkink 2011).

Resonance of Historical Precursors

To this point, I have argued that international community's preferred script for enacting the norm of accountability for human rights violations is criminal prosecution, but that such action cannot be taken in most cases in Eastern Europe due to legal constraints. It is necessary, therefore, to turn to an alternate script—some other means of achieving accountability. The case of lustration suggests that such substitute scripts, not sanctioned by the world polity, are sought in the familiar and are based on past experiences. Here, borrowing again from social movement scholars, the concept of *frame resonance* is useful. Resonance denotes the ways in which ideas gain traction with an audience by mechanisms such as the credibility of the claims-maker and the extent to which the idea/arguments comport with the audience's own lived experience (Snow and Benford 2000). To understand the diffusion of lustration in the East European context, we have to ask why this particular method of transitional justice resonates broadly as an alternative to the more acceptable script of criminal prosecution. In accordance with the observation made by the dramatist Shakespeare that "what's past is prologue," I argue that this resonance is due in large part to the collective memory of what I term lustration's *schematic antecedent*: the purge.

Before commencing with a genealogical analysis of lustration, it is productive to engage first in an etymological analysis of the term. *Lustration* derives from the Latin verb *lustrare*, meaning "to purify by a propitiatory offering" (OED 1989). In ancient Greece and Rome, lustration was a process "whereby individuals or communities rid themselves of ceremonial impurity ... [such as] pollution incurred by contact with childbirth or with a corpse" (*Encylopædia Britannica* 2013). Purification was achieved with fumigation and application of water, blood, clay, or other substances. More proximately, the term *lustration* was appropriated by the Czechs (*lustrace*), who retained the original meaning of purification or cleansing, but extended its application to the state. As described by Milosavljevic and Pavicevic (2002:104), "By using this term, perhaps the Czechs wanted to emphasize the ethical, sublime dimension of freeing themselves from the communist past."

But the Czech usage of *lustrace* did not begin with post-Communist debates about the need to cleanse the state of human rights abusers. Instead, the term was used by the Czechoslovakian secret police (StB, *Státní bezpečnost*) to refer to their process of evaluating citizens' loyalty to the Communist Party (Horne and Levi 2003; Barret, Hack, and Munkacsi 2007). The post-Communist concept of lustration as a screening procedure is thus only very slightly removed from the screenings of citizens that were already taking place before the reinstatement of democracy.

Yet another precursor of post-Communist lustration is the purge of Nazis and other régime critics that followed World War II. Nazi collaborators and critics of Communism were hunted down by many countries under the pretext of consolidating the

newly installed Communist regimes. Such purges were accompanied by Stalinist show trials that enabled Communists to silence dissent and settle scores with critics and other Party members alike (Stan 2008). High-profile examples include the trials of Traicho Kostov in Bulgaria, László Rajk in Hungary, Rudolf Slánský and 13 other Communist leaders in Czechoslovakia, Lucreţiu Pătrăşcanu in Romania, and Leo Bauer in East Germany--all of whom were Communist Party leaders (Hodos 1987). Further examples include the 1968 "anti-Zionist" purge of 9,000 Jews from official positions in Poland (AP 1988) and the 1971-72 purge of Croatian separatists by Tito in Yugoslavia (Biondich 2005).

"Terror and purges are essential ingredients" of any Communist state, observes Vali (1984:175; cf. Brzezinski 1956). This fact was evident throughout Central Europe in the late 1940s. The Hungarian secret police, the AVH, had many duties: espionage, the surveillance of foreigners, and arrests and interrogations of political prisoners, to name a few. Paramount among their responsibilities was keeping a watchful eye on all organs of the Hungarian Communist Party, including the Central Committee. The AVH conducted purges even from within the upper echelons of the Party. The most well known case was the purging of Minister of the Interior Laszlo Rajk. In August 1948, Rajk was demoted to the less prestigious post of Minister of Foreign Affairs (Vali 1984). The timing of his removal from office was no coincidence, as it came shortly after a significant dispute between the Soviet Union and Yugoslavia.

Energy-poor Yugoslavia felt its bilateral trade agreements with the Soviet Union were asymmetric, benefitting the latter while exploiting the former (Allcock 2000). Tito

had been vocal for years about his rejection of an imperialist relationship with Moscow, preferring instead a partnership that placed Yugoslavia and the other allies on equal footing with the Soviet Union. Tensions reached their peak in 1948, and Yugoslavia was expelled from the Cominform, the cross-national organization of Communist parties (Gallagher 2001).

Thus, Laszlo Rajk's removal from office by Hungarian General Secretary Matyas Rakosi was done so that Hungary could curry favor with Moscow at a time when the Soviet Union's alliances were beginning to strain. After a Stalinist-style show-trial in which Rajk "confessed" that he and Tito had been plotting to overthrow the Hungarian Communist regime, Rajk was sentenced to death. Although Rajk thought he was only playing a role—letting himself be made an example of—and would be sent to live a new life in the Soviet Union, he was in fact hanged. Rajk is just one of many purge victims by the Rakosi regime in Hungary. Many thousands of political prisoners were taken under his reign, and at least 2,000 were executed like Rajk (Vali 1984).

Czechoslovakia was put under similar pressure to distance itself from Tito and to demonstrate its loyalty to the Soviet Union after Yugoslavia's expulsion from the Cominform. Like Hungary, Czechoslovkia needed a fall guy. They found that person in Slovak party leader Rudolph Slansky, who became the "Czechoslovakian Rajk." Slansky and other Jews were particularly targeted in the purges, indicating an ethnic bias in the Czechoslovak case, but Jews were not the only targets of the regime. Nearly 10,000 people were imprisoned for crimes against the state by 1950 (Rice 1984). Slansky was charged with "cosmopolitanism" and "Zionism." He and 13 other defendants were given

a show trial—the script having been approved by Stalin himself—where they begged for the death penalty. Slansky and ten others were hanged; the other three defendants were given life in prison (Rosenberg 1995).

There is, therefore, a long history in the region of removing from office important officials whose loyalty or ideological alignment with the state was questionable, or which could be questioned for the purposes of political gain. For this reason, I argue that lustration has a special resonance in the post-Communist states, more so than in other world regions who lack this prior experience, and exists as an available schematic device for the current regimes in Central and Eastern Europe to deal with the former members of the secret police and their collaborators.

Prestige and Bridging Metaphors

To summarize the argument so far, when states are barred by some norms—in this case, a principle imposing legal constraint—from enacting others, such as the emerging global norm of accountability for human rights violations, through the usual means (i.e., prosecution), an alternative script must be employed. Under such circumstances, an alternative script is most likely to be selected when it has frame resonance by virtue of a schematic antecedent—an historical precursor that provides a model as to how to proceed. I will now argue that a further condition is necessary for implementing alternative scripts: prestige.

In research that tracks "legal transplant"—that is, diffusion—from Western countries to the post-Communist states, Ajani (1995:93) argues that such borrowing

occurs both "by chance and prestige." In Ajani's usage, *prestige* refers to the weight accorded to Anglo-American (i.e., common law) legal theories by Russian and other jurists, particularly with respect to how Western law has been used to forge market economies and undergird democratic development in Eastern Europe. In the case of lustration, I argue that it is the prestige of Germany—the first to adopt post-Communist lustration—that has spurred subsequent lustration diffusion. I offer three kinds of evidence for this claim—interview data, NGO documentation, and transcripts of parliamentary debate, all from Southeastern Europe.

I interviewed Novica Veljanovski[40], a member of Macedonia's Data Verification Commission, at the commission's office on the 17th floor of MRT Center, home to Macedonia's national broadcaster, in Skopje. Dr. Veljanovski[41] is a distinguished scholar and emeritus professor of history at Saints Cyril and Methodius University of Skopje. At one point in our conversation, I asked him if there were any country whose lustration system he would like Macedonia to emulate as an exemplar of best practices. In response, Dr. Veljanovski turned to the bookshelf and produced an English translation of the 1990 German lustration law in pamphlet form. That this document was kept at the ready for easy reference is, I believe, a sign of the influence it holds over the commission's work.

[40] Personal Communication. July 19, 2011. Skopje, Macedonia.

[41] It should be noted that Dr. Veljanovski is an ardent defender of the lustration process in Macedonia, having been on the commission since it was formed in 2009. In 2012, when the country's lustration law was being rewritten by parliament after being partially struck down by the Constitutional Court, Veljanovski told a local newspaper of his desire for increased transparency with regard to the commission's findings: "I support the proposal to publish names of collaborators to secret services. … I believe that documents should be published also for those who oppose or deny collaboration and accuse the Commission of incompetence, amateurism, selectiveness and arbitrariness" (Danilovska-Bajdevska and Naumovska 2012:140-141). Although I reached out to every member of the Commission individually, I was not able to obtain an interview with any member who is more critical of the lustration process.

Another key informant I interviewed was Dr. Ivan Jankovic,[42] a human rights and intellectual property lawyer in Belgrade who also holds a PhD in sociology from the University of California at Santa Barbara. I contacted Dr. Jankovic because at one time he was a member of the executive committee of the Center for Antiwar Action (CAA),[43] a Serbian NGO that advocated for lustration in that country. When I asked Dr. Jankovic whether in 2011 it were too late for Serbia to begin its lustration process, he replied that he did not think so and discoursed at length about Germany and how it compared to Serbia. His comments on the matter are worth setting out *in extenso*:

> I always think of a comparative example of Germany. In my understanding of history, generally, of how things developed generally and in particular in Germany, it takes one generation—it's a minimum—for a society which had undergone such strain as Serbian society did under Milosevic for those 10 years, 15 years. Or as German society did for 10 or 15 years from 1933 to the end of the war. And it was shown beautifully by a colleague of ours… whose name is Helmut Dubiel, a German sociologist. He wrote a little book called *Niemand ist frei von der Geschichte* (*No One Is Free from History*). Methodologically it was very beautifully simple. What he did was to search the … records of the German parliament, when it was first introduced … until in 1980s. And what he looked at is how members of the German parliament in this period for 30 years spoke of the victims, who in their eyes were the victims. And he found out that until 1968, no one talked, for example, about victimization of the Jews. Not a word! No one ever said, "Among the victims of the Second World War, as a separate group, there were Jews." Until that time, 1968, the only victims of the war were perceived to be the Germans themselves. In two ways: on the one hand, they were perceived as victims of Nazism, of Hitler's regime, which they no doubt were. On the other, they were perceived as victims of excessive military destruction after 1942 or 1943. That's reference to Dresden. The Allied bombings of destruction of German cities—huge number of civilian victims. And even—that's probably a third category—they were victims of the Allied occupation authorities. So in 1968, for the first time, there is a mention of the Jews. And then I don't remember exactly when, successively, Roma—the gypsies—homosexuals, etc., etc. Everything that's today [a] staple. If you go to Germany, the first thing that will happen to

[42] Personal communication. June 14, 2011. Belgrade, Serbia.
[43] CAA was founded as a peace organization in 1991, and is now known as the Center for Peace and Democracy Development.

> you … you'll be taken to the synagogue and shown-- which is all fine. I'm not objecting to it, but it's a comparatively recent development.
>
> *And I think the same applies to any society*. I don't think that globalization, communications, etc. change anything, or at least they don't change much in this respect. It is not the *availability* of the information about what has happened that stops people from acknowledging their own responsibility. Not at all. It is deep existential interest which prevents most people— … There are exceptions. There were exceptions in Germany. There were exceptions in Serbia…. There will always be exceptions. So some people did help Jews in Germany under Hitler. Some people did help Croats in Serbia, or Muslims or whatever. But for the bulk of the population it takes generational change. That's what happened in Germany in 1968. That was when young people started asking their parents about what really happened. And that's when it started to unravel. You had Nuremberg trials, you had everything that you had in the [19]40's. It was not a question of learning something new.

These interview examples show that other countries consider Germany, generally, and Germany's pursuit of lustration, in particular, as a model that ought to be emulated for at least two primary reasons: 1) Germany's prior experience of dealing with the Nazi regime, and 2) other countries' ability to see their experience with Communism as analogous to Germany's, making them likely to follow a similar path.[44]

In 2002, CAA conducted a study[45] of secret police file declassification and lustration in other post-Communist states with the aim of recommending policies and best practices that could be implemented in Serbia. In particular, the CAA report draws a contrast between the experiences with lustration in Czechoslovakia/Czech Republic, which is cited as an example of "legal incompetence," and the former German Democratic Republic, which is described as "successful" (p. 111). Among other problems

[44] This is an example of what Savelsberg, King, and Minyard (2011:63) have termed "prognostic bridging," which is the use of metaphors to predict "likely future consequences of events that are considered similar" (cf. Alexander 2004).

[45] Milosavljevic and Pavicevic 2002, *Secret Files: Opening the Files of State Security Services*. I am grateful to Marina Jelic for providing me with a copy of this document.

with lustration in Czechoslovakia, a list of dubious veracity containing more than 140,000 names of alleged StB associates was leaked to the press. The list even included Czech president Vaclav Havel, the playwright and dissident widely credited with helping to bring about the end of Communist party rule in Czechoslovakia. There was much reputational damage done to the persons included in the leak, and they lacked any means of recourse against the unknown person(s) who released the list. By contrast, the lustration process in the former East Germany was accompanied by a simultaneous release of the Stasi's files. CAA credits this fact with ensuring a more "just process" in Germany than in Czechoslovakia, but notes that "more trust [was placed] on what was written in the files than on the circumstances under which an individual had begun collaborating with the Stasi" (pp. 111-112).

As a final bit of evidence of Germany's influence, I offer that the parliamentary opponents of lustration in Serbia used as a line of argument that the situation in their country was not similar to Germany. To use the terminology of Savelsberg et al (2011), they proposed "bridging challenges." Member of Parliament Dragan Pavlovic, for example, argued that the Serbian lustration law was unconstitutional and not appropriate for his country:

> The second objective sought to be achieved by this process is the destruction and suppression of the authentic expression of the will of the Serbian people. … The promoters of lustration … found denazification, a concept associated with something applied in fascist Germany, and for something like this, not only do the conditions not exist in Serbia, but just thinking about it insults the dignity of and the pride of the Serbian people.[46]

[46] Transcript. National Assembly of the Republic of Serbia. Eighth Session. First Regular Session. 30 May 2003. p. 120

Similarly, Dragan Colic of the Serbian Radical Party argued, "Comparison with fascist Germany, the idea of denazification, offends the pride, honor and name of Serbs."[47] That lustration opponents felt it necessary to denounce the German model indicates the influence that it had over the debate in Serbia.

In line with WPN, Germany's prestige no doubt derives in part from its powerful position in the international community. It is the most economically powerful country in the European Union and an exemplar of democracy. It is, therefore, the prestige of the German model—a model built on Germany's past experience of dealing with both the Nazi and Communist regimes—that offers other countries permission to pursue a strategy that would otherwise be eschewed, according to WPN, due to negative pressure from the international community.

Conclusion

In one respect, this chapter is a story of regional isomorphism. The model presented here is not meant to explain whether or when a particular country adopts lustration. Instead, it has been concerned with showing why this particular form of transitional justice predominates in the post-Communist states. On the other hand, the chapter is meant to have general applicability beyond the specific case of lustration by taking advantage of the possibilities that come from analyzing negative cases. Lustration presents a theoretical challenge to world polity neoinstitutionalism. The theory predicts that policies should not diffuse when they are assailed by powerful international governmental and non-governmental organizations. Despite the fact that lustration is not

[47] ibid. p. 134

supported by many such actors, lustration laws have diffused throughout the post-Communist region. This chapter has attempted to resolve this paradox by developing new concepts, repurposing other concepts, and proposing relationships among them: In the presence of a *legal constraint structure*, an alternative script must be developed to enact global norms. Such a script is likely to be one that has *frame resonance* and is predicated on a *schematic antecedent*. Further, the case of lustration suggests that schematic antecedents achieve legitimacy not through global consensus, as is suggested by WPN, but through the *prestige* of a specific actor or actors whose experience can be satisfactorily compared to other actors' experience with *bridging metaphors*. I have attempted to formulate this model in an abstract way so as to suggest its applicability to other potential cases that present as paradoxes vis-à-vis world polity theory. In particular, the case of lustration indicates to scholars working in the tradition of WPN the need to consider how regional factors, such as a similar or shared history, can play a role in mediating between the global and the national.

Appendix 3.1

Council of Europe, Document 7668, 1996

"Guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law"

To be compatible with a state based on the rule of law, lustration laws must fulfill certain requirements. Above all, the focus of lustration should be on threats to fundamental human rights and the democratisation process; revenge may never be a goal of such laws, nor should political or social misuse of the resulting lustration process be allowed. The aim of lustration is not to punish people presumed guilty — this is the task of prosecutors using criminal law — but to protect the newly-emerged democracy.

a. Lustration should be administered by a specifically created independent commission of distinguished citizens nominated by the head of state and approved by parliament;

b. Lustration may only be used to eliminate or significantly reduce the threat posed by the lustration subject to the creation of a viable free democracy by the subject's use of a particular position to engage in human rights violations or to block the democratisation process;

c. Lustration may not be used for punishment, retribution or revenge; punishment may be imposed only for past criminal activity on the basis of the regular Criminal Code and in accordance with all the procedures and safeguards of a criminal prosecution;

d. Lustration should be limited to positions in which there is good reason to believe that the subject would pose a significant danger to human rights or democracy, that is to say appointed state offices involving significant responsibility for making or executing governmental policies and practices relating to internal security, or appointed state offices where human rights abuses may be ordered and/or perpetrated, such as law enforcement, security and intelligence services, the judiciary and the prosecutor's office;

e. Lustration shall not apply to elective offices, unless the candidate for election so requests — voters are entitled to elect whomever they wish (the right to vote may only be withdrawn from a sentenced criminal upon the decision of a court of law — this is not an administrative lustration, but a criminal law measure);

f. Lustration shall not apply to positions in private or semi-private organisations, since there are few, if any, positions in such organisations with the capacity to undermine or threaten fundamental human rights and the democratic process;

g. Disqualification for office based on lustration should not be longer than five years, since the capacity for positive change in an individual's attitude and habits should not be

underestimated; lustration measures should preferably end no later than 31 December 1999, because the new democratic system should be consolidated by that time in all former communist totalitarian countries;

h. Persons who ordered, perpetrated, or significantly aided in perpetrating serious human rights violations may be barred from office; where an organisation has perpetrated serious human rights violations, a member, employee or agent shall be considered to have taken part in these violations if he was a senior official of the organisation, unless he can show that he did not participate in planning, directing or executing such policies, practices, or acts;

i. No person shall be subject to lustration solely for association with, or activities for, any organisation that was legal at the time of such association or activities (except as set out above in sub-paragraph h), or for personal opinions or beliefs;

j. Lustration shall be imposed only with respect to acts, employment or membership occurring from 1 January 1980 until the fall of the communist dictatorship, because it is unlikely that anyone who has not committed a human rights violation in the last ten years will now do so (this time-limit does not, of course, apply to human rights violations prosecuted on the basis of criminal laws);

k. Lustration of "conscious collaborators" is permissible only with respect to individuals who actually participated with governmental offices (such as the intelligence services) in serious human rights violations that actually harmed others and who knew or should have known that their behaviour would cause harm;

l. Lustration shall not be imposed on a person who was under the age of 18 when engaged in the relevant acts, in good faith voluntarily repudiated and/or abandoned membership, employment or agency with the relevant organisation before the transition to a democratic regime, or who acted under compulsion;

m. In no case may a person be lustrated without his being furnished with full due process protection, including but not limited to the right to counsel (assigned if the subject cannot afford to pay), to confront and challenge the evidence used against him, to have access to all available inculpatory and exculpatory evidence, to present his own evidence, to have an open hearing if he requests it, and the right to appeal to an independent judicial tribunal.

Chapter 4.
Lustration in the Former Yugoslavia: A Strategic Narrative Approach

"I am in blood
Stepp'd in so far, that, should I wade no more,
Returning were as tedious as go o'er."
William Shakespeare, *Macbeth*, Act III, scene iv

The independent states formed by the breakup of Yugoslavia have traveled different paths with respect to considering, adopting, and implementing lustration policies. This chapter compares the lustration experiences of three of those former Yugoslav republics: Croatia, Serbia, and Macedonia. In Croatia, a marginal, far-right political party introduced a lustration bill in the parliament in both 1998[48] and 1999[49], but the bill was not given a vote or even put on the legislative agenda either time[50]. By contrast, the Serbian parliament did adopt a lustration law in 2003[51], but that law was never implemented and, ultimately, expired quietly in 2013 (Ristić 2013). The Macedonian parliament adopted a lustration law in 2008[52], and, going one step further than Serbia, the lustration commission began enforcing it in 2009. Following anti-lustration rulings from domestic administrative and constitutional courts in Macedonia (Brunwasser 2012), further iterations of the law[53] have been adopted and implemented

[48] Bill No. 396, "Bill on the elimination of the consequences of the totalitarian communist regime," submitted February 11, 1998.
[49] Bill No. 657, "Bill on the elimination of the consequences of the totalitarian communist regime," submitted September 30, 1999.
[50] Sraga, Daniela, email correspondence, June 8, 2012. (Head of Information and Documentation Department, Croatian Parliament)
[51] No. 58/2003, "Accountability for Human Rights Violations Act," adopted May 30, 2003
[52] "Law on Additional Requirements for Public Office," *Official Gazette of the Republic of Macedonia*, No. 14, January 29, 2008
[53] "Law Amending the Law on Additional Requirements for Public Office," *Official Gazette of the Republic of Macedonia*, No. 24, February 25, 2011

with persistence in that country. These divergent outcomes—no law in Croatia, a law without enforcement in Serbia, and a law with enforcement in Macedonia[54]—merit sociological analysis.

In this chapter, I employ the "strategic narrative" analytic method developed by Stryker (1989, 1990, 1996) to answer the question, "Why are there divergent outcomes with lustration in countries responding to a common Communist past?" Useful in qualitative historical sociological research, strategic narratives proceed by first constructing an analytic case as both theoretically and empirically anomalous. Such anomalies require researchers to bring all available theoretical knowledge to bear in order to reframe the theoretical lens for viewing a given case. This reframing forms the basis for a cumulative, phased-in comparative research design. Each phase builds new narratives and results in the mutual construction of history and theory. Along the way, the method generates new hypotheses, concepts, and findings, and each research phase prefigures the next. The approach is "narrative" in that it emphasizes stories based on eventful time--that is, key turning points in the process under consideration. And the approach is "strategic" in that it posits that some narratives are better than others for the purposes of theory building (Stryker 1996). Thus, this chapter develops an analytic narrative, a "theoretically structured [story] about coherent sequences of motivated

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"Law to Determine the Condition of Limitation for Public Office, Access to Documents and Publication of Cooperation with the Organs of State Security," *Official Gazette of the Republic of Macedonia*, No.86, July 9, 2012.

[54] I do not actually analyze the case of Macedonia on its own in this chapter, as it conforms neatly to established explanations of lustration. Specifically, the right-wing VMRO-DPMNE party, which has ruled Macedonia for several years, has implemented lustration and uses it, many say, as a tool for smearing political opponents. I am more interested in exploring anomalous cases rather than confirmatory ones. Macedonia should be thought of as a referent case, one against which to contrast the experiences of Croatia and Serbia.

actions" that "can contribute to the construction of explanations of why things happened the way they did" (Aminzade 1992:458) and, implicitly, why they did not happen some other way.

The current "politics of the past" and "politics of the present" (Stan 2008) explanations of lustration both foreground a country's experience with democratization as a central mechanism in the deployment of transitional justice. As such, these approaches obscure the Communist-era institutional histories that I argue are determinative, in the path-dependent sense (Aminzade 1992; Pierson 2004), of outcomes with lustration. My approach links the past to the present by showing how the weight of history constrains or enables current decision making in the former Yugoslavia.

In section one of this chapter, I begin my strategic narrative by constructing the case of Croatia as both an empirical and a theoretical anomaly in light of existing research. That is, although there has been no lustration in Croatia, current theory suggests that the policy should have been adopted there, more so than anywhere else in the former Yugoslavia. I then reframe the theoretical backdrop by developing a chronological historical narrative of the Croatian secret police from its founding as an autonomous unit within the larger Yugoslav state security apparatus in 1966. Such a narrative is not only an historical account; the strategic narrative method requires that I conceptualize in abstract and general terms the issue of whether and how the state makes use of and regulates the security sector. My reframing focuses on political sociology's concept of *policy feedback* (Skocpol and Amenta 1986; Pierson 1993; Thelen 1999; Campbell

2012). The second section of the chapter focuses in turn on Serbia and operates as a cumulative, phased-in analysis that builds on the findings of the preceding case.

I. Croatia

Croatia: A Theoretical and Empirical Anomaly

Lavinia Stan (2008) divides explanations of lustration into those that emphasize "the politics of the past" and those that emphasize "the politics of the present." I argue that the failure of lustration in Croatia is anomalous with respect to both kinds of explanations. Specifically, I will show that theories developed by Huntington (1991), Stan (2008, 2009), and Welsh (1994) do not apply to Croatia. The failure of these explanations reflects the tendency in the literature on lustration, previously mentioned in chapter 2, of focusing on only a handful of positive cases of lustration (e.g., Czech Republic, Poland, and Hungary) and ignoring both other positive cases (e.g., Serbia) and negative cases of lustration (e.g., Croatia). Further, Croatia is the only country that fails all three theories, making it an empirical anomaly as well as a theoretical one.

Croatia's Replacement Transition

Recall from chapter 2 that Huntington (1991) developed a typology of transitions to democracy. The three kinds of transitions he identifies are *replacement*, *transformation*, and *transplacement*. According to Huntington, transitional justice is most likely to occur in states that undergo a replacement transition--that is, a transition in

which the undemocratic regime is severely weakened and overthrown by the opposition. In this section, I argue that Croatia underwent a replacement transition in 1990-95 and, according to Huntington, should have been likely to adopt lustration. Croatia is, therefore, a theoretical anomaly with respect to Huntington's argument about the mode of exit from anti-democratic regimes.

The wave of democratizing reforms that hit Eastern Europe in 1989 resonated in Croatia, then still one of the six constituent republics of the Socialist Federal Republic of Yugoslavia (SFRY).[55] Initially, it seemed that Croatia could undergo a transformation transition, wherein the regime itself introduces liberalizing reforms. In December of that year, Croatia's League of Communists voted to allow additional political parties to exist and to contest forthcoming elections. Franjo Tudjman, a JNA[56] general turned historian turned political prisoner, had already established a right-wing nationalist party known as the Croatian Democratic Union (HDZ) in February 1989. Tudjman, who was allowed to travel despite his dissident status, was particularly successful at garnering the support of Croats living abroad, especially in Canada. When the first multi-party elections in almost 50 years were held in Croatia in April and May 1990, HDZ won a majority of seats in the Sabor (parliament). Their 42% share of the vote was a plurality, but enough for a majority in an electoral system that lacked proportional representation (Lampe 2000).

Almost two weeks after the 1990 election, a riot erupted between rival fans of the (Croatian) Dinamo Zagreb and (Serbian) Red Star Belgrade professional soccer teams at a match in Zagreb, the Croatian capital. The setting was predisposed to allow easy

[55] The other five are Bosnia-Herzegovina, Macedonia, Montenegro, Serbia, and Slovenia.
[56] Yugoslav People's Army, the military of the SFRY and its successor state the FRY (essentially Serbia).

demarcation between Croats, who had just elected Tudjman's secessionist political party, and Serbs, who wanted to preserve a united Yugoslavia. The incident, which lasted for over an hour, was more than just another instance in a long line of European soccer hooliganism. The Serb criminal and eventual warlord Željko Ražnatović, better known by the alias Arkan, was among the Red Star fans in the audience. He later went on to recruit members of his paramilitary group—the Tigers, who were responsible for war crimes in Bosnia—from the Red Star fans in attendance that day. In Croatia, the riot was seen as a turning point in relations with Serbia and is now remembered with nationalist pride. Outside Maksimir Stadium, where the match was held, there is a statue of a group of soldiers. Its inscription reads, "To the fans of the club, who started the war with Serbia at this ground on May 13, 1990" (Montague 2011, np).

Officially, though, the war did not begin for another year. But the combination of Tudjman's rise to power, strained relations between Croats and Serbs, and Croatia's declaration of independence from Yugoslavia on June 26, 1991, did begin a brutal four-year war that resulted in the deaths of tens of thousands and many more displaced refugees (Goldstein 1999; Lampe 2000). It is beyond the scope of this dissertation to give a full account of the Croatian War of Independence; it will suffice for the moment to say that Croatia's decisive military victory in 1995 provided a hard break from Yugoslavia/Serbia. In my view, this constitutes a *replacement* transition. By Huntington's formulation, there was ample opportunity under these conditions to punish the vanquished socialist regime, particularly those loyal to Belgrade. Because that did not happen, the Croatian case is anomalous with respect to Huntington's theory.

Communist Opposition and Elite Repression

Comparative research by Stan (2008, 2009) argues that the pursuit of lustration is determined by a combination of three factors: the strength of the anti-Communist opposition both pre- and post-1989, the Communist regime's strategy for dealing with elites (either repression or co-optation), and the extent of a country's pre-Communist experience with political pluralism. While it is true that historians give conflicting accounts as to the last of Stan's three criteria (see chapter 2), Croatia did have a strong opposition (nationalist) movement and elites who resisted co-optation, particularly in the period after 1966, when Croats were emboldened by Tito's firing of Aleksandar Rankovic (Tanner 2010) (see below). The Croatian nationalist movement emerged as a mass force in the spring of 1971. The student newspaper at the University of Zagreb became a forum for nationalist discourse. Other institutions, including Radio-Television Zagreb and the cultural society *Matica Hrvatska*, stepped up their nationalist rhetoric (Burg 1983). The "Croatian Spring," as it came to be known, culminated in November 1971 with a strike by Zagreb students. They had several demands, including recognition of the Croatian language as separate from Serbian and a sovereign Croatian state. Tito responded with police repression throughout the country: thousands were detained and many students and members of *Matica Hrvatska* were put on trial and given prison sentences (Goldstein 1999). The goals of the Croatian Spring were not realized at the time. However, the movement indicated that mass mobilization against the regime was possible. Further, among those detained was Franjo Tudjman. Tudjman, as we have seen,

went on to become the first President of Croatia, providing yet another reason as to why we would expect Croatia to engage in lustration.

Right-Wing Party in Power

Welsh's (1994) research suggests that lustration is most likely to be implemented by Right parties. The case of Croatia is anomalous with respect to this argument. The country's first post-war parliamentary elections were held on October 29, 1995. Franjo Tudjman's Croatian Democratic Union (HDZ) emerged victorious, winning 45.23% of the vote and securing 75 of the 127 seats in the Sabor. The Manifesto Project Database (Volkens et al 2013) codes political party manifestos and rates parties' policy positions on a range of topics. Each party is given a score ranging from -100 (left) to +100 (right) based on those party positions. The table below shows the five political parties that garnered the most votes in the 1995 Croatian parliamentary elections, along with their vote share, seats won, and right-left score. Of the parties that gained a significant share of the vote, HDZ is rated as being the furthest to the right.

Party	Vote Share	Seats	Right-Left Score
Croatian Democratic Union (HDZ)	45.23	75	+47.4
Coalition: HSS-IDS-HNS-HKDU-SBHS	18.26	20	+3.6
Croatian Social Liberal Party (HSLS)	11.55	11	+13.9
Social Democratic Party (SDP)	8.93	9	+3.0
Croatian Party of Rights (HSP)	5.01	4	+14.0

Table 4.1: Top 5 Political Parties, 1995 Croatian Parliamentary Elections
Source: Manifesto Project Database (https://manifestoproject.wzb.eu/)

According to Welsh, when lustration was introduced in this parliament by the Croatian Party of Rights (HSP) in 1998 and 1999, one would expect a Right party like

HDZ--particularly one headed by a president who himself was a dissident and political prisoner of the Communist regime--to be supportive of such a measure. Moreover, the 1995 elections represented HDZ at its furthest right moment. The table below shows the right-left movement of HDZ for the first decade of its existence. With each successive election, the party moved increasingly rightward through the 1990's. Following Tudjman's death in late 1999, the party tacked significantly to the left for the 2000 elections, which it lost. Despite the rightward leanings of HDZ at the time, the party did not support lustration. HDZ did not allow HSP's bill to be placed on the agenda in either 1998 or 1999, and it was never voted on (Lalić 2005).

Year	Right-Left Score
1990	+3.4
1992	+25.8
1995	+47.4
2000	-13.4

Table 4.2: Right-Left Scores of HDZ, 1990-2000
Source: Manifesto Project Database (https://manifestoproject.wzb.eu/)

The Croatian Party of Rights--the political party that introduced the lustration bill in the Croatian Sabor on two occasions--describes itself as a "right-wing party" that "advocates conservative and Christian democratic philosophies" (HSP website 2013). The party traces its origins to 1861. Founders Ante Starcević and Eugen Kvaternik wanted an independent Croatia that was not part of the Austro-Hungarian Empire. When the Kingdom of Yugoslavia was formed in 1918, the party was opposed to what it now describes as the "tragic unification of Croatia with Serbia" (ibid.). HSP, therefore, has a long history of promoting nationalism.

At HSP's Fourth Convention on September 18, 1999, the party adopted a resolution detailing an eight-part program. Two of the eight points deal with lustration. The resolution argues that Croatia is not ready for European integration but that "the difficult current situation of the Croatian people and the Croatian state and its economic system can be quickly overcome by implementing lustration and awakening the moral values of the Croatian people." HSP also asserts that to bring order to the state and society requires, *inter alia*, "lustration from public life all advocates of the defeated Communist ideology and the failed Communist government" (HSP 2013).

The bills introduced by HSP were identical and were clearly based on the Council of Europe's Resolution 1096 (see chapter 3). Echoing the title of Resolution 1096, HSP's bill is known as the "Draft Law on the elimination of the consequences of the totalitarian communist regime" (pg. 2). The bill contains disingenuous language about how the adoption of lustration would aid in the accession of Croatia to the European Union and NATO, something that HSP actually opposed.

> Passing this law would contribute to the international reputation of Croatia and allow faster and easier admission to the European Union and NATO. For example, in an alliance of democratic states to defend freedom NATO received only those states that have adopted lustration law in the period 1995-1997.

Reframing the Case: Uses of the Secret Police Since 1966

Having established Croatia as an anomalous case with respect to existing theory, the strategic narrative method requires a reframing of the case along new theoretical lines. In this section of the chapter, I will offer path-dependency arguments about the lack of lustration in Croatia. I show that after a political crisis in 1966, the autonomous Croatian

secret police began a campaign of assassinations that were viewed as being pro-nationalist. As an example, I will discuss the elimination of a Croatian émigré in West Germany and the absence of any desire in Croatia to punish the secret police agent that allegedly carried out the killings. I will also discuss the role of institutional inertia owing to the 1991-95 war that kept many of the UDBa in place.

The Ouster of Aleksandar Ranković[57]

Before 1966, Aleksandar Rankovic was widely believed to be the person who would succeed Josip Broz Tito as president of Yugoslavia. As Minister of Internal Affairs, Rankovic oversaw the Yugoslav secret police. It came as a surprise when it was announced at a session of the Communist party's Central Committee on July 1, 1966, that Tito had fired Rankovic, creating what the CIA described as the "greatest crisis [for Tito's regime] since Yugoslavia was expelled from the Cominform in 1948" (p. 1). The official reason given for the firing was that Rankovic and his ally Svetislav Stefanovic were consolidating power by placing secret police officers in various government and party positions. Rankovic was getting too eager about the possibility of taking over from Tito, and there were multiple offenses that led to the ouster. Rankovic ordered wiretaps of high-ranking government officials' homes and offices. Through the UDBa, he had amassed files on a million people in Croatia—nearly one-fourth of the population, a clear abuse of power that shocked Tito. It should be noted that Rankovic, who was a Serb, had an uneasy time with interethnic relations in the government. In addition to applying a too-

[57] This section relies on a declassified CIA document, "Yugoslavia—The Fall of Rankovic," from August 5, 1966.

heavy hand to spying on Croats, Rankovic had clashed with them over tourism. In the early 1960's, some Croats in the government wanted to establish visa-free entry for foreign tourists who wanted to visit Croatia's famously beautiful coastline. Rankovic maintained that such tourists posed a security threat and deployed the UDBa to harass them (Tanner 2010). The firing was accompanied by a purge of Rankovic supporters from the government and a reorganization of the secret police into six separate, autonomous units for each of the republics.

Path Dependency: Policy Feedback and Critical Junctures

The concept of *policy feedback*[58] is used by political sociologists to indicate how "policies, once enacted, restructure subsequent political processes … making some future developments more likely, and hindering the possibilities for others" (Skocpol 1992:58, 232). Much of the literature that has been produced by scholars working in this tradition has dealt with the establishment of social policy (e.g., Skocpol and Amenta 1986; Pedriana and Stryker 1997; Steensland 2006). Some research emphasizes functional mechanisms that lead to such feedback. According to Thelen (1999:392), functionalist accounts propose that "once a set of institutions is in place, actors adapt their strategies in ways that reflect but also reinforce the logic of the system" (cf. Ikenberry 1994; North 1990). Other research focuses on the distributional effects of institutions that empower some groups while disenfranchising others (Thelen 1999). A related concept important for path-dependency research is *critical junctures* or *turning points*, which often result in

[58] This concept is sometimes called *policy legacy*. Pedriana and Stryker (1997:638) prefer the term *feeding forward*, since "past policies structure current policies and current policies structure future policies."

"intertia" that reproduces institutional patterns. "Once processes are set into motion and begin tracking a particular outcome," says (Mahoney 2000:511), "these processes these processes tend to stay in motion and continue to track this outcome." Both policy feedback and critical junctures are useful for explaining the case of Croatian lustration.

The War: A Critical Juncture in 1991

The 1991-95 Croatian War of Independence created a need to maintain the *status quo ante* with respect to the intelligence services. University of Zagreb professor and former president of Croatian Helsinki Committee (HHO)[59] Žarko Puhovski spoke to that issue in a 2003 interview with the BBC:

> In Croatia [in 1991], the government radically changed in terms of ideology--a nationalist party came to power, by the name of HDZ …. Regardless of the fact that it was headed by a former general of the Yugoslav army, it had a new ideology. But it rather quickly came under attack of the forces in the Yugoslav Army, and in that situation it seemed logical*, when you are at war, when you are under attack, that intelligence structures cannot be changed, but must be left as they are* and must be placed under control, that some people obviously working for the other side must be fired, and all those who more or less coherently showed that they want to work for the Croatian side should be retained, and that one should be happy they exist (BBC 2003). [emphasis added][60]

This is a path-dependency argument that differs markedly from an alternative argument, offered by some interlocutors of the author[61]: the need for transitional justice to deal with the Communist period in Croatia was obviated by the need, and even the requirement, to seek justice for atrocities committed during the war. In the latter view, all political will to

[59] HHO is a prominent human rights organization founded in 1993. Prof. Puhovski led the organization from 2000-2007.
[60] Prof. Puhovski was interviewed for this research. This particular quotation, however, was occasioned by a 2003 conference on lustration in the Western Balkans, held in Belgrade and organized by the Thessaloniki-based Center for Democracy and Reconciliation in Southeast Europe.
[61] I refer here to the thought-provoking comments made by colleagues at the Woodrow Wilson Center's Junior Scholars Training Seminar and the annual conference of the Centers for Austrian Studies.

deal with the past is expended on the more proximate period of injustice (i.e., the 1990's). In other words, the war serves as a mechanism for collective amnesia vis-à-vis the SFRY. I do not accept this argument because it cannot explain the legislative success of lustration in Serbia, which also experienced the war. In the alternative view, however, the war is a mechanism that created institutional inertia with respect to the intelligence agencies in the face of an outside threat. This view is echoed by the Croatian intelligence service itself. A section on its website about the history of the agency, now known as the Security and Intelligence Agency (SOA), argues,

> The so-called JNA stood on the side of the Serbs directly, thus openly involving itself in the aggression against the Republic of Croatia, the Agency, like other state administrative bodies, went through a difficult period at that time and a certain number of its employees did not accept social-political changes and left the Agency. Aware that aggression was being prepared against the Republic of Croatia, an attempt was made to maintain and prepare a healthy core of the Agency for the period which was to follow.[62]

This statement suggests that any purging of the intelligence services was done due to loyalty concerns rather than concerns about abuses of power in the SFRY. Some members were thrown out because they were found to have been Serbs who infiltrated the agency:

> Through the operative work of the Agency, Agency employees were detected who were "snuck in" by SDS and KOS in Belgrade and who worked in their interests (operation "Labrador") (ibid.)

[62] "Intelligence Service's Role in the Creation of the Republic of Croatia" https://www.soa.hr/en/history/services_role/

In my own interview with Dr. Puhovski,[63] he noted an additional reason as to why lustration failed in Croatia: there was no way to construct a lustration policy that would not result in the state's leaders being subject to the policy themselves.

> The reason why it failed in [the 19]90s was basically a very simple one: there was no construct of lustration that would avoid the basic characteristic of the biography of President Tudjman. And some other officials like Mr. [Josip] Manolic[64] and so on. Tudjman was a colonel and general in the Yugoslav Army. He was a member of the Partisan[65] unit in the period of '45, '46 when a gross massacre of civilians happened after [World War II]. … But after the war, there were dozens of thousands of civilians killed in the period when Tudjman was a young lieutenant or captain of the Yugoslav Army. And he was part of the military intelligence service in a period of his career. The same goes to Mr. Manolic and some other members of the Croatian Democratic Union [HDZ], which is the official name of the ruling party in the '90s and now again. So they could not avoid [lustrating themselves].

Even though Tudjman was not a member of the UDBa—or even a member of the Communist party—his background in JNA intelligence would have disqualified him from office under HSP's lustration bill.

Josip Manolic, however, was a high-ranking official in the UDBa. After leaving office as Prime Minister in July 1991, he became head of the Bureau of the Protection of the Constitutional Order (UZUP). He was, therefore, put in charge of the entirety of the Croatian intelligence system at a time when the Croatian War was just beginning. The Croatian security services (police, military, intelligence) had to be built up rapidly, and the UDBa served as an available pool from which Manolic could draw as he was staffing the new intelligence service.[66] There are, therefore, issues of both institutional inertia,

[63] Personal communication. July 23, 2011. Zagreb, Croatia.
[64] Prime Minister of Croatia, August 1990 – July 1991
[65] Yugsoslav anti-Nazi army.
[66] https://www.soa.hr/en/history/uzup/

fueled by the exigencies of war, and the biographical inertia of Croatia's first leaders after independence that precluded the possibility of lustration.

Assassination of Stjepan Djurekovic[67]

Following the firing of Aleksandar Rankovic, the UDBa began to lean heavily on a policy of assassinations, or "black actions," against émigrés living abroad. Over a twenty-year period, they killed more than 100 people, mostly Croats. The plurality of these killings took place in West Germany, which was home to a large population of Yugoslav guest workers. The UDBa operated as a very smooth killing machine and were, in the assessment of Professor John R. Schindler of the U.S. Naval War College, "brilliant" at it and "every bit as nasty as the KGB, and in some ways even worse." One of the highest-profile killings was that of Stjepan Djurekovic, a Croat chief executive of a state-owned oil company. Djurekovic, seeing the corruption of the Yugoslav state first hand, became "disgusted" and moved to West Germany in 1982. The following year, he was killed at his home in the Munich suburb of Wolfratshausen, allegedly by the UDBa in a brutal hit. Schindler attributes the killing to the UDBa 2nd Department in Zagreb, the branch of the agency that dealt with issues of "enemy emigration." The head of the 2nd Department and Djurekovic's alleged assassin is a man named Josip Perkovic, who was one of the many secret police operatives retained in the post-1991 intelligence apparatus by Tudjman, as described above. Perkovic was made an assistant defense minister and assistant to Miroslav Tudjman, Franjo Tudjman's son (Pavelic 2013a).

[67] This section draws from Schindler, John R. June 29, 2013. "The Legacy of Black Actions" http://20committee.com/2013/06/29/the-legacy-of-black-actions/

Perkovic is wanted for questioning about the murder of Djurekovic by Germany, who issued an arrest warrant for Perkovic in 2009. The warrant was successfully ignored by Croatia for a few years (Pavelic 2013b). However, the situation changed in 2013. After years going through the negotiation process, Croatia was admitted to the European Union on July 1. One of the many conditions for EU accession is that certain laws must be harmonized across member states, including a 2002 EU law on extradition. Initially, Croatia refused to change its extradition law to be in line with EU standards, opting instead to pass a law that only applies to crimes committed since the EU extradition law went into effect in 2002 (Pavelic 2013b). This law was adopted on June 28, parliament's last work day before joining the EU. Many critics thought that Croatia wanted this provision specifically to ensure Perkovic's protection, and the law was dubbed "Lex Perkovic" (Perkovic's law) (Pavelic 2013c).

In response, German Chancellor Angela Merkel cancelled plans to visit Zagreb for the EU accession celebration to be held on June 30, officially saying that she "lacked time" to travel to Croatia (Pavelic 2013a, np). Nevertheless, the same day that Merkel cancelled her trip, Germany renewed the arrest warrant for Perkovic, cementing the idea that the cancellation was tied to Croatia's adoption of a law that only applied as far back as 2002. Croatian Prime Minister Zoran Milanovic resisted changing the law because other EU member states that acceded before 2002 were not bound to extradite their citizens for crimes committed prior to that year. Only states, like Croatia and neighboring Slovenia, that had acceded after 2002 were required to extradite citizens for crimes, regardless of when they were committed. Milanovic found this double standard to be

"twisted" and "discriminatory."[68] Under threat of sanctions from the EU, including withholding of $108 million in EU funds meant to prepare Croatia to join the Schengen Zone allowing easy border crossings within the EU, Milanovic relented.[69] He sent a letter to the European Commission President saying, "Croatia will undertake the necessary measures to harmonise its law on judicial cooperation with European *acquis communautaire*."[70] The final vote to change the law took place on October 7, 2013.[71]

The Djurekovic/Perkovic story highlights a couple of theoretical points. The first has to do with path dependency. It is clear that the post-Rankovic killings carried out by the Croatian secret police was a policy that escalated over time, continuing after the death of Tito in 1980 and only petering out with the fall of Communism. The inclusion of Perkovic as a high-ranking officer in the defense ministry, working closely with Tudjman's son, is another indication of how the institutional inertia that maintained the power of the secret police after Croatia's transition. Second, this story provides an addendum to the discussion of neoinstitutionalist theory in chapter 3. In it, I argued that criminal prosecution was usually not possible for the secret police in the post-Communist states, as their actions were often not criminal at the time they were committed. It remains to be seen whether Perkovic will be prosecuted, as he is only wanted for questioning at this time. But the Djurekovic/Perkovic matter is the exception that proves the rule: only when a blatant crime, such as an assassination, is committed, and perhaps only when it is committed in the West, is a prosecution of the secret police possible. The

[68] http://www.balkaninsight.com/en/article/croatian-pm-eu-rule-discriminatory
[69] http://www.dw.de/croatia-gives-in-to-eu-demands-on-extradition-law/a-17114563
[70] http://www.balkaninsight.com/en/article/croatia-to-change-lex-perkovic
[71] http://www.balkaninsight.com/en/article/croatia-changes-lex-perkovic

case illustrates the power of international governmental organizations to bring about a prosecution under those circumstances. This recent event effectively illustrates the principle from world polity theory that countries with stronger and denser ties to the international community are more susceptible to pressure—in this case, changing an extradition law—to conform to international standards.

In sum, under several current theories of lustration, Croatia should have been among the likeliest countries to implement the policy. It did not. I find that the lack of lustration in Croatia is partly due to the occurrence of the war. However, this was not because the war distracted from the need to deal with the Communist past, nor because the war created a whole new set of human rights violations to address. Instead, the sudden outbreak of the war meant that the security sector had to be staffed as quickly as possible with persons loyal to Croatia rather than to Serbia. It was therefore out of institutional inertia that members of the UDBa came to maintain positions of power in post-Yugoslav Croatia. Further, policies enacted to reorganize the secret police after 1966 meant that many of the Croatian secret police, in particular, had been involved in a brutal campaign of assassinations. Their ability to maintain closeness to the Tudjman regime shielded them for many years from any kind of accountability, which may now be changing. Thus, the Croatian case suggests the following hypothesis:

> Reforms to the security sector, including lustration, are not likely to occur when that sector must be built up rapidly under exigent circumstances, such as war. When personnel are retained and form close ties to the new regime, they are likely to be shielded from accountability.

Consistent with the phased-in nature of the strategic narrative research design (Stryker 1996), this hypothesis is subject to revision upon analysis of further cases. In fact, the same exigencies that present in the case of Croatia were also present for Serbia. Serbia did, however, adopt a lustration law. In the next section of the chapter, I will look at how that law came about and why it was never implemented.

II. Serbia

If Croatia illustrates the strength of policy feedback for constraining future outcomes, the experience with lustration in Serbia illustrates the limits of policy feedback. In this section, I will use the case of Serbia to argue about the conditions under which policy feedback does not constrain future outcomes. Serbia, as readers will recall, adopted a lustration law in 2003. The law expired a decade later having never been implemented. Below, I give historical background on the Serbian case, with a focus on events leading up to the passage of the lustration law. I will then discuss reasons and suggest mechanisms as to why the law was not implemented despite its popularity.

Background

On March 12, 2003, Serbian Prime Minister Zoran Djindjic was due to meet with the Swedish Foreign Minister, Anna Lindh, at the Government Building in Belgrade. When Djindjic arrived at 12:25 p.m., he stepped out of his car and was immediately shot

and killed by a member of the Red Beret paramilitary—a group responsible for many of the atrocities of the Bosnian War of the 1990's—at the behest of the Serbian Mafia. The sniper, Zvezdan Jovanovic, was stationed at the Institute for Photogrammetry, some 600 feet away. Djindjic's assassination was the clearest sign of how Serbians' attitudes toward the prime minister had shifted in less than 3 years from admiration to deep unpopularity. Following contested elections in September 2000, Djindjic, a former mayor of Belgrade, led Serbians in peaceful street protests against the repressive regime of Yugoslav President Slobodan Milosevic. In what was a forerunner to similar revolutions in Georgia, Ukraine, Kyrgyzstan, and Lebanon (Bunce and Wolchik 2011), the Djindjic-led protests precipitated the ouster of Milosevic and the move to a democratic Serbia on October 5, 2000.

In 2001 Djindjic was elected prime minister on a wave of support. However, Djindjic soon fell out of favor as he came under pressure from the West to extradite Milosevic to The Hague to stand trial for war crimes at the International Criminal Tribunal for the former Yugoslavia (ICTY). Although most Serbs were glad that Milosevic was out of office, many bristled at the idea that he was a war criminal who deserved to be prosecuted by an international court. But Djindjic was swayed by promises of financial aid and eventual membership in the European Union and NATO for Serbia. He sent Milosevic to The Hague in March 2001, a move that pleased the United States and Western Europe and displeased many in Serbia.

In the immediate post-Milosevic era, Serbia was, at best, reluctant to deal with its past. Serbia did decide, similar to many other post-Communist countries, to provide some

degree of access to the files of the state security services. On May 22, 2001, the government issued a Decree on removing the confidential classification from files held in the State Security Service on citizens of the Republic of Serbia. Just a few days later, on May 31, 2001, the government changed the name to the *Decree on Giving Access to Certain Files kept on Citizens of the Republic of Serbia in the State Security Service*. In other words, the confidential classification was not lifted. People were permitted to take a glimpse of their file, but were not allowed to inspect it, photocopy it, or discuss it with anyone, which would be a violation of state secrets.

Two years later, the assassin Jovanovic said that he killed Djindjic because he saw him as a traitor to Serbia. In the wake of the killing, a state of emergency was declared in the country. When the National Assembly resumed its session a week later, new legislation was adopted that gave increased powers to law enforcement in combatting organized crime. Changes to the criminal code and to the law on public prosecution and a new law on weapons and ammunition followed in April. Then, on May 30, 2003, realizing that personnel from the Milosevic era still wielded too much power, the Assembly adopted the "Law on the Accountability for Human Rights Violations" (hereafter, the lustration law). The law established a committee of 8 persons who were to investigate the current holders of and future candidates for 21 different offices to decide if they had violated human rights as defined by the International Covenant on Civil and Political Rights, which had been ratified by Yugoslavia in 1976. The lustration law was enacted by the Assembly using emergency procedures with a vote of 111 in favor, 1 opposed, 15 abstentions, and 123 members not present for the vote.

Despite the apparent political enthusiasm with which the law was adopted, it was never enforced. The 8-member commission was never fully constituted; only 7 people were named to the body. As such, the commission never took office. Moreover, the law expired as scheduled in May 2013, ten years after its passage, with little discussion of its renewal. This lack of implementation is surprising given other developments in Serbia over the past decade. In the years since Djindjic's assassination by militant nationalists opposed to transitional justice, Serbia's commitment to transitional justice has only grown. In 2003, the same year as the assassination, a special War Crimes Chamber of Belgrade District Court was opened to begin domestic prosecutions against suspected low-level war criminals that were not sent to The Hague. Serbia's cooperation with the ICTY has also increased. The government extradited the three remaining most-wanted war crimes suspects to the court in 2008 and 2011, thereby fulfilling all obligations to the court. The National Assembly issued an official apology for Serbia's role in the 1995 Srebrenica massacre, the signature atrocity of the Bosnian War, in 2010. And the national broadcaster, Radio Television Serbia, issued an apology in 2011 for spreading pro-Milosevic propaganda during the 1990's. For these efforts, Serbia was granted Candidate Status for the European Union on March 1, 2012. However, lustration has remained an unrealized element of Serbia's embrace of transitional justice.

Popularity of the law

Before discussing why lustration has not been implemented in Serbia, it is important to note that the reason is not because there is no demand for it. In fact, the idea

of lustration in Serbia[72] is immensely popular, particularly in contrast to other forms of transitional justice. In a survey conducted in March 2009--six years after the lustration law was adopted--by Ipsos for the Belgrade Center for Human Rights, 82% of Serbians said "Yes" to the question, "Is there a need, at least for a time, to prohibit those who have violated human rights from being in public office (i.e., implemented lustration)?" This stands in contrast to the 29% who think Serbia should apologize to other countries in the region without expecting an apology in return,[73] the 37% who have a positive attitude toward the ICTY, the 46% who feel there is a need to establish a truth commission, and the 50%[74] who approve of the handling of war crimes by Serbian domestic courts. Even among ethnic Serbs, who are very likely to regard transitional justice measures with suspicion or distaste, support for lustration stands at 79% (BCLP 2009). Of course, it is probable that lustration is so popular *because* it has not been implemented. The idea of banning human rights violators from office may sound like a good idea and may lend itself to social desirability bias--the tendency for persons to respond to surveys with what they think is the appropriate response. Seeing lustration in practice, though, would likely be controversial as persons would likely differ with respect to who should be lustrated.[75]

[72] The survey cited excludes Kosovo but is representative of the rest of the country. (N=1,433) 6% of Serbians said "No" to the lustration question, and 12% had no opinion.
[73] Another 52% support an apology by Serbia, but only if it is accompanied by similar apologies from Bosnia and Croatia.
[74] This figure represents those who gave a score of 3 or higher on a 5-point scale ranging from Very Bad to Very Good. Counting only those who rated domestic courts as a 4 or 5, support drops to 12%.
[75] See the end of this chapter for a discussion of further analysis of this data.

When Policy Feedback Fails

Patashnik and Zelizer (2009) offer three reasons as to why policies do not feed back: weak policy design, inadequate or conflicting institutional supports, and poor timing. I argue that all three of those are present in the case of the Serbian lustration law, and I will add the additional mechanisms of regulatory capture and stoking conspiracy theories. In this section, I draw on transcripts of debate from Serbia's National Assembly on May 29-30, 2003, the text of the law itself, and interviews with key informants.

Weak Policy Design

The weakness of the lustration law's design comes from how opponents were able to take the framing of providing redress to violations of human rights and turn that against the law by pointing out how the law would further violate human rights. They pointed out ways the law could be misused and questioned its seemingly arbitrary start date. Moreover, a strategy developed to ensure the law's passage may have actually undermined it.

Article 5 of Serbia's lustration law defines *human rights violations* as follows:

> …every action undertaken by a person specified in this Law in discharge of duty and/or task, which:
> 1. represents a criminal offence or other punishable act which is prosecuted ex officio, which has fallen under the statute of limitations for criminal or other penal prosecution, in whose commission the person specified under this Law participated as a perpetrator, instigator, accomplice, abettor, organizer of criminal conspiracy or whose commission such person failed to prevent in accordance with his/her legal powers.
> 2. has as its aim to deprive a person of his/her lawful rights or to hinder exercise of such rights, or to enable a person to acquire a right or benefit to which such person is not entitled under law; or

> 3. has as its aim to influence a state body, organization, enterprise or other legal entity to take a decision or undertake an act which brings citizen into an unequal position.

During the parliamentary debate over the law, issues regarding this framing were raised by several lawmakers. Zarko Obradovic[76] argued that the law was not truly designed with human rights in mind:

> This Act introduces a presumption of guilt, not innocence. It is retrospective in character, and selective, because it is not concerned with who violated human rights in Serbia, but applies only to persons who apply for participation in public life. It is essentially a way to dissuade people from participating in elections. (p. 7)[77]

Gordana Pop-Lazic[78] brought an historical perspective to the discussion by referencing the May 1903 coup against the royal family in Serbia:

> I remind you that today is May 29. How ironic. 100 years ago today the royal couple were killed, and clearly [now] you want to kill political opponents, to a make a political assassination or cause political suicide…This law, I'm sure, will lead to your [lustration supporters] political suicide. The Serbian Radical Party does not fear that we will be affected by this law. … We are against political retaliation against political speech. (p. 26)

She continued:

> The adopting of this draft law … is contrary not only to the provisions of the Constitution of the Republic of Serbia, but is at odds with the International Covenant on Civil and Political Rights [ICCPR]. The National Assembly would, by protecting human rights, in fact, provide the most brutal violation of human rights (pg. 30).

[76] Member of the Socialist Party of Serbia, the Communist successor party and the party of Slobodan Milosevic
[77] Transcript. National Assembly. May 29, 2003.
[78] deputy vice-president of the Serbian Radical Party

Dejan Mihajlov[79] also argued that the law would be selectively applied and questioned why it only dealt with human rights abuses committed after Yugoslavia's ratification of the ICCPR in 1976. He thought this granted amnesty to human rights violations committed prior to that year and argued that the law should apply to any violations committed after the adoption of the Universal Declaration of Human Rights in 1948.

> Do you want to grant amnesty from responsibility … for those who shot professors at the Faculty of Law at the beginning of the [19]70s? Do you want to pardon them from liability? Probably you do. And if you do not, you would start it in 1948 (pg. 15).

Thus, the invocation of human rights and the framing of the law as "accountability for human rights violations," opened a rhetorical space that allowed the law to be criticized and, ultimately, ignored. This echoes the finding of Williams, Szczerbiak, and Fowler (2005:20) whose analysis of lustration debates in Czechoslovakia, Hungary, and Poland found that coalition-building among parties to support lustration was most successful when the discussion was removed from the frame of transitional justice, thereby relieving lustration of the "expectations that accompany and often paralyse conventional judicial approaches to the past."

A further indication of a weak design was the deliberate choice to pursue what proponents called a "soft"[80] model of lustration, in contrast to the "hard" forms of lustration established in the Czech Republic or Poland. This was intended as a strategy to

[79] Member of Parliament. Democratic Party of Serbia (DSS). (DSS is a right-wing party, and should not be confused with the left-wing Democratic Party [DS]). May 29, 2003

[80] The law is "soft" in that it does not apply to as many public positions and the ban from office is not as long as in some other countries.

bring potential lustration opponents on board with the law. Aleksandra Joksimovic[81] spoke to this strategy:

> We wanted anything that could be finally accepted by all sides. So we said, "OK, let's have a soft model," which could be chewable to everyone. But unfortunately, even that kind of model, the way it was adopted, was not implemented at all. Never.

In further remarks from the floor of the Assembly, Gordana Pop-Lazic argued that a soft model was not needed because informal lustration was already going on in Serbia:

> Lustration in Serbia started a long time ago … on October 5, 2000 [date Milosevic was removed from power]. … Abusing [Milorad] Komrakov [a journalist] and a number of directors of social and public enterprises in Serbia, you are already on the way to performing lustration in some way, punishing those people and stigmatizing them in public (pg. 27).

In sum, there were multiple issues of framing that combined to give the law a weak design.

Inadeqaute or Conflicting Institutional Supports

The political-institutional literature identifies characteristics that contribute to increasing on state capacity and the power of state agencies. Particularly important resources include: sufficient money, trained personnel who are granted real power, and a developed bureaucratic structure. Agencies lacking such resources should not be able to wield much power (Pedriana and Stryker 2004). Such was the case with the lustration commission that was to be formed to implement the screenings of persons subject to the law in Serbia. The commission was meant to have 9 members, but the Assembly

[81] Personal Communication. June 23, 2011. Belgrade, Serbia. Ms. Joksimovic is a former assistant foreign minister and was a member of parliament at the time the lustration law was adopted, serving from 2000 to 2004.

approved only 8 members. Despite this, the commission met on October 20, 2003 and decided not to implement vetting for the forthcoming December parliamentary elections "in part because the field of 5000 - 6000 candidates was too large a number to investigate, and also no consensus was reached on investigating only the 250 who secured mandates in the election."[82]

The commission, therefore, lacked sufficient personnel to carry out its job. This was not that unusual, though, for Serbia. Both the former and current executive directors of CAA noted parallels between the failed attempt to implement lustration and an earlier unsuccessful attempt at launching a truth commission in Serbia. According to Aleksandar Resanovic[83],

> Something very similar happened also in 2001 when it was established a commission for truth and reconciliation. Actually this commission only met just a few times. And somehow in 2003 it disappeared. … [The Federal Republic of] Yugoslavia moved to the Union of Serbia and Montenegro.[84] A lot of these state authorities that had been established at the level of Yugoslavia just disappeared. So it also shows that there was not a political will for such a commission. … Talking about human rights, there [was] not political will at that time. We as people of Yugoslavia and Serbia and Montenegro were not ready to accept responsibility for everything [that] happened in … the period of 1991 to 1995. … So nothing was happened about this [truth] commission, and nothing was happened about the commission on lustration.[85]

Marina Jelic[86] made a similar point:

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[82] 2006 United Nations Development Report report prepared by Louis Aucoin and Eileen Babbitt, p. 104.
[83] Mr. Resanovic is the former executive director of CAA and is currently serving as the Deputy Commissioner for Information of Public Importance and Personal Data Protection in Serbia.
[84] See timeline at the end of this chapter for details of the evolving names of Yugoslavia and its successors.
[85] Personal Communication. June 8, 2011. Belgrade, Serbia.
[86] Ms. Jelic is the current executive director of the Center for Peace and Democracy Development (formerly known as CAA).

> We had some commission, which Kostunica[87] formed. The main point was to deal with the past, but I think it was only formed just to say, 'Oh, we will deal with it.' But they never did anything. There were I think 12-13 people who were engaged, but I don't think they had any particular initiative or any meetings. They just established [the commission] and that was it. They established not to deal with [the past]. [Laughs.][88]

I asked Aleksandra Joksimovic whether it was common for laws in Serbia to go unenforced and, if so, why. She said it is common and gave what amounted to a neoinstitutionalist argument about the influence of the international community.

> In transitional periods, you're always looking for some goal which will lead you to economic development, international recognition as a democratic country, and so on. But you also have forces inside the country who are against some particular law, some implementation of particular rules. And from time to time I have to say that maybe we are playing to the international community. You are forced to adopt some law in order to coordinate your activities with the European Union and legislation. And you do it. And you can say, "OK, law #55 is adopted and is in accordance with European law now." But nothing happens on the ground because you have different lobby groups which are against the implementation.

Poor Timing

A third problem with the lustration law is the issue of when it was adopted. As detailed above, the law was pushed through the National Assembly using emergency procedures in the months following the assassination of the Prime Minister Djindjic. According to Aleksandar Resanovic,

> No one wanted to do adopt such a law. It happened in May 2003, just two months after the assassination of Prime Minister Djindjic, and it was just because of that. … I do not believe that this law would pass if nothing had happened. Just because of the assassination of Prime Minister Djindjic. … Otherwise, in a normal situation in Serbia, the relationship between the nationalistic parties and the pro-European parties [would not have allowed for the adoption of the law].

[87] Vojislav Kostunica, President of Yugoslavia [Serbia], 2000-2003; Prime Minister of Serbia, 2004-2008
[88] Personal Communication. June 16, 2011. Belgrade, Serbia.

The passage of the lustration law under such conditions is an example of what journalist Naomi Klein (2007) refers to as the "shock doctrine." That is the name she gives to the strategy used by governments to take advantage of "shocks"—which could be a natural disaster, an economic crisis, a terrorist attack, etc.—to justify the passage of a law that would otherwise be difficult to adopt. The ruling party in Serbia was able to take advantage of Djindjic's assassination and the state of emergency that followed that event to push through the law. In one sense, this is an example of good timing, rather than poor timing. On the other hand, the lustration law alienated the opposition parties, who walked out of the debate. New elections were held later that year, and the opposition Serbian Radical Party gained control of the Assembly. Thus, issues of timing both enabled the passage of the lustration law and led to its demise.

In addition to the three factors identified by Patashnik and Zelizer (2009) that inhibit policy feedback, I add two more: regulatory capture and stoking conspiracy theories.

Regulatory Capture

Regulatory capture is a term used to refer to a type of corruption that results when persons who should be subject to a law end up being in charge of its enforcement. Aleksandra Joksimovic suggested that the government that came to power in December 2003 could not remain in office if the law were to be implemented. This was likely true, as the party that won the elections was the Serbian Radical Party. The leader of that party was Vojislav Seselj. He did not stand for the 2003 elections because he voluntarily surrendered to the ICTY in February of that year to stand trial for charges of war

crimes.[89] Other persons in his party, however, were likely targets of lustration. According to Ms. Joksimovic:

> Reasons why in 2003 it was so sensitive was in fact that already in ruling coalition, after democratic changes, as part of the coalition, were some people who were involved in the Milosevic party once upon a time. And, therefore, some of them were afraid that it could become a tool for political comeback, which is always sensitive. Nowadays, I think it just can't be implemented because we will lose the government as such. … The ruling coalition wouldn't exist. You have the Milosevic party as a coalition partner in the government, which means that if you will lose [them], you won't have a government. And I'm afraid that any future government will not be possible to be composed without some people from the past. They have changed, some of them, changed their approach, like in any other transitional country. … The late prime minister would say, "From the aquarium you can make fish soup. But from fish soup you can never create the aquarium again."

This situation is a bit different from what happened in Croatia. In Croatia, people like Tudjman and Manolic, who would have been subjected to lustration, were already in power and were able to prevent the lustration law from being adopted. By contrast, the persons who would have been subjected to lustration came to power after the law was in place and ignored it.

Stoking Conspiracy Theories

I suggest as a final factor that inhibits policy feedback the stoking of conspiracy theories. One of the unexpected themes to emerge in my coding of the Serbian debate transcripts is the invocation of George Soros as the person pulling the strings behind the scenes to push for the law. Soros is a Hungarian-American billionaire who expends considerable money and effort promoting democracy, particularly in his native Eastern Europe, through his

[89] As of November 2013, the verdict in the Seselj trial has been put on hold after the dismissal of one of the judges hearing the case. Seselj claims his rights have been violated and is demanding 12 million EUR from the court. http://www.balkaninsight.com/en/article/seselj-asks-12-million-euros-from-the-hague

Open Society Foundation. Soros is a favorite liberal bogeyman of the right wing in the United States due to his financial backing of the Democratic Party,[90] and it appears that the same is true in Serbia. But the ire for Soros did not appear out of thin air. The lustration debate occurred on the same day, May 29, that Soros visited Belgrade where he held a press conference urging Serbia to grant independence to Kosovo as a means of earning membership in the European Union quickly.[91]

One way to defeat or, at the least, discredit a law is to play on people's fears and resentments. The following exchange between MP Velimir Simonovic and the President of the Assembly shows Simonovic's attempt to do that by playing on nationalist and ethnic concerns:

> SIMONOVIC: I was very surprised yesterday [to learn] that a certain great enemy of ours, a Mr. Soros, may hold a press conference in the middle of Belgrade. I learned later what he said. Watch out—this [lustration] is its [presumably referring to control of the Serbian government] second stage, and the first phase was to finance non-governmental organizations, and perhaps some political parties.
>
> PRESIDENT: I'm warning you to get back on the agenda. … According to the rules, you cannot hold a press conference and hold a politics class as you like. Now you have to talk about the bill.
>
> SIMONOVIC: I'm saying this because the law is unnecessary. Please do not interrupt me. So [Soros] publicly declared that Kosovo and Metohija, that the Serbian Republic should be drowned in Bosnia-Herzegovina, that Serbia and Montenegro should be independent states, and the Macedonians—let's see what to do with the Albanians. (pg. 53)

Similarly, Zoran Andjelkovic,[92] linked Soros's visit to Belgrade with the lustration law.

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[90] See, for example, http://www.businessinsider.com/christine-odonnell-george-soros-is-after-me-2010-12.
[91] http://www.osim.org.me/fosi_rom_en/english/g_soros_media.htm
[92] Andjelkovic was once described by a report in the *New York Times* as "one of the organizers of the ethnic discrimination and suppression of Albanians in Kosovo during the last decade and a proven and loyal ally of President Slobodan Milosevic of Yugoslavia" (Gall 1999, np). Readers should bear in mind that he 1) would likely be banned from office under the lustration law, and 2) would likely take particular offense to the idea that Kosovo should be independent of Serbia.

> I am convinced that this law would not have come to the agenda if Mr. Soros had not come to Belgrade. But as Mr. Soros came to Belgrade, he of course funded them [the government], and they are likely to have a commitment to him, … so of course we came to [have this] Soros law, ie. lustration law. (pg. 85)

III. Macedonia

To gain additional leverage on the analysis of the Serbian case, I will briefly contrast it with the case of Macedonia. I argue that the 5 factors that thwarted the implementation of the lustration law in Serbia are not present in Macedonia, a country that does enforce its lustration law.

Stronger Policy Design

Macedonia avoided the problems caused by an ambiguous appeal to "human rights" in its lustration law by instead framing lustration as a matter of employment regulation. As indicated by the title of the law ("Law on Additional Requirements for Public Office"), the screening process is presented as just one further criterion, an "additional requirement," that must be met for holding certain jobs. Lustration in this instance is similar, then, to obtaining a university degree or other certification meant to regulate a profession. It does not proclaim, in this framing, to have the lofty goals of justice or accountability. Thus, by minimizing the scope of lustration in Macedonia, it is not susceptible to the same types of criticism from opponents as in Serbia.

Adequate Institutional Support

The Data Verification Commission, the regulatory body that implements Macedonia's lustration law, receives institutional support in ways that its Serbian counterpart never did. The Commission receives an office, occupying the 17th floor of the national broadcaster's building in Skopje. Moreover, the Commission is funded through the national budget. The 11-member team is provided a staff of civil servants to carry out "professional, administrative, and technical matters" such as liaising with other state agencies and communicating with the public. Members of the Commission and their staff are granted a security clearance, giving them access to the state secrets necessary for fulfilling their jobs.[93]

In January 2014, as the term of all members on the Commission expired, the opposition Social Democrats threatened not to support an extension or replacement of anyone on the Commission, thereby denying the two-thirds majority of parliament that is necessary to place persons on the Commission. The Social Democrats insist that the lustration process has been abused for the purposes of "political retaliation."[94] However, it is expected that if a first vote to elect new members to the Commission fails, a second vote will only require a simple majority.

Timing

The implementation of the lustration law in Macedonia has been made possible by the continuing presence in office of the right-wing VMRO-DPMNE party. After a brief initial stint in power in coalition with an ethnic Albanian party from 1998 to 2002,

[93] "Report for the period 1-15-2013 to 7-15-2-13" available at: http://www.kvf.org.mk/index.php/en/reports
[94] http://www.balkaninsight.com/en/article/macedonia-opposition-shuns-election-of-collaborator-hunters

VMRO-DPMNE regained control of the government on its own in 2006. Consistent with findings from Chapter 2, VMRO-DPMNE voted in favor of lustration in 2008. The party has maintained power since 2006, and it seems likely that the law will continue to be enforced as long as VMRO-DPMNE is the majority party.

Regulatory Capture and the Role of George Soros

Unlike in Serbia, where there is a sense that the persons who should have been lustrated were the ones controlling the process, there is a sense in Macedonia that lustration has gone overboard. That is, in an egregious abuse of power, persons are being lustrated who ought not to be. Such is the view of the Social Democratic party (cited above), who initially supported the law in 2008 but have come to oppose it. Thus, the concern in Macedonia is not one of regulatory capture, but one of abuse. An example involving, perhaps bizarrely, George Soros will illustrate this issue. In Serbia, Soros was viewed by the right as being behind the lustration law. In Macedonia, Soros has been punished by the law, at least indirectly.

One of the early supporters of a lustration law in Macedonia was the Foundation Open Society Institute – Macedonia (FOSIM), which is a Soros-funded NGO in Skopje. However, as explained to me by Neda Korunovska[95], FOSIM withdrew its support for the law after Macedonia adopted a law that granted citizens some access to their own secret police files. In FOSIM's view, lustration was no longer necessary once that concession

[95] At the time of our interview, January 21, 2011, Ms. Korunovska was the Law Program Coordinator for FOSIM.

was made. Thus, starting around 2006, FOSIM actively worked against the adoption of a lustration law.

Then in July 2011, the Commission named FOSIM's director, Vladimir Milcin, a former spy. To the public, it may now seem that FOSIM's opposition to lustration was to protect Milcin's past from being revealed. However, Milcin vehemently denies the claims of the Commission and says exculpatory documents showing that he was a victim of spying rather than a spy himself were deliberately withheld. Milcin insists that he was targeted for being a critic of the VMRO-DPMNE government. At a press conference in August 2012, Milcin said, ""The goal of this lustration is not to settle the injustices of the past, but to tarnish people's reputation" and said the head of the Commission is "a 'tumor in our society' who causes 'repulsiveness' with his 'industrious servility' to the government of Prime Minister Nikola Gruevski"[96]

Conclusion

The case of lustration in Serbia illustrates the limits of policy feedback. Although current policies should be constrained by past policies, that was not the case in Serbia. The implementation of the lustration law was inhibited by several factors. Certain aspects of the law were poorly conceived and, therefore, open to attack from the opposition. In particular, the definition of human rights violations was considered to be variously too ambiguous or too narrow. The charge that the law could be applied selectively was given more force by a seemingly arbitrary start date of 1976 for lustrable offenses. The lustration commission was given neither adequate staff nor sufficient time to carry out its

[96] http://www.balkaninsight.com/en/article/macedonian-ngo-chief-to-sue-lustration-body

mission. Like the failed truth commission before it, it was a weak institution that did not accomplish anything. Timing was both a friend and an enemy of the lustration law: the prime minister's assassination enabled the law to be passed under conditions that normally could not have been employed, but the use of those special procedures alienated the opposition party. That party, the far-right Serbian Radical Party, went on to win the next round of elections six months after the law was adopted. Their victory resulted in a type of regulatory capture by placing in charge of lustration one of the parties most likely to lose members as a result of the process. Finally, the lustration debates happened to coincide with a visit to Belgrade by George Soros. Serbian nationalists rejected his views on the status of Kosovo and suggested that he played a part in adopting the lustration law. By inserting conspiracy theories and stoking ethnic resentment, the law became easier to ignore as something foreign to Serbia.

Appendix 4.1 Timeline of Events in Croatia

1946	Aleksandar Ranković installed as first Minister of the Internal Affairs of Yugoslavia by President Josip Broz Tito
1966	Ranković removed from office, restructuring of secret police begins
early 1970s	Croatian Spring movement
1983	Stjepan Đureković assassinated in Wolfratshausen, West Germany, allegedly carried out by former Croatian secret police director Josip Perković
1989	HDZ formed
1990	HDZ wins first democratic elections in Republic of Croatia; Dinamo/Red Star soccer riot in Zagreb
1991-95	Croatian War of Independence
1998	HSP introduces first lustration bill
1999	HSP introduces second lustration bill Franjo Tudjman dies
2009	Germany issues arrest warrant for Perković
2013	Croatia accedes to the European Union, acquiesces to demand from Germany to extradite Perković

Appendix 4.2 Timeline of the Breakup of Yugoslavia

1943 – 1992 Socialist Federal Republic of Yugoslavia

Successor states of SFRY:

1991 – present	Republic of Slovenia
1991 – present	Republic of Croatia
1991 – present	Republic of Macedonia
1992 – present	Bosnia and Herzegovina

1992 – 2003 Federal Republic of Yugoslavia (successor of SFRY)

2003 – 2006 State Union of Serbia & Montenegro (successor of FRY)

Successor states of Serbia & Montenegro:

2006 – present	Montenegro
2006 – present	Republic of Serbia

Disputed successor state of Serbia:

2008 – present	Republic of Kosovo

(not recognized as independent by Serbia)

Appendix 4.3 Additional Analysis of Serbian Survey Data

As part of a separate unpublished manuscript, I have done statistical modeling on the survey data from Serbia.[97] The survey asks respondents about a series of 22 events that occurred during the 1990s Yugoslav wars. For each event (e.g., the siege of Sarajevo), the survey asks the following questions:

1) Have you heard of the event?

2) If you have heard of the event, do you believe it happened?

3) If you believe the event happened, do you view it as an inevitability of war, or as a war crime?

Of the 22 events that are included in the survey, 16 were perpetrated by ethnic Serbs against non-Serbs.[98] I use latent class analysis to categorize persons based on their responses to the questions about those 16 events. I create four categories:

1) *low-information persons*, who have heard of very few events,
2) *skeptics*, who have heard of but doubt that many of the events took place,
3) *belligerents*, who tend to view Serb-perpetrated events as inevitabilities of war,
4) and *critics*, who view most Serb-perpetrated events as war crimes.

I then use those latent classes to estimate several logistic and OLS regression models, depending on the structure of the dependent variable, to see if memories have differential effects on support for a range of five transitional justice mechanisms. I

[97] I am grateful to Zarko Markovic of the Belgrade Center for Human Rights for providing me with the microdata from this survey.
[98] I use this restriction to avoid the confounding effects of ethnicity, as people from all ethnic groups tend to be ethnocentric in their view of what is a war crime versus what is an inevilability of war. view events perpetrated by other ethnic groups as war crimes and events perpetrated by their own ethnic group as inevitabilities of war.

control for the respondent's age, level of education, sex, ethnicity, residence in Belgrade, regularity of viewing footage from ICTY proceedings, and news source for information about the ICTY.

I estimate models that gauge support for lustration, the ICTY, domestic Serbian courts, a one-sided official state apology by Serbia to Croatia and Bosnia-Herzegovina, and a truth commission. I find that lustration is the only mechanism of transitional justice for which the odds of support do *not* vary by latent class (i.e., memory category). That is, low-information persons, skeptics, belligerents, and critics do not differ in their odds of supporting lustration, net of other characteristics. I find that memory categories do matter in terms of support for the other four transitional justice mechanisms. It is likely, though, that if lustration were to be carried out in Serbia, the four groups would differ in terms of *who* they think should be lustrated and support for the policy would diminish within some latent classes.

Chapter 5

Conclusions

Summary of Findings

This dissertation has sought to answer the general question of, "What accounts for lustration?" In chapter 2, I use quantitative analysis to answer the more specific question of "What factors account for the proposal and adoption of lustration policies?" The chapter breaks new ground in that it is based on an original dataset covering all post-Communist countries for the period 1989 to 2012, thereby including all positive and negative cases of lustration. This differs from most of the literature on lustration, which tends to argue from only a handful of positive case studies. The chapter is also innovative in that it considers the possibility that there are separate processes at work for the proposal and the adoption of lustration policies. I adopt Stan's (2008) classification of explanations as emphasizing either the "politics of the past," meaning the period up to and including the transition from Communism, or the "politics of the present," referring to the post-Communist period. Within those broad categories, I test 7 hypotheses from the literature about the adoption of lustration. The following explanations are considered in both bivariate and multivariate discrete-time logistic regression models:

1) type of transition to democracy
2) the configuration of opposition movements, elite relationship to the regime, and a pre-Communist history of democracy
3) the left-right ideology of the ruling party
4) the legitimacy of the Communist regime
5) ratification of two human rights treaties.

In bivariate analysis of lustration proposal, I find that the "politics of the past" arguments do the best job of explaining whether such policies are proposed. Countries that undergo a replacement transition, where the outgoing regime has no leverage with which to protect itself, are very likely to propose lustration. Countries with relatively weak opposition movements during the Communist period are much less likely to propose lustration than those that had stronger opposition movements. Higher levels of democratization and wealth also indicate a higher likelihood of proposing a lustration bill. I find that time, regardless of how it is measured, is not significant. This means that the odds of proposing a lustration bill do not vary over time. Such a finding is a contrast to Samuel Huntington's (1991) prediction that justice in transitional societies either happens right after the transition or not at all. Ratification of the European Convention on Human Rights (ECHR) is associated with higher odds of proposing lustration, but this finding runs counter to the hypothesis based on world polity neoinstitutionalism. Because the international community, including the court that adjudicates cases dealing with the ECHR, is largely anti-lustration, I would expect ratification of the ECHR to be negatively associated with proposing lustration. This finding was not borne out by the data.

In multivariate analysis of lustration proposal, I use trimmed models that only include variables that were significant in bivariate analyses due to the relatively small sample sizes. I find that countries that undergo a replacement transition to democracy and countries that have a high level of democratization are the most likely to propose lustration. Other variables that were significant in bivariate analysis wither under the gaze of the multivariate model.

In the bivariate analyses of lustration adoption, I find that both the politics of the past and the politics of the present arguments have merit. Stan's classificatory scheme is significant for some countries, indicating that there are lower odds of adopting lustration in countries where the elites were co-opted into the Communist regime. Consistent with Welsh's (1994) argument, Left parties are much less likely to adopt lustration that Right or unclassified parties. Level of democratization and GDP are again positively associated with lustration adoption. In multivariate models, only level of democratization and Left party rule remain statistically significant.

The findings show a consistently strong effect for democratization. This is somewhat puzzling given the anti-democratic nature of lustration laws, at least from an American liberal understanding of democracy that emphasizes individual rights over communal rights. I suggest that there must be some aspect of democracies that is driving the adoption of lustration laws. I tentatively offer the suggestion that it is the constraining effects of past policy regarding the regulation of the security sector that is operating to give democratization a consistently significant effect.

It should be noted that Chapter 2 is somewhat limited by data problems. A very plausible explanation for differences in lustration across countries is that the level of repression differed from country to country. It was not possible to include level of repression under Communism as a variable in my models because of a lack of data. The data that would normally be used to measure such repression, the Political Terror Scale, suffers from two problems: the data only go back to 1976, and the data are only available for countries that existed at the time. Thus, early repressive episodes, such as in the

Soviet Union in the 1930's, Hungary in 1956, or Czechoslovakia in 1968, are not reflected in the PTS. Also, there are not separate repression scores available in the PTS for each of the constituent Soviet or Yugoslav republics until those republics gain independence. It is not possible, therefore, to compare levels of repression across what at the time were sub-national units.

Another plausible explanation for differences in the implementation of lustration is the availability of qualified alternate personnel to take the place of persons removed from office. For example, a country may be more likely to implement lustration against judges if there are many persons with legal training who are driving taxis, essentially waiting in the wings to fill those vacated positions, than if there is a dearth of such surplus qualified persons. To test such a hypothesis, one would need data on both the extent of lustration in a given country and data on underemployment by sector. I did not have access to such data, so I did not test this hypothesis in Chapter 2.

The original intent of my dissertation was to examine the influence of international actors on the adoption of lustration laws. After traveling to Croatia, Serbia, and Macedonia and speaking with 30 key informants from academia, government, and civil society, I found that there was very little influence from international actors. Thus, chapter 3 is an attempt to explain this finding. From the perspective of world polity neoinstitutionalism, is paradoxical that the diffusion of lustration laws is happening in spite of negative pressure from the European Court of Human Rights, the Parliamentary Assembly of the Council of Europe, the International Labor Organization, Human Rights Watch, and other international bodies. I attempt to reconcile the predictions of WPN with

the empirical reality by employing a variant of Burawoy's (1991) extended case method. I draw on documents from the aforementioned international actors and my interviews to build new concepts and propose relationships among those concepts so as to account for the paradoxical case of lustration. I argue that the presence of legal constraint that prevents the implementation of a preferred norm means that an alternative means of carrying out the norm must be found. Such alternatives are likely to be found among practices that have resonance with a given population due to their congruence with a schematic antecedent. Finally, diffusion may occur when legitimacy is conferred not through the international system, per se, but rather through the legitimacy of a particular actor--in this case, Germany--whose experiences can be seen as similar to those of other countries.

In chapter 4, I present the cases of three former Yugoslav republics: Croatia, Serbia, and Macedonia. I chose to compare these three cases because they have had different outcomes with respect to implementing lustration. Lustration bills were proposed in lustration on two occasions but were not adopted either time; Serbia adopted a lustration law in 2003 but never enforced it; and Macedonia both adopted and enforced its lustration laws. Because an examination of the Macedonian case does not offer much in the way of theoretical gain, I use it only as a reference against which to compare Croatia and Serbia. Macedonia shows that it is possible to implement lustration "successfully" in the former Yugoslavia, but not much else. Thus, my comparison really focuses on the other two former republics. I employ Stryker's (1996) strategic narrative method to conduct the comparison. I show how the lack of lustration in Croatia is a

theoretical and empirical anomaly. That is, lustration should have occurred under existing explanations of lustration, but it did not. Building from that, I then offer an explanation as to why Croatia did not lustrate and try to frame that explanation in general theoretical terms. Based on interviews and documents from the Croatian intelligence service, I argue that the exigencies of an impending hot war, building the security sector from the ground up would not be feasible. This could apply to other transitional countries, which often face situations of insecurity upon the adoption of a new regime. Most of the post-Communist states did not experience such insecurity, but one could easily imagine lustration-like policies not being implemented in the newly transitional countries of Egypt or Libya for similar reasons as in Croatia.

Further, I use the case the assassination of Stjepan Djurekovic, allegedly by Josip Perkovic, to illustrate how the Croatian secret police, specifically, came to be populated with serious violators of human rights. More so than the other secret police forces in Yugoslavia, which achieved a large degree of autonomy in each republic after the 1966 firing of Aleksandar Rankovic, Croatia's secret police engaged in two-decade assassination campaign abroad. Agents like Perkovic became friendly with the post-Communist Tudjman regime and were protected from retaliation for many years. Only very recently has that started to change. Croatia's entry to the European Union in July 2013 has made it more susceptible to international pressure to extradite Perkovic to face questioning in Germany for the death of Djurekovic.

The Croatian case, then, illustrates a certain degree of path dependency that explains why lustration did not occur there. For me, path dependence refers to “social

processes that exhibit positive feedback and thus generate branching patterns of historical development" (Pierson 2004:21), patterns "that are inherently difficult to reverse" (Hacker 2002:54). By contrast, the Serbian case shows the limitations of path-dependent explanations. Despite the passage of a lustration law in 2003, subsequent governments have not enforced it, indicating that they have not been constrained by past policy as would be expected under theories of policy feedback. Instead, the Serbian law was undermined in several ways. Consistent with Patashnik and Zelizer (2009), I argue that the Serbian law had a *weak design* that allowed for successful reprobation by the opposition parties; *inadequate institutional support* in the form of an understaffed and overburdened lustration commission; and *poor timing* in that the opposition party who was alienated by the law's passage under emergency procedures came to power only six months after the law went into effect. I suggest two additional mechanisms to supplement Patashnik and Zelizer's model: *regulatory capture* and *conspiracy theories*. The party that came to power under the above conditions, the Serbian Radical Party, was also the party that would be highly susceptible to being lustrated out of office. They had no incentive to enforce the law, just as Franjo Tudjman had no incentive to allow the lustration bill in Croatia to come to a vote. Also, the use of conspiracy theories about George Soros's involvement with the lustration law was used to stoke ethnic resentment about his views on Kosovo, the largely ethnic Albanian province of Serbia. Suggestions of Soros's outside influence were discrediting to the law.

Some readers may argue that the Serbian law was deliberately not enforced--that it was meant to placate the international community by being on the books but not to be a

real piece of legislation. Although this is no doubt the case with many human rights policies around the world (Risse, Ropp, and Sikkink 1999), I do not buy that argument with respect to Serbia. As best I can tell, there was no demand from the international community that Serbia engage in lustration. Who, then, is the audience for a law that is strategically unenforced? The international community was very clear with respect to Serbia's post-war course of action: it was to comply with the International Criminal Tribunal for the former Yugoslavia, including by handing over all indicted fugitives. Serbia finally completed this task in 2011 by handing over Ratko Mladic and Goran Hadzic. The proof of Serbia's requirement to do so is in the proverbial pudding: three months after arresting Hadzic in July, the European Commission recommended that Serbia be given official Candidate status with respect to European Union accession. That status was granted in February 2012, without any expectation that Serbia engage in lustration.[99]

Taken together, the empirical chapters of this dissertation suggest that lustration is a process that is largely driven by internal processes: democratization, legal structures, and, under certain conditions, policy legacies. The important international factors driving lustration appear to come from the regional level, rather than the global, and are contingent upon a state's ability to see its own history as similar to or connected with that of another state.

[99] Barlovac, Bojana. 2012. "Brussels Grants Serbia EU Candidacy" *Balkan Insight*. March 1. http://www.balkaninsight.com/en/article/brussels-to-confirm-serbia-s-candidacy

The Bigger Picture: Lustration, Transitional Justice, and Democratization

In this section, I will argue that lustration is improperly categorized as a form of transitional justice by both academics and policy makers, since it is neither transitional nor just. I claim that to be properly regarded as "transitional," lustration must be time bounded in its application in a way that is not necessarily true of other forms of transitional justice, like prosecutions and truth commissions. While it is the case, as I discussed in the section of this dissertation dealing with prognostic bridging and the example of Germany, that countries can be slow to begin to come to terms with the past, lustration is a process whose value declines with the passage of time *if its purpose truly is to remove human rights abusers from office*.[100] There is a natural attrition from public life with the passage of time. This point was made by Zarko Puhovski at one of the meetings organized by CDRSEE to promote lustration in Southeastern Europe:

> A professional career can be for, let's say, a maximum of 40 years. So, nothing that has occurred over 40 years ago can be relevant for lustration, because lustration is dealing with concrete persons and a possible disqualification of these persons in public life. There is no basis for disqualifying someone for something done when he or she was 17 years old and if he or she is now 85 or even older.[101]

I would contend that prosecuting such a person for criminal activity, or seeking to uncover the truth about actions committed by such a person, would still be appropriate,

[100] As a corollary to this punitive purpose of lustration, some may argue that lustration exists to change the culture of policy making in institutions like the police, the military, or the judiciary, that lingers even after a transition to democracy. In this formulation, removing persons from office not only punishes the individuals, but also provides needed reform to the agents of state power--especially those that might be slow to change. In my view, removing personnel from office is not sufficient for changing the culture of an institution, which is likely to retain a culture through inertia even in the absence of specific individuals. To address such institutional "stickiness," one must change the incentive structure within the agency. For example, changing the requirements for promotion or other rewards within an institution are more likely to result in a change to a potentially repressive culture that has held over from the *ancien regime*.

[101] *Disclosing Hidden History*, p. 121

even at the age of 85. But a ban from public life is superfluous. Moreover, the idea of the time-boundedness of lustration has been expressed by both the European Court of Human Rights, as expressed in the *Adamson* case cited in Chapter 3, and the Parliamentary Assembly of the Council of Europe. PACOE fixes the date for the end of lustration processes at December 31, 1999, because "the new democratic system should be consolidated by that time in all former communist totalitarian countries."[102] Further, many of the informants I spoke to in Croatia and Serbia--including those who were otherwise supportive of the idea of lustration--argued that it was "too late" to implement lustration in those countries. This was the view taken by, among others, Aleksandra Joksimovic in 2011. She argued that lustration should have been pursued in the months following the October 5, 2000, revolution that unseated Milosevic. Because lustration is happening well beyond these time frames in many countries, it is better regarded as open-ended rather than transitional.

Second, lustration is not just. I believe this point is well illustrated in Chapter 3, particularly as concerns the lack of due process afforded to the accused. Another very problematic aspect of lustration is the targeting of collaborators, rather than merely the secret police themselves. It is not usually known from a secret police file the circumstances surrounding someone's collaboration. Was the person actually an informant, or was the person listed as an informant without their knowledge so that the police officer could meet a recruitment quota? If the person did inform, what kind of duress was the person put under to consent to doing so? Were they or their family threatened? Blackmailed? Tortured? If so, it is hardly just to punish them in the same way

[102] Resolution 1096

as the secret police themselves. Because this information is not contained in the files, and the files are documents upon which decisions about lustration rely, there can be no fair screening of informants.

Finally, I must return to the point I made in the introductory chapter regarding the balance of power among the branches of government. Saskia Sassen (2008) argues that the neoliberal economic system has expanded the power of executives and limited the power of legislatures. I believe that lustration and "transitional justice" measures show a countervailing trend: it used to be that executives (here I include state security services as they are tasked with enforcing the law) never or only rarely faced accountability for human rights abuses. The fact that they now do, at least sometimes, face such accountability, is evidence that courts and legislatures are asserting their power over executives. Charles Tilly, in his synthetic work on democracy, argues for a dynamic, process-oriented definition of democracy: “a regime is democratic to the degree that political relations between the state and its citizens feature broad, equal, protected and mutually binding consultation” (2007:14). To this definition, I would add that a regime is democratic to the degree that the branches of state power exhibit broad, equal, protected and mutually binding consultation *among themselves*, not only with respect to state-citizen relations. To the extent that lustration is a means reigning in the power of the security services, I would say that it contributes to democracy as defined by my addendum to Tilly's definition. However, as I have just noted above, lustration is often unjustly applied, and does not provide adequate protection of citizens by the state. Lustration, then, has mixed effects on democracy. My experience in Macedonia suggests

that a powerful judiciary is especially important in providing a check on an unrestrained lustration process. There, the courts--both constitutional and administrative--have been in a pitched battle with the lustration commission and the legislature to settle on a process that is fair. This is only an observation based on one country, and further research should be done to determine how the balance of power among the branches of government is shaped in particular contexts.

Directions for Future Research

It is my view that the largest impediment to research on lustration or other vetting schemes is the availability of good data. The literature could be improved enormously by knowing who is lustrated, who is not, under what conditions, and with what consequences. Poland, in particular, seems as though it could be fertile ground for research that improves our understanding of lustration. Because Poland allows persons who confess to collaboration with the secret police to still run for office, I can envision a research project on stigmatization that examines the effect of such an admission on one's electoral chances. How does admitting one's past affect one's odds of winning? Do they vary by gender, political party, region of the country, or office being sought? Do they vary by what kind of activity a person is admitting to? Since lustration is in large part an exercise in naming, blaming, and shaming, such research is crucial to advancing our knowledge of the cultural impact of the policy.

Other research should look at vetting policies across regions. Some comparative work on this has been done by Mayer-Rieckh and de Greiff (2007), but, particularly in

the wake of the Arab Spring, there are new opportunities to learn about vetting systems, both those proposed and those enacted. There should also be research on *informal* vetting practices. Informal vetting was referred to in the discussion of Serbia. It entails discrimination against persons who may have been associated with the prior regime even in the absence of formal policies. There are opportunities for excellent ethnographic and interview-based research that looks at informal lustration.

Finally, further research could look at differences across types of vetting practices. In particular, there seem to be differences in how the European Court of Human Rights handled post-World War II vetting practices, when states were granted more leeway, compared to post-Cold War vetting practices, which have been found to be in violation of human rights. An analysis of this change over time in the Court's jurisprudence would be illuminating.

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