

To what extent is lustration an effective mechanism of transitional justice and democratic consolidation? The case of Polish Lustration Law

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The study of the effects of lustration, particularly in the countries of Central and Eastern Europe emerging from authoritarianism post-1989, remains a controversial, morally ambiguous and relatively unexplored field. Lustration laws in these countries vary greatly in their scope, opportunity for judicial review and implementation, as the countries' journeys out of communist rule exhibit marked differences. The first lustration law was approved in 1991 in Czechoslovakia, providing for the dismissal of state officials in key positions, effectively disqualifying communist cadres, secret police and their collaborators from the new administration;² Poland, partly due to its unique mode of exiting from communism in Round-table negotiations and the relatively liberal nature of the communist regime,³ took a different turn, emphasizing 'value discontinuity through truth revelation',⁴ and offering a second chance to those old regime officials who had confessed their collaboration. This essay aims to assess lustration as an instrument of transitional justice based on the example of its implementation in Poland. Although emphasis will be placed on the Lustration Law of 1997, it will be shown to have led to a continuously unclear and politically malleable status of the process at present, particularly with regard to the contested broadening of the scope of lustration in 2006 and the current debates surrounding it. Beginning with the consideration of the broad aims of lustration as a transitional justice tool, through an account of the historical developments in the Polish lustration process, to an evaluation of its three main objectives as outlined by Roman David (2003): determining historical truth, establishing minimal justice and safeguarding state security, this essay will judge the impact of lustration procedures on the consolidation of democracy in Poland as a state emerging from authoritarian rule.

Transitional justice mechanisms address past violence through societies' attempts to come to terms with a legacy of large-scale past abuses, aiming to ensure accountability, to re-establish the rule of law and to serve justice.⁵ Lustration laws, as instruments of transitional justice, are transitional public employment laws which determine conditions for holding public office by associates of former regimes in the new democracies. They examine whether a person applying for or holding a certain public office worked for or collaborated with the repressive apparatus of the former communist regime. Additional to their instrumental purpose of screening public officials, lustration may be seen as a 'symbolic act', marking discontinuity with the past as a means of rebuilding society after transition.⁶ The management of administrative personnel inherited from previous regimes is crucial to democratic consolidation, thus facing multiple challenges, the most basic being the tension between the dismissal of collaborators, which may diminish organizational skills and expertise crucial for effective governance and exacerbate historical tensions, and allowing them to retain office, risking the undermining of the new state's legitimacy in victims' eyes (particularly in the case of large-scale abuses), condoning past injustices and compromising the implementation of reform.⁷ Further issues include the historiography of reconstructing and treating the past and issues of the reliability of regime data, moral dimensions of the

2 R. David. 'Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001)'. *Law & Social Inquiry* 28.2 (2003), pp. 387-439.

3 Szczerbiak. 'Dealing with the Communist Past or the Politics of the Present? Lustration in Post-Communist Poland'. *Europe-Asia Studies* 54.4 (2002), p. 555.

4 R. David (2003), op. cit., p. 407.

5 S. Cohen. 'State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past'. *Law & Social Inquiry* 20.1 (1995), pp. 7-50.

6 A Szczerbiak (2002), p. 555.

7 Ibidem.

accountability for actions which were once legal, or the issue of retroactive punishment.⁸ In essence, it faces the dilemmas associated with the popular desire to be informed about oneself and election candidates after a period of government monopoly on truth to regain trust in public institutions, whilst operating with incomplete, convoluted or fraudulently acquired data. Faced with this complexity, and with the communist legacy of mistrust toward state representatives, Poland, along with Hungary or Romania, developed a lustration model offering a second chance to personnel after a process of the exposure of or confessions by tainted officials. It focuses not on retribution but ‘value discontinuity through truth revelation’ to establish accountability in the newly democratic state.

Having faced four decades of communist rule, where notable state positions were staffed according to ideological and Party loyalty, Poland (and other transitioning Eastern states) faced the legacy of a system of official and clandestine reporting, surveillance and control developed by the old regime. This ensured that the ‘enemies of the people’ were uncovered and loyal *nomenklatura* could maintain its grip over political life. Poland was the first country in the region to overthrow communism, and the last to pass a lustration law. It exited communism through Round-table negotiations with the Communist elites in February-April 1989. The first semi-free elections saw *Solidarność* democratic opposition candidates take all but one of the 35% Lower Chamber seats made available by the Communist Party, leading to the appointment of Tadeusz Mazowiecki as the first non-communist Prime Minister, and thus institutional power sharing between old and new elites.⁹ As Mazowiecki called for drawing a ‘thick line’ under the communist past and forgiving in the name of reconciliation and transformation,¹⁰ it was clear that the first post-communist government explicitly rejected a policy of lustration as disturbing in democratic infancy. The approach to the past polarized non-communist factions, with the lustration debate leading to the fall of the 1992 Olszewski government upon the publication of unreliable lists of alleged secret collaborators among high-ranking officials by the Interior Minister, Macierewicz. Only in 1997, after the centre-right coalition’s election victory, was a lustration law passed, to be finally implemented in 1999. The unregulated phase between 1989-99, when uncontrollable ‘wild lustration’ in media and public life was rampant, and the feeling among some that the adopted Lustration Law was insufficient to end it, led to lustration becoming a recurrent, unresolved, politically-manipulated issue which continues to re-emerge as a salient focus point on the political agenda.

Lustration in Poland, unlike that in some transitioning states, is based on a judicial process. The main feature of the Lustration Act of 11th April 1991¹¹ was the verification of affidavits submitted by individuals applying for high-level public positions (including 25,000 posts such as the President, MPs and senior state functionaries) ‘confessing’ whether they had collaborated with communist regime security services.¹² Revealed collaborators, clarified by the Constitutional Court to have been conscious, secret employees connected with the secret services’ operational activities, see their affidavits published in a governmental gazette. The Warsaw Court of Appeal as the Lustration Court decided on the truthfulness of the information submitted, where a false affidavit was sanctioned as a criminal offense and led to the loss of moral qualifications for 10 years, implying

8 S. Cohen (1995), p. 14.

9 M. Łoś and A. Zybortowicz. ‘Is Revolution a Solution?’ in *The Rule of Law After Communism*, M. Krygier and A. Czarnota (eds.). Dartmouth: Aldershot, 1999, pp. 261-307.

10 M. Łoś. ‘Lustration and Truth Claims: Unfinished Revolutions in Central Europe’. *Law and Social Inquiry* 20.1 (1995), pp. 117-161.

11 Act of 11th April 1997, on the revealing of information on work or service within state security organs or of collaboration therewith between 1944 and 1990 by public administration members.

12 S. Choi and R. David. ‘Lustration Systems and Trust: Evidence from Survey Experiments in the Czech Republic, Hungary, and Poland’. *American Journal of Sociology* 117.4 (2012), p. 1175.

the loss of the right to access public office.¹³ The law is therefore forward-looking and has no retroactive character, assuming punishment only for ‘lustration liars’ who are found to have lied in their affidavits but not for those who have thus revealed their collaboration themselves. It sanctions ‘present dishonesty, instead of past involvement’¹⁴ and offers tainted officials a second chance in public life in exchange for truth about their involvement with the repressive apparatus of the old regime. It also does not impose any automatic sanctions for having worked for or collaborated with the security services as such, and, although criticized for its lack of de-communisation, it thus seeks to bypass the common charge against the Czech law about the application of collective guilt retroactively.¹⁵

It is now imperative to assess the effectiveness of the Lustration Law and proceedings in their historical context against the Law’s three main objectives: delivering historical truth, providing minimal justice and seeking state security.

Determining the truth about past injustices

The first objective, the establishment of historical truth, focuses on the desire for openness in public life and the idea that citizens have a right to be informed about the backgrounds of their public representatives and how these could have affected people’s own lives in the past. The expectation is that of ‘honesty, accuracy [and] politicians telling the truth’.¹⁶ It is believed that the lustration process allows people to regain confidence not only in political candidates, but also in the public institutions they are part of, and allows for the dispelling of rumors, thus easing and clearing the atmosphere in society and strengthening trust in the democratic state apparatus itself. The revelation of ‘truth’ about the past in the lustrated individual’s own confession has always been a bottom-up process in Poland, where it is the individual who initiates his lustration process, giving it a normative meaning and symbolizing a change of attitudes within the government. It also exposes the value of truth itself in a society plagued by generations of denials, cover-ups and lies, where many have a paramount desire to establish exactly what happened; for those affected by large-scale abuses by the communists, the demand for truth is often more critically felt than the desire for justice. The ‘need to convert private knowledge into public acknowledgment’¹⁷ through the publication of the results of lustration often provides satisfaction to victims whose voices had been brutally suppressed under communist rule. A significant element of this cleansing process was also the protection of individuals against ‘wild lustration’, meaning public allegations of collaboration against which they had no redress, by giving them the opportunity to defend themselves and clear their names in a judicial procedure.

In its task to establish the historical truth lustration can, however, lead to the contamination of public discourse by becoming an instrument for political struggle, particularly when, as in Poland, a comprehensive lustration law is drawn up years after authoritarianism has come to an end. In the lengthy unregulated period, Poland experienced an intensive stage of ‘wild lustration’, with public figures using accusations as a tool for ideological or political struggle, and the media uncontrollably exposing alleged ‘collaborators’ to settle political rivalries. During this time, three Polish prime ministers:

13 R. David (2003), op. cit., p. 412.

14 S. Choi and R. David (2012), op. cit., p. 1185.

15 R. David (2003), op. cit.

16 A. Szczerbiak (2002), p. 563.

17 S. Cohen (1995), p. 18.

Oleksy, Cimoszewicz, and Buzek, and two presidents: Wałęsa and Kwaśniewski, were publicly denounced, creating a shaming effect of exposure until the lengthy lustration proceedings had cleared them.¹⁸ For many, even after negative lustration dismissing claims of collaboration, such accusations resurface in public debate subject to political convenience. The issue of the reliability of secret service files, often compiled using coercive methods, with fabricated evidence and untrue statements about the nature or degree of one's collaboration has reappeared particularly as Lech Wałęsa, the first non-communist president, was accused by a group of researchers of having been the secret collaborator 'Bolek', much to the delight of rival post-Solidarność right-wing parties.¹⁹ Similar to other accusations which were made, the nature of the claimed collaboration was not revealed, making it impossible to address the issue of whether Wałęsa's presence in communist files was merely a by-product of his role as President, or whether he had participated in harmful operations. Such a lack of clarity leaves plenty of room for doubts, allegations and political crusades.

The lengthy lustration procedure, and its contestation, often despite the results, had and continues to have a destabilizing effect on public discourse and governance. As a case in point, the lustration trial of Krzysztof Gajewski, the vice-president of Radom, took seven years before his name was finally cleared following certain allegations,²⁰ raising doubts as to whether the late introduction of a lustration law has in fact been effective in eradicating 'wild lustration'. Particularly the alleged exposure of high-ranking officials often leaves an ineradicable mark on the public collective memory of the past and creates rival historical accounts which are used as scapegoating tools in a political struggle by rival political camps.²¹ The initial shaming effect is often impervious to Lustration Court rulings, considering their lengthy delivery, and is likely to continue to return in public discourse. Meanwhile, the lustration trials themselves have come under heavy criticism. The accused often have an imbalanced access to case files or are not allowed to take notes in the courtroom. Further, fabricated information present in old regime files, and the multiplicity of forms of engagement with the former secret service (ranging from the acquisition of information through invigilation or the unwitting passing of data to agents, to fully conscious collaboration), makes it difficult to draw a line indicating where punishable 'collaboration' has occurred. Grievances against the procedure, often heard before the European Court of Human Rights (ECtHR), such as the recent 2009 case of *Rasmussen v. Poland*,²² depict lustration trials as mechanisms of truth revelation and justice. In particular, the ECtHR has repeatedly found that Polish lustration proceedings have violated the right to a fair trial and equality of arms. Limited access to communist files, often shelved as 'classified', as well as closed trials, foster an atmosphere of mistrust in society and fail to deliver democratic transparency.²³ Doubts remain as to whether the vaguely-rooted lustration procedure, aspiring to reinstate the rule of law and democratic principles, may still be seen as an effective tool for democratic consolidation where it is found to breach the very laws and ideals it stipulates.

18 R. David (2003), *op. cit.*, p. 417.

19 Gazeta Wyborcza. 'Sprawa Bolka urosła już do rangi mitu. Politycy o nowej kszacie IPN'. Available at: http://wiadomosci.gazeta.pl/wiadomosci/1,114873,8716276,_Sprawa_Bolka_uroslejuz_do_rangi_mitu_Politycy.html. 2010. Accessed: 13.6.12.

20 Gazeta Wyborcza. 'Koniec lustracji Krzysztofa W. Nie był TW'. Available at: <http://radom.gazeta.pl/radom/2029020,48201,11564767.html>. 2012. Accessed: 12.6.12.

21 F. Millard. 'Poland's Politics and the Travails of Transition after 2001: The 2005 Elections'. *Europe-Asia Studies* 58.7 (2006), pp. 1007-1031.

22 ECtHR. Application no. 38886/05 (2009). *Rasmussen v. Poland*.

23 R. David. *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland*. Philadelphia: University of Pennsylvania Press, 2011.

Establishing minimal justice and transparency standards

The second objective of lustration is therefore the provision of minimal justice, in public life and administration, and to the broad group of victims of the former regime in society. Under communist rule, positions in administration were filled on the basis of unfair ideological criteria; the introduction of a lustration law thus did not perpetuate and legitimize past injustices, because it in principle denounced the past selection criteria. The very introduction of lustration was said to signal the transition of value systems, essential for the consolidation of liberal democracy. Any mass dismissals, it was widely believed since the Mazowiecki government, would have been highly destabilizing to the apparatus of the new state with an outflow of manpower, expertise and sensitive information from the state administration. Such an exodus could jeopardize the efficiency of the state in a time of rapid, often painful, reform.²⁴ It was to provide redress to victims by expelling those public officials who did not want to submit to self-cleansing, i.e. those who refused to publicly own up to collaboration and symbolically make a passage towards democratic accountability and popular scrutiny by submitting false affidavits. The problem, however, centred on the fact that such ‘symbolic’ forms of discontinuity did not satisfy the desire for a ‘real’ elite turnover.

As part of the elite bargain of exit from communism, the communists retained significant influence over the political process in the immediate aftermath of transition, and the 1993 election victory of the post-communist party SLD fostered the perception that pre-1989 communist elites were returning to high-level positions of power at the local and national level. Most crucially, throughout this period, a ‘nomenklatura capitalism’ had emerged, where former political leaders were reinventing themselves during the phase of rapid privatization as powerful businessmen.²⁵ Mazowiecki’s ‘thick line’ under the past, mindful of the fact that secret police files were an untrustworthy basis for pursuing historical justice, and the reinvention of post-communist business elites, nurtured the perception in many that the dismissal of all collaborators, as in the Czech example, would have been a more stark sign of justice being done and wrongdoers paying their debt to society. Bold actions could have renewed trust in new, fully cleansed public officials, and provided more efficient immediate relief.

Such voices were particularly audible as much of the public felt uneasy about giving a second chance to old officials despite common knowledge about the gross human rights violations perpetrated by the old apparatus, including arrests, beatings, invigilation, or political trials which directly and indirectly affected many households. The Lustration Act does not in principle preclude elite discontinuity, because the revelation of truth about one’s past may serve as a reason for dismissal, but this itself has been criticised in three ways. Firstly, the very process of lustration in Poland is very negatively biased and is seen as an ‘orchestrated accusation’, with the commencement of the procedure often equaling political scandal as journalists jump to conclusions, and ‘the lustration process ends (...) at its very initiation’.²⁶ This discredits the individual as it reflects negatively on his moral suitability for public office, and creates pressure for dismissal even before the procedure comes to any conclusions, be they positive or negative. Secondly, as Paradowska states,²⁷ the fact that dismissal on the grounds of revealed collaboration is permissible, and that there was often public pressure for such a dismissal, may be a case of ‘being punished for the

24 M. Łos (1995), p. 141.

25 A. Szczerbiak (2002), p. 561.

26 A. Michnik. ‘Lustracja błotem się toczy’. *Gazeta Wyborcza*. 23 December 1999.

27 J. Paradowska. ‘Prawda ukarana’. *Polityka* 11 (1999).

truth', which calls into question the very principles on which the Act is founded. Lastly, and somewhat conversely, dismissals occur very rarely, and are highlighted by the media, meaning the claim about elite discontinuity cannot in fact be substantiated in Poland.

Substantiating democracy and reinforcing state security

Finally, especially in the wake of the Polish accession to international organizations such as NATO at the turn of the century, the Lustration Law must be scrutinized for its contribution to strengthening state security and advancing democracy. This issue has to do with the degree and form of old networks' permeation of new institutions. Lustration, in this sense, is necessary for national security because it ensures that high-ranking public officials are not vulnerable to blackmail associated with the revelation of their past association with the security services of the communist regime. Blackmail could affect not just key decision making figures, but also parliamentarians formulating laws and people entrusted with key economic and political decisions, particularly those associated with the volatile country's basic sovereignty.²⁸ Such concerns became particularly vocal as Poland prepared for accession to high-profile international organizations, particularly the military alliances of NATO and economic and political ties of the EU. Knowing that the KGB was most likely in possession of copies of files from the USSR's Eastern satellite states, and that Soviet 'advisors' had long been present at their Ministries of the Interior, as well as the fact that many documents had gone missing, the independence and popular accountability of the lawmakers of the newly democratic state had to be protected.²⁹ Lustration's confession and judicial screening mechanisms in this sense provide a safety net against domestic and international instances of compromising state sovereignty. It has been successful to the extent that whereas in the early 1990s' power-sharing the communists retained control of the Ministry of the Interior, various 'power' ministries (and therefore of the army and security services) and the presidency of Jaruzelski, even a shade of doubt about the secret services' collaboration could exclude politicians from sensitive posts. As Prime Minister Oleksy was accused in 1996 of being a Russian spy,³⁰ he was forced to resign due to controversy and social suspicion despite later clearing his name. Despite doubts on moral grounds about the raised suspicion leading to the sacking of public officials even as they became negatively lustrated, which have been discussed earlier, the procedure has provided a transparent, judicial instrument for rooting out those with a vested interest in dishonesty about their past (and instruments to appeal against such a judgment). With a successful entry into and operations within both NATO and the EU, it may be argued that the highest echelons of power have been cleared of those suspicious on grounds of actively concealing their past.

It must be remembered, however, that the lustration process in Poland did not apply to officials in ranks below local governors, as well as the economic sector, in which much of the old nomenklatura took refuge. On a broader scale than the highest official posts, the structural changes were not accompanied by a mass personnel policy and were therefore inefficient, allowing old networks to permeate new democratic institutions at lower operational levels. Concerns were raised about the protection of the newly acquired democracy and the irreversibility of transition where, to name but one example, as late as at the end of the 1990s, 8 per cent of the Polish police and two-thirds of the employees of the Office for the Protection of the State (UOP) had previously been operatives of the secret services.³¹ This means that

28 A. Szczerbiak (2002), p. 564.

29 R. David (2003), op. cit., p. 402.

30 F. Millard (2006), p. 1012.

31 M. Łos and A. Zybortowicz. *Privatising the Police State: The Case of Poland*. New York: St.Martin's Press, 2000.

former security service members who had been trained in covert activities, misinformation, infiltration, blackmail or threats de facto remained connected in networks to all levels of power within the newly democratic state.³² It may then be concluded that although confessions may be a viable alternative to dismissals in countries that cannot afford the loss of so many qualified personnel in transition, the security issue remains to what extent people can trust institutions occupied by those who have revealed their collaboration, and whether such uncertainty could not be easily galvanised to stir up internal political struggles.

Recent developments in Lustration Legislation and proceedings

Given the troubled past of Polish lustration, more recently proposed changes to the process may in fact be viewed as symptoms of the ills of the Polish system of truth revelation rather than solutions to its most pressing problems. Following its election victory in 2005, the conservative Prawo i Sprawiedliwość party (PiS) embarked on a staunchly anti-communist programme of ‘moral revolution’, proposing a radical view of lustration in the Act of 18th of October 2006³³ (amended on 14th February 2007 at the initiative of the then President Lech Kaczyński). Not only was the scope of persons subject to lustration extended to cover over half a million people ‘holding public functions’, including academics, journalists, actors or businesspeople, but most of them had never so much as aspired to hold a public function which could, in theory, jeopardise the security and functioning of the democratic state. The terms ‘public function’, as well as ‘collaboration’, were in effect not clearly defined and malleable. Further, the refusal to undergo the self-accusation of lustration through a failure to submit an affidavit was made punishable, which targeted especially those who chose not to submit themselves to a verification of their moral qualification as an act of civil disobedience against the law’s sweeping scope.³⁴ It has been repeatedly argued that the proposed retributive system, based on a fundamental suspicion of a vast, largely ‘private’ portion of society, jeopardised the basic values of a democratic state based on the rule of law.³⁵ Clearly, the new Act was just another instance of the age-old use of lustration as a tool of political convenience. It did not set up a mechanism serving human rights, but an instrument of historical and political vengeance, employing collective, rather than individual vetting and promoting societal mistrust, a condition it was theoretically trying to remedy.³⁶ These key provisions of the 2006 Lustration Law were subsequently held to be unconstitutional by the Constitutional Tribunal on 11th May 2007, undermining the legitimacy of the very continuation of the entire process in the eyes of many.

One of the focal stipulations of the new lustration regime was the transfer of enacting authority from the Spokesperson of Public Interest to the Institute of National Remembrance (IPN), whose activity as an instigator and arbiter of lustration and moral credentials remain unclear and acutely present in current debates. Its competences to create and publish catalogues of secret collaborators and operational contacts of communist security services, and the delegation to its head of the sole decision about the granting of access to files at his own discretion, have been repealed by the Constitutional

32 M. Łos and A. Zybortowicz (1999), p. 284.

33 Act of 18th October 2006, on the revealing of information concerning documents of state security forces between 1944 and 1990, and the content of such documents.

34 View expressed by Prof. A. Rzepliński in the debate ‘Lustracja po Orzeczeniu Trybunału Konstytucyjnego’ held by the Fundacja im. Stefana Batorego on 3 July 2007. A transcript of the proceedings is available at http://www.batory.org.pl/programy_operacyjne/debaty/2007/lustracja_po_orzeczeniu_trybunal_konstytucyjnego. Accessed: 12.7.12.

35 Helsinki Foundation for Human Rights. Information Bulletin of the Human Rights and Settlements with the Past Programme 1 (2008).

36 R. David (2011), op. cit., p. 90; Helsinki Foundation for Human Rights (2008), p. 1.

Tribunal in its verdict. IPN employees have, nonetheless, felt empowered as depositaries of secret service documentation, to treat history as unitary and encased in the communist files, which ought to be published and judged under the guise of historical research in their numerous lists and sensationalist Public Information Bulletins.³⁷ It must be remembered that the regime's documents themselves were often compiled without a legal basis and through criminal methods. It would therefore seem clear that complementary research outside of the archives is necessary for the establishment of wholesome accounts of the past, so as not to harm innocent individuals whose encounters with the communist apparatus were wrongfully documented as 'conscious cooperation'.³⁸ Mindful of the IPN's generous exposure of the names of both victims and perpetrators in single documents bearing no clarification of their historical status, it must be questioned whether curtailing the freedoms of those whose names become published may be permissible in the name of reaching a 'historical truth', especially if this is usually aligned with a political narrative at the convenience of pro-lustration circles.

Lustration, to serve its purpose as envisaged in the early years of transition, cannot pursue revenge, but should seek to come to terms with the past, to ultimately dismantle totalitarian mechanisms. Its nature is, after all, that of a transitional measure, not to be perpetuated beyond the time necessary for democratic consolidation. Especially in light of the repeated ECtHR rulings on lustration's breach of Articles 6.1 and 6.3 of the European Convention on Human Rights regarding the right to fair trial, it must be asked whether, over 20 years after the fall of communism, Poland may still invoke the need to secure post communist transition to. curtail human rights. With lustration nowadays considered to be largely over, and a salient topic only to a limited group of conservative politicians, many influential figures associated with the lustration debate have expressed the wish to open the IPN archives completely. This, they argue, would free public life from being under the thumb of leaks and games played using communist files at political convenience, thus eliminating the public blackmail effect which IPN publications continue to generate - an ironic result given lustration's original purpose.³⁹ This issue has resurfaced particularly after the publication in 2006 of the so-called 'WSI Report', verifying illegal and criminal activities of Military Information Service workers, co-workers and officers upon the restructuring of the military intelligence unit, whereby no instruments of appeal against defamation resulting from publication were provided.⁴⁰ The opponents of the full disclosure of information have in effect pointed out that given the time that has elapsed, the opening of files could easily spiral out of control. It is likely to cause unacceptable harm to innocent people and to nullify the gains of transition by legitimizing the work of the Secret Services, whose methods of data collection extensively violated human rights.⁴¹ The project of ending lustration, proposed by the ruling party Platforma Obywatelska in 2009, has not been returned to, and, with its potential to galvanize powerful conservative groups, is likely to be kept to simmer below the surface, indefinitely extending the phase of semi-regulated *de facto* wild lustration. Worrying signals are being sent from Poland as the lustration issue is invoked ad hoc to appease political groups, as was the case with the 'Deubekization Act' of 23rd January 2009.⁴² With

37 Helsinki Foundation for Human Rights (2008), p. 3.

38 Ibidem, p. 10.

39 A. Michnik. 'Otwórzmy teczki'. Gazeta Wyborcza. 13 May 2007.

40 Helsinki Foundation for Human Rights (2008), p. 16.


41 J. Lityński. 'Otwarcie teczek zalegalizuje przestępstwa PRL'. Gazeta Wyborcza. 15 May 2007.

42 Act of 23rd January 2009, on the amendment of the act on the retirement pensions of professional military personnel and their families, and the act on the retirement pensions of functionaries of the Police, the Agency of Internal Security (ABW), the Intelligence Agency, the Military Counter-Intelligence Service, the Central Anti-Corruption Bureau (CBA), the Border Agency, the Government Security Office (BOR), the State Fire Department and Correction Officers and their families.

the lowering of the retirement pensions of officials who had been benefiting financially and legally from sustaining the communist regime as a means of ‘discontinuing unlawfulness’, serious doubts have arisen over the constitutionality of such retaliatory measures, adopting collective, repressive responsibility as their *modus operandi*.⁴³ Despite the disputed generosity of the financial allocations themselves, it remains questionable whether the methods employed to ‘deal with the past’ do not in fact deliver retroactive vengeance in the present, and to what extent this can still be desirable today.

With lustration aiming to establish historical truth, bringing minimal justice and protecting state security, it is safe to conclude that it is a process which is riddled with contradictions, which makes the policy difficult to implement successfully. As the Polish case has illustrated, lustration has all too often served as a tool of political conflict which is used to discredit political opponents, often with no evidence, and this role is only reinforced by societal suspicion of elites as a result of a long, unregulated phase of ‘wild lustration’. As a forward-looking rather than purely retributive model, the Polish Lustration Law in principle offers old perpetrators of state-sanctioned misdeeds an opportunity to start afresh by aligning themselves with democratic values through confessing past sins. Although allowing for the prevention of state destabilization associated with mass sackings of qualified cadres at a time of intense social and political reform, such conciliatory handling of the issue is vulnerable to attack on grounds that it has failed to de-communise public life, and may lead to chaotic attempts at correction (such as the ‘Deubekization Act’). This, in turn, leaves the issue of lustration *de facto* open and encourages nationalist parties, like recently the PiS, to use the apparently failed lustration as a tool to discredit political opponents, to an extent perpetuating a state of ‘wild lustration’. As is starkly apparent in the newest Lustration Act of 2006, lustration is surely not sufficient for neutralizing old power networks and for democratic consolidation, if only because its nature is inherently temporary and meant to facilitate democratic transition rather than establish a new legal reality, although it may contribute to such aims. As the Polish and Czech examples illustrate, both dismissal and reconciliation have significant downsides; however, lustration carried out in the early phases of transition seems to satisfy the public need for justice more efficiently by making the embedding of old cadres in new formal pressure networks less likely. The facilitation of value discontinuity could perhaps be aided by the employment of other transitional justice mechanisms which could complement and reinforce the lustration process, such as a truth commission. This is because it is difficult to build justice on a fragile ‘truth’, and to press for value discontinuity whilst maintaining contested ‘stability’ without turning the desire for knowledge into a quest for retribution.

43 Helsinki Foundation for Human Rights. Information Bulletin of the Human Rights and Settlements with the Past Programme 1.3 (2010)



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