POSTSOCIALIST CLEANSING IN EASTERN EUROPE:
PURITY AND DANGER IN TRANSITIONAL JUSTICE

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NOTE TO READERS: When I submitted my abstract, I envisioned this paper as coming from my new project on the Romanian secret police, which I was to have started during summer 2009. As too often happens, I did not start my project as planned: I started it in early October, under the press of this deadline. In consequence, the paper is very sketchy, full of holes, and possibly full of errors as well; maybe it is all very obvious. Although other conference participants know far more than I about this topic (Marek Kaminski, for example, has published several papers on it), I hope there is nonetheless something worth reading in here.

Among the many problems that emerged in the wake of the collapse of Eastern Europe's communist-party regimes were a collection of issues treated under the rubric of "transitional justice." This rubric, which refers broadly to various means by which the successor states to authoritarian polities seek to address and overcome their legacy of repression, has been applied to a wide variety of cases, ranging from South Africa and Rwanda to Argentina and Chile on to Poland, Albania, Estonia, and other states of the formerly Soviet bloc. The issues included within transitional justice are equally broad, such as how to create democracy and the rule of law in the wake of "lawless" and undemocratic regimes; how to bring to justice those who perpetrated violations of human rights, whether to punish or amnesty such persons, and how to compensate victims; how to prevent supporters of the former regime from corrupting or destabilizing the new order; how to come to terms with pasts that were deeply painful and often unacknowledged, and how to revise the nation's historical narrative accordingly; how if at all to achieve reconciliation among opposing parties. In brief, transitional justice is about how to go forward from authoritarianism to something better, particularly from a legal point of view. For the former Soviet space, much of this is treated under the heading of "decommunization."[1]

In the present paper I do not treat most of these problems, even though I recognize them as significant ones; I dip a fork into this enormous stew and take only a small bite. The piece I chew on concerns that aspect of decommunization related to banning persons who had occupied important posts in the communist regimes from holding important posts in the new regimes, usually for a specified period of time (initially, 5-15 years). A subset of this process was the problem of preventing people who had worked for or collaborated with the secret police from holding important positions, as well. That is, the problem has two forms: some of the people one wants to keep away from public office are widely known because they held public offices before (as party officials, prosecutors, or police operating visibly at the district, regional, or national level, and so on), whereas others are known by few if any, because their work was defined as secret. Procedures for identifying and dealing with these two types of targets for exclusion from political life differ correspondingly.

Terminology varies as to whether and how scholars and/or participants distinguish between these two forms. Sometimes both are referred to with the word lustration; sometimes that word is reserved for the problem of police collaborators only. There seem good reasons for saving a special word for police collaborators because as Kaminski and Nalepa put it (they use lustration in this restricted sense), "Lustration differs from decommunization or denazification in one important respect—namely, that in the lustration case, the former secret agent is vulnerable to blackmail . . . and may be pressed to breach the norms of public service by somebody with access to his or her files" (2006:). In my remarks

here I will strive for consistency in using "decommunization" for the process of banning former (usually high) party officials from holding important posts (though the term's possible referents are wider than that) and "lustration" (the form I am more interested in) for the process of dealing with secret police agents and informers (see also Krygier and Czarnota 2006; Sadurski 2005). Sometimes, however, the two become intertwined. When I want to refer to them together, I will use "cleansing," which draws on the root meaning of "lustration" as purification.

Lustration and decommunization have been crucial ingredients of the larger issues I raised at the beginning—creating a rule of law, delivering justice, and promoting democratic practice in the exit from socialism. Most obviously, if former party officials were allowed to keep running things, there was no reason to think regime change would happen at all: their habits of mind, ongoing social relationships, and institutional locations would prevent it. New leaders—even if they too were former communists, as happened in Romania, for instance—realized that the internal and external legitimacy of the new government would be enhanced by at least the appearance of calling the Communist Party to account for its actions, which lustration and decommunization laws would foster. But the literature also reveals major obstacles in the path of such cleansing policies as means of establishing democracy and the rule of law. Among the thorniest was that because under the communist system it was legal to collaborate with the secret police, the principles of nulla poena sine lege and tempus regit actum (so-called nonretroactivity principles) would reject punishing them for their behavior after the fact—indeed, Hungary's Constitutional Court invalidated its lustration laws on precisely these grounds. The rule of law cannot be founded on a violation of legal maxims, even though the regime they served is now seen as "illegal." If space permitted, I would take up other such problems, but this one is sufficient to show the conundrum of trying to create lawfulness across the socialist/postsocialist divide.

My goals in this paper are, first, to indicate something of the forms these solutions have taken in Eastern Europe and where things stand as we approach the twentieth anniversary, then to offer some open-ended thoughts about the process and the way it has been formulated. That is, besides assessing where 20 years of lustration have taken the region, I am interested in asking where 20 years of writing about it have gotten us, and where our concern with this aspect of postsocialism should go in the future.

OVERVIEW OF LUSTRATION AND DECOMMUNIZATION, 1990-CA. 2008[2]

We owe the term "lustration"[3] to the Czechs, who used it in framing their cleansing law in 1990-91.[4] They and the Germans basically provided the model for events in the remaining countries of the region, even though the absorption of East Germany into a unified German state made it decidedly not a

suitable model for the others. Only in Germany was there a radical separation between those who legislated the screening (West Germans) and those who were screened (East Germans) (Sadurski 2005: 233); everywhere else, screeners and screened were intermingled, with consequences for the forms and pace of cleansing practices. Moreover, Germany devoted extraordinary resources to the process of ferreting out collaborators from the 120-miles-long Stasi archive: a staff of over 3,000 employees and a budget exceeding 200 million DM (the entire defense budget of Lithuania—Garton Ash 1997: 220). Crucial in the German case was long-standing criticism of West Germany for not having pursued a sufficiently stringent denazification policy after World War II; this made the German government eager to show it could do better this time and contributed to the relatively harsh solution adopted (Sadurski 2005: 233). I will summarize the form of cleansing that emerged in Czechoslovakia and then more briefly characterize other instances.

In Czechoslovakia, strong public pressure to eliminate communist officials from the new polity led all parties but the Communist Party to lustrate their candidates in advance of the June 1990 elections, purging anyone with a secret police (StB) record from their lists. A cleansing law narrowly passed Parliament in October 1991. It disqualified persons from specific forms of employment on the basis of two rather large lists: one specified the positions held or activities engaged in during the communist period that would prevent a person from holding positions on the second list, containing posts for which any applicant must pass the lustration test. The first list contained officials extending downward to relatively low positions in the Communist Party and state administration at the district and even township levels; the StB, intelligence, and security apparatuses; and anyone collaborating with those organizations. Persons on that list were to be excluded from positions on the second list for five years (thus, to 1996), later extended to 2000, and then extended indefinitely. The second list contained jobs in the judiciary, civil service, and intelligence; managerial positions in the media and press, national bank, and state enterprises; higher ranks in administration, police, army, and universities, as well as the Academy of Sciences—but not, significantly, Parliamentary or other positions contested in the elections. For all the posts on that list, one had to pass the lustration test, which meant receiving from the Ministry of the Interior a certificate stating that one did not figure in the files as a collaborator—i.e., that one was "lustration-negative." Although the law did not cover elected office, nearly all parties required their candidates to present a negative certificate in order to run for elected positions.

According to Sadurski, there were a number of motives for this swift and punitive law. The Czechoslovak regime was among the harshest and its secret police had heavily infiltrated all social groups, especially the political opposition; the Party had all along required loyalty not to the

Czechoslovak state but to the Party alone, and in 1989 its leaders had ordered the police to do anything possible to destabilize the opposition. Moreover, some 90% of the StB files had been destroyed or hidden. These facts appeared to justify seeing the StB as a real and present danger to the state and lustration as necessary to preserve its safety and democratic prospects (2005: 236-237). In addition, the regime's collapse was not "negotiated," like those in Poland and Hungary, but represented a near-revolutionary break, after which the remnant communist party was a very weak force (in contrast with, say, Romania and Slovakia). Cleansing would make room for a new elite uncorrupted by ties to the communist past, and the communists were too weak to prevent it. In short, the initial motive for cleansing was not retribution or rule-of-law, a response to past crimes—indeed (and this is true of Germany as well), lustration laws were part of the labor code rather than the criminal code (Kaminski and Nalepa 2006: 385).

The law and its early results led to immediate challenges, which a Review Commission was created in 1992 to handle, but it was unable to keep up with the complaints about false lustration "positives." Problems with the notion of "collaborator," among other things, led to a challenge to the Constitutional Court, which made some changes but otherwise upheld the law (establishing a precedent that extended to Slovakia even after the Velvet Divorce, despite Mečiar's opposition to it). A crucial difficulty was that prior destruction/disappearance of numerous files meant that for many people, the only proofs of collaboration were the registration card the StB had filled out for its collaborators, with no further behavioral evidence (e.g., informer's reports, signed statements). The main people with extensive StB files were likely to be dissidents, whom the StB might have approached for collaboration or interrogated at length and then created files for, even if they had refused to cooperate (ibid., 334); their presence in the files made them "lustration-positive." A number of celebrated cases served to reveal the dark face of Czech lustration, particularly its inability to separate victims from perpetrators (see Priban 2007: 333-337, Wechsler 1992).

Between the mid-1990s and the mid-2000s, the percentage of persons assessed as "lustration-positive" went from roughly 5% of those verified to about 3%; the Ministry had been receiving 6-8,000 requests per year, with a total of 402,270 certificates issued between 1991 and 2001 (Priban 2007: 315). Polls conducted in 2000, when the law was extended, showed that a third of the population strictly opposed it, with another 36% in favor (and the rest presumably neutral) (ibid., 216). This relative lack of interest on the part of the public contrasted with ongoing activity in Parliament, where communist deputies in 2003 proposed killing the law but failed: it had proved too useful in political infighting to be dispensed with. Priban's judgment of Czech lustration is sobering:

lustration's power to isolate the old political enemy helped to petrify the antiregime ideology and unreformed leadership of the Communist Party, which builds its popularity on political populism and antiregime feelings. The law's *political effects* therefore are as controversial as the legal ones. The lustration statute and other laws attempting to legislate against the communist past have created strong political opposition and old enemies reproduce their mutual distrust and animosity. Lustrations are one of the reasons why old regime supporters keep their old ideological and political positions and operate as an antiregime element in the new conditions of liberal democracy (2007: 338).

East German cleansing, which was legislated in the August 1990 unification treaty, shared with the Czech case the lumping of perpetrators by collective guilt—all officials of certain kinds, all secret police collaborators—and made them ineligible for certain kinds of employment. Although from a social point of view Germany's cleansing was retributive—to sanction behavior that occurred under the communist regime—from the legal point of view, as in Czechoslovakia, the cleansing laws concerned labor issues—a person's qualifications for holding public office. The clash between these two understandings was the source of much frustration (Wilke 2007: 349). The focus of cleansing was the civil service in general, but special attention went to members and collaborators of the Stasi: public employees would not be retained if they had collaborated with it or committed misconduct, to be determined through trials. Although a single norm in the unification treaty governed the vetting process, its implementation varied widely across sectors, states, and administrative departments. Some institutions (courts, universities) tended to use more stringent procedures across the board, while others (such as town administrations) differentiated their practices according to an employee's level of responsibility (Wilke 2007: 391).

As in the Czech case, there was heated debate about the definition of collaboration, with the fundamental difference that far more of the Stasi archive survived regime change and thus provided a detailed data base for assessing collaboration; in addition, Germans had access to their files so as to vindicate themselves, as Czechs did not. The purge of Stasi collaborators proved unexpectedly difficult because of the pervasiveness of surveillance (with an estimated 178,000 collaborators and another 93,000 full-time employees, this makes about 1 Stasi contact per 35 adults[5]). In contrast to the Czech case, implementation of the law provided for more extensive proofs, allowed more room for nuance, regarded human weakness with some dispassion, and made exceptions for valuable people who had shown one way or another that they were trustworthy and rejected the communist system. Still, as a result of vetting plus shrinking budgets, by 1996 some 60,000-100,000 people had been dismissed for their Stasi connections (Bruce 2009: 29); in a study of four institutions, between 25% and 45% of people found to be Stasi collaborators had to leave (Wilke 2007: 391).

The Czech and German cases are generally regarded as the harshest cleansing measures in Eastern Europe, in terms of both the laws passed and their implementation; they prevented former Party officials and secret police collaborators from a broad range of posts for 15 years in Germany, and indefinitely, in the Czech Republic. Other countries instituted cleansing measures at various times thereafter, targeting various groups with various sanctions. Sometimes parliaments passed cleansing laws that their constitutional courts then tossed out or modified, or subsequent parliaments altered laws passed earlier. In contrast to the countries that banned their targets from office, others (e.g., Poland, Romania, Lithuania, Estonia) merely required them to acknowledge past collaboration, after which their political careers might continue. Some (East Germany, Romania, Hungary) eventually gave access to anyone wanting to read their own files and (within limits) other files as well, some (Czech Republic, Poland, Bulgaria) to a more restricted number of people; some (Albania, Serbia) did not open them at all.[6]

In Poland, despite the strong objections of such important figures as Adam Michnik, an abortive 1992 lustration law was followed by another one in 1997; it criminalized not the fact of collaboration but lying about it, making the Polish lustration process much less harsh than the Czech one (Czarnota 2007: 245). Its procedures were later challenged by the constitutional court in 2007; as of 2009, though, lustration was still in process. Bulgaria's laws, first passed in 1992 with subsequent attempts thereafter, were likewise invalidated by its constitutional court; it remained with the provisions of a 1997 law requiring members of parliament and senior government officials—but not the president or constitutional court judges—to declare their collaboration with the secret police or risk being "outed," but they were allowed to keep their jobs, and the range of posts affected was narrow. Albania passed a stringent law in 1993, which the constitutional court soon invalidated, and a second one in 1995, but authorities did not implement its provisions and it expired in 2001 (a new proposal was introduced in 2004). Slovakia inherited the early cleansing practices of its predecessor state but did not enforce them, reviving a limited vetting procedure only in 2001, in view of EU accession. In Romania, the 1990 "Timişoara Proclamation" (which gained over a million signatures) called for an electoral law that would bar any former Party activist or Securitate officer from running for office for 12 years, but no such law was passed. 1999 legislation provided access to secret police files and a procedure (implemented with numerous shortcomings) for vetting public officials; a lustration law passed in 2006 but was rejected as unconstitutional in 2008; discussions continue. The Baltic countries differed from others in Eastern Europe because after independence, most secret police files were withdrawn when the KGB that had produced them departed, but modified cleansing was variously legislated in all three, largely through

citizenship and electoral laws that emphasized self-declaration. Hungary took a distinctive middle course, which Halmai and Scheppele define as "living well is the best revenge" (1997). There, strong demands for lustration produced lustration laws in 1994 and 1996 as well as subsequent amendments, provisions of which the constitutional court repeatedly invalidated, on the argument that even those who have violated the principles of a law-governed must be assured the same rights as others. Sanctions in the procedure were limited to the threat of disclosure; the law is still in force.

On the low-to-no-cleansing side we find Slovenia, where the few initiatives launched came to naught, and Serbia, which passed a very limited measure only in 2003, related strictly to human rights violations. Indeed, according to a 2005 report by the Center for Democracy and Reconciliation in Southeast Europe (Hatschikjan, Reljić, and Šebek 2005), in the former Yugoslavia this form of cleansing basically did not take place at all, despite the passage of some relevant laws; energies went instead to cleansing of the _ethnic_ type. (To some extent, the cleansing laws of the Baltic republics also had ethnic consequences—the removal of Russians from the political scene—, but this was not true elsewhere.) Likewise in the former Soviet Union: aside from the Baltic countries, cleansing was almost non-existent after the initial opening provided by glasnost. According to Stan (2009: 227), Russia "found it impossible to go beyond the politics of memory and embrace lustration, launch court trials against former communist leaders and KGB agents, and open secret archives," despite some attempts to get a law through Parliament. In Moldova and Ukraine, lustration bills were proposed—unsuccessfully—only in 2004 and 2005; in other former Soviet republics such as Belarus, Armenia, Azerbaijan, and the Central Asian states, no cleansing laws were seriously entertained. In Appendix I, I provide a helpful table, shamelessly ripped off from Kaminski and Nalepa (2006), that summarizes the overall outcomes in Eastern Europe.

What if any generalizations can we make about the kinds of cleansing measures reviewed here? I will advance three from my review of this literature. They concern the messiness of comparative statements about whose measures are more harsh; the role of constitutional courts; and explanations for the variation in outcomes.

1.   Although Kaminski and Nalepa distinguish between cleansing practices that were "harsh" vs. "mild," such designations are somewhat problematic. The provisions of the law are one thing; its implementation is another. Solutions that on paper seem quite harsh, such as the Albanian law, might in fact be allowed to languish. In Lithuania, for example, laws were initially very strict because of widespread concern about the country's independence, given that its secret police was the KGB—now

servant of a different state. Subsequently, however, according to Clark and Pranevičiūte, "The general approach appears to have been to forget about the Soviet era. One rather suspects that this may be related to the fact that the political elites were overwhelmingly drawn from the former L[ithuanian] C[ommunist] P[arty]. . . . [W]hile the opposition frequently engaged in campaign rhetoric about how to deal with Soviet-regime collaborators, the lustration process was never seriously undertaken, even during four years of right-wing rule from 1996 to 2000" (2008: pp.). As indicated above, laws or parts of them might be blocked by constitutional courts or presidential vetoes, such as in those that eliminated decommunization provisions from lustration bills in Bulgaria and Albania. Moreover, laws varied in the range of disqualifying former positions and of positions requiring vetting, but the sanctions applied did not co-vary: cutting a wide swath might be accompanied by a sanction limited to public announcement of the person's name, not actual exclusion from his/her post. The zeal of prosecutions depended heavily on what party was in power and what influence it had over the judiciary, constitutional court, Ministry of the Interior, or post-communist security organizations. Finally, citizens' access to files did not co-vary with the stringency of the law: East Germans, Hungarians, and Romanians can access their files, but Czechs and Poles can access them only under limited conditions; and so on. Where access is open, countries vary in whether or not the names of collaborators or other third parties are blacked out (yes in Hungary, no in Germany, and partially in Romania). For these reasons, it is difficult to make blanket comparative judgments about the severity of the cleansing provisions. Stan (2009: 262) arrays countries into four groups according to whether they adopted early and vigorous lustration, file access, and court proceedings (Germany, Czechia, the Baltics [but see Clark and Pranevičiūte 2008]); employed less radical or later measures (Hungary and Poland); adopted weak or partial measures (Bulgaria and Romania); or went with some version of "forgive and forget" (Slovakia, Slovenia, Albania, former Soviet Union other than Baltics). Even this grouping, however, seems subject to further nuance, as the "forgiving" Slovaks, for example, suddenly roused themselves in 2001 to legislate lustration.

2.   In this connection, I am intrigued by Kaminski and Nalepa's observations concerning the constitutional courts, which played a pivotal role in reducing the severity of whatever cleansing practices were legislated. They argue that the former communists who negotiated the transfer of power were especially enthusiastic supporters of as strong a judiciary as possible in the new system, gambling that to replace the communist judiciary elites would take longer than the turnover of members of parliament. For example, "during the final stage of the roundtable negotiations in Czechoslovakia, when Vaclav Havel suggested that the new federal government ought to have some authority over the justice system,

communist Prime Minister Calfa objected 'that the judicial structures should be subject to the legislature only and that the judiciary should check the executive.'" Outgoing communist leaders in both Hungary and Bulgaria likewise insisted on establishing a constitutional court, hoping to construct institutions that would save them from retroactive justice in the new regime (2006: 391-392). Kaminski and Nalepa's insight would encourage us to look case by case for the specific institutional sites (particularly the constitutional courts) at which members of the nomenklatura were retained or managed to exert continued influence. A separate question is whether or not this was a "bad thing": the result of that influence may well have been to prevent witch hunts that could have seriously damaged the prospects for democratic politics.

3.   These observations relate to my final point, concerning explanations for the variety of cleansing practices. A number of theories have been advanced, focusing especially on the nature of the experience under communism and the path out of it (negotiated between opposition and Communist Party, overthrow of the party) (see summary in Stan 2009: 262-267). The ideas that make the most sense to me have to do with the nature of the political field after 1989 (see, for instance, the analyses of Horne and Levi 2004; Stan 2009: 262-269; Williams, Fowler, and Szczerbiak 2005). As Łoś puts it, "The lustration debate is … a terrain of a ruthless power struggle" (1995: 119). Williams, Fowler, and Szczerbiak state the point more expansively in concluding their comparison of the Czech, Hungarian, and Polish cases:

> Close analysis of the legislative history of lustration reveals the limited power of the macro-variables commonly cited to explain why and when certain post-Communist states have adopted it. The urge to purge, or at least to name names, was expressed quickly throughout the region, regardless of how Communism had operated or ended, although it was usually the identity-defining sentiment of relatively small anti-Communist factions and mini-parties. The breakthrough in these three countries was the conversion of the original, very demanding vision into something more acceptable to a heterogeneous plurality of the political élite large enough to pass law. . . . The discourse of lustration was convincing because it responded to major events of the transition, such as the discovery of chaos in the archives, the extent and possible survival of surveillance networks, the hardship and confusion caused by profound economic change, and the return of former Communists to power. The passage of each lustration bill, and the sanctions contained therein, similarly reflected not the country's political history but rather the parliamentary arithmetic of fluid party systems, the actual or anticipated response of veto players such as the presidency and constitutional court, trial and error, and learning from neighbours' recent experiences. The story of lustration, therefore, is one of post-Communist political competition and legislative coalition-building, and should be told with emphasis on the rhetoric, moves and compromises that competition and coalitions require (2005: 38-39).

Some of the stakes were, of course, cleansing's labor-force implications (as I noted, the law was often part of the labor code, not the criminal code). The East German case showed this particularly clearly: collaborators were banned for 15 years from any public-sector job. Rosenberg attributes this to the surfeit of public employees unification produced: "If Czechoslovakia and Poland had purged their judges, mail clerks, and teachers, there would be no one to run their courts, post offices, and schools. Germany's problem is exactly the reverse: there are too many bureaucrats and teachers. . . . The purges fulfilled their unstated primary goal, sifting out a sudden excess of public servants" (1996: 325, 327).

Whatever its initial motivations on the part of various groups (protecting the state, support for democracy, retribution and rule of law, employment vetting, and so on), cleansing was largely the creature of the anti-communist opposition and entered into political conflict as such. Where post- or crypto-communist parties dominated the scene, cleansing laws failed or fell into abeyance; when opposition parties (re)emerged, so did cleansing. In general, the fate of cleansing laws is a good (if imperfect) index of the balance of power between the successors to communist parties and those opposed to them—as well as of their balance in different state institutions, such as the executive, legislative, and judiciary. Stan (2009: 268) adds to the mix the relation of regime and opposition under communism, which conditioned this balance. To say this is not to deny "the genuine needs for justice, truth, and atonement" to which such laws responded (ibid., 4), but only to emphasize the thorough-going politicization of the means devised for addressing those needs. Even where cleansing began as a means of righting historical wrongs, it quickly became a potent means of political conflict. Austin and Ellison's (2008) analysis of lustration in Albania exemplifies this nicely. More Albanians were tried under the lustration law there than elsewhere, they write, but not to punish the crimes of communism: rather, the trials demobilized the opposition and exacted personal vengeance. Similarly, Bugaric reports that the upsurge in lustration legislation in Poland in 2007 had become "a centerpiece of the right-wing Polish government's witch-hunt against the uklad: a network of the old Communist nomenclature, new business elites, political liberals, secret police informers, and Russians, who all, according to the brothers Kaczynski, control and govern Polish society against the true interests and moral principles of the Polish people" (2008: 193).

Overall, my survey of the literature impresses upon me the political productivity of cleansing practices. Although it is uncertain whether they accomplished much by way of rendering historical justice or "coming to terms with the past," they provided an idiom that proved useful for a variety of groups across the political spectrum in a variety of circumstances, and I believe they will continue to do so. They mobilized resonant symbols that affected the bounding of political arenas. The symbolic

effects of declaring that secret police collaborators were unwelcome in postsocialist governments helped to define the political landscape, in that persons with such pasts—whether "caught out" or not—were stigmatized over at least a medium run. Given the questionable evidentiary value of information from the secret police files, the declarations had often unfortunate performative effects: simply publishing lists launched the stigma, implicating persons as presumed guilty until proven innocent, rather than the reverse. As Teitel puts it, "The purge begins with the list" (2000: p. 171). (I return to the matter of purging below.) I submit that the political productivity of cleansing practices provides the basis for the continuity of something we can call "Eastern Europe" despite the incorporation of various countries into the EU. Cleansing was a collective product: the idea of it and practices associated with it ricocheted across the bloc, unifying a postcommunist political field with certain distinctive properties.

Seeing such practices as generalizable political weapons helps to account for such facts as that—to the surprise of outside observers—debates about cleansing kept returning to the political arena even when public sentiment for it had waned (Horne and Levi 2004: [26]) and long after the end of the former regimes or after initial legislation had lapsed (Stan 2009: 248). Macedonia passed its first laws in 2007. Not even EU membership has staunched interest in cleansing: as late as 2006, after Poland had entered the EU, Polish politicians resuscitated public shaming of secret police collaborators; Czechia revisited the practice in 2007. Horne draws from this the conclusion that late lustration policies have different aims from early ones, expanding their size, scope, duration and transparency measures.

> The scope has expanded substantially beyond the original design, and has started to affect outright private sector jobs or private sector positions requiring citizen trust and confidence. This is a wholesale change in the scope and intent of lustration laws, emblematic of the manner in which late lustration is designed to address a larger swath of society, not simply the political elites. . . . This suggests that late lustration is conceptualized as more of an on-going process, rather than as something designed to jump start a transition (2007: 6).

Although Horne believes that "both early and late lustration programs are designed to enhance citizen trust in the new regime, thereby promoting good governance and democratic consolidation" (p. 8), I confess to a more jaundiced interpretation: cleansing is just good business, politically.

In the following sections I will expand upon this possibility and take up some more general questions concerning cleansing practices. Given my disciplinary formation, I feel uncomfortable entertaining some of the serious questions other scholars have asked about cleansing practices: have 20 years of them promoted democracy or not? Would amnesty have been preferable? Have justice and the rule of law been better served by some cleansing practices than by others? Did they enhance or endanger trust in government? For whom have they fostered a useful "coming to terms with the past"

and for whom not? Instead, what I see is 20 years in which certain forms potentially associated with democratization and the rule of law were domesticated by groups in the various societies they were brought into, the result being in many cases to void the initial impulse for them even as the practices served other, perhaps unanticipated kinds of tendencies. I would rather ask questions such as, How did notions of the "rule of law" affect the field of political contest? What directions is cleansing likely to take, and what broad tendencies might it be participating in? What light does cleansing shed on our own practices? How can we think about the effects of socialism on the form they took? Given space constraints, I focus on the last of these.

COMING TO TERMS WITH THE PAST, OR CAUGHT IN ITS TOILS? THE PAST IN THE PRESENT

> It is absurd that the absolute and ultimate criterion for a
> person's suitability for performing certain functions in a democratic
> state should come from the internal files of the secret police.
> (Václav Havel[7])

Thinking about Purification

A number of observers have commented that cleansing shows some similarities with communist-era practices, suggesting that the region is trapped by its communist past even in the methods used to try to overcome it. Ralf Dahrendorf, for example, quotes Italian communist Sergio Segre as responding to East Germans' prosecution of Honecker with, "Will you never learn from history? Is the era of the trials of the 1930s and 1950s going to start all over again?" (Garton Ash 1997: 101 ck). Similarly, Teitel writes: "the post-1989 purges are just the most recent in a line of purges. Even in its mild form, lustration evokes the dreaded lists of the totalitarian regimes; as such, it seems to reconstruct society just as in the old way, by redefining political parties along the very same lines. Lustration appears profoundly enmeshed in the ways of the old regime even as it pursues its transformative purposes" (2000: 173). Moreover, the very word "lustration" comes from the lexicon of the Czechoslovak secret police, who used it in verifying whether communist cadres were loyal to the party and removing them if not (Bertschi 1994: 436, also Cohen 1995: 27).

Adam Michnik, too, noted similarities between various forms of anticommunism in Poland and the antifascism of the Comintern and post-1945 socialism; in his view, beneath their superficial similarities lay a deeper structure having to do with "political bickering and neo-authoritarian tendencies" (Tismăneanu 2009: np). I agree that we must be careful to avoid too-facile comparisons, but let me take a couple of leaps anyway. Concerning lustration, we might follow the logic of Mary Douglas's famed "Purity and Danger" and see in both sets of purges certain people being labeled the

political equivalent of "matter out of place"—sources of pollution to the body politic—and removed from it. A technique of expulsion, rather than one of reconciliation (as in South Africa) and (re)incorporation, governed both regime-building moments. Both involved a kind of ritual sacrifice, a purification by sacrifice—the original meaning of the word "lustration."

I have not yet figured out how best to address this idea, but I would like to indicate how anthropologists might handle it differently from other disciplines. I begin with John Borneman's book Settling Accounts, in which he examines the postsocialist construction of the rule of law, defining it "not as a set of rules, procedures, and technical devices for getting things done…, but as a set of ritual practices performed in the belief that the performance itself will establish what is right" (1997: 16). He cites René Girard's distinction between societies that practice sacrifice and those that invoke the rule of law, noting the utility of sacrifice even to the latter. "A major problem for a Rechtsstaat is determining not only who committed the crime, but also who is it politically possible to exteriorize, to place outside the group [and then to sacrifice]? Which ethnic group, political elite, nation, minority group, or individual can be held accountable for committed wrongdoings without dividing the political community?" (p. 23). Along with anthropologists Michael Humphrey (2003) and Richard Wilson (2003 ck), Borneman sees the global ideology of the rule of law as including "ritual performances such as trials for wrongdoers and public vindications" (p. x), and the global movement for retributive justice as "part of a global ritual purification of the center of political regimes that seek democratic legitimacy" (p. viii). Borneman invites us to think about how lustration participates in the sacralization of postsocialist politics through purificatory rituals. We could generalize the point to socialist purges as well.

A second anthropological take comes from Serguei Oushakine's paper "The Terrifying Mimicry of Samizdat." Oushakine argues that contrary to standard models of resistance that saw dissidence as situated *outside* the discursive field or power, dissidence sat firmly *within* this field, being constituted by the authoritative discourse and partially reproducing it, even if from a different location; this limited their role in Soviet society (204). Responding to post-"Secret Speech" discourse about norms, law, and "socialist legality," "the dissidents used rights-based discourse with perplexingly paralyzing results" (ibid., 206-208 ck p). I find Oushakine's argument provocative for thinking about lustration, which—like Soviet-era dissidence—was motivated as resistance to a particular regime, the logic of which nonetheless set its agenda even after the regime itself disappeared.[8] To pursue the parallel, we would want to inspect much more closely the important features of the discursive field of socialism, especially in the Czech case that launched the lustration idea. We would want to note the deeply dichotomous universe of Czechoslovakia's Charter 77 dissidents, with their emphasis on sacrifice and moral capital, as

against the political capital of party members (I'm inspired here by Eyal's fascinating paper "Anti-Politics and the Spirit of Capitalism" [2000]). Ripened—like interwar communist parties themselves—in prison cells and marginal social locations after 1968, the Czech opposition differed from those in Poland and Hungary in being smaller and more heavily persecuted, and in developing not alternative socialisms with a human face (they had already tried that) but an explicitly anti-regime strategy of "living in truth." As Eyal puts it,

> This was essentially [Václav] Benda's suggestion, that dissidents engage in the creation of "parallel structures that are capable, to a limited degree at least, of supplementing the generally beneficial and necessary functions that are missing in the existing structures": a parallel legality, a "second culture," alternative education, a parallel information network. In short, a "parallel polis" that will be the concrete materialization of the dissidents' sense of moral commitment and mission (2000: 68).

This "anti-politics" strategy may have unwittingly trapped them in the terms of the regime agenda that they strove to reject. The cleansing policies that emerged in Czechoslovakia after 1989, I propose, show precisely that. The experience at their heart, including "anti-politics" in other countries, was nonetheless a general one; this fact plus Czech dissidents' deep moralizing of the "us-them" distinction that was so ubiquitous in the region enabled lustration's logic to spread rapidly from its Czech birthplace, albeit in multiple "vernaculars."

I draw a third anthropological approach to the socialist-parallels problem from Jane Schneider's brilliant analysis of the link between Prohibition in the US and the expansion of the Sicilian mafia on US soil (2009). Schneider transforms Mary Douglas's structural opposition between "purity and danger" into a dialectical process. The quest for purity, she argues, in the form of legislating Prohibition, had the effect of creating greater danger, as the thing prohibited spread through efforts to eradicate it. Banned pollutants proliferate. This insight seems apt for the process of lustration, with its attempts to purify the postsocialist body politic of the "pollutants" of the previous regime. How and why might this purification process create new dangers? One pretty obvious possibility comes from something that was essential to both communist and lustration regimes: the <u>denunciation</u>. Lustration cases often begin when someone denounces someone else for having been a collaborator. Practices that invite collaborators to come forth on their own avoid this, but the potential of denunciation is always there. Consider this article from February 13, 2009, in the online publication of "AllBusiness, a D & B Company," entitled "Czech CSSD's Mrstina has dubious lustration certificate" and citing a story in the Czech newspaper *Mlada fronta Dnes (MfD)*:

>Miloslav Mrstina, a significant Czech Social Democrat (CSSD) whose suspicious business deals surfaced recently, has a dubious lustration certificate confirming that he did not cooperate with the Communist secret police StB under the previous regime. . . . Paradoxically, it was Jiri Paroubek, the senior opposition CSSD chairman, who first mentioned Mrstina's suspicious past when he reacted to MfD's article about the state subsidies Mrstina had drawn in 2006 to finance the reconstruction of his hotel in Nachod, east Bohemia, which, however, he later ran as a brothel, MfD writes. . . . On Thursday, MfD reported on the 5.2 million-crown state subsidy the then CSSD ministers provided to Mrstina in 2006, for which he reconstructed his brothel in Nachod. In addition, CSSD colleagues gave Mrstina a lucrative post of a member of the supervisory board of the state-owned oil company Cepro, MfD wrote. The CSSD leadership protested against the information and said it is considering lodging a criminal complaint against an unknown perpetrator.[9]

Now, I have no idea what is really going on here, but the story suggests to me the following possibilities. First, a "lustration-negative" Czech remains always vulnerable to competitors' accusations that he had his certificate falsified. Second, the effects of the process have strayed far from its democracy-protecting roots and are available to business competitors, alternative aspirants to elite status of any kind, and—who knows?—possibly even rivals in love. In short, lustration makes a person visible, no matter whether the outcome is negative or positive, and that visibility clings to one like being HIV-positive. One never knows when it will become virulent, and in what forms.

This suggests to me that lustration has moved out from politics into society in general and is fulfilling its purificatory functions in unanticipated ways. No longer working to cleanse politics of potentially disloyal or blackmailable public officials, it has become a weapon for competition more broadly. And if an effect of the collapse of communism was to usher in one or another kind of capitalism—a system to which competition in nearly all domains is fundamental—then the cleansing potential of lustration has spilled out into a much wider field. Something like this is what anthropological researcher Saygun Gökarıksel has been finding in Poland.[10] Anyone can be accused of secret police collaboration, whether directly, anonymously, publicly, or in private. The means can be more or less overt, and they can involve subtle pressures. Gökarıksel gives the example of a university professor whose name is mentioned in a newspaper article, with a question mark. The professor might decide not to respond because the accusation is groundless, but then his dean invites him for a drink and turns the conversation to his past, in something like these terms. "We're wondering what you'll do about this rumor. Our university wants to maintain its reputation for integrity, and we can always find other faculty willing to prove their character if some are not." The professor is now obliged to submit to the verification procedure, which can entail a great deal of time, uncertainty, and anguish. If the verification report comes back "lustration-positive," then he can challenge that finding, but to do so is not easy: it poses major legal problems, because a person accused cannot see his file unless he decides

to take the case to court. Only then is he allowed to go into a special room, by himself (that is, without a lawyer), and look at the file (which might be hundreds of pages long), but he is not allowed to take notes. Poland's law justifies this on the grounds that the person could well be a perpetrator, not a victim, and the files contain state secrets. On the basis of this exposure to his file he must construct his defense. The premise of lustration proceedings is that he is guilty unless he can prove himself innocent. But what if he cannot locate evidence to exculpate himself? What if no file on him can be found—does this mean he's clean or, rather, that he's powerful enough to make it disappear? It is precisely because of this legal nightmare that the Helsinki Committee on Human Rights has become involved in challenges to Poland's (and other countries') lustration procedures, as violations of due process. Even if the professor brings suit and is vindicated, the stigma of his having been rendered visible in this way can cling to him for the rest of his life.

Lustration, in other words, has set loose a possibility like that of the denunciation of earlier communist times. Its effects are no longer limited to the public sphere or to qualification for high office. Like the denunciation, as Jan Gross showed for that form (1988:), it brings the instruments of state power and surveillance directly into the hands of any citizen, creating a state-subject relation different from the one we have generally imagined as the basis of democratic citizenship. But the analogy suggests to us something about the new forms of state power being constituted in the world of "neoliberalism" post-9/11, with its injunction "if you see something, say something" and other incitements to make the citizen part of the surveillance apparatus. Have communist practices shown us the image of our own future, which post-communist incitements to denounce are reinforcing? Is the purity sought by lustration pushing dangerous pollutions outward through ramifying denunciations? Milan Kundera, István Szabó, and others targeted by recent charges of collaboration would surely say yes. We need much more ethnography to explore this possibility of the past in the present.

Thinking about Historical Truth

My final point concerning the "past in the present" is an open-ended question about the notion of truth. One of the most powerful discourses around lustration and access to secret police files concerned getting at the historical truth, revealing hidden secrets, and making the guilty accountable, enabling the society to come to terms with the past. Maria Łoś commented that lustration debates in Poland revealed competing notions of truth:

> For some participants in the debate, the main goal of lustration is to uncover "the truth." For others, "the truth" is a false construct that hides the complexity of many subjective truths. [In] the latter view, . . . lustration is perceived as an attempt to recentralize and renationalize

> "truth," which is by its very nature local/situational and private/subjective. . . . Some representatives of the "objective truth" approach . . . insist . . . that an individual, subjective truth loses its "privateness" and "localness" once it forces itself into the public arena. A public official's past has to be "objectified" in order to reflect the nature of prevailing power relations (1995: 155-156).

In brief, she raises the clash between modernist and post-modern conceptions of truth, attributing the former to lustration and the latter to its opponents. Thus, lustration's effects include promoting a form of truth that is absolutist, sure of itself, over a more relativizing, skeptical notion of truth. This absolutist, modernist variant was the regime of truth characteristic of socialism, as well, and of the files that were its signature product. Files and their production apparatus constituted an immense system for elaborating people's truths. The guiding question was, Who are these people really?, and the underlying assumption was the modernist one that surfaces give only appearances, with truth hidden below. The secret police aimed to unmask internal enemies, uncover their truth; the secret police archives are its repository. They are a monument to communism's knowledge of its population.

As we know from Michel Foucault, however, archives are not [just] repositories of knowledge but sites for producing power. What kind of power can we discern in this archive? To approach this question I refer to my own secret police (Securitate) file from Romania, and I take my cue from Elizabeth Povinelli's discussion of the meaning of knowledge for Australian aborigines, who see it as not about getting at truth but about attaching socialities, about generating attachments among people. An abiding concern with socialities and attachments was basic to Securitate knowledge as well: colonizing attachments, breaking or disrupting them, trying to forge new ones. The most crucial form of secret knowledge concerned people's networks: knowing these would reveal a person's truth. In following me, the Securitate noted my contacts; they repeatedly instructed their informers to find out my networks; they noted that I was good at forming connections, and this made them nervous that I would recruit people against Romania's interests; they sought to recruit my contacts instead and installed microphones in my friends' apartments. In January 1985, the head of Romania's Securitate, General Iulian Vlad, ordered his subordinates to step up their surveillance of me and to explain what they were doing to contain me. Their response included taking special steps to destroy my entourage by warning the people I spent time with not to talk with me; as the basis for these warnings, agents were to tell people what was in my fieldnotes. After 1989, my very closest friend confessed that a year earlier, he had been driven far out of town into a field, told that I was about to be arrested for high treason, and admonished that he had better become an informer and tell all he knew about me or he too would be arrested.

Romania's secret police understood, with Foucault, that power flows in social relationships. They knew that people's sociality is dangerous and that essential to containing this danger was to break up those networks, by introducing collaborators and false friends. Just like being under surveillance, collaboration too was a "networked" phenomenon, not an individual one. Many people became collaborators because they had friends and families whom they wanted to protect or whose suspect actions had implicated them—that is, they became collaborators because they were socially embedded. They were targeted for recruitment for the same reason: documents from the Securitate archives instruct that the best people to recruit as informers are those who have the largest possibilities for contact and movement, both up and down (Banu 2008: 12)—that is, who are well connected. Informers informed not just on individuals but on social networks. To indulge briefly in anthropological jargon, persons in socialist Romania were not <u>in</u>dividuals but "dividuals," in Marilyn Strathern's terms (1988), or "partible persons." Their personhood was <u>constituted by their relations with others</u>, not by their actions as autonomous selves. Secret police work was successful precisely to the extent that persons under socialism were <u>not</u> individuals.

This is why international pressure to individualize lustration, on the principle that the rule of law works only when collaborators are treated <u>as individuals,</u> seems to me misguided: it distorts the historical reality of collaboration. Among the reasons behind such international pressure is that collective responsibility is much more difficult to punish, but the effect of individualizing accountability is to impose notions of truth-getting that do not fit the crime. It is precisely <u>because</u> of these network properties that cleansing was instituted in the first place: to disrupt the networks of party officials, police agents, and informers and thus diminish their effective opposition to exiting socialism. And, precisely, to the extent that the networks were <u>not</u> disrupted, cleansing was more tepid, and more delayed.

The problems with using secret police files as truth are legion—the "signing bonuses" offered to agents to extend the web of informers (such as a TV for every 3 signatures [Wechsler 1992: 80]), which encouraged them to manufacture collaborators; the fact that because the secret police were not allowed to recruit informers among party members without the express permission of their local party organization, their fabrications would come disproportionately from just that group most likely to be pushing for lustration laws after 1989—the former political opposition; and so on. I will not continue in this vein, since numerous other observers have noted the difficulties with using the secret police files as repositories of historical truth, few as eloquently as Adam Michnik: "It seems that things are becoming absurd if secret police colonels are to give out morality certificates" (Michnik and Havel 1993: 23). Far better that we should use the hundreds of kilometers of Eastern Europe's secret police files as an

extraordinary trove of field notes, through which to try to make sense of the workings of this most obscure of all socialism's institutions.

NOTES

[1] See Borneman 1997: 26-27, however, for a discussion of why this is not a useful term.

[2] Different sources I have consulted have different cut-off dates according to when they were published, and I have not been able to bring my account up to the minute for each case.

[3] Williams, Szczerbiak, and Fowler state that Slavophone archivists have long used the term "simply to refer to the compilation of an inventory or register. To lustrate someone was to check whether his name appeared in a database. The term was more widely adopted *not* because, as is commonly alleged, of its etymological association with ancient Roman rites of purification, but because politicians and the public heard it used by bureaucrats during battles for control of Czechoslovak files in early 1990" (2005: 21n.7 ck).

[4] Sources for this discussion include: Łoś 1995, Kaminski and Nalepa 2006, Priban 2007, Sadurski 2005, Wechsler 1992 and 1996.

[5] Note also that the Stasi files are orders of magnitude larger than those of other, more populous Eastern European countries. Reinke estimates the Stasi archive at 180 km. of paper records, 1 milllion photos, 150,000 audiotapes, 4,000 video cassettes, plus 5000 sacks of shredded paper (Bruce [2009: 17] says 17,200 sacks), and 7 milllion file cards on individuals (1997: 106n.28). Compare this with the reported 35 km of Romania's Securitate—another very active police.

[6] In order of the appearance of their first lustration measures we have East Germany (1990 Unification Treaty), Czechoslovakia (1991), Lithuania (1991), Bulgaria (1992), Albania (1993/1995), Hungary (1994/1996), Latvia (1994), Estonia (1995), Poland (1997—a preliminary lustration attempt in 1992 having been invalidated by the constitutional court), and Romania (2006, with a law on access to secret police files in 1999).

[7] In Michnik and Havel 1993: 23.

[8] The parallel with post World War II purges of Nazi collaborators is perhaps not inapt, for there too we were dealing with a preeminently "purgative" regime, albeit in forms different from those of communist parties; the reaction was similarly violent purges of collaborators. I realize that there were major differences, most significantly the much shorter time period of Nazi collaboration than was true of communism.

[9] See http://www.allbusiness.com/government/elections-politics-politics-political-parties/12125211-1.html, accessed October 10, 2009.

[10] My thanks to Mr. Gökarıksel for an illuminating conversation on this question.

Major Truth Revelation Procedures Created in the Aftermath of the Third Wave of Democratization

Country/Type of TJ	Description of TJ
Albania/harsh ETR LL	Targets: candidates in parliamentary elections, high government officials, and supreme court justices; targeted activity: senior party or government position in the former communist regime or collaboration with the secret police; targeted period: 1945-1990; dates in force: September 1995 to April 1996; source of evidence: files of the Sigurimi secret police. Comment: Candidates positively screened were banned from politics for five years (Done 1995).
Bulgaria/harsh ETR LL	Targets: academics and university administration and bank managers; targeted activity: membership in the Communist Party and/or teaching Marxism-Leninism; period covered: 1945-1990; dates in force: 1992-1997; source of evidence: register of Secret Service Information and Bulgarian Communist Party archives. Comment: LL was ruled unconstitutional in July 1992 (banks) and February 1993 (academia). The refusal to provide statement was regarded as "admission that the person does not meet the requirements for membership in those [academic] organizations" (Kritz 1995, 1:701).
Czech Republic/harsh ETR LL	Targets: all nonelected politicians and civil servants; targeted activity: secret police officer or informer, Communist Party official, member of the People Militia, or member of 1968 verification committees; targeted period: 1945-1990; date initiated: October 1991; source of evidence: register of collaborators. Comment: More than 420,000 persons have been subjected to LL. Source: Interviews (2004, SI).
East Germany/harsh ETR LL	Targets: members of federal and state governments and parliaments, employees of public service (including the municipal level), international organization of which West Germany was a member, or churches, public notaries, attorneys, and all managerial positions; targeted activity: full-time STASI employees or secret police informers; targeted period: 1951-1990; dates in force: 1991-present; source of evidence: files and documents of STASI, including microfiche, film, and electronic records. Source: Kritz (1995, 3:278-9).

Estonia/harsh ITR LL	Targets: all citizens; targeted activity: officer or informer of the KGB; targeted period: 1945-1991; dates in force: February 1995; source of evidence: declarations of targets and KGB files. Comment: Membership in Nazi Germany intelligence agencies was also listed as targeted activity. Source: Keesing's Record of World Events (1995).
Hungary/mild ETR LL	Targets: candidates in national elections; targeted activity: informers for the III/III secret police; targeted period: 1945-1990; dates in force: December 1996 to 2001; source of evidence: files from the former III/III department of the Ministry of Interior. Comment: About 600 persons were subject to LL. Targets proven to be collaborators were "advised to leave office," but this "advice" was not enforced. Source: Halmai and Scheppele (1997).
Lithuania/harsh ITR LL	Targets: deputies to parliament, members of ministerial departments, employees of State Service, and administrators and deputies of cities and districts; targeted activity: KGB officer or informer; targeted period: 1940-1991; dates in force: 1991-2001; source of evidence: declarations of targets and KGB files. Source: Kritz (1995, 3:427-8).
Poland/mild ITR LL	Targets: candidates for parliament and other national-level elected posts, president, justices, and lawyers; targeted activity: secret agents, secret police, ordinary and military intelligence or counterintelligence; targeted period: 1946-1989; dates in force: 1997-present; source of evidence: secret police files and targets' declarations. Comment: A total of 23,000 persons were subject to LL. Source: Interviews (2004, L).
Romania/mild	Targets: candidates for national-level elected office, automatically; by request of citizens, any elected or appointed state official plus leaders of religious groups, media, political parties, military, unions, public companies, Romanian Academy, and universities; targeted activity: secret police agents and collaborators; targeted period: 1945-1989; dates in force: 1999-present; source of evidence: secret police files and targets' declarations. Source: Law 187/1999, Romania; Stan (2009.)

(ETR/ITR LL refers to whether the lustration law is evidence- or incentive-based.)
Data for Romania added by Verdery.

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