Lustration and Transitional Justice

Personnel Systems in the Czech Republic, Hungary, and Poland

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LUSTRATION AND
TRANSITIONAL JUSTICE

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Bert B. Lockwood Jr., Series Editor

To Susanne, Jan, and Antonin

PREFACE

This book addresses one of the most pressing problems that new governments face in the aftermath of transition: the personnel they inherit from the previous regime. They may not be perpetrators of human rights abuses, but their prior role casts doubt on their loyalty to the new regime. For these states, a dilemma arises: should the old personnel be excluded from or incorporated in it? The new political elites have to consider whether the policies they adopt—for instance, the expulsion or retention of these tainted officials—would have a negative impact on their primary objective: democratization and establishing a stable administration. The consequences of the de-Baathification in post-Saddam Iraq have revealed the importance of effective personnel policies. Although it originally intended to establish trustworthy government by ridding the state apparatus of discredited Baathists, the policy augmented historical rifts in society as a whole. The negative social effects of de-Baathification may have undermined its primary political purpose.

Although transitional personnel policies are essential to successfully consolidate state structures and are important because of their spillover effect on social reconciliation, research in transitional justice and democratization has not given adequate attention to this topic. The variety of inclusive alternatives to dismissals that developed in Central and Eastern Europe have also been largely overlooked. While Czechoslovakia and other countries purged their administrations of the remnants of previous regimes, Hungary and Poland developed considerably more sophisticated methods for dealing with their discredited personnel. They adopted methods based on truth revelation and confession that were stipulated as conditions for inclusion. The personnel policies put into place may produce various results in terms of the people's trust in government and social reconciliation. Consequently, in contrast to the role of electoral systems and truth

commissions in democratization, very little is known about the operation and consequences of transitional personnel policies.

To fill this gap, this book proposes the concept of *personnel systems* as a theoretical abstraction of transitional public employment measures that regulate access to non-elected positions in public administration. It classifies personnel systems as three types: exclusive, inclusive, and reconciliatory. The exclusive system is based on the dismissal of inherited personnel from the state apparatus, whereas the inclusive system is based on their exposure and the reconciliatory system on their confession of past wrongdoing. Although they have political-security objectives, personnel systems are viewed in the eyes of its protagonists as different purification measures that aim at cleansing society from the taint of the past. The acknowledgment of the symbolic role of personnel systems helps to explain both the demand for personnel systems and their effects. Each system reflects and conveys a different ideological message about the previous regime and its tainted officials. Consequently, each system has a particular propensity to generate direct (political) effects on trust in government, as well as indirect (social) effects on reconciliation with former adversaries and on the collective memory of the past. Thus, personnel systems appear at a critical juncture, which may affect a society's political culture for many years.

The utility of these systems is examined in Central Europe, which has implemented personnel systems by means of lustration laws. *Lustration* refers to the screening or vetting of public officials against the archives collected by the secret police under their socialist regimes. In order to deal with personnel inherited from the communist regimes, the Czech Republic, Hungary, and Poland have developed three archetypal models: exclusive, inclusive, and reconciliatory systems, respectively. This book interprets the different meanings of these systems, demonstrates their operation, analyzes their origins, assesses their implementation, and examines their effects. To examine their origin, we analyzed a number of historical surveys conducted in these countries in the early 1990s and scrutinized parliamentary debates on lustration laws. In order to examine the political and social effects of different systems, we have devised an original and uniquely tailored experimental vignette, which was embedded in nationwide surveys in the Czech Republic, Hungary, and Poland. The survey experiment tested the effect of dismissal, exposure, and confession on trust in government and on social reconciliation at the level of individual and their effect on collective memory at the country level.

A word about terminology used in this book. Part II of the book uses the concept of *lustration systems* as a regional variant of personnel systems. We use *lustrations* to honor the widespread terminology for the transitional personnel process in Central and Eastern Europe. Although Hungarians—unlike Czechs, Slovaks, and Poles—do not use the term *lustration*, a number of Hungarian scholars and scholars writing on Hungary use *lustration* or *lustrations* (*lustration*, like *examination*, may be used in a singular form or as a plural depending on the context). Many scholars writing on the Baltic states, Albania, Georgia, the former Yugoslavia, Bulgaria, or Romania also use *lustrations*. The word *lustration* is used because it is widely accepted in the academic literature and because no other word, such as *vetting* or *screening*, can capture the dual meanings of the different personnel processes as vividly as *lustration*. At the same time, we cannot use *lustration systems* to encompass personnel systems in all transitional countries because not all personnel systems used lustration procedure: a screening against secret police archives. On the other hand, the different meanings of lustrations in common parlance in different countries in Central and Eastern Europe required that we avoid using the word *lustration* in our survey experiment. The experimental part of the book, Part III, therefore primarily uses *personnel systems*, and their methods of dismissals, exposures, and confessions, instead of *lustration systems*.

We use the term *reconciliatory system* to describe the lustration process in Poland, although the message of reconciliation was not communicated to the public there. In previous publications I have called the lustration system *semi-reconciliatory*. There are a number of reasons why my opinion has evolved. The reconciliatory system is derived from theoretical considerations of major perpetrator-centered strategies of transitional justice: retribution, revelation, and reconciliation. It has hallmarks of the reconciliation process, similar to that of the South African Truth and Reconciliation Commission (TRC). The reconciliatory system is based on confession, similar to that of the TRC's amnesty committee; in contrast, the inclusive system is based on external exposure, similar to the TRC's human rights violation committee. Like the TRC in South Africa, the reconciliatory system in Poland has been conceived in protracted political negotiations, which included a wide range of political parties on the right, the center, and the left. Although the coalition did not include the successor Communist Party, President Aleksander Kwaśniewski, a former communist, signed it into law. With the blessing of the Constitutional Tribunal, the system has been

implemented for more than a decade in spite a number of challenges and amendments to it. Finally, the reconciliatory system deserves its name because it is the only system which can lead to reconciliation.

Unlike the word *nomenclature*, which refers to terminology or classification, the word *nomenklatura* refers to the stratum of communist party cadres, each of whom was selected to occupy senior positions in all areas of public and quasi-public spheres based on their loyalty to socialist regimes. *Nomenklatura*, tainted officials, wrongdoers, people associated with former regimes, former communist party leaders, members of the repressive apparatus, and secret informers are all used interchangeably to refer to persons whose deeds have led to breaches of an interpersonal trust but who did not commit a criminal offense under the socialist regime. Although gross human rights violations, including extrajudicial and judicial killings, concentration camps, torture, and imprisonments, did occur during socialism, this books deals with the "soft" nature of collaboration. The terms *socialist regimes* and *communist regimes* are used interchangeably to refer to the regimes in Czechoslovakia, Hungary, and Poland prior to 1989. We do not capitalize the "communist parties" in Central Europe unless we refer to the Communist Party of Czechoslovakia by name. Communist parties in Hungary and Poland did not call themselves "communist." Czechoslovakia refers to the federation of the Czech Republic and the Slovak Republic, which ceased to exist as of December 31, 1992. When referring to the Czech Republic before 1992, we refer to the territory of the Czech Republic within the Federation. The term *tainted official* is used to refer to both men and women in Parts I and II; however, in Part III we only use *masculinum* in line with the realistic nature of our experimental vignette because most collaborators in Eastern Europe were men. In the text, we try to spell the names of all authors correctly with diacritics (e.g., Vojtěch Cepl), but we cite them as they published their work (Vojtech Cepl). Similarly, we refer to historical actors by their names with diacritics (e.g., Lech Wałęsa), but we maintain the original titles of English publications and citations referring to them (Lech Walesa).

ABBREVIATIONS

ANC	African National Congress (South Africa)
ÁVH	State Security Authority (Hungarian secret police prior 1956)
AWS	Election Action Solidarity (Poland)
CBOS	Public Opinion Research Center (Poland)
CPA	Coalition Provisional Authority (Iraq)
ČSSD	Czech Social Democratic Party
ČSSR	Czechoslovak Socialist Republic
ČTK	Czech Press Agency
CVVM	Center for the Public Opinion Research (Czech Republic)
Fidesz	Alliance of Young Democrats (Hungary)
FKgP	Smallholder Party (Hungary)
HZDS	Movement for Democratic Slovakia
IFP	Inkatha Freedom Party (South Africa)
IPN	Institute of National Memory (Poland)
KDNP	Christian Democratic Party (Hungary)
KDS	Christian Democratic Party (Czech Republic)
KDU-ČSL	Christian Democratic Union–Czech People's Party
KLD	Liberal Democratic Congress (Poland)
KPN	Confederation of Independent Poland
KSČ	Communist Party of Czechoslovakia
KSČM	Communist Party of Bohemia and Moravia (Czech Republic)
LPR	League of Polish Families
MDF	Hungarian Democratic Forum
MIÉP	Hungarian Justice and Life Party
MSzMP	Hungarian Socialist Workers Party
MSzP	Hungarian Socialist Party
NKVD	People's Commissariat of Internal Affairs (Soviet Union)
NP	National Party (South Africa)

OBOP	Center for Research of Public Opinion (Poland)
ODA	Civic Democratic Alliance (Czech Republic)
ODS	Civic Democratic Party (Czech Republic)
OF	Civic Forum (Czech Republic)
OH	Civic Movement (Czech Republic)
PAP	Polish Press Agency
PC	Center Agreement (Poland)
PiS	Law and Justice Party (Poland)
PO	Citizens' Platform (Poland)
PSL	Polish Peasant Party
PZPR	Polish United Workers' Party
SB	Security Service (Poland's secret police)
SdRP	Social Democracy of the Republic of Poland
SIS	Slovak Information Service (Slovak counterintelligence agency)
SLD	Democratic Left Alliance (Poland)
SRP	Self-Defense (Poland)
SSM	Socialist Association of the Youth (Czechoslovakia)
StB	State Security (Czechoslovak secret police)
SzDSz	Alliance of Free Democrats (Hungary)
TRC	Truth and Reconciliation Commission (South Africa)
UB	Security Office (Poland's secret police)
UD	Democratic Union (Poland)
UP	Labor Union (Poland)
UW	Freedom Union (Poland)
VPN	Public Against Violence (Slovakia)
ZChN	Christian-National Union (Poland)

CONTENTS

INTRODUCTION

We had free elections, . . . we elected a free parliament, we have
a free press, we have a democratic government. Yet we have not
managed to deal with the burdensome legacy of the totalitarian
system. Powerful structures of the former regime still exist and
remain at work. . . . Many places are governed by the same
people as before. . . . The old bureaucracy persists at all levels. . . .
It is not true that our revolution failed. It just has not been
finished yet.

> —Václav Havel, "Výročí okupace Československa
> vojsky Varšavského paktu"[1]

Should we revoke our de-Baathification policy, as some in
Washington now seemed to want? I wearily reminded the others
that Iraq was a zero-sum game. We needed to keep the Shia and
Kurds in mind too. Calling back former [Baathist, mostly Sunni]
senior army officers would not solve our problems.

> —L. Paul Bremer, *My Year in Iraq*[2]

This chapter introduces the issue of policies designed to deal with personnel
inherited in the apparatus of transitional states from previous regimes. The
puzzle is that transitional personnel policies as well as their absence may
negatively impact democratization. This is because these policies carry sym-
bolic meanings that may create social effects that contradict their original
political purpose of establishing trustworthy government. We identify
major institutional innovations in Central Europe, manifested in a variety
of alternative personnel policies, as plausible ways to address this conun-
drum. The alternative policies may convey a message of inclusion and con-
version of inherited personnel and may produce different constellations of

political and social effects. The theoretical and empirical investigation of the effects of different personnel policies on trust in government and historical divides in society is the primary objective of this book.

The Personnel Problem and Its Problematic Solutions: Chile, South Africa, and Iraq

How can states undergoing the transition from authoritarianism to democracy deal with inherited state personnel complicit with abuses of prior regimes? Failure to acknowledge the problem of the inherited personnel, or an inability to effectively address it, may create considerable obstacles for the prospects for democratization. Whether open or clandestine, loyal to the past elite or seemingly "accommodating" to the new democracy, members of the anciens régimes who have retained their positions of influence have impaired democratic consolidation and undermined critical policies in many transitional countries. The so-called authoritarian enclaves, consisting of non-democratic institutions, unresolved human rights problems, and "social actors not fully willing to play by democratic rules," have for a long time been impediments to redemocratization in Chile and other countries of the Southern Cone.[3] The result has been an "incomplete democracy" that maintained itself via the inherited constitutional and judicial structures and prevented the democratically elected government from launching political and social reforms for more than a decade.[4]

In South Africa, the continuation of the former apparatus had even more ominous consequences. While Nelson Mandela and his African National Congress (ANC) were negotiating the handover of political power with the reformist president Frederick de Klerk and his not-yet-reformed National Party (NP), the remnants of the old elite, with vast experience in the technology of political and military power, were actively seeking to derail the process. Entrenched in the administration and armed forces, sections of the outgoing white minority government instigated and prolonged so-called black-on-black violence in the early 1990s.[5] The country found itself on the brink of civil war after the South African Ministry of Defense trained and armed the Inkatha Freedom Party (IFP) to stir violent clashes with the ANC and encourage the independence of the KwaZulu-Natal province.[6]

However, systematic solutions to the problem of inherited personnel may be difficult for transitional governments to implement: these

governments may be relatively weak in the face of rigid legal, institutional, and structural constraints imposed by previous regimes and backed by their powerful security apparatuses. In South Africa, the "Inkathagate scandal" of 1991 led eventually to the demotion of the minister of defense, Magnus Malan, and the minister of police, Adriaan Vlok, to lower cabinet positions by President de Klerk.[7] Nonetheless, later negotiations between the outgoing NP government and the ANC at Kempton Park resulted in the approval of a so-called sunset clause.[8] According to this clause, the apartheid-era personnel would retain their positions until the second democratic elections in 1999. It was a compromise solution between the ANC's demand for immediate majority rule and the NP's demand for continuous power-sharing arrangements.[9]

In Chile, attempts to remove the personnel of the previous regime from state institutions provoked the threat of a new military takeover. The leader of the military junta, General Augusto Pinochet, exercised his power during the transition process in his position as both commander in chief and senator for life. In 1992, Chilean president Patricio Aylwin proposed a set of constitutional reforms that would allow presidents to appoint and remove military officers. After his proposals were politically defeated, he threatened to exercise his power to veto the promotion of army personnel through administrative inaction in order to renegotiate the time when General Pinochet would step down as the army's commander in chief.[10] Aylwin's actions provoked the so-called *boinazo*, during which soldiers in combat gear paraded in downtown Santiago to remind the civilian government about the real distribution of political power in Chilean society at that time. It took another six years (1998) for Pinochet to eventually step down as a military chief. He was stripped of his senatorial immunity only in 2000.[11]

Solutions to the problem of inherited personnel in the state apparatus may be at least as problematic as the dilemma itself. Since the Reconstruction era in the United States,[12] personnel policies have usually been one-dimensional, oscillating between greater and lesser exclusion of inherited personnel. The wave of post–World War II purges conducted under various banners, such as attempts at the denazification of Germany, defascification of Italy, and demilitarization of Japan, sought to completely rid state apparatuses of people associated with previous regimes and the propagators of their authoritarian ideologies.[13] However, the policies of wholesale dismissal, if implemented, are very problematic in terms of their contribution