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Andreea Maieran: Ph.D. Dissertation Topic: A Comparative Study of Lustration in Central and Eastern Europe Research Proposal

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Abstract

The general aim of my PhD project is to make a contribution to the academic debate in political science that focuses on the advantages and disadvantages of lustration in Central Eastern Europe. By analysing the different circumstances determining the enactment of the lustration laws, I seek to conclude whether lustration was detrimental or on the contrary favourable to the newly emerging democracies.

Furthermore, I will attempt to identify the factors affecting differences in lustration in Central and Eastern Europe. Among others, I will focus on the external impulses effecting the lustration processes during EU enlargement. One of the main reasons in ensuring the widespread support for accession to the European Union in the countries of Central and Eastern Europe is the perception that it will strengthen the process of democratization after the fall of Communism. My thesis will explore this claim by examining the political conditionality of the accession process and the level to which the process of democratization can be understood as a result of external pressures. The thesis will consider the effects of accession on democracy by looking in detail at an area that has been particularly important: the process of lustration.

Much has been written on the topic of quantitative versus qualitative methods of analysis in the social sciences. In my thesis I will attempt to reconcile this antagonism by using both qualitative and quantitative methods that I consider to be complementary. My research will follow the hypothesis of King, Keohane and Verba that all good research originates in the same logic of inference and both qualitative and quantitative methods can be used to obtain systematic and scientific results. The study of the primary sources will be conducted through content analysis, discourse analysis and interviews with experts in the field. The choice of content and discourse analysis is motivated both by their straightforward design and by their specific terminology that allows a precise examination of the documents. The interviews will help me clarify some narrower aspects of the project.

The general aim of my PhD project is to make a contribution to the academic debate that focuses on the advantages and disadvantages of lustration in Central and Eastern Europe. By analysing the different circumstances determining the enactment of the lustration laws, I seek to conclude whether lustration was detrimental or on the contrary, favourable to the newly emerging democracies.

So far, lots of pages have been written on the topic of quantitative versus qualitative methods of analysis in the social sciences. In my thesis I attempt to reconcile this antagonism by using both qualitative and quantitative methods that I consider to be complimentary. My research will follow the hypothesis of King, Keohane and Verba that all good research originates in the same logic of inference and both qualitative and quantitative methods can be used to obtain systematic and scientific results.

1. Context and Relevance of the Research

The goal of my PhD project is to explore the political origins and consequences of lustration laws in Central and Eastern Europe. During transitions from authoritarian to democratic regimes, lustration is the disqualification of certain categories of office-holders (associated with the abuses of the prior regime) from certain public or private positions under the new regime.¹

In the context of post-communist transitions, lustration is a legal process that authorises governments to initiate screening procedures of candidates for high positions in the state. However, the lustration laws differ in terms of who initiates the process of lustration and of how the 'lustrated' individual is treated. While the presence of anti-communist programmes across Central and Eastern Europe reflects the common desire to break with the past, the intensity of these programs varies substantially by country.

1 According to Oxford Advanced Learner's Dictionary, 2001, the term 'lustration' is derived from the Latin word 'lustratio' meaning purification by religious rites, especially spiritual or moral.

In my thesis, I attempt to identify the factors affecting differences in lustration in Central and Eastern Europe. I will explain the variety in the scope and nature of the policies adopted, focusing on the role of the political actors in the context of EU enlargement. Moreover, by analysing the circumstances of the enactment of the lustration laws in four post-communist states, I seek to conclude whether lustration was detrimental or on the contrary, favourable to the newly emerging democracies.

2. Research Design

The selected cases are the Czech Republic, Hungary, Romania and Poland during the period of post-communist transition. These countries are representative for the different intensities of lustration: the Czech Republic having the strongest type of lustration, Poland and Hungary having a weaker form and Romania lacking lustration.

My main hypothesis is that the EU conditionality during the accession process influenced the content, the enactment and the results of the lustration laws. One of the main reasons in ensuring the widespread support for accession to the European Union in the countries of Central and Eastern Europe was the perception that it would strengthen the process of democratisation after the fall of Communism. My thesis will explore this claim by examining the political conditionality of the accession process and the level to which the process of democratisation can be understood as a result of external pressures. The thesis will consider the effects of accession on democracy by looking in detail at an area that has been particularly important: the process of lustration.

The research project is based on three main stages. The first is to analyse the demands for lustration in the four countries and to establish the degree to which the structure of these demands was supported or discouraged by the domestic political actors and by the EU regulations. The second step is to specify the way in which state authorities responded to these demands. At this point, I will be able to test the project's main hypothesis by comparing the different political arrangements and different lustration outcomes in the four countries. The third step consists of the theoretical analysis of the findings: I will seek to clarify whether the EU position towards lustration modified or not the outcomes of the lustration process.

3. Preliminary Research Already Completed

Currently, I am working on the first stage of the research. For this, I am using the relevant laws of the countries, as well as various secondary sources. I am trying to find out whether the political arrangements of the four countries and the negotiations for the EU accession have had different impacts on the actual outcome of the process: the disqualification of certain categories of office holders under the prior regime from certain public or private positions under the new regime.

The next step is to analyse more carefully the way in which the *acquis communautaire* has been directly addressing the problem of dealing with the communist past. For this, a closer look at the EU human rights legislation will be needed.

I started the analysis at Boston University with the widely discussed cases of Poland and the Czech Republic and I aim to continue the next academic year in Europe with the cases for which considerably less information is available: Romania and Hungary. The aim is to determine under which configuration and for which specific problems the governments took the position of anti-lustration actors and under which conditions they acted as promoters of the project. Based on this, I will elaborate a classification of the countries analysed.

4. Proposed Research Schedule

A major difficulty in my endeavour is that the literature and the available internet resources offer sufficient data (such as the projects of lustration laws) only for the highly debated cases of Poland and the Czech Republic. In order to collect the other data needed, I will have to plan a research trip to Budapest (Hungary) and Bucharest (Romania) during the next academic year. Most of the above-listed materials are publicly available in the two countries' National Libraries and in the National Archives. In Bucharest, I also intend to interview some of the people that are currently investigating the subject. Additionally, I have requested permission to access the Romanian Archive of Secret Police Files administrated by the National Council for the Study of the Archives of Former Secret Police.

Lastly, in the final stage of writing the thesis, when I want to elaborate on the main theoretical models and to link them to the empirical data, I would like to make use of the resources of The Transitional Justice Institute from University of Ulster (Northern Ireland), the only European institute dedicated to examining how law assists (or not) the move from authoritarian to democratic rule. The topic of my research is directly related to the main goal of the Institute, namely building *a theoretical and practical understanding of the role of transitional justice*. One of the main specialisations of The Transitional Justice Institute is the *'dealing with the past' issue* that aims to build a critique of existing lustration mechanisms, an endeavour which is directly related to my research interests.²

5. Objectives

The question of how to deal with the legacies of repression has been an important source of political divisions in post-communist Eastern Europe. The states from this area had several possibilities available when deciding how to pursue transitional justice: the prosecution of former important party leaders and secret police agents, the rehabilitation of victims of the communist regime who were unjustly punished or the process of declassifying secret police files for public inspection.

However, none of these options fully answered an important question: 'What should and can be done with those involved in the abuses committed by the communist state or by the security services?' The controversial response to these dilemmas was lustration: the vetting of officials for links to the former communist regime. These laws generally rely on information contained in the Secret Police files.

6. Major Hypotheses

My operating hypothesis is that the EU conditionality during the accession process influenced the content, the enactment and the results of the lustration laws.

Some possible alternative hypotheses are:

1. The electoral success or failure of the former communist elite changed the scope of the lustration laws. As the political orientation of the dominant party affects the initiation and content of the lustration laws, I would like to see what happened in countries where former communist parties remained in power after 1990, as opposed to countries in which the anti-communist opposition was in power over the same period.
2. The intensity of the political competition between parties influenced the national 'accountability processes'. Political parties attempt to restructure the scope of the law to strengthen their political power when facing other competitors. As socialist parties have increased their political power, centre and right-wing political parties tried to increase the scope of the laws.

² 'Dealing with the past' in periods of political transitions from authoritarian to democratic regimes or from civil conflicts to a democracy refers to the opportunities of such societies to address past human rights abuses, mass atrocities or other forms of severe trauma in order to facilitate a smooth transition into a more democratic or peaceful future.

3. The legal framework regarding the protection of individual data slowed down and burdened the access to secret files and the real outcomes of the laws.
4. The public support and the pressure of civil society affected the form of the laws. It has been claimed that the role of civil society varied considerably from country to country and that it affected the final form of the laws.

7. Existing Literature

Among the large normative literature on telling the truth, three political theories offered arguments on why and how new democracies deal with the past. Samuel P. Huntington³ established a link between policy and the authoritarian regime's 'mode of exit': only if the former leaders had been removed from their position against their wish would there be a desire for retribution.

John Moran⁴ focuses on the 'tough' or 'soft' nature of repression during the final decades of the communist regimes. If the citizens were not allowed to talk or to disagree, then there will be more pressure for finding the guilty ones.

Helga Welsh⁵ finds the conditions for a serious approach of the past in the present and argues that if the former elites are still in power the chances for a successful process are lower.

8. Selection of Cases

All four countries under scrutiny are now members of the European Union. According to Herbert Kitschelt,⁶ the post-communist countries can be classified in 3 groups following a set of criteria relevant for the period of transition:

Countries	Strength of pre-communist political society	Professionalisation of the state apparatus	Programmatic or clientelist linkage	Programmatic cohesiveness and party ideology
Group I: Bureaucratic-Authoritarian Czech Republic, Hungary	strong	strong	programmatic	socialist orthodox
Group II: National-Accommodative Poland	medium	medium	programmatic	social democratic
Group III: Paternal Romania	weak	weak	clientelist	diffusely orthodox socialist and nationalist

3 Huntington, Samuel P.: *The Third Wave: Democratization in the Late Twentieth Century*, London: University of Oklahoma Press, 1991, p. 228.

4 Moran, John P.: *The Communist Torturers of Eastern Europe: Prosecute and Punish or Forgive and Forget?*, in: *Communist and Post-Communist Studies*, 1994 (Vol. 27), pp. 95–109, here p. 95.

5 Welsh, Helga: *Dealing with the communist past: Central and East European experiences after 1990*, in: *Europe-Asia Studies*, 1996 (Vol. 3), pp. 413–28.

6 Kitschelt, Herbert: *Constraints and Opportunities in the Strategic Conduct of Postcommunist Successor Parties: Regime Legacies as Causal Argument?*, in: Bozoki, Andras / Ishiyama, John T., *Communist Successor Parties in Central and Eastern Europe: Reform of Transmutation*, NY: Sharpe, 2002, pp. 14–40.

On a scale regarding the results of the lustration laws, the Czech Republic has a firm law and carried out purges that affected large numbers of people. Poland and Hungary have a law, but few trials were conducted. In Romania there is no law and de-communisation has been limited to symbolic gestures.

Given these very different outcomes, I selected countries from all three categories listed by Kitschelt and I will attempt to see how the similarities and contrasts could explain the differences in the scope and nature of the policies adopted.

9. A Brief Early History of Eastern European Lustration

In the Czech Republic, the new government moved quickly to confront the communist regime's legacy of injustice. The situation of more than 100 000 individuals mentioned in the secret police (StB) files as collaborators or informants was settled in the 'Law on Lustration' of 4 October 1991. This measure barred all those identified as 'conscious collaborators' in StB records from a wide range of elected and appointed state positions.

In Poland, the issue of lustration has been one of the most divisive in political life under democracy. Only in 1997 did the Congress pass a 'Screening Law' stipulating that all deputies, senators, judges or high ranking civil servants had to issue a statement declaring whether they had collaborated or worked in the communist apparatus or secret services. A screening court was to check those statements and only those making false statements would be banned from any high ranking positions.

In Hungary, the general public, intellectuals and the majority of politicians have not been overly interested in political justice. After several failed attempts to legislate lustration, the 'Screening Law' that was passed in 1994 affected around 10,000 positions, including members of Parliament, ministers, deans and the heads of universities, judges and editors of leading newspapers. However, the law received harsh criticism on whether it will be able to fulfil its objective of 'de-communisation' and provide a fair screening process.

Despite signs of 'revolutionary violence' and the events of December 1989 – the mass demonstrations, bloody repression and the execution of Nicolae Ceausescu – the political developments in Romania have revealed the resilience of the ruling elite. In March 1997, The Romanian Parliament proposed a draft 'Law on Access of Former Communist Officials and Members of the Totalitarian Regime to Public and Political Positions'. The draft has not been adopted because it is inconsistent with Romanian Election Law and violates Article 16 of the Constitution, which states that 'all citizens are equal before the law and public authorities, without privilege or discrimination.'

10. Methodology

The primary sources to be examined are: the proposed projects of lustration laws, the final drafts of the laws, the EU regulations, the press declarations of main political leaders and the official programmes of the parties.

As research methods, I will use content analysis, discourse analysis and interviews with experts in the field. The choice of content and discourse analysis as methods of study is motivated both by their straightforward design and by their specific terminology that allows a precise examination of the documents. The interviews will finally help me clarify some narrower aspects of the project.

First, for the quantitative content analysis of the documents, a formal modelling software program will be used (www.textanalysis.info). The coding scheme will include elements described in the next subchapter of this proposal, 'The Operationalisation of Variables'.

Second, for the qualitative discourse analysis, four main questions (following Norman Fairclough⁷) will be answered:

1. How is the text designed, why is it designed in this way, and how else could it have been designed?
2. How are texts of this sort produced, and in what ways are they likely to be interpreted and used?
3. What does the text indicate about the order of discourse?
4. What wider socio-cultural processes is this text a part of, what are its wider social conditions and what are its likely effects?

Third, the interviews with experts studying lustration in each of the four countries under scrutiny will include questions that will further clarify the findings revealed through the content and discourse analyses.

11. Operationalising Variables

Among the elements to be examined, using as a method content analysis, are:

1. The existence or the absence of a lustration law in the country.
2. The presence of direct EU requirements asking for clarifications of the issue of 'dealing with the past'.
3. The moment of law enactment:
 - a). Did it happen immediately after the fall of the communist regime?
 - b). Did discussions on the topic begin only several years after the collapse of communism?
 - c). Did discussions begin once the country officially became an EU candidate?
4. The time-frame of the lustration process:
 - a). Was it limited to a few years?
 - b). Was it referring to an extended period?
5. How radical the law was:
 - a). What are the former positions subject to lustration?
 - b). What are the current positions subject to lustration?
 - c). What is the estimated number of those targeted by the law?
6. The availability of primary information regarding the communist past:
 - a). Who is entitled to study the Secret Police files?
 - b). Who can access the results of the investigation of the files?

Among these factors, those revealing how many people and positions the laws targeted seem to be the most relevant for describing how radical the policies adopted were.

12. Final Considerations

The debates around lustration are extremely relevant for today's public discussions around the moral, legal and political responsibility for the crimes of the communist regimes. Some of the most fundamental issues regarding law, morality and politics are raised at such times, as societies look back and struggle to find solutions to legacies of violence. Legacies of repression have been dealt with in transitional periods through amnesties, trials or purges, through the establishment of truth commissions, through financial compensation or through symbolic gestures such as the building of monuments and proclamations of commemorative days or remembering.

My research is therefore interested in ethical considerations ('Is it good or bad to pursue lustration?'), in legal constraints ('How should the lustration laws be designed?') and in human rights dilemmas ('What

7 Fairclough, Norman: **Discourse Analysis**, London: E. Arnold, 1995, p. 202.

should and can be done with those involved in the human rights abuses committed by the communist states?').

In my thesis, I attempt to identify the factors affecting differences in lustration in Central and Eastern Europe. Furthermore, one chapter of my thesis will be dedicated to a cross-regional comparison of transitions to democracy in Central and Eastern Europe, Latin America and Southern Europe. I will assert that Eastern European communism has been distinctive from its Latin American and Southern European 'relatives' due to: the state ownership of the means of production, the rule by a single Leninist party, the leftist ideology committed to producing a new socialist man, the cultural isolation from the West and the integration into a hierarchical system functioning under the Soviet Union. Nevertheless, I consider that the agenda of post-communist transition shared the same basic tasks as the agenda of Latin America and Southern Europe in the 1970s, requiring a change in regime, economy, state and relationship to the international system.

The post-communist lustration laws have been designed to facilitate the move to democracy and the rule of law by disqualifying those who might have attempted to interfere with the new political conditions. However, the persistence over the years of debates around the issue is an element of continued instability that weakens the political system. By analysing the different circumstances of the enactment of the lustration laws, I seek to conclude whether lustration was detrimental or, on the contrary, favourable to the newly emerging democracies.