

**Transitional Justice in Context: The Historical Roots of Lustration Law
in Post-Communist Poland**

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Abstract

Dealing with officials from the previous regime is an important issue for any country transitioning to democracy. Many of the former Soviet satellites of Eastern Europe attempted to resolve this dilemma through the transitional justice mechanism of lustration, or vetting of officials based on the archives of the former secret police. This thesis investigates the origins of lustration law in post-communist Poland, and attempts to answer two main questions: why did the law occur when it did, and why did it take the unique shape that it did? To answer these questions I examine the period prior to transition and posit that the rise of Solidarity as the first independent trade union in the former communist bloc directly affected the timing of lustration in Poland, and that the influence of the Catholic Church and the dissident movement under communism helped shape the 1997 Polish lustration law.

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Introduction

After the fall of communism in the former Soviet satellites of Central and Eastern Europe, the new democratic regimes were presented with a dilemma: how to establish public trust in government after so many years of repressive, coercive communist rule? In an attempt to distance themselves from the former regimes, many of the fledgling democracies employed the transitional justice mechanism known as lustration. Although the term is interpreted differently in different countries, lustration can be broadly defined as a systematic process by which officials are vetted or screened against the archives of the former secret police.¹ It is important to distinguish lustration as a specific mechanism from the broader process of de-communization, through which some new democracies attempted to distance themselves from their communist predecessors by removing a wide range of former regime officials from their posts and/or removing markers of the previous regime from public life and culture. Although these processes are certainly related, my work will focus solely on lustration in order to gain a deeper understanding of its origins.

The problem of how to deal with the officials and functionaries of the previous regime is something that every new regime has to grapple with after transition. Oftentimes it is impossible to operate a functional state without employing at least a portion of former regime officials. However, employing too many officials from the previous regime can undermine the legitimacy and popular support of the new regime, especially when the old regime is seen as corrupt or coercive. Sometimes this process is streamlined due to similarities between the previous and successor regimes, as evidenced

¹ Roman David, *Lustration and Transitional Justice* (Philadelphia: University of Pennsylvania Press, 2011), x.

by personnel continuity between the Nazi supported Hungarian Arrow Cross regime and its communist successor, especially with regards to state security personnel.² However this problem can become exacerbated when the new regime has a vested interest in distancing itself from the old regime. The case of Iraq after the coalition invasion perfectly illustrates this dilemma and its potentially disastrous consequences. In 2003, the provisional authorities issued Order Number One, which called for the total de-Ba'athification of Iraqi society.³ This transitional policy of blanket exclusion of anyone associated with the former regime led directly to a swell in recruiting for the insurgency, and left the authorities with very few skilled and locally knowledgeable officials. The case could certainly be made that this poorly designed vetting policy contributed to the subsequent prolonged, bloody guerilla war.⁴

However, exclusionary tactics are not the only means of dealing with former regime personnel. The opposite strategy was employed in South Africa, where the negotiated transitional agreement guaranteed that officials would retain their posts until the second round of fully democratic elections in 1999.⁵ This is an example of an inclusive personnel system, which are generally instituted through transitional agreements, or under a situation where the former regime still maintains a significant amount of influence or power. The downside of this strategy is that the population might

² Deborah S. Cornelius, "9. From Arrow Cross Rule to Soviet Occupation," in *Hungary in World War II: Caught in the Cauldron* (New York: Fordham University Press, 2011), 334-383.

³ "Coalition Provisional Authority Order Number 1: De-Ba'athification of Iraqi Society," May 16, 2003, http://iraqcoalition.org/regulations/20030516_CPAORD_1_De-Ba_athification_of_Iraqi_Society_.pdf (accessed April 10th, 2015).

⁴ Roman David, "From Prague to Baghdad: Lustration Systems and Their Political Effects," *Government and Opposition* 41, no. 3 (2006): 367.

⁵ David, 2011, 3.

feel betrayed, since in reality it might seem like regime change achieved very little. The lustration systems that emerged after the regime changes of 1989 in Central and Eastern Europe provide a solid backdrop for studying transitional personnel management strategies. These countries that on the surface appeared to be undergoing very similar political transitions ended up addressing the personnel problem in very different ways, providing fertile ground for both comparative and in-depth, case specific research.

Among the various Central and Eastern European countries that passed lustration measures after the fall of communism, Poland stands out as a unique case. The 1997 Polish law represents one type of middle ground between the aforementioned exclusive and inclusive prototypes for transitional personnel management. Instead of penalizing officials for complicity with the previous regime, the Polish law requires that certain officials - both elected and non-elected - submit a lustration affidavit, and an official can be dismissed only if it is proven that he or she lied on their affidavit. Additionally, the Polish law was passed a full eight years after the beginning of democratic transition in 1989. This immediately raises two main questions; why did it take eight years for Poland to pass lustration, and why did the law take the unique truth-oriented form that it did? These are the two main questions that I will attempt to answer in this thesis.

My argument will consist of two main explanatory sections, with each section specifically addressing one of these two separate but related research questions. Firstly, I hypothesize that lustration did not occur immediately after transition as a direct result of the enormous democratic legitimacy enjoyed by Solidarity, the first independent trade union in the communist bloc, which arose in Poland in the latter part of 1980. As for the content of the law, I will argue that sociological factors including the influence of the

Catholic Church and the Polish dissident movement played a large role in shaping public attitudes towards past elites, resulting in the unique truth-oriented 1997 law. In the first chapter I will address the theoretical basis for my study as well as alternative explanations for the origins of lustration law in Central and Eastern Europe. The next section of this chapter will describe in detail the 1997 Polish law, with a focus on the truth-seeking and reconciliatory mechanisms that give the law its unique shape. This section will also illustrate why the context is important for understanding the motivations and influences that determine the shape of the law. In the second chapter, the first major explanatory section, I will develop a historical institutionalist (HI) argument that highlights the causal relationship between the rise of Solidarity and the timing of lustration in Poland. I will argue that the period leading up to the legal recognition of Solidarity represents a critical juncture that set Poland down a particular path, which then determined the nature of transition and the level of democratic legitimacy after transition. In the third chapter I will employ an interpretivist approach in examining the social factors that shaped the law. I will argue that the discourse coming from the two main actors in the opposition to communist rule, the dissident movement and the Catholic Church, created a political environment that generally focused on building towards the future rather than prosecuting the past. In the conclusion, I will attempt to bring the two explanatory chapters together and determine whether the Polish case can provide any lessons for other countries attempting to manage personnel after transition.

Chapter 1: Theoretical Framework

Scholars of transitional justice examine the ways in which new regimes attempt to deal with the actions and crimes associated with the previous regime. Some of the most commonly examined mechanisms in the field are truth commissions, criminal trials, and reparations. One of the main conflicts of transitional justice is; how to reconcile transitional justice measures with the consolidation of democracy. This conflict arises in various aspects of the transitional justice process. For instance, oftentimes some of the most horrific offenders and human rights violators under the previous regime were operating within the boundaries of the law, sometimes directly implementing the will of the previous authorities. This makes it very difficult for a new democracy, attempting to establish the liberal democratic pillar of rule of law, to criminally prosecute offenders under the previous regime.⁶ For this reason, regimes often take alternative routes to solve the dilemmas of transitional justice. For instance, in Spain, the new regime made the conscious choice to move forward without prosecuting members of the previous regime, despite acknowledging the wrongdoings of the past.⁷ A different strategy was employed in many Latin American countries such as Uruguay, Haiti, Guatemala and El Salvador during the 1980's, where amnesties for previous regime officials were a necessary precursor to the transition away from military rule.⁸ Another option is the truth commission, which can have some of the socially cohesive benefits of trials, while

⁶ Jose Zalaquett, "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Constraints," in Neil Kritz (ed.), *Transitional Justice Volume I: General Considerations* (Washington DC: US Institute of Peace, 1995).

⁷ Angela M. Guarino, "Chasing Ghosts: Pursuing Retroactive Justice for Franco-Era Crimes against Humanity" *Boston College International And Comparative Law Review* no. 1 (2010): 61.

⁸ Ruti Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000), 53.

avoiding some of the destabilizing political threats and sticky legal consequences.

However, truth commissions can often be seen as political tools, and their social benefits are largely context dependent.⁹ Although some scholars have argued that the benefits of certain transitional justice mechanisms, such as criminal trials, can be generalized across different cases,¹⁰ I believe that in order to truly understand why different strategies are employed in different cases it is necessary to do an in-depth analysis of the historical context.

Lustration arose as the preferred mechanism of transitional justice across the post-Soviet space due to the far-reaching influence of the communist era secret police. Even before the communists came to power in Eastern and Central Europe, Moscow ensured that loyal communists or fellow travelers took control on the interior ministries of the soon to be communist bloc countries in the period directly following the Second World War.¹¹ This allowed the communists to mold each state security apparatus along the lines of the Soviet secret police, the Cheka, and its successor organization, the NKVD. Control of the interior ministries allowed the communists to silence political opposition and eventually, with the backing of Moscow, take a firm hold on power.¹² However, the influence of the Secret Police on communist rule did not stop with the takeover of power. Closely following the Soviet model, the secret police organizations in Eastern and

⁹ Robert Rotberg, "Truth Commissions and the Provision of Truth, Justice, and Reconciliation," in *Truth vs. Justice: The Morality of Truth Commissions*, eds. Robert Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000), 3-10.

¹⁰ Juan E. Mendez, "The National Reconciliation, Transitional Justice, and the International Criminal Court" *Ethics & International Affairs* 15, no. 1 (2001): 25-44.

¹¹ Anne Applebaum, Part 1 Chapter 4: "Policemen" in *Iron Curtain: The Crushing of Eastern Europe, 1944-1956* (London: Allen Lane, 2012).

¹² Applebaum, "Policemen," 2012.

Central Europe soon developed a vast network of informants that allowed the authorities to closely monitor the activities of the population.

Although the Eastern bloc never experienced terror on the level of the Great Terror in the Soviet Union, which lasted from 1936 until 1938 and resulted in 681,692 officially recorded executions,¹³ the influence of the secret police on life in the communist bloc was enormous. For instance the infamous East German secret police, or Stasi, employed 93,000 officials and 178,000 part-time informants, which allowed the state to compile vast amounts of intelligence on its own population.¹⁴ These vast networks of informants created a culture of fear; since anyone could be a potential informant, people had to be constantly vigilant, even in the presence of friends and family. The social effects of the police state are hard to quantify, but it is safe to say that the secret police organizations were a major reason that the communists were able to gain and maintain power, and that they had major affects on the population's general psyche.¹⁵ Hence, after transition, one of the main goals was to remove anyone who had been complicit in collaborating with the secret police from positions of power and influence. Other transitional justice mechanisms such as truth commissions, criminal trials, and reparations were employed by some post-communist regimes such as Romania, which attempted all three of the aforementioned mechanisms. The case of Romania is a good representation of the dilemmas of post-communist transitional justice, as the truth

¹³ Richard Pipes, *Communism: A History* (New York: Random House, 2001), 67.

¹⁴ Gary Bruce, "East Germany," in *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*, ed. Lavinia Stan (New York: Routledge, 2009), 28.

¹⁵ Robert Jay Lifton, "History as Trauma," in *Beyond Invisible Walls: The Psychological Legacy of Soviet Trauma, East European Therapists and Their Patients*, eds. Jacob D. Lindy and Robert Jay Lifton (New York: Taylor and Francis, 2001), 220.

commission presided over by Vladimir Tismaneanu generated a significant amount of political controversy and negative media coverage,¹⁶ the attempts at criminal justice were largely derailed due to legal constraints and general malaise on the part of post-transition elites,¹⁷ and the legislative clauses that promised reparations were struck down as unconstitutional, effectively undercutting the program.¹⁸ So although there were certainly other alternative transitional justice mechanisms on the table, the real and perceived influence of the secret police on life under communism thrust debates on lustration into the public spotlight.

The main goal of lustration was to reinvigorate the social trust in public institutions and the state that was destroyed by communism and the vast networks of secret police informants. Social trust has been shown to be a key element in the consolidation of democracy,¹⁹ and after over 40 years of communist rule and the revelations that followed the de-classification of secret police files, the herculean task of repairing social trust fell to the political elites.²⁰ However, like most instances of transitional justice, the issue of implementing lustration was by no means black and white. Firstly, the files of the former secret police were not exactly reliable sources and

¹⁶ Alina Hoge, "Coming to Terms with the Communist Past in Romania: An Analysis of the Political and Media Discourse Concerning the Tismăneanu Report," *Studies of Transition States and Societies* 2, no.1 (November 2010): 16.

¹⁷ Raluca Ursachi and Raluca Grosescu, "Transitional Criminal Justice in Post-Communist Romania," Presented at the conference "Crimes of the Communist Regimes," 24-26 February 2010, Prague, available at http://www.ustrcr.cz/data/pdf/konference/zlociny-komunismu/Raluca_Grosescu.pdf (accessed May 20th, 2015).

¹⁸ Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (Cambridge: Cambridge University Press, 2013), 181.

¹⁹ Robert D. Putnam, Robert Leonardi, and Raffaella Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press, 1993).

²⁰ Cynthia M. Horne, "Lustration, Transitional Justice, and Social Trust in Post-Communist Countries: Repairing or Wresting the Ties that Bind?" *Europe-Asia Studies* 66, no. 2 (February 2014): 225.

needed to be diligently maintained. The danger of the irresponsible use of secret police files in order to smear or blackmail political opponents manifested itself in Czechoslovakia during the “wild lustration” period that immediately followed transition, and in Poland in 1992 when then President and Solidarity hero Lech Walesa was implicated in an initial report only to be exonerated at a later date.²¹ Also, the definition of collaboration is an issue that plagues all lustration efforts, as some “informants” claimed to have only passed on unnecessary information, or that they only divulged information under enormous pressure, and these distinctions were not always evident from the secret police files. I will show how the Polish addressed this question in the next section.

Another dilemma that occurs in many societies attempting transitional justice lies with the letter of transitional agreements. Some influential thinkers such as Polish dissident Adam Michnik argued that lustration measures directly violated the transitional agreement signed by the then ruling Communist Party and the opposition in 1989.²² This objection goes hand in hand with the broader dilemma of Rule of Law vs. transitional justice mentioned earlier. Also, lawmakers had to decide who should be covered under the lustration law. Should the scope be limited to elected officials; should university professors be included; should it apply to high ranking bureaucrats but not low ranking ones? Another dilemma comes with the punishment for those found guilty of collaboration. Should the guilty be barred from running for office, or is it enough to

²¹ Adam Czarnota, “The Politics of the Lustration Law in Poland, 1989-2006,” in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, ed. Alexander Mayer-Rieckh and Pablo de Greiff (New York: Social Science Research Council, 2007), 227.

²² Adam Michnik, and Vaclav Havel, “Confronting the Past: Justice or Revenge?” *Journal of Democracy* 4, no. 1 (January 1993): 25.

publicize their collaboration? Should officials be given the opportunity to confess, if so, what should be the punishment for those who voluntarily admit collaboration? These are only some of the questions and dilemmas that needed to be addressed by lustration designers. Next I will look at the diverging means by which these concerns were answered.

Scholars who have written on lustration have either focused on the political factors that led to the passage of lustration law such as Williams; et al 2005, David 2003, Czarnota 2007, and Szczerbiak 2002, or attempted to develop models that predict which countries will enact lustration law (Huntington 1991, Moran 1994, Welsh 1996). These studies largely been broadly comparative nature, attempting to draw conclusions based on data from many post-communist countries. Huntington's work is a good example of how a broad comparative study seeks to explain when transitional justice occurs. His explanation uses "mode of exit" as the variable that determines whether or not lustration would occur in a given country. He argues that if a country has to oust the previous leaders, then it is more likely that the new regime will pursue retributive policies as opposed to a situation where there is a negotiated and peaceful transition.²³ Although this is an extremely parsimonious and logical idea that could well explain transitional justice in other settings, it does not hold in the post-communist context. Although the two countries that endured rocky transitions (GDR, Romania) initially appeared to act in accordance with Huntington's hypothesis, the countries that focused the most on transitional justice were actually those that had smooth non-violent transitions (Poland, Hungary, Czechoslovakia).

²³ Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK and London: University of Oklahoma Press, 1991), 211.

Two studies that have attempted to provide deeper explanations for why lustration occurred in the form that it did are Williams, Fowler, and Szczerbiak (2005) and Roman David's comprehensive 2011 book, *Lustration and Transitional Justice*. The first study examines post-communist political competition and posits that it is the differences in political dynamics *after* transition that account for differences in lustration policy.²⁴ This approach looks at Poland, Czechoslovakia, and Hungary and centers on the examination of coalition building around centrist lustration proposals, and forms of politicking that allowed proposals to pass with only minority support in the legislature.²⁵ The authors present compelling evidence that dispels traditional lines of argumentation explaining lustration by identifying historical trends that can be generalized across countries. However, this line of reasoning cannot explain the origins of the political competition that occurred after communist rule, which in many countries finds its roots in the pre-transition dissident movement. Although the argument that I will present in the subsequent chapters by no means contradicts this focus on post-communist politics, I believe that in order to truly understand the forces that shape political life and political decision making it is important to have a firm and deep understanding of the context that gave rise to them.

In his very well researched 2011 book, Roman David provides an alternate explanation that incorporates both history and contemporary politics in order to explain lustration policies. He hypothesizes that the "choice of a particular lustration system is a

²⁴ Kieran Williams, Brigid Fowler, and Aleks Szczerbiak, "Explaining lustration in Central Europe: a 'post-communist politics' approach." *Democratization* 12, no. 1 (February 2005): 22.

²⁵ Williams et al, 2005, 23.

function of the perception of the transformation status of former adversaries.”²⁶ He identifies three lustration prototypes, exclusive, inclusive, and reconciliatory, which were employed in Czechoslovakia, Hungary, and Poland respectively, and argues that these different systems arose out of different attitudes towards past elites.²⁷ Again, this argument is logical and adds a layer of depth not found in either Huntington or Williams’ reasoning. However, in my mind David does not do enough to establish from where these differing attitudes towards past elites emerged. This is important because if it is indeed true that the public attitude towards past elites is the key to understanding lustration, then pinpointing where these attitudes originate is the critical step towards understanding what exactly *causes* particular aspects of a lustration system. The rest of this thesis will consist of a case study of lustration in Poland that attempts exactly this type of pinpointing.

1.1 Lustration in Poland: Background

In 1996 the Council of Europe’s Parliamentary Assembly passed a resolution on the proper “measures to dismantle the heritage of former communist totalitarian systems.”²⁸ The resolution highlights rule of law concerns as well as other problems that typically occur after regime change such as revenge and political misuse of the historical record. Through its focus on truth and legal processes, the text of the 1997 Polish Lustration Act complies fully with the Council’s recommendations. In this section I will provide a brief overview of the process leading up to the passage of the 1997 law,

²⁶ David, 2011, 99.

²⁷ David, 2011, 27-34.

²⁸ Council of Europe Parliamentary Assembly, “Resolution 1096: On Measures to Dismantle the Heritage of Former Communist Totalitarian Systems,” available at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta96/eres1096.htm> (Accessed on April 19th, 2015).

highlight the crucial mechanisms of the law, and explain why these mechanisms give the law its “soft” characteristics. I will conclude this section by arguing that the only way to truly understand the unique aspects of the Polish case is through a more thorough examination of the historical processes that preceded the passage of the law, both before and after transition.

Immediately after transition, the inaugural democratic government led by Prime Minister and former Solidarity intellectual Tadeusz Mazowiecki adopted a “thick line” policy, through which the new regime attempted to shift the focus from Poland’s communist past onto Poland’s future and the important issues at hand, such as democratic consolidation and economic transition.²⁹ However, the issue of lustration did not disappear from political life. Even during the Mazowiecki regime, participants in the legal system were subjected to a screening process, which resulted in the dismissal of 10% of state prosecutors.³⁰ However, this process was not public knowledge and the reasoning behind these dismissals were often masked or not elaborated at all in order to avoid publicity.³¹ As early as 1990 Roman Bartoszcze, a member of the Sejm (lower house of parliament), argued for a formal investigation of the relationship between certain political leaders and the communist era secret police (*Śluzba Bezpieczestwa* or SB).³² The first formal legislative attempt at lustration occurred in 1992, when the Sejm tasked then interior minister Andrzej Milczanowski with compiling a list of former collaborators who were currently holding high civil office. The result was a list that

²⁹ Aleks Szczerbiak, “Dealing with the Communist Past or the Politics of the Present? Lustration in Post-Communist Poland,” *Europe-Asia Studies* 54, no. 4 (June 2002): 556.

³⁰ Szczerbiak, 2002, 556.

³¹ Szczerbiak, 2002, 557.

³² Czarnota, 2007, 226.

included then President and former Solidarity hero Lech Walesa, 39 MPs and 11 Senators.³³ After the lists' publication, the Sejm entered into a marathon 16-hour parliamentary quarrel known as the "Night of Files," causing the opposition to question the direction of democracy in Poland and call for a motion of non-confidence, which eventually resulted in the dismissal of the minority government led by Jan Olszewski.³⁴ The Milczanowski list, which was subsequently discredited and declared unconstitutional by the constitutional court, illustrates the inherent problems that can result from irresponsible use of the archives and files.

Despite the public backlash following this failed attempt at lustration, which included negative media coverage and condemnations from many leading Polish intellectuals such as former dissident Adam Michnik,³⁵ the issue of dealing with the past did not disappear from the political landscape. The November 1995 presidential election between Lech Walesa and Democratic Left Alliance (SLD) candidate Aleksander Kwasniewski served to polarize the Polish electorate around the issue of dealing with the country's communist past, as Walesa ran a campaign centered on anti-communist rhetoric and Kwasniewski was seen as representing the former *nomenklatura*.³⁶ The issue came to a head in December 1995, when Democratic Alliance (SLD) premier Josef Oleksy was accused of being a Soviet spy. Even though the charges were never proven, Oleksy was forced to resign as the head of the SLD during the subsequent public relations

³³ Czarnota, 2007, 227.

³⁴ David, 2011, 123.

³⁵ Adam Michnik, *Letters from Freedom: Post Cold War Realities and Perspectives* (Berkeley: University of California Press, 1998), 293.

³⁶ Szczerbiak, 2002, 561.

nightmare.³⁷ The Oleksy affair is an example of how defamation can occur when the contents of the secret police files are not made public. As Walesa put it, “a human being is defenseless against defamation... The defamed person does not have any chance to clear himself from suspicions.”³⁸ With these concerns in mind many Polish politicians, especially those on the right side of the political spectrum, stressed that some form of transitional justice was necessary for a functioning Polish democracy. Although it may appear that some form of regulation of the files and an institutionalized lustration policy was inevitable at this point, there was still a large portion of the Polish population that opposed lustration outright.³⁹

A significant figure who came to represent the Polish opposition to lustration was the former dissident Adam Michnik. Michnik rose to prominence as a founding member of the Workers Defense Committee, or KOR, which was founded in Poland in 1976 and sought to peacefully secure human and worker’s rights under the communist regime. In addition to his work as an activist, Michnik was a remarkably effective dissident writer; in particular his concept of “new evolutionism” had an enormous impact on the Polish political psyche.⁴⁰ In contrast to earlier attempts at revolution or dramatic reform such as occurred in 1956 in Hungary, 1968 in Czechoslovakia, or even Poland’s own 1968 student uprising in which Michnik played a role, “new evolutionism” posits that change can only occur in a totalitarian system when particular groups exert pressure from below

³⁷ Szczerbiak, 2002, 561.

³⁸ David, 2011, 124.

³⁹ David, 2011, 157.

⁴⁰ Barbara J. Falk, *The Dilemmas of Dissidence in East-Central Europe: Citizen Intellectuals and Philosopher Kings* (Budapest: CEU Press, 2003), 179.

but *within the system itself*.⁴¹ Michnik's impeccable dissident credentials (he was imprisoned on various occasions and his most famous work is entitled "Letters From Prison") as well as his post-transition position as editor and chief of *Gazeta Wyborcza*, a prominent left-leaning Warsaw newspaper, ensured that his opinions carried weight in the post-transition political environment. Michnik believed that the passage of any sort of lustration law was a direct violation of the round-table agreement that peacefully ended the communist monopoly of power in the fall of 1989. He argues that these agreements should be treated in the same way as a constitution, and that breaking these agreements undermines the foundations of the democratic Polish state.⁴² This is the political backdrop against which the 1997 law was passed; one side arguing that a lustration law is necessary for a functioning democracy and the other side arguing that lustration law undermines the foundation of said democracy.

1.2 Mechanisms and Characteristics

The Polish Lustration Act passed on April 11th 1997 represents a centrist compromise to the positions presented in the previous section. The draft, which was proposed concurrently by the Union of Freedom, the Union of Labor, and the Polish People's Party, only penalizes the telling of a "lustration lie" rather than the actual act of collaboration.⁴³ In this way, the Polish law distinguishes itself from the prototypical "exclusionary" Czechoslovak law, which penalized people based on their actions under

⁴¹ Adam Michnik, "A New Evolutionism 1976," in *The Civil Society Reader*, eds. Virginia Hodgkinson and Michael W. Foley (Medford: Tufts University Press, 2003), 203-212.

⁴² Michnik and Havel, 1993, 25.

⁴³ Czarnota, 2007, 229.

the old regime.⁴⁴ The mechanism through which the Polish law does this is called a lustration statement. The Polish law states that certain public officials who were born before May 11th, 1972, and therefore legal adults at the time of transition, must complete a lustration statement that either confirms or denies collaboration with the communist era security services (1944-1989).⁴⁵ The law covers many high ranking and influential positions including the President, MPs, Senators, Judges, state prosecutors, and state television, radio, and press employees.⁴⁶ The lustration statements contain two parts. The first section is a simple yes or no response, which if affirmative is made public in the state-run *Monitor Polski*, or by electoral proclamation for elected officials.⁴⁷ If a negative statement is verified, then the person is cleared and cannot be lustrated again, and if a negative statement is deemed untrue, then the case goes to trial.⁴⁸ The second section describes any admitted collaboration in detail, and these details are not made public.⁴⁹ The law also defines the institutions with which one can collaborate with as the intelligence and counter intelligence services in Poland between 1944 and 1990, as well as parallel institutions in foreign countries.⁵⁰

The second important mechanism in the 1997 law is the Office of the Commissioner of Public Interest, which is in charge of initiating the lustration proceedings. The Commissioner and his two Deputy Commissioners are the main

⁴⁴ Kieran Williams, "Lustration as the Securitization of Democracy in Czechoslovakia and the Czech Republic," *Journal Of Communist Studies & Transition Politics* 19, no. 4 (December 2003): 2.

⁴⁵ 1997 Polish Lustration Act, Chapter 2 Article 6.

⁴⁶ 1997 Polish Lustration Act, Chapter 1 Article 3.

⁴⁷ 1997 Polish Lustration Act, Chapter 2 Article 11.

⁴⁸ 1997 Polish Lustration Act, Chapter 2 Article 10.

⁴⁹ Czarnota, 2007, 233.

⁵⁰ 1997 Polish Lustration Act, Chapter 1 Article 2.

instigators of lustration proceedings, are appointed by the Chief Justice of the Supreme Court, and can only be removed by the Chief Justice.⁵¹ The Office of the Commissioner of Public Interest handles all lustration statements and is responsible for determining which statements constitute “lustration lies.” The commissioners as well as a team of researchers that includes lawyers, historians, and political scientists conduct research to determine which cases the Commissioner or his Deputy Commissioners should bring to trial.

The third and final important mechanism in the law is the special Lustration Court. The Lustration Court is composed of three judges and was initially meant to be a separate judicial body, but an amendment to the original law designates the Warsaw Appellate Court as the official Lustration Court.⁵² In addition to judges from the Appellate Court, judges from the *voivodeship* courts, the next level down from appellate, can also serve on the Lustration Court. If there is a defamation claim, where a person feels that he has been falsely accused in public of collaboration, then the Court can begin proceedings without instigation from the Office of the Commissioner of Public Interest, granting individuals the ability to publicly clear their names.⁵³ The Lustration Court is governed by the Polish Code of Criminal Procedure, and like most criminal courts, it can find the accused either guilty, not guilty, or dismiss the case due to a lack of evidence.⁵⁴ Additionally, any person found guilty of telling a “lustration lie” has the ability to appeal

⁵¹ 1997 Polish Lustration Act, Chapter 3 Article 17

⁵² Czarnota, 2007, 232.

⁵³ David, 2003, 417

⁵⁴ 1997 Polish Lustration Act, Chapter 4 Article 27.

the decision, in which case the hearing will be presided over by a three-judge panel consisting of at least two appellate judges, including the Chief Justice.⁵⁵

The main goal of the Polish Lustration Act was to provide a solution to the defamation and file regulation problems without infringing on human rights and the rule of law, which are important standards in any emerging democracy, especially one that is attempting to distance itself from a prior regime that was notorious for human rights and Rule of Law violations. The three mechanisms mentioned earlier are the means through which the Polish law reconciles these potentially contradictory goals. The lustration statement focuses the attention on officials' moral qualifications for office rather than on the specific offense that they may or may not have committed in the past. This approach not only seeks to avoid sticky statute of limitations claims and other legal issues, but also potentially strengthens public trust in officials, something that was seriously lacking under communist rule.⁵⁶ The other two mechanisms, the Office of the Commissioner, and the Lustration Court, seek to ground the lustration process in law. By applying the Polish Criminal Code, as opposed to a civil code with a lesser threshold for conviction, the accused are given every opportunity to clear their name, and substantial evidence is required for a conviction. Also, because the Commissioner him/herself is a member of the legal community, and has no political affiliations, the initiation process and evidence review is at least theoretically cleared of any political favoritism or targeting.

These mechanisms are what gives the Polish law what David terms its “reconciliatory” characteristics, or what other authors have called “soft” characteristics.⁵⁷

⁵⁵ 1997 Polish Lustration Act, Chapter 4 Article 24

⁵⁶ Horne, 2014, 220.

⁵⁷ Czarnota, 2007, 227.

These features highlight the uniqueness of the Polish law, especially against the backdrop of lustration “exclusionary” or “hard” lustration policy in Czechoslovakia, which sought to oust officials for acts committed under communist rule, and was a procedurally bureaucratic.⁵⁸ Unlike the Czechoslovak law, which explicitly sought some sort of discontinuity with the past, the Polish law attempts to reckon with the past while also moving towards the future through its focus on truth and public reconciliation. In its review of the Polish Lustration Law, the Helsinki Foundation for Human Rights highlights the legal focus of the law and argues that most of the problems lie in the implementation of the law.⁵⁹ For instance, in the case of *Matyjek v. Poland*, the European Court of Human Rights secured the accused full access to the information presented against him/her, a right that is guaranteed under the law but was not applied fully in practice.⁶⁰

Although I will not excessively dwell on the implementation of the Polish lustration law, since my argument is geared towards explaining the shape and timing of the law, it is important to at least briefly go over the outcome of the legislation. After some initial problems, including a change in the design of the lustration court and in the organization created to preside over the secret police files, the law functioned quite well from 2000-2004.⁶¹ The number of positive affidavits was fairly low, with 315 positive affidavits submitted during the first four years (1999-2002), of which 165 were deemed

⁵⁸ Williams, 2003, 1.

⁵⁹ “Tadeuz Matyjek v. Poland: Written Comments by the Helsinki Foundation for Human Rights,” November 2, 2006, 2.

⁶⁰ Matyjek v. Poland Written Comments, 3.

⁶¹ David, 2011, 158.

unwarranted, and 150 of which were sent on to the newspaper.⁶² However, the lustration process was somewhat derailed in 2004 when Bronislaw Wildstein made public a list from the archives that contained the names of around 240,000 Poles who allegedly had contact with the secret police.⁶³ This naturally caused a huge flow of lustration requests from people who were implicated, which swamped the Office of the Commissioner and the Lustration Court and generally caused the population to view lustration proceedings in a more negative light.⁶⁴ All things considered, the 1997 law at least theoretically does an admirable job of addressing the controversies that naturally arise when pursuing transitional justice and democratization concurrently. Although the consequences of the law in terms of public opinion were not ideal, this was largely due to the context and unforeseen circumstances rather than any kind of flaw in the legislation itself.

The questions remain: why did the 1997 Polish law pass when it did, and why did the law take the shape that it did? I have discussed the context leading up to the law as well as the specific dilemmas that the law sought to address, and my claim is that the only way to really understand why the law passed when it did and in the shape that it did is through an examination of the historical context *prior to transition*. Only by looking at the historical factors that emerged before transition can we gain a clear understanding of the path to the kind of lustration that occurred in Poland in 1997. Once again, I am not stating that the post-communist political context is unimportant. As Williams et, al identify, the legislative politics present in 1997 do go a long way towards explaining why the particular draft was passed in Poland. They particularly stress the controversies arose

⁶² David, 2003, 424.

⁶³ David, 2011, 157.

⁶⁴ David, 2011, 158.

from the politicization of the files and the political effects of public denunciations as main causal factors for the passage of the law.⁶⁵ However, this explanation cannot explain why lustration did not occur prior to 1997 like it did in Czechoslovakia and Hungary, since the first political crises surrounding the files arose almost immediately after transition. Roman David's explanation partially addresses this issue by singling out popular attitudes towards past elites as the causal variable. But how did these attitudes come about? Why were these attitudes different in Poland in 1997 compared to the years from 1990-1996? The introduction discussed the importance of transitional justice mechanisms in securing a consolidated democracy. In their groundbreaking study in comparative democratization, Capoccia and Ziblatt discuss the importance of pre-transition institutions and the ideas that shape them in determining the stability of the democratic regime after transition.⁶⁶ Although their analysis focuses on the initial emergence of democracy in Europe, the same tools can be utilized when studying the transition from communism to democracy. In order to understand the influence and power of institutions and ideas after transition, which is necessary for a deeper understanding of the factors that shaped the transitional justice process, we must look to the historical developments that occurred before transition.

⁶⁵ Williams et. al, 2005, 29.

⁶⁶ Giovanni Capoccia and Daniel Ziblatt, "The Historical Turn in Democratization Studies: A New Research Agenda for Europe and Beyond" *Comparative Political Studies* 43, nos. 8-9 (June 2010): 945-6.

Chapter 2: Historical Institutionalism and Solidarity

2.1 Methodological Approach: New Institutionalism

Although the study of political and economic institutions has been a hallmark of political science since Weber, recent changes in approach have greatly widened the scope and explanatory power of institutionalist arguments. Whereas classic institutionalism focuses solely on the study of formal institutions and processes such as legislative bodies or state bureaucracies, “new institutionalism” has both broadened the definition of institutions and expanded the methods through which they can be studied, while maintaining the central thesis of classic institutionalism; that institutions have a profound effect on political and economic life. Peter Hall has classified these “new institutionalisms” into three categories: historical, rational choice, and sociological institutionalism⁶⁷ (although Vivien Schmidt has argued that there exists a fourth, discursive institutionalism, from which I will borrow some ideas later in this analysis).⁶⁸ Since I will be making a historical institutionalist argument, it is necessary to give a very brief summary of historical institutionalism (HI).

Historical institutionalists generally view institutions as “the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy.”⁶⁹ This definition is somewhat more expansive than that employed by rational choice institutionalists, who limit their focus to the rules of the game, which then determine institutional outcomes, and somewhat less expansive than that of sociological institutionalists, who employ normative arguments to treat social

⁶⁷ Peter A. Hall and Rosemary C. R. Taylor, “Political Science and the Three New Institutionalisms,” *Political Studies* 44, no. 4 (1996): 936-957.

⁶⁸ Vivien A. Schmidt, “Putting the Political Back into Political Economy by Bringing the State Back in yet Again,” *World Politics*, 61, no. 3(2009): 516-546.

⁶⁹ Hall, 1996, 938.

tendencies and behavior as institutions.⁷⁰ According to Peter Hall, historical institutionalists are distinct in that they tend to “view institutional development in terms of unintended consequences and path dependence,” determined by prior historical processes. Besides, they believe that other factors, such as (historically rooted) ideas, can have consequences for political behavior and decision-making.⁷¹ Because I am going to employ some historical institutional concepts and methods such as critical juncture, path dependence, and counterfactual analysis in the subsequent section, I believe some conceptual clarification is required.

Political Science literature has witnessed a proliferation of critical juncture arguments, oftentimes without an accompanying definition of what exactly makes a juncture critical or why a specific critical juncture is chosen among a sea of other junctures. In their 2007 article, Capoccia and Keleman clarify this conceptual befuddlement by highlighting the two key characteristics of a critical juncture: the probability jump and the temporal aspect.⁷² While these terms may sound complicated, they are actually relatively straightforward. The probability jump measures probability that a certain outcome has of occurring before the critical juncture as opposed to the probability of the same outcome after the juncture. The temporal element is simply the amount of time involved in a juncture, whether measured in days, months, years, or nanoseconds. The temporal aspect takes into account the length of the path that a certain

⁷⁰ James G. March and Johan P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: Free Press, 1989).

⁷¹ Hall, 1996, 938.

⁷² Giovanni Capoccia and R. Daniel Kelemen, “The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism,” *World Politics* 59, no. 3 (2007): 341-369.

juncture facilitates. In other words, a long juncture can still be critical when it causes a long path dependent process. Basically, a juncture is very critical when there is a high probability jump combined with a short juncture and long path. Certainly, a juncture can still be critical if the probability jump is slightly lower and the strength of the temporal ratio decreases, but a juncture is not critical when a small probability jump is combined with an inefficient temporal ratio. This is by no means an exact science, as the probability jump is often hard to measure, and the temporal ratio may or may not be clear, but it does provide us with a more methodological strategy for identifying and comparing critical junctures.

Although this abstract conceptualization of critical junctures is certainly helpful, it may be useful to look quickly at one exemplary and easily understood case study that uses this type of analysis. In his study of Weimar Germany, Henry Ashby Turner identifies the specific time period that *caused* the subsequent democratic breakdown that began with Hitler's appointment as chancellor in 1933.⁷³ Using regime change as his observed outcome, Turner points to a specific thirty-day period during which a full return to democracy became impossible. However, Turner highlights the fact that the appointment of Hitler was by no means inevitable and that even during this period there were other options on the table. However, specific actions taken by specific individuals, such as Von Papen and Hindenburg, had an exponentially greater effect on the outcome, regime change, than they would have had during a different time period. This is the probability jump factor. Although institutions are normally stable, the thirty-day period leading up to Hitler's appointment represents a time of great institutional flux, where the

⁷³ Henry Ashby Turner, *Hitler's Thirty Days to Power* (Reading, Mass.: Perseus, 1996).

likelihood of change is greatly increased. This high probability jump combined with a strong temporal ratio (30 day critical juncture, 12 year path) is what makes this case a strong example of a critical juncture.⁷⁴

Another important aspect of an HI argument is the analysis of counterfactuals. Although counterfactual arguments based on events that *could have happened* have generally been shunned by positivist political scientists, there has been a flurry of political science scholarship that has sought to gain a deeper and more rigorous understanding of counterfactuals, in order to better understand when certain outcomes occur. For instance, in their comparative study of democratization in Europe, Capoccia and Ziblatt examine counterfactual ‘near misses,’ instances where democratization might have occurred but did not, in order to gain a deeper understanding of the instances in which democratization did indeed occur.⁷⁵ Similarly, in the previously mentioned Wiemar example, Turner analyses counterfactual near-misses, such as the possibility of Germany becoming a military dictatorship, that serve to augment our understanding of the factual outcome: Hitler’s appointment and the subsequent democratic reversal. This kind of analysis serves to highlight the agency of individuals, showing how seemingly trivial decisions can change important potential outcomes. Counterfactuals have greatly expanded the range and scope of potential explanatory arguments by adding greater amounts of data to the equation. This logic is mathematically simple: including near misses greatly increases the number of cases that we can consider in any analysis, making the results much more robust.

⁷⁴ Capoccia and Kelemen, 2007, 346.

⁷⁵ Capoccia and Ziblatt, 2010, 931-968.

These concepts are central to the development of the HI portion of my argument; that lustration occurred in Poland when it did because of certain historical events that occurred before the transition to democracy. Although the events that occurred during and after transition were important, as noted by other authors and earlier in this analysis, my selection of a particular critical juncture before transition goes further in explaining the real roots of transitional justice in Poland. I will now go into detail about what exactly these events were and how they relate to lustration law, focusing on the outcome variable, counterfactual ‘near misses,’ probability jump, and temporal ratio. In this way, I will attempt to craft a more nuanced, country-specific account of the transitional justice process in post-communist Poland.

2.2 The Birth of Solidarity: The Critical Juncture

The birth of Solidarity as the first independent trade union in the Soviet bloc, which occurred in the wake of massive workers strikes in the summer of 1980, was a watershed event in the development of civil society in Eastern Europe. However, before identifying the critical juncture that occurred during this period, it is important to provide some background that illustrates the conditions that gave rise to Solidarity. The natural place to begin this short back-story is the signing of the Helsinki Agreements by the Soviet bloc states on August 1, 1975. Although the representatives of the Warsaw Pact (Edward Gierek represented Poland) certainly did not understand the implications of their actions, by signing an agreement that explicitly recognized universal human rights, the communist regimes effectively created a crack in the façade of political life in the Soviet

bloc.⁷⁶ Through this crack, civil society groups such as Charter 77 in Czechoslovakia, and the Workers Defense Committee (KOR) in Poland, were not only able to form, but were able to hold their respective regimes accountable for human rights violations perpetrated by the communist authorities.⁷⁷ Although members of both Charter 77 and KOR endured constant surveillance, as well as the threat and reality of imprisonment, they were able to present an alternative narrative to that of the state, with devastating effects for the credibility of the communist regimes.⁷⁸ Also, Solidarity was by no means the first labor organization to challenge the authority of the state in Poland. In fact, the Free Trade Unions of the Baltic Coast (WZZ) was founded in 1978, and was essentially a blueprint for Solidarity, albeit at the regional level only.⁷⁹ Against this backdrop, the seemingly indestructible Polish institutions of communist power, which had remained relatively unchanged since 1947, suddenly entered a period of flux.

The critical juncture that I have indentified began at 6 AM on August 14, 1980 in the aptly named Lenin Shipyard in Gdansk, with the first strikes protesting the firing of Anna Walentynowicz. The juncture ended on November 10th with the official recognition and registration of Solidarity as a fully independent trade union by Polish Supreme Court.⁸⁰ Before discussing the details and reasoning behind this selection of dates, it must be noted that this 89-day period is by no means set in stone, and there are certainly other dates that could have been considered as start or endpoints. For instance, the signing of

⁷⁶ Vladimir Tismaneanu, *Reinventing Politics: Eastern Europe from Stalin to Havel* (New York: The Free Press, 1992), 117.

⁷⁷ Tismaneanu, 1992, 116-23.

⁷⁸ Adam Michnik, *Letters from Prison and Other Essays* (Berkeley: University of California Press, 1995), 25.

⁷⁹ Michael Szporer, *Solidarity: The Great Workers Strike of 1980* (Lexington Books: Plymouth, 2012), ix.

⁸⁰ Szporer, 2012, 317.

the Gdansk agreement, which ended the August strikes and accommodated the demands of the strikers, by Solidarity leader Lech Walesa and Deputy Prime Minister Mieczyslaw Jagielsky on August 31st is a both a potential start and end date, since it represents both the culmination of the strike that began on August 14th and also the formation of Solidarity as a coherent movement.⁸¹ Also, the declaration of martial law on December 12, 1981 is another potential endpoint for the critical juncture that began with the birth of Solidarity, since it represents the end of one period and the start of a new path.

The reason that the period between August 14th and November 10th is the most critical juncture for this analysis is because of the outcome variable. Because I am looking at the development of democratic legitimacy, which is what had a direct effect on the timing of lustration, rather than specific institutional changes or even the broader topic of regime change in Poland, this time period is the most critical. Although the Gdansk accords certainly enhanced the credibility of Solidarity as an organization, since they illustrated the group's power to secure democratic concessions from the state, the regime still could have potentially gone back on its word and crushed the movement in its infancy. However, after the Supreme Court rejected the proposition from the lower-level Warsaw Court that sought to amend Solidarity's independent status, the group's path to democratic legitimacy was ensured.⁸² The Supreme Court decision solidified the crack in the façade of the communist system, and once in place, this small crack proved impossible to mend. This is also the reason that the declaration of martial law, albeit hugely important for the day-to-day operations of Solidarity as a functioning trade union, was not the most important date in terms of the development of democratic legitimacy.

⁸¹ Szporer, 2012, 317.

⁸² Szporer, 2012, 315.

Although the movement that eventually became Solidarity can be tracked back to well before August 14, 1980, the start of the August strikes marks the public mass proliferation of discontent with the regime, and it was this mass discontent that Solidarity was able to capitalize on. Although there had been a student movement in Poland in 1968, workers strikes in 1970, the formation of KOR in 1976, and the formation of WZZ in 1978, the probability that an independent alternative to the communist power structure would arise from *inside* the system was essentially non-existent before the mass August strikes. This is the previously discussed probability jump element. The massive strikes, which by August 30th had expanded to over 700 industries in Poland essentially crippling the already struggling Polish economy, changed the very nature of the Polish political landscape.⁸³ This newfound political consciousness was not only a product of the workers strikes; as academics, artists, dissidents, and religious figures quickly backed the strikers by adding their voices to the general call for reform.⁸⁴ In the face of such massive popular resistance, First Secretary Gierek reportedly declared his doubts about the willingness of Polish soldiers to fire on the striking and protesting workers, which, along with a heart attack, probably had something to do with his dismissal on September 5th.⁸⁵ By the time that the Supreme Court officially declared and registered Solidarity as a totally independent trade union, the probability of a democratically legitimate institution inside the Polish state had gone from essentially non-existent to highly likely.

⁸³ Andrezej Paczkowski and Malcolm Byrne, eds., *From Solidarity to Martial Law: The Polish Crisis of 1980-1981, a Documentary History* (CEU Press: Budapest, 2007), xxxi.

⁸⁴ Tismaneanu, 1992, 119.

⁸⁵ Paczkowski and Byrne, 2007, xxxii.

2.3 Counterfactual Analysis

The probability of the observed outcome, the creation of a democratically legitimate institution, certainly increased dramatically during this critical juncture, but this result was by no means inevitable. This is the counter-factual element that is so crucial to any HI analysis. In the Polish case, the strikes and birth of Solidarity eventually resulted in the mass credibility and legitimacy of Solidarity as a democratically functioning institution. At the time of its First National Congress of Delegates, which began in September 1981, Solidarity membership had skyrocketed to over 8.9 million members in a country with a total population of 35 million.⁸⁶ Despite this explosion of popular support, the observed factual outcome was never a certainty, as there were alternative paths that could have been taken both during and after the critical juncture. After all, the only two instances in the Soviet bloc states where the communist regimes attempted to institute more democratic institutions, in Hungary in 1956 and Czechoslovakia in 1968, resulted in immediate Soviet military intervention. Against this backdrop, many Solidarity leaders feared that the Soviets would intervene in Poland, and recent evidence from the Soviet archives shows that these fears were not unfounded.

In a letter from then General Secretary Leonid Brezhnev to the leader of the East German Communist Party leader Erich Honecker dated November 4, 1980, the Soviet leader expresses grave concern over the situation in Poland and states, “Counter-

⁸⁶ Thomas Kozlowski, “The Birth of Solidarity: Dynamics of a Social Movement,” presented at Columbia University’s East Central European Center on October 4, 2011, available at <http://www.columbia.edu/cu/ece/research/intermarium/vol14/Kozlowski.pdf> (Accessed May 5, 2015).

revolution is advancing and practically grabbing at the party's throat."⁸⁷ Brezhnev goes on to discuss the "need to break the tide of events and to launch our own offensive against the forces of counter-revolution."⁸⁸ In response to this letter, Honecker wrote to Brezhnev declaring the urgent need to organize a gathering of communist bloc leaders so that they could "work out collective emergency measures to assist our Polish friends in overcoming the crisis that, as you know, is escalating day after day."⁸⁹ This correspondence is indicative of the attitude that the Soviet bloc leaders took towards the ongoing situation in Poland. In fact, as early as August 28, the Soviet Union had put its military units on full combat alert in preparation for a possible military action in Poland.⁹⁰ Even after the end of the identified critical juncture, a full military intervention was still on the table as a possible solution to the "Polish problem."

In a top-secret memorandum dated June 16, 1981, Soviet defense minister Marshal Dmitrii Ustinov declared, "The CPSU Central Committee and the Soviet government, together with the fraternal parties and governments of the member-states of the Warsaw Pact, will provide comprehensive support to Poland."⁹¹ This language is eerily similar to the arguments put forward before and after the invasions of Hungary and Czechoslovakia; in particular, the declaration of "comprehensive support" is reminiscent

⁸⁷ "Letter from Leonid Brezhnev to Eric Honecker," November 4, 1980, in *From Solidarity to Martial Law: The Polish Crisis of 1980-1981, a Documentary History*, eds., Andrezej Paczkowski and Malcolm Byrne, (CEU Press: Budapest, 2007), 132.

⁸⁸ Brezhnev to Honecker, 132.

⁸⁹ "Letter from Eric Honecker to Leonid Brezhnev," November 26, 1980, in *From Solidarity to Martial Law: The Polish Crisis of 1980-1981, a Documentary History*, eds., Andrezej Paczkowski and Malcolm Byrne, (CEU Press: Budapest, 2007), 134.

⁹⁰ Paczkowski and Byrne, 2007, xxxi.

⁹¹ Mark Kramer, trans., "Declassified Documents from the Russian State Archive of Recent History," in Michael Szporer, *Solidarity: The Great Workers Strike of 1980* (Lexington Books: Plymouth, 2012), 329.

of the build-up to each invasion. In light of the attitudes expressed by these important officials, the question must be asked: why was Solidarity allowed to operate as an independent trade union for well over a year, if the “counter-revolutionary” nature of the Solidarity movement was such a threat to communist rule? Why was there no immediate crackdown on the striking workers such as occurred in Poland in 1970? There are no easy answers to these questions, but a closer examination of the actions taken by key players during the critical junctures provides some clarity.

2.4 Actors, Actions, and Repercussions

One of the crucial aspects of a critical juncture is that decisions or non-decisions made by key players often have a greater impact than they would during a time of institutional stability. Additionally, random chance and unforeseen consequences (such as the emergence of civil society in the aftermath of the Helsinki Agreement) often play a key role in determining outcomes, setting an institution down a path that none of the actors foresaw. When the juncture began on the morning of August 14, Edward Gierek, the man who could have ordered a crackdown on the striking workers was on vacation in Crimea (exactly like Gorbachev during the August coup in 1991).⁹² Because of the explosive nature of the Solidarity phenomena, it is likely that an early crackdown would have been more effective than a crackdown after the proliferation of Solidarity membership. However, by the time that Gierek returned to Poland, the regime had lost its golden opportunity to nip the strike in the bud and prevent the spread of the movement. Clearly, we will never know what would have happened if the order for a crackdown had been given early on, but once the strike had spread from the Lenin shipyards to 700 major

⁹² Paczkowski and Byrne, 2007, xxx.

workplaces, the opportunity for an internal crackdown that would have prevented the rise of Solidarity as a unified and legitimate political institution was lost.

Another decisive moment that occurred during the critical juncture is the aforementioned signing of the Gdansk agreement by Walesa and Jagielsky. Although the concessions granted to the workers of the Lenin shipyard might not have had such enormous repercussions during a time of institutional stability, this small victory was of huge symbolic importance for both the legitimacy of Solidarity as an independent union, and for the Polish state, which lost its monopoly on political life in Poland. The Gdansk agreement is highly ironic, since the workers were making demands on the state that ostensibly ruled with a mandate derived from the working class. After the signing of the agreement the communist government could no longer support the myth of popular support, which had served to protect the regime against dissent. Vaclav Havel famously identified this state of being as “living within a lie,” where the post-totalitarian state only needed the population’s tacit, ritualistic acceptance in order to maintain an iron grip on power.⁹³ The Gdansk agreement and the subsequent registration of Solidarity as an independent trade union by the Supreme Court shattered this myth for good in Poland, and even the imposition of martial law by General Jaruzelski on December 13, 1981 could not revert Poland back to its pre-Solidarity norms.⁹⁴

It should be noted that the key actors in the Polish Communist establishment also played key roles in the drama that led to mass support for Solidarity. Stanislaw Kania replaced the ineffectual Edward Gierek as party leader on September 5, but was unable to

⁹³ Vaclav Havel, *The Power of the Powerless and other Essays* (New York: Palach Press, 1985), 12.

⁹⁴ Tismaneanu, 1992, 120.

resolve the conflicts that were tearing apart society.⁹⁵ During Kania's short tenure as party leader it was one particular non-action, the fact that he did not call on the Soviet Union for help, rather than any particular action that had the largest effect on the observed outcome. Unlike the communist leadership in Hungary in 1956, elements of which appealed for Soviet intervention, Kania and the Polish party insisted that the crises was a Polish problem with a Polish solution.⁹⁶ However the Polish solution to the problem, the imposition of martial law, did not take place until late 1981, once Jaruzelski had replaced Kania as party leader. Again, it is unclear whether there would have been a different outcome if this decision had been made in the earlier stages of the crises, but the factual results demonstrate that martial law came far too late to prevent Solidarity from securing a democratic foothold in Polish politics.

The path from the critical juncture to the passage of the lustration law in 1997 may not be immediately clear. However, by focusing on the outcome variable, democratic legitimacy, the timing of lustration in Poland begins to make sense. As I discussed in the introduction, most transitional justice mechanisms, including lustration, are passed with the intention of securing the legitimacy of the new regime. However, in the Polish case, the new democratic regime already enjoyed a great deal of legitimacy in the wake of Solidarity's landslide victory in Poland's first democratic elections in the summer of 1989.⁹⁷ The negotiated transitional settlement allowed Solidarity to compete for 20% of the seats in the Sejm and contest all the seats in the Senate in the first

⁹⁵ Szporer, 2012, 316.

⁹⁶ Paczkowski and Byrne, 2007, xxx.

⁹⁷ Tismaneanu, 1992, 193.

elections in the summer of 1989.⁹⁸ Although Solidarity expected some electoral success, they were not expecting to win 99 percent of the seats in the Senate (the only non-Solidarity candidate to win was a wealthy independent), and take 161 out of 260 possible seats in the Sejm.⁹⁹ This democratic mandate, along with the legitimacy gained during and after the 1980 critical juncture, gave Solidarity more political capital than was enjoyed by the other fledgling democracies of the former Soviet bloc. Thus when Prime Minister Mazowiecki declared his “thick line” policy, he was actually able to uphold it. In the opposite situation, the extremely popular new Czechoslovak President Vaclav Havel, was unable to prevent his country from passing lustration measures. Unlike Poland, Czechoslovakia did not have a coherent and experienced democratic organization to step up and assume a leadership role after the downfall of the communist regime. In *The Magic Lantern* Timothy Garton Ash illustrates the chaotic nature of the opposition movement in Czechoslovakia, where Havel essentially held court in the basement of a theater, and many actors with very different agendas and backgrounds interacted in ways that were not regulated by the oppositional organization, Civic Forum.¹⁰⁰ Because of the decisions made by key individuals during the critical juncture in 1980, Poland did have such an organization, and so when the new regime decided to focus on democratic consolidation and the transition to capitalism, this message resonated with the Polish

⁹⁸ Ryszard Pachocinski, “Solidarity after the 1989 National Election in Poland,” *International Journal on World Peace* 6, no.3 (July 1989): 75.

⁹⁹ Pachocinski, 1989, 75.

¹⁰⁰ Timothy Garton Ash, “Prague: Inside the Magic Lantern,” in *The Magic Lantern: The Revolution of '89 Witnessed in Warsaw, Budapest, Berlin, and Prague* (New York: Vintage Books, 1993).

people.¹⁰¹ This allowed the Polish state to move forward with the transition, putting off transitional justice measure during the first years of the fledgling Polish democracy.

¹⁰¹ David, 2011, 158.

Chapter 3: Shaping the Law

The question of why the 1997 Polish lustration law took the shape that it did has no easy answers. Unlike the timing of the law, which I have attempted to explain through a fairly precise causal chain, the shape of the law cannot be traced back to any one specific event or time period. However, this does not mean that we cannot identify some factors that played an important role in creating the political and social climate that shaped the law. The two factors that played the most important roles in the formulation of Polish political thought prior to and after transition were the Catholic Church and the dissident movement (many dissidents and Catholic clergymen were involved with Solidarity, which brought together people from many different walks of life, including over 1 million communist party members).¹⁰² The evidence of these two group's influence on the Polish law can be found in already discussed unique aspects of the 1997 law: the focus on truth, and the respect for the rule of law. In this section I will describe the key players, events, and discourses coming from dissidents and the Catholic Church, and illustrate how these ideas influenced political culture, including popular attitudes towards past elites.

3.1 The Church and the Left

This section will not attempt to give a history of Catholicism in Poland, as such an endeavor is well beyond the scope of the present paper, but rather will focus on the impact of the Catholic Church on politics before, during, and after transition. Although the Church certainly played a role in the political dynamics of the early communist period, with some scholars even arguing that the Church played a role in the

¹⁰² Kozłowski, 2011, 6.

establishment of communism,¹⁰³ the natural place to start looking closely at the role of the Church is in 1976 with the formation of KOR. As discussed earlier, the formation of human and workers' rights organizations in the wake of the Helsinki Agreements of 1975 represent a shift in the political relationship between the communist controlled state and other social and political groups. So although the Church might (or might not) have played a role in the establishment of communism in Poland and certainly had an influence on life in Poland during the first 30 years of communist rule, my analysis will only examine the ideas and events that took place after this shift, since in my opinion it is these events and ideas that had an influence of the post-transition political landscape.

Although I will not discuss specific actors and events that occurred before 1976, it is important to have a brief background discussion of the Catholic Church and its relationship with the communist state. As Vladimir Tismaneanu writes, the Church in Poland maintained its political influence in the face of attacks from the communist authorities largely due to its supranational nature and subordination to the Vatican, which endowed the Polish Church with substantial international backing.¹⁰⁴ This resulted in the Church coming to represent the last bastion of civil society in a Poland where, outside of the Church, there was little room for political discussion, especially in the first two decades of communist rule.¹⁰⁵ Although recent revelations by clergymen such as Father Tadeusz Isakowicz-Zaleski illustrating the infiltration of the Church by the communist era security services are certainly sobering, they do not undermine the position of the

¹⁰³ Michael Fleming, "The Ethno-religious Ambitions of the Roman Catholic Church and the Ascendancy of Communism in Post-war Poland (1945-50)," *Nations & Nationalism* 16, no. 4 (October 2010): 637-656.

¹⁰⁴ Tismaneanu, 1993, 25.

¹⁰⁵ Tismaneanu, 1993, 25.

Catholic Church in Poland as a facilitator of dissent.¹⁰⁶ Recent figures put the number of informants inside the clergy at around 15 percent of the 25,000 priests in Poland, and while this may seem like a large number, it pales in comparison to the statistics from other communist bloc countries.¹⁰⁷ For instance, the relationship between the Orthodox Church and the Romanian secret police (Securitate) was quite close. Although there is no accurate figure for the number of collaborators among the clergy, some put it as high as 80-90 percent.¹⁰⁸

From the beginning, KOR represented a heterogeneous group of social and political thinkers. For instance, the initial membership of the organization included Jerzy Andrzejewski, a writer with “homosexual leanings,” Halina Mikołajska, a famous actress, and F. Zieja, a priest.¹⁰⁹ Both of KOR’s leading figures, Adam Michnik and Jacek Kuron, wrote and discussed about the power and influence of the Christianity on any potential social movement in Poland. In his 1975 essay “Christians Without God,” Kuron attempted to take biblical Christian values and transform them into an oppositional platform, and in his 1977 book “The Church and the Left,” Michnick laid down the framework for dialogue between leftist dissidents and the sympathetic elements inside the Catholic Church.¹¹⁰ Not only did the Church provide incredible moral leverage for KOR’s oppositional aims, it also sometimes provided important infrastructure, such as

¹⁰⁶ Michael Szporer, "Managing Religion in Communist-Era Poland," *Journal Of Cold War Studies* 12, no. 3 (Summer 2010): 116.

¹⁰⁷ Szporer, 2010, 116.

¹⁰⁸ Lavinia Stan and Lucian Turcescu, "The Devil's Confessors: Priests, Communists, Spies, and Informers," *East European Politics & Societies* 19, no. 4 (Fall 2005): 673.

¹⁰⁹ Nina Witoszek, "Friendship and Revolution in Poland: The Eros and Ethos of the Committee for Workers' Defense (KOR)," *Critical Review Of International Social & Political Philosophy* 10, no. 2 (June 2007): 220.

¹¹⁰ Witoszek, 2007, 223.

meeting halls, which helped transmit KOR's message to a broader audience.¹¹¹ This strange alliance during the initial phase of dissent is important, as it set the stage for even greater cooperation between the Church and KOR's brainchild, Solidarity.

Despite the Church's involvement in Poland's political landscape during the first 30 years of communist rule, the election of Karol Wojtyla, the archbishop of Kraków, as pope on October 16th, 1978, is widely acknowledged as the watershed event for Catholicism in Poland in the 20th century.¹¹² Wojtyla's election as Pope John Paul II and his two subsequent visits to Poland, the first one coming on June 2nd, 1979, and the second one coming during the martial law period, are certainly critical events that played an important role in the development and cohesion of Solidarity as a mass movement and the eventual downfall of the communist regime.¹¹³ The discourse that came out of the Pope's first visit, which included massive outdoor speeches, was concentrated on the theme of human dignity, which struck a chord with a Polish populace who had been living under the harsh yoke of communist rule for almost 35 years. John Paul II represents what Murray Edelman termed a "condensation symbol,"¹¹⁴ which served to mobilize Polish society around his figure and his message of moral dignity, while reigniting the deep seeded Roman Catholic identity that had laid dormant in many Poles.¹¹⁵ This was obviously dangerous for the secular communist order. As one Italian journalist memorably claimed at the time, "the Soviets would prefer Aleksandr

¹¹¹ Witoszek, 2007, 225.

¹¹² Szporer, 2010, 115.

¹¹³ Gracjan Kraszewski, "Catalyst for Revolution: Pope John Paul II's 1979 Pilgrimage to Poland and Its Effects on Solidarity and the Fall of Communism," *The Polish Review* (2012), 27.

¹¹⁴ Mayer N. Zald, "Politics and Symbols: A Review Article," *Sociological Quarterly* 7, no.1 (Winter, 1966): 85-91.

¹¹⁵ Szporer, 2010, 115.

Solzhenitsyn as Secretary-General of the United Nations than a Pole as Pope.”¹¹⁶ The communist campaign against religion in Poland, which did not succeed in eliminating Christianity as a factor but did succeed in limiting its political and social influence, at least for a time, failed to prevent the spread of religious joy and Polish national pride that sprung up in the wake of John Paul II’s election and 1979 visit.¹¹⁷

However, the Church’s interactions with the state were not always straightforwardly in favor of revolutionary change, even after the rise of Solidarity. For instance, in an important speech on August 26th, 1980, the highly influential primate of Poland, Cardinal Stefan Wyszyński, sympathized with the discontent of workers, but dismissed strikes as a solution to the problem and urged the workers to go back to work before further harm was inflicted on the Polish economy.¹¹⁸ Also, immediately after the imposition of martial law on December 13th, 1981, the Vatican released a brief statement that did not directly denounce the regimes actions, but instead decried that “everything possible must be done to peacefully build the future of the Homeland.”¹¹⁹ However, five days later the Pope would take a much stronger stance in a letter to Jaruzelski, appealing the General’s conscience and demanding that the “threat of death and repression” be lifted before the start of the Christmas Holidays.¹²⁰ As these various interactions indicate,

¹¹⁶ Kraszewski, 2012, 26.

¹¹⁷ Kraszewski, 2012, 27.

¹¹⁸ “Cardinal Wyszyński’s Sermon at Jasna Gora Following the Outbreak of Strikes with Reactions,” in *From Solidarity to Martial Law: The Polish Crisis of 1980-1981, a Documentary History*, eds., Andrezej Paczkowski and Malcolm Byrne (CEU Press: Budapest, 2007), 51-4.

¹¹⁹ “Speech by Pope John Paul II Concerning Martial Law,” December 13, 1981, in *From Solidarity to Martial Law: The Polish Crisis of 1980-1981, a Documentary History*, eds., Andrezej Paczkowski and Malcolm Byrne (CEU Press: Budapest, 2007), 475.

¹²⁰ “Appeal from Pope John Paul II to Wojciech Jaruzelski,” December 18, 1981, in *From Solidarity to Martial Law: The Polish Crisis of 1980-1981, a Documentary*

the political aspirations of the Church in Poland were somewhat convoluted, but the influence of the Church on the Solidarity movement and leadership as well as the international political clout of John Paul II re-established the Church as a major player in everyday Polish politics before transition, which made it easy for the Church to consolidate its influence in the post-transition period.

3.2 Round Table and Post-Transition Influences

Taken by itself, the described interaction between the Church, dissident movements, and the communist authorities may not seem to be connected to the post-transition political climate in general or to the development of the lustration law in particular. However, these actions and interactions that occurred during the 70's and 80's made possible the developments that occurred during and after transition, which had a direct effect on shaping the law. This is especially evident in the role that the Church played during the round-table discussions that occurred in the summer of 1989. Because the Church had at least some credibility with both sides (the communists saw the Church as a somewhat tempering influence on the Solidarity movement), the Church played the role of mediator in the discussions, much like the royalty did in Spain during the transition to democracy in the late 70's.¹²¹ Although the Church did not actively participate in the round-table negotiations, there were two designated clergymen who attended the talks, whose role was to “mediate during critical moments and to witness the

History, eds., Andrezej Paczkowski and Malcolm Byrne (CEU Press: Budapest, 2007), 480-1.

¹²¹ This comparison was formulated during lectures by and discussions with Vladimir Tismaneanu at the University of Maryland, Spring 2012.

negotiations.”¹²² However the most crucial contribution that the Church made to the process of transition was the agreement for partially free elections (with the communist party guaranteed to maintain a majority), which was proposed by the Church and agreed upon before the round-table agreements.¹²³

The actions of the Church within the oppositional movements and the transitional negotiations granted it great legitimacy after the transition to democracy. And in typical fashion, the Church proceeded to capitalize on this legitimacy in order to influence the day-to-day politics of post-transition Poland in an effort to “guide Poland through democracy to morality.”¹²⁴ These attempts to guide Poland towards morality included directly lobbying for or against certain candidates for office. For instance, the Church openly lobbied against the eventually successful presidential bid of the secular leftist Kwasniewski in 1995.¹²⁵ However, there were many other instances where the Church’s influence was much more successfully translated into political action. In December of 1992, the Sejm passed an amendment to the law governing broadcasting rights that required both public and private radio and television programs to “respect the religious feelings of the audience and in particular respect the Christian system of values.”¹²⁶ This type of action caused ombudsman Tadeusz Zielinski to declare that Poland was close to

¹²² Wiktor Osiatynski, “Roundtable Talks in Poland,” in *The Roundtable Talks and the Breakdown of Communism*, ed. Jon Elster (Chicago: University of Chicago Press, 1996), 37.

¹²³ Osiatynski, 1996, 37.

¹²⁴ Mark F. Brzezinski, “Constitutionalism and Post-Communist Polish Politics,” *Loyola Of Los Angeles International And Comparative Law Journal* no. 3 (1997): 442.

¹²⁵ Brzezinski, 1997, 447.

¹²⁶ Brzezinski, 1997, 444.

becoming a “para-religious state,” where the church and state are separate, but the church, not the state, has the final say in matters of morality.¹²⁷

Although political involvement and scandals involving church officials and the former secret police¹²⁸ had limited the Church’s ability to directly influence policy by the time of the passage of the lustration law in 1997, the law contains overtly religious mechanisms that were certainly impacted by the Church’s presence in Poland. The law’s normative focus on morality springs from the collective religious consciousness of a country that is around 90% Roman Catholic. But the influence of Christian doctrine can also be found in the more specific mechanisms of the law. For instance, the lustration statement is essentially a confessional exercise, offering the guilty a chance at redemption. This focus on truth coincides with the Church’s line on the preservation of human dignity as well as the more general “Christian values” of redemption and forgiveness. The two main instigators in drafting the lustration law, the Freedom Union (UW) and the Polish People’s Party (PSL), are/were both associated with forms of Christian democracy.¹²⁹

The influence of both dissident and Catholic ideas in the drafting of the law may not be directly clear, but both institutions were considered the pillars of Polish political life,¹³⁰ and both wheeled influence within the parties that drafted the law. The law’s focus on legality directly descends from the legacy of KOR and the Polish opposition. In fact, UW ran former KOR leader Jacek Kuron as its candidate for president in 1995, garnering

¹²⁷ Brzezinski, 1997, 445-6.

¹²⁸ John L. Allen Jr., “Polish Church Confronts Ghosts of Past,” *National Catholic Reporter* 43, no. 12 (January 2007): 8-10.

¹²⁹ Paul G. Lewis, *Political Parties In Post-Communist Eastern Europe* (London: Routledge, 2000).

¹³⁰ Tismaneanu, 1993, 227.

9.3% of the vote nationally.¹³¹ The creation of an unbiased, politically separate lustration court, which adheres to the Polish criminal code, is an attempt to uphold the rule of law, which KOR and Solidarity had fought so hard for under communist rule.

Another path of influence from dissident discourse through the lustration law can be found in the work of the acclaimed Czech playwright turned dissident turned politician Vaclav Havel. In his famous 1978 essay “The Power of the Powerless” Havel proclaimed that the only way to break the power of a totalitarian regime that was based on lies was to “live in truth.”¹³² Havel’s influence in the dissident community of the Soviet bloc was enormous, and this idea in particular inspired Polish activists such as Michnik and Kuron. This concept of living in truth combined with KOR’s civil rights agenda and Solidarity’s political and worker’s rights focus makes up the core of the dissident discourse under communist rule. In the aftermath of transition, Solidarity’s political legacy became a point of contestation, as many parties attempted to capitalize on the organization’s enormous political capital, but its message still carried weight. Of the parties that drafted the lustration law, the Freedom Union (UW) had roots that stemmed directly from the Solidarity trade union movement.¹³³

In summary, the unique aspects of the 1997 Polish lustration law, the focus on truth and the focus on legality, are rooted in the two main political forces in transitional Poland, the Catholic Church and the oppositional/dissident elements. Much like the somewhat strange compromise that arose between the Church and the left in the mid-70’s, the 1997 law represents another attempt to integrate these two different but

¹³¹ Lewis, 2000, 51.

¹³² Vaclav Havel, *Open Letters: Selected Writings 1965-1990* (New York: Knopf, 1991), 146.

¹³³ Lewis, 2000, 55.

somehow aligned forces in an effort to come to terms with the past. The result is a law that at least on paper appears to satisfy the transitional justice goal of establishing social trust, without violating the democratic principles that every new democracy must strive to uphold.

Conclusion

This discussion of transitional justice, social trust, institutional development has lead to one very simple conclusion; institutions matter. The Polish lustration law of 1997 occurred when it did and took the shape that it did largely due to the effect of important political institutions, namely the Catholic Church and the Solidarity Trade Union. Because Poland, unlike the other countries of the former Soviet bloc, did indeed possess an institutional entity blessed with great democratic legitimacy, it did not need to initially take any additional steps, at least initially to ensure the people's faith in their new democratic institutions. Because of the discourse emanating from the Catholic Church, as well as the pre-transition opposition movements, the Polish lustration law took its unique form, with a focus on truth and legality. These kind of causal claims cannot and should not be made without a deep examination of their institutional roots. Historical institutionalism provides us with a methodological tool for tracing the origins of institutional change. By using the HI tools of critical juncture and counterfactual analysis, I was able to identify the juncture that lasted from August 14th through November 10th, 1981, during which the probability of the existence of democratically legitimate organization in communist Poland increased dramatically. However, institutions can also play a less direct role, through the promulgation and popularization of different lines of discourse. We see this in the case of the Catholic Church and oppositional organizations such as KOR and Solidarity. These institutions' positions on key issues such as civil and political rights and the maintenance of human dignity had an enormous impact on political culture both before and after transition, and set the table for the passage of a lustration act that did not infringe on basic rights of due process, or unduly shame those who confessed to their actions.

It should be noted that nothing in my analysis refutes the other alternatives for explaining lustration law mentioned in the introduction. Seeking to explain differences in lustration between countries, Roman David focused on attitudes towards past elites, which he believes is the key to understanding lustration policies. However, as my analysis illustrates, it is important to look past the current political landscape, and past the dynamics of transition in order to understand the origins of these attitudes towards elites. Because of its moral authority and democratic legitimacy, Solidarity was able to somewhat dictate popular attitudes towards elites during the crucial period immediately following transition. When Mazowiecki declared his “thick line” policy, people listened and respected it because he was the mouthpiece of Solidarity. The other alternative explanation that focuses solely on post-communist politics to explain lustration could also find ample support in my analysis. After all, the early disastrous attempts including the Milczanowski list and the Oleksy affair certainly played a role in creating momentum for the passage of the law. But only through a detailed analysis of the political climate, both past and present, can we see why the law actually took the shape that it did.

It should be noted that the process of lustration in Poland did not end with the 1997 act. A new lustration act put forward in the Sejm in 2006, and amended in 2007, vastly increasing the scope of professions included in the lustration process. However these changes were met with fierce resistance from society and are largely viewed as a political maneuver by the present government rather than a serious attempt to address issues dealing with the past.¹³⁴ The scope of this analysis is limited to only the 1997 law

¹³⁴ Magdalena Kaj and Megan Metzger, “Justice or Revenge? The Human Rights Implications of Lustration in Poland,” *Humanity in Action*, available at

for a variety of reasons. The first reason is that the 1997 at least theoretically represents a substantial attempt to deal with the past while adhering to liberal democratic principles and from my point of view it is normatively important that we discover the origins of this law in order to understand how such an effort can possibly be replicated. The changes that occurred between 1997 and the passage of the new act in 2006 have less and less to do with events that occurred before transition, although the issue of dealing with the past still looms large in Poland to this day.

The complexities of the Polish case make any generalizations of the transitional justice process extremely tough. However, the process through which these events and outcomes have been analyzed could certainly be applied to other countries in order to gain a deeper understanding of where/when certain transitional justice measures occur, and what kind of characteristics they come to possess. If one thing is clear, it is that institutions and actions taken before transition have a distinct impact on both the timing and the shape of transitional justice measures, even when they are enacted eight years after transition.

<http://www.humanityinaction.org/knowledgebase/165-justice-or-revenge-the-human-rights-implications-of-lustration-in-poland> (accessed May 15th, 2015).

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