

# Anti-Communist Justice and Founding the Post-Communist Order: Lustration and Restitution in Central Europe

Hilary Appel\*

This article explores how ideas and beliefs shaped the development of programs of retrospective justice. By focusing on lustration, property restitution, and the declassification of secret service files in four central European countries, this article investigates the role of formalized anti-communist programs in the founding of the new political and economic order. After reviewing the development of anti-communist programs in East Germany, the Czech Republic, Poland, and Hungary, the article examines the motivation behind these programs and the variation in approaches across countries. It then analyzes the implications of anti-communist programs for the creation of a post-communist national identity, and concludes with a discussion of the weak anti-communist programs in post-Soviet Russia.

*Keywords:* Eastern Europe; retrospective justice; restitution; post-communism; ideology

## I.

Many new governments in Central and Eastern Europe employed anti-communism to distance themselves from their predecessors, to bring legitimacy to their new leadership, and to advance their political and economic agendas. The importance of anti-communism, however, extends well beyond the realm of political rhetoric and *post hoc* justification of political preferences. It informed policy choices, shaped perceptions of legitimacy, and constrained political alliances. In some instances, anti-communist sentiment and the need to break decisively with the

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past directly translated into anti-communist legislation. These laws seemed to serve as necessary steps to cope with past acts of collaboration and to redress injustices under the former regime. Focusing on East Germany, Poland, Hungary, and the Czech Republic, this article addresses three programs in particular—lustration, property restitution, and to a lesser extent the declassification of secret service files—to understand the role of formalized anti-communist programs in the founding of the new political and economic order. These programs help to elucidate how anti-communist ideas and beliefs were fundamental to the process of regime change.

This article studies anti-communism as a set of ideas and values that tangibly structure policy making. The anti-communist dimension to programs such as lustration and restitution is twofold. First, they are anti-communist because they carry negative repercussions for many who were privileged in the past communist system. Second and more important, these programs are anti-communist because they were the products of strong anti-communist beliefs that permeated many levels of society. Recognizing some variation across countries, anti-communism generally refers to a set of ethical beliefs about the legitimacy of the past political and economic system. On a normative or ethical basis, it rejects the moral authority of the past regime, which violated the basic political and economic rights of individuals. Moreover, it implies a duty for anti-communist leaders not only to condemn but also to redress the injustices perpetrated under the past system. Focusing on the ideational underpinnings of anti-communist programming provides insight into the role anti-communism played in the founding of the new polity and national identity. An investigation of anti-communist programs in terms of material interests or power, rather than in terms of normative values and conceptions of justice, misses the greatest motivation behind the adoption of these programs.

Yet, despite the pervasiveness of anti-communism in Eastern Europe, both anti-communism and the ideational dimension of regime change more generally are understudied in the literature on post-communist transition due to the methodological challenges of measuring and comparing nonmaterial variables. Not

only are they seldom quantifiable, but ideological beliefs—even when part of a larger organized system of values that are shared by many people—seldom exist in an identical form across countries. Indeed, unlike material variables, scholars cannot always compare the same ideology, or the same independent variable, across countries in a simple fashion. A further challenging aspect of this theoretical area is that the contributors to the political science literature on ideas have yet to agree on how to define and differentiate ideas from other phenomena. While recognizing the breadth of ideational phenomena that the literature examines, this article examines anti-communist ideas in terms of “principled beliefs.”<sup>1</sup>

Despite the methodological challenges, anti-communism is too influential in post-communist politics to ignore. Indeed, the number of anti-communist programs and the range of countries in Central and Eastern Europe that adopted them serve to highlight the ideational dimension of regime change.<sup>2</sup> Some of the anti-communist programs that were important for coming to terms with the past and for limiting certain legacies of the old regime include

1. *the banning (often followed by the lifting of bans) of communist parties.* For example, the Czechoslovak Federal Assembly passed Law 260 that punished the supporters of communism or fascism with one to five years in prison. The Constitutional Court overturned the law, noting that the successor communist party was behaving within the legal confines of a democracy (Rosenberg 110).<sup>3</sup> The overturning of bans on communist parties stands in contrast to the continued barring of fascist or Nazi parties after World War II.
2. *the erasing of public images and tributes to the communist regime.* This included the renaming of streets, parks, and other places with

1. Judith Goldstein and Robert Keohane, early contributors to the literature on ideas, differentiated three ideational phenomena: causal beliefs, principled beliefs, and worldviews. This typology is useful in clarifying how anti-communist justice is understood relative to other ideational phenomena. See Judith Goldstein and Robert Keohane, eds., *Ideas and Foreign Policy: Beliefs, Institutions and Political Change* (Ithaca, NY: Cornell University Press, 1993), 8-9.
2. For an extensive discussion of how anti-communism manifested itself in economic reforms, see Hilary Appel, *A New Capitalist Order: Privatization and Ideology in Russia and Eastern Europe* (Pittsburgh, Pa.: University of Pittsburgh Press, 2004).
3. Tina Rosenberg, *The Haunted Land: Facing Europe's Ghosts after Communism* (New York: Vintage Books, 1996).

distinctly communist associations and the removal of public statues and monuments marking communist achievements or leaders.

3. *the prosecution of former party leaders, secret police agents, and border guards for violations of human rights and other abuses during the communist period.* Some notable trials include those of Poland's General Wojciech Jaruzelski, East Germany's party leader Erich Honecker and Stasi head Erich Mielke, and the German Democratic Republic's (GDR's) Berlin Wall border guards. In Germany, as a result of provisions in the Unification Treaty of 1990, tens of thousands of East Germans were subject to prosecution for crimes committed in the GDR. In particular, the Unification Treaty amended the statute of limitations for a range of crimes, including violence at the border, torture, kidnapping, and economic crimes.<sup>4</sup> In the Czech Republic, the parliament passed the Act Concerning the Lawlessness of the Communist Regime in 1993, which was upheld by the Constitutional Court. It permitted the prosecution of individuals for crimes committed during the communist period. Like the Unification Treaty, this act also overturned any existing statute of limitation that would have prevented prosecutions for the duration of the communist period.<sup>5</sup> The Czech government also created the Bureau for Investigation and Documentation of the Crimes of Communism to study and record human rights abuses under the past regime.<sup>6</sup>
4. *the rehabilitation of victims of the communist regime who were unjustly punished (through public vindication and financial compensation).* For example, in the summer of 1990, the Czechoslovak Federal Assembly passed the Act on Judicial Rehabilitation to clear the names of two hundred thousand political prisoners and adjusted the pensions of former prisoners who had been unfairly prosecuted.<sup>7</sup> The Hungarian government in 1996 allocated 3 billion Huf (about \$12 million) to compensate the victims of political, religious, or racist persecution between 1939 and 1989—either those subject to forced labor in Soviet camps during World War II, victims of the 1956 revolution, or those unjustly persecuted during the communist period.<sup>8</sup>

4. Helga Welsh, "Dealing with the Communist Past: Central and East European Experiences after 1990," *Europe-Asia Studies* 48:3(1996): 417.

5. Vojtech Cepl and Mark Gillis, "Making Amends after Communism," *Journal of Democracy* 7:4(1996): 121.

6. ČTK (Czech News Wire), 6 December 1994.

7. Rosenberg, *Haunted Land*.

8. Andrzej Kozminski, "Restitution of Private Property: Reprivatization in Central and Eastern Europe," *Communist and Post-Communist Studies* 30:1(1997): 100.

5. *the opening of the archives of the secret police to the public or to victims.*
6. *the purging (or lustration) of former communists from public organs.*
7. *the return of property confiscated during the communist period.*

These legal manifestations represent how the new governments translated anti-communist sentiment into distinct programs to facilitate the transformation of the regime. This article focuses on the latter three anti-communist programs to interpret and assess the normative and ideational pillars on which they are based.

## **II. Lustration and the use of secret police files**

Lustration refers to the process of screening groups of people for previous acts of collaboration under the communist regime (especially acts of collaboration with the secret police) and in turn disqualifying members of these groups from holding high-level positions in the public sector. Several countries carried out some form of lustration including Poland, East Germany, the Czech Republic, Hungary, Albania, and Bulgaria. All of these countries adopted legislation denying former secret police collaborators from holding high-level government positions, whereas individual countries barred collaborators from other posts, such as academia in Bulgaria, the postal service in Germany, and the state media in the Czech Republic.

### **East Germany**

For Germans, coming to terms with their role in the past political system was an all too familiar process since this was the second time in the twentieth century that political collaborators had to “work off the past,” as Habermas calls it.<sup>9</sup> At the end of the Cold War, dealing with political collaborators in unified Germany was especially sensitive since many felt that de-Nazification was not

9. Habermas borrows the expression from Theodor Adorno in his essay “A Double Past.” Jürgen Habermas, *A Berlin Republic: Writings on Germany*, trans. Steven Rendall (Lincoln: University of Nebraska Press, 1997).

handled correctly and that efforts to cleanse German political life after World War II were inadequate, especially in the east.<sup>10</sup>

With the tearing down of the Berlin Wall and the collapse of the GDR regime, Germans had to agree on an approach to pursuing retrospective justice. Along with other decommunization measures, the Unification Treaty included provisions for the lustration of collaborators with the East German secret police (Stasi). Both high-level officials of the GDR Communist Party (SED) and Stasi agents and informants were disqualified from holding numerous kinds of jobs in the public sector.

The Unification Treaty provided for an extensive lustration program. It disqualified tens of thousands of government officials (parliamentarians, ministers, local councilors, judges, lawyers, and anyone in a job requiring security clearance) for fifteen years.<sup>11</sup> In contrast to other programs, German lustration also applied to low-level workers in public employment, such as janitors in public buildings, government secretaries, and postal workers for fifteen years. Although disqualification was not automatic, employers would receive portions of a collaborator's file and determine whether to continue employing him. In addition, professors and school teachers were subject to lustration. In Saxony alone, 13,500 primary school teachers were fired, about 25 percent of the teachers in the region. The mass firings antagonized East-West relations since lustration ultimately provided a boon for unemployed West Germans, both in academia and in the public sector generally. Furthermore, in industry, employers could check whether senior managerial employees had a history of collaboration and could fire them if their history would impede them from performing their job.<sup>12</sup>

10. Under de-Nazification in western Germany, every citizen was assumed to be a "major offender" unless he could prove his innocence before a tribunal. Given the administrative burden of holding millions of tribunals, the German government soon resorted to several general amnesties. For the most part, only the highest level of war criminals faced tribunals. Rosenberg, *Haunted Land*.

11. Erhard Blankenburg, "The Purge of Lawyers after the Breakdown of the East German Communist Regime," *Law and Social Inquiry* 20:1(1995): 223-44.

12. John Miller, "Settling Accounts with a Secret Police: The German Law on the Stasi Records," *Europe-Asia Studies* 50:2(1998): 315.

It is not surprising that lustration affected so many East Germans, in particular because the Stasi had reached deeply into society. In fact, the Stasi had files on six million people, about half the adult population of the GDR. After unification, the secret police files were partially opened to the public in that East Germans gained the right to read their own files. As in Poland and the Czech Republic, citizens did not gain (automatic) access to other people's files or to the true names of their informants appearing in their own files,<sup>13</sup> except in special circumstances. To prevent misuse of the files, no government institution could search a person's file, including members of the police or the judiciary, for speculative purposes. When a search did fall within the confines of the law, the person under scrutiny had to be informed and had to provide his consent to the investigation. Lustration checks are ongoing and are permissible by law through 2006.<sup>14</sup>

#### Czech Republic

As in Germany, Czechoslovakia passed a lustration law relatively early (October 1991), shortly following the failed coup attempt in the Soviet Union. Czechoslovakia's first lustration law was passed by the Federal Assembly and signed into law by President Václav Havel. This program disqualified particular groups from public positions for five years. The program is still in force in the Czech Republic since the parliament extended the law (overriding two presidential vetoes) in 1995 for five years and in 2000 indefinitely. In this program, any Czech seeking a high public office must apply for a certificate verifying that he never collaborated with the secret police (StB) and never attained a certain level in the communist party. If a person's name appears in the StB files as an agent or an informant, he becomes ineligible for senior positions in government ministries, the military, the police, the new secret service (FBIS), and the state-owned media. Likewise, he cannot serve as a judge at any level, a state notary, a public prosecutor, or the director of a majority state-owned enter-

13. Miller, "Settling Accounts"; and Welsh, "Dealing with the Communist Past."

14. Miller, "Settling Accounts," 315.

prise.<sup>15</sup> Czechoslovak lustration disqualified former collaborators from holding leadership positions in academia; although regular professors did not need to submit lustration certificates. That said, most of the social science faculty in higher education was replaced after the Velvet Revolution due to anti-communist sentiment. Social science professors and researchers were typically considered unqualified and pressured to leave. Demographic factors aided this process since many researchers and professors appointed shortly after the purge in academia in 1968-69 were approaching retirement age anyway. In the Slovak lands, the lustration law was not widely enforced before the division of Czechoslovakia, and Slovak Premier Vladimír Mečiar abandoned the lustration program after independence.<sup>16</sup>

Lustration in the Czech Republic affected thousands of people, with more than forty thousand posts requiring lustration certificates. During the first decade of the program, the Ministry of the Interior provided more than 345,000 lustration certificates (and 340,000 within the first two years). While the StB files listed 700,000 Czech names, only about 3 percent of the 345,000 certificates issued by the Interior Ministry were positive, thereby certifying collaboration.<sup>17</sup> While Czech citizens had the right to view their own files, the lustration certificates presented to employers showed almost no detail from the file.<sup>18</sup> The certificate assigned only a letter that designated the general kind of collaboration associated with the name.

## Hungary

Hungary's lustration program targeted the agents and collaborators of the communist domestic secret police as well as the counterinsurgency squads that operated during the 1956 revolu-

15. More details on the positions included in lustration appear in Roman Boed, "An Evaluation of the Legality and Efficacy of Lustration as a Tool of Transitional Justice," *Columbia Journal of Transnational Law* 37:2(1998): 357-402.

16. On Mečiar and the repeal of the lustration law, see ČTK, 21 December 1993.

17. Roman David, "Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001)," *Law and Social Inquiry* 28:2(2003): 414.

18. For example, the Act on the Access to Files Created by Activity of Former Stat Security (no. 140/1996 Sb.) allows every adult Czech to see his or her file.



tion and the fascist Arrow Cross. Hungary's program is distinguished by its vacillation between an extensive program that pertained to more than ten thousand posts to a more modest program covering several hundred. After several failed attempts in the early 1990s, Hungarian parliamentarians passed a broadly inclusive lustration program in March 1994 that required the vetting of ministers, deputy ministers, members of parliament, judges, prosecutors, mayors and other local government officials, ambassadors, senior military officials, high-level employees in the state media, academic administrators, and the directors of state-owned companies.<sup>19</sup> However, when the Socialists regained power in 1996, the lustration program was curtailed and affected only the most senior posts in the government and the state-owned media. The number of jobs subject to lustration according to the new legislation, by some estimates, may have been lowered to as few as five hundred posts.<sup>20</sup> In 2000, however, the right regained the parliament and voted to expand the scope of lustration once again to include more members of the media and judiciary, and it extended the lustration program until 2004.

Regardless of the scope of the program, the privacy of individuals was respected—in part due to the efforts of the Constitutional Court, which made this a priority. If the panel of lustration judges found an individual to have collaborated with the secret police, that individual had the option of resigning to prevent a public revelation of past acts of collaboration.<sup>21</sup>

## Poland

A formalized lustration program came late to Poland, despite frequent attempts to pass a lustration law during the early and middle 1990s. While the Sejm adopted Poland's lustration law in April 1997, the program did not take effect for another two years,

19. Kieran Williams, "Explaining Lustration in Eastern Europe: A Post-Communist Politics Approach" (Mimeo, 2003), 7, <http://www.sussex.ac.uk/sei/documents/wp62.pdf>.

20. Williams, "Explaining Lustration," 7.

21. EECR, "Constitutional Watch—Hungary," *Eastern European Constitutional Review* 11:3(2002): 22-26, [http://www.law.nyu.edu/eecr/vol11num3/constitutionwatch/hungary\\_print.html](http://www.law.nyu.edu/eecr/vol11num3/constitutionwatch/hungary_print.html) (accessed 10 August 2004).

leading then to the dismissals of three ministers and several parliamentarians that year.<sup>22</sup> Like the narrower Hungarian program, Polish lustration was strikingly limited, especially compared to the Czech or German programs, since it only applied to a narrow set of public-sector positions, including the president, legislative deputies and senators, presidential appointees to government bodies, judges, prosecutors, and leading posts in the state-owned media.<sup>23</sup> If a Pole wanted to apply for a relevant position, she had to file an affidavit specifying whether she had collaborated with the secret police during the communist period. She would be disqualified from holding a position in government for ten years only if she lied about her collaboration. In other words, if an applicant acknowledged past acts of collaboration, she would not be disqualified from holding the position. Hence, access to top government positions turned on the current truthfulness of the candidate and not her past acts of collaboration.<sup>24</sup> Although about twenty-five thousand public positions required the submission of the affidavit, only eighty-five individuals have faced a lustration trial before the Polish vetting court. Of these, the court found eighteen people to have submitted false affidavits, including four parliamentarians.<sup>25</sup>

Prior to the initiation of Poland's lustration program, informal versions of lustration occurred on many occasions. Accusations of secret police collaboration tainted Polish political life for years and led to the resignations of two Polish prime ministers: Jan Olszewski in 1992 and Jozef Oleksy in 1996. Two post-communist presidents, Lech Wałęsa and Aleksander Kwaśniewski, were also publicly accused of collaboration, but they were cleared by the courts and thus neither resigned.<sup>26</sup>

22. "Solidarity Officials Dismissed for Ties to Communist Secret Police," *Washington Post*, 9 September 1999.

23. David, "Lustration Laws."

24. PAP (Polish News Wire), 4 July 1997.

25. David, "Lustration Laws."

26. In August 2000, the vetting court ruled that Kwaśniewski had been truthful in his statement that he had not collaborated with the secret police. On the findings of the court, see PAP, 11 August 2000.

### III. Restitution

Like lustration, most Central and East European countries undertook restitution programs after the collapse of communism as a way to cope with their recent past. These programs sought to return real property that had been legally or illegally confiscated during the communist period, although several countries defined the period of illegal confiscations somewhat more broadly than just the communist period. Restitution programs often returned property in kind. However, when property had been transformed or was serving a social purpose (such as education, health care, or local governance), financial compensation took the place of restitution in kind. Some programs, like in Hungary, kept the maximum level of financial compensation low for budgetary reasons. Other programs, such as the Czech and German programs, sought to link the level of compensation to the value of the property expropriated.

In all instances, restitution constituted part of the larger process of redressing material injustices of the communist period. In most cases, the injustice addressed was the violation of personal property rights. At times, however, restitution served as a measure to correct for broader historical injustices, such as the distorted distribution of privileges in society across political and ethnic groups or, more broadly, to respond to the shift in the ethnic makeup, such as in the Baltic region during the Soviet period. In fact, in all of the Baltic countries, restitution aimed to favor ethnic Estonians, Latvians, and Lithuanians—including émigrés who had forfeited citizenship rights—at the expense of the Russian minority that had immigrated to the Baltics after 1945. It also deliberately encouraged the diaspora to return and the Russian minority to leave.<sup>27</sup>

In most East and Central European countries, however, restitution served to redistribute property rights among political groups rather than ethnic groups. The restitution of housing to pre-communist owners serves as a powerful example of redistri-

27. Mark Blacksell and Karl Born, "Private Property Restitution: The Geographical Consequences of Official Government Policies in Central and Eastern Europe," *Geographical Journal* 168:2(2002): 188; and Lynn Fisher and Austin J. Jaffe, "Restitution in Transition Countries," *Journal of Housing and the Built Environment* 15:3(2000): 233-48.

bution that was sensitive to past political position. One alternative to restituting residential property (within the context of creating a private property system) was simply to transfer the title of state apartments to the current tenants, as occurred in Russia. This approach, however, extended the privileges of the communist era (and the material rewards associated with past collaboration or political position) into the post-communist era. In the Czech Republic, such a privatization approach was not compatible with anti-communist sentiment and popular conceptions of justice and was thus strongly rejected.<sup>28</sup>

Many post-communist governments returned seized property, including the Czech Republic, former East Germany, Bulgaria, Romania, and the Baltic states. Each country adopted its own version of restitution, depending on the normative concerns of the people, constrained importantly, however, by the local political and social context.

#### East Germany

Property restitution posed serious challenges in reunified Germany, even though claimants could rely on well-maintained property records and a stable, well-endowed legal system. Like the lustration process, eastern Germany's extensive restitution program appears in the 1990 Unification Treaty as its own appendix.<sup>29</sup> The program is the largest in the region, with 20 percent of the population (about five million people) participating in the program.<sup>30</sup> It is estimated that 90 percent of urban buildings fell within the restitution program.<sup>31</sup> Former property owners or their heirs could claim title to property confiscated by the communist government or the Nazi government, albeit according to different procedures. While the adjudication of restitution claims led to delays in planning, development, and public and private invest-

28. Hilary Appel, "Justice and the Reformulation of Property Rights in the Czech Republic," *East European Politics and Societies* 9:1(1995): 22-40.

29. Mark Blacksell, Karl Born, and M. Bohlander, "Settlement of Property Claims in the Former East Germany," *Geographical Review* 86 (April 1996): 200.

30. *Ibid.*, 202.

31. Blacksell and Born, "Private Property Restitution," 185.

ment, the overwhelming majority of East German restitution claims have been settled at this point.

In contrast with other programs in the region, the restitution of East Germany property was not limited by nationality. Any former owner or heir—whether a foreign citizen or a nonresident—could submit a claim to property confiscated during the communist period or the Third Reich.<sup>32</sup> On one hand, this reflects Germany's particular history during the Second World War, namely, its role as an aggressor as well as the holocaust. On the other, its inclusive approach served its larger cause of trying to convince others, especially the Czech and Polish governments, to return expropriated property to former German owners in their restitution programs.

#### Czech Republic

In the Czech program, only Czech citizens in residence could reclaim land or buildings confiscated by the communist government after February 1948. Although the Czech program focuses primarily on property seized by the communists, it also includes Jewish property confiscated by the Nazis after 1938. The parliament added Jewish property to the restitution program only after a long and contentious debate. The government resisted anticipating restitution's starting date to 1938 to include Jewish property—despite the negligible amount of property concerned given the scarcity of Jewish-Czech heirs—due to the fear that expanding the scope of restitution would pave the way for Sudeten Germans to reclaim property seized immediately after World War II by the Czechoslovak government. As in Poland, there has been strong resistance to making Germans eligible for restitution, even at the expense of aggravating Czech-German relations.

#### Hungary

Hungary's restitution process began in 1991 with the enactment of two restitution laws. They initiated the restitution of reli-

32. Special thanks to Matt Murphy for this point.

gious property seized during the communist period and allowed private individuals to apply for partial financial compensation for expropriated property. Instead of cash payments or property in kind, former owners would receive a voucher<sup>33</sup> that was tradable for shares in enterprises or land undergoing privatization. The rationale for initially choosing a form of financial compensation over restitution in kind is specific to Hungary's structure of ownership in 1991. In contrast to East Germany or Czechoslovakia, a substantial amount of property was already privately owned, including many apartments, houses, small businesses, and other types of property. Therefore, in Hungary's case, restitution in 1991 would not have meant transferring state property to former private owners but reallocating property among private individuals.<sup>34</sup> This carried substantial economic and political costs. To minimize the burden on the political leadership and the budget, the compensation to former owners often remained financial and typically fell far below the value of the property. As elsewhere, only citizens in residence (in 1990) could participate in restitution, which also helped to limit the fiscal burden of property restitution.<sup>35</sup>

In 1997, the parliament revised the restitution program to facilitate the return of property to religious orders and schools. Religious groups became eligible to apply for government annuities to compensate for real property that could not be returned in kind. The annuities were proportional to the value of the property but again fell short of the value of property lost in most cases.<sup>36</sup>

## Poland

In Poland, one might have expected property restitution to proceed quickly because the return of confiscated property

33. The maximum value of the voucher was \$70,000. Kozminski, "Restitution of Private Property."

34. Ibid.

35. Ibid.

36. Commission on Security and Cooperation in Europe, "Briefing: Property Restitution and Compensation in Post-Communist Europe: A Status Update," 10 September 2003, [http://www.csce.gov/briefings.cfm?briefing\\_id=262](http://www.csce.gov/briefings.cfm?briefing_id=262) (accessed 12 August 2004).

appeared in the 1990 constitution amended after Solidarity gained power and because the restitution of Church property began even prior to Solidarity's 1989 electoral victory, during the Rakowski government.<sup>37</sup> Nevertheless, more than sixteen legislative attempts to establish a program of restitution have failed.<sup>38</sup> Instead, claimants have tried to gain access to property expropriated during the communist period using the courts rather than a formal program. As would be expected, the absence of legislation has limited the amount of property restituted. The legal system has been slow, with fewer than 3,000 property claims processed (in contrast to 2.7 million in East Germany).

Restitution's adoption has been delayed despite a general agreement among the main political parties that property should be returned in kind when possible and that reprivatization bonds should be used for compensation when not. In addition, the main parties agreed that the claimants must be Polish citizens and that a bifurcated tax system should apply, differentiating between former owners and heirs. Even with these areas of agreement, finalizing a restitution program in Poland has stalled.

One complication is Poland's historical shifts in borders. For example, while political groups want to compensate the former owners of property located in the territory ceded to the Soviet Union after World War II, the state struggles with finding the resources to compensate these Poles.<sup>39</sup> On a related point, there are similar hurdles in returning property to claimants of Ukrainian descent whose property was nationalized when Poland's borders shifted after World War II.<sup>40</sup> Of greater concern are the German claims to nationalized property in Western Poland, a problem familiar from the Czech Republic. This political hurdle is expected. After all, Poles do not even want Germans to buy Polish real estate, let alone receive it for free.<sup>41</sup> An additional

37. Kozminski, "Restitution of Private Property," 101.

38. Blacksell and Born, "Private Property Restitution," 187.

39. Kozminski, "Restitution of Private Property," 102.

40. Blacksell and Born, "Private Property Restitution," 186.

41. One survey shows that 72 percent of Poles wanted an eighteen-year transitional period on foreign sales of land, even at the expense of delaying European Union (EU) membership. Indeed, foreign landownership was fiercely resisted and became one of the greatest sticking points in EU membership negotiations. "Survey: Poles Strongly Favor 18-Year Ban on Land Sales to Foreigners," *Associated Press Worldstream*, 2 July 2001.

point of concern is the restitution of Jewish property, since Poland has been lobbied by American Jewish groups and American politicians to include former Jewish property in its restitution program.<sup>42</sup>

In addition to ethnic and border-related problems, Poland's delays stem from divisions in society and in the political arena over conceptions of distributional justice.<sup>43</sup> One bill on restitution did pass through both houses of parliament in March 2001 but failed to become a law due to a presidential veto, which President Kwásniewski justified on the grounds of social justice and economic development.<sup>44</sup> In Poland, some of the resistance to various restitution proposals stems from concerns over the rights of the current owners or users of previously confiscated property. Officials are uncertain about how to cope with the tenants of restituted residential buildings. Approaches to this problem have varied across countries. In Bulgaria, tenants of restituted property could not be expelled for three years, whereas in the Czech Republic, tenants could not be expelled unless they agreed to an equivalent housing trade. In Poland, existing tenants were fearful of their fate after restitution, in particular given the material insecurity many faced during the initial years of shock therapy.<sup>45</sup> The current economic downturn only further exacerbates tenants' fears.

#### IV. The power of ideas

The determinants of anti-communist legislation

In national debates, proponents and opponents discuss anti-communist programs explicitly in ideational and even moral terms. For example, advocates of anti-communist legislation commonly evoked justice to explain their support, such as former Polish prime minister Jerzy Buzek who promoted restitution,

42. PAP, 26 January 2004.

43. Ann Louise Strong, Thomas Reiner, and Janusz Szyrmer, *Transformations in Land and Housing: Bulgaria, The Czech Republic and Poland* (New York: St. Martin's, 1996); and Kozminski, "Restitution of Private Property," 104-5.

44. PAP, 22 March 2001.

45. Kozminski, "Restitution of Private Property."



stating, "Justice means that we should return to people the property of which they had been robbed."<sup>46</sup> As another illustration, Vojtech Cepl, a justice on the Czech Constitutional Court, and his coauthor explained anti-communist programs by contending, "After communism fell in Czechoslovakia, the new regime recognized that while it would not be possible to make full amends for all past injustices, there were measures available that would help make good on the promise of principled and responsible government." This was necessary for the "metamorphosis of the norms of human conduct." He adds, "Without rehabilitation, lustration and restitution, there [would] be no transformation."<sup>47</sup> While political actors talk about these programs in terms of anti-communist justice, a skeptic might find politicians' ideational or ethical motivations suspect.

For example, some might question whether restitution represents more than just another mode of ushering in a private property system. After all, restitution was part of the larger privatization process. Returning property in kind (rather than financially compensating former owners) imposed virtually no burden on government budgets. Restitution had other advantages as well. It was relatively transparent. It avoided most controversies over the value of assets. Moreover, restitution could create a constituency supportive of capitalist reforms, spark entrepreneurship and capital formation, and improve economic growth.<sup>48</sup> According to this formulation, one might say that a capitalist ideology drove restitution as much as, if not more than, anti-communist historical justice.

Irrespective of the economic benefits of shifting property from the public to the private sector, restitution was not just another privatization program. It does not represent straightforward economic policy making or politics as usual. First, restitution bene-

46. PAP, 22 March 2001.

47. Cepl and Gillis, "Making Amends," 119-20. The debates on lustration could be represented by a collection of statements by Czech, East German, and Polish politicians, such as that of Bogdan Peł, a deputy with the Polish Peasants' Party, who asserted, "In this fledgling democracy, no one with a sane mind trusts 'deliberate collaborators.'" *The Warsaw Voice*, 8 September 2002.

48. John Earle and Scott Gehlbach, "A Spoonful of Sugar: Privatization and Popular Support for Reform in the Czech Republic," *Economics and Politics* 15:1(2000): 7; and Kozminski, "Restitution of Private Property," 97.

fited a small percentage of the electorate. Second, as a means of privatization, restitution carried significant political and economic costs and risks. Blacksell and Born discuss the problem that occurred in Germany (and elsewhere) in which the claimants of restituted property found themselves burdened with new liabilities given the poor condition of many buildings in depressed areas. Given the new owners' lack of resources and the location of the property, there was little possibility of renovating the property for resale or renting it out for a profit. In these cases, claims for restituted property were actually withdrawn since the liabilities exceeded the value of the asset.<sup>49</sup> Even when the restitution of property included attractive residential buildings, the policy carried real political risks. When residential buildings had the potential to turn a profit, new owners often treated their tenants poorly in the hopes they would move since the new owners could sell their buildings only if they found some way to evict their tenants.<sup>50</sup> In the early 1990s, private service companies sprung up to help new owners "negotiate" with tenants to get them to leave. Thus, not only did restitution benefit a small group of people, it created conditions that could potentially lead to a large backlash by tenants.

The economic benefits of restitution were also mixed. The uncertain climate caused by restitution (due to the protracted adjudication of property disputes) delayed infrastructural development and distorted investment. Some especially complex restitution claims concerned large tracts of land, including major national parks, cemeteries, multiple homes, and buildings. For large areas, urban planning was put on hold for years as claims made their way through the sometimes intricate restitution process.<sup>51</sup>

East European governments did not adopt restitution programs based on simple political and economic incentives. Nor-

49. Blacksell and Born, "Private Property Restitution."

50. New owners often resorted to underhanded methods to push out tenants, including noise pollution, shutting off utilities for (non)repairs, and even rat infestation. Employed in a real estate development company in Prague in 1994, the author interviewed representatives from such companies, and such services were offered. Several companies advertised eviction services in the classified sections of local newspapers.

51. Blacksell, Born, and Bohlander, "Settlement of Property Claims."

mative considerations weighed heavily in these choices. Much of the momentum behind restitution programs came from the revolutionary energy of the time. They were fueled by the widely felt sentiment that the nationalization of property and the violation of personal property rights by the previous communist regimes were unjust. Returning property to past owners served to boost the legitimacy of the new regime and bolster the integrity and credibility of the new private-property rights regime. In doing so, the government demonstrated both a commitment to private ownership and a repudiation of past ownership structures. Restitution legally overturned the past programs of nationalization and served to denounce the coercive methods of expropriating property by the past communist regimes. These benefits were compatible with the larger systemic goal of creating a capitalist economy and a law-based polity.<sup>52</sup>

#### Justice and the politicization of lustration

Perhaps more than restitution, skeptics might call into question the moral imperative motivating lustration, given the problems with lustration's implementation. First, lustration programs suffered from many flaws, including their reliance on the very organs and methods that anti-communists disdain. In a twisted way, the lustration programs validated the former secret police institutions in that the lustration commissions relied on the former agencies' records to lustrate people. On an ethical level, this endorsement is certainly problematic. Under communism, people might have informed against their will, under coercion and even under torture. The agents also acquired and (at times falsely) attributed information gained through illegal wiretaps and video surveillance.<sup>53</sup> Even on a practical level, identifying informants based on the old secret police files leads to false accusations. The files were not accurate since the incentive structure of the secret services encouraged agents to pad files, to attribute information to uncooperative candidates, and to fabricate names

52. Noel Calhoun, *Dilemmas of Justice in Eastern Europe's Democratic Transitions* (New York: Palgrave Macmillan, 2004).

53. *Ibid.*

from scratch to meet departmental quotas.<sup>54</sup> Also, in Romania, Slovakia, East Germany, and the Czech Republic, agents were known to have purged and altered secret police archives in the days and weeks following the sudden collapse of the old regimes. In East Germany, for example, despite the formation of citizens committees to protect the integrity of the files, high-level Stasi officials had multiple opportunities to smuggle or destroy files.<sup>55</sup>

Second, skeptics might point to the political misuse of lustration as well to cast doubt on any ethical or ideational motivation behind the program. Many observers have accused politicians of manipulating the lustration process to discredit their opposition. As expected, an accusation of secret police collaboration was a quick and dirty way to discredit opponents, even those with long histories battling communism. Perhaps the best known example of a dissident who faced lustration charges is that of former Czech parliamentarian turned foreign minister, Jan Kavan. He claims that the accusations of collaboration and his positive identification in the StB files stemmed from his virulent opposition to the economic program of then Prime Minister Václav Klaus.<sup>56</sup> When people in the Klaus camp labeled Kavan a leftist and an StB collaborator, Kavan had to make the choice of whether to resign or face a lustration trial. He chose to fight the lustration case brought against him and won in January 1996, nearly five years after first standing accused. Another notable example is former Czechoslovak deputy premier Václav Valeš, who also confronted accusations of past communist collaboration by members of parliament. When submitting his resignation, he formally cited health reasons. However, according to public statements by President Havel, Valeš's resignation was prompted by "unscrupulous" and "unsubstantiated" attacks on him in the Federal Assembly and in the press that insinuated Valeš had collaborated with the StB.<sup>57</sup> In the Czechoslovak Federal Assembly

54. Rosenberg, *Haunted Land*.

55. *Ibid.*; Calhoun, *Dilemmas of Justice*.

56. Author's interview with Jan Kavan, Prague, 7 February 1996.

57. Valeš is an interesting example of a politician who had suffered under the communist period of normalization (fired as a government minister and incarcerated for three years)

in 1991, ten deputies in total denied collaboration and fought positive lustration identifications, despite the powerful pressure of their peers to submit their resignations.<sup>58</sup> Indeed, the strong criticism of lustration by prominent dissidents with clear anti-communist credentials, such as Adam Michnik and Havel, further calls into question both the ethical and the anti-communist underpinnings of these programs.

The use of lustration for political ends occurred throughout the region. In Slovakia, former Premier Vladimír Mečiar was known for denouncing opponents for past collaboration,<sup>59</sup> and many Polish leaders, as discussed above, stood accused of secret police collaboration without the benefit of due process, given the delay in formalizing a program. Although some politicians survived the attacks, many succumbed to the pressure. Moreover, due to the repeated leaking of names from the secret police files, some individuals were “lustrated” without ever applying for high-level positions or without verification from the Interior Ministry. When this occurred, people’s reputations and professional prospects suffered. Returning to the Czech case, in June 1992, students working in the StB archives smuggled out computer disks with the registry lists of 160,000 names and published them in installments. The list did not accurately match up against the list in the Ministry of Interior, with some names missing and others added.<sup>60</sup>

Indeed, there is much evidence to suggest that lustration was nothing but a political weapon, given its frequent abuse and exploitation. And it is easy to focus on its flaws in implementation and assert that lustration was supported not for reasons of historical justice or anti-communism but for its political utility. In social science analysis, moreover, it is always easier to reduce human motivation to self-serving materialist behavior. Perhaps it even seems naïve to attribute lofty goals to politicians or policies.

Despite its misuse, lustration nevertheless did arise out of ethical and normative concerns. First, as Noel Calhoun argues, it

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but still faced accusations of communist collaboration. For Havel’s comments, see ČTK, 17 September 1991.

58. ČTK, 18 April 1991, 24 May 1991.

59. David, “Lustration Laws.”

60. Rosenberg, *Haunted Land*.

arose out of an ideological commitment to a new liberal order. Lustration was a way to prevent past political iniquities from polluting or contaminating the new society and polity. Certainly lustration at times was used as a weapon, but it was much more than a weapon since it was also a way of protecting the inchoate liberal democratic order.<sup>61</sup> As Czech Justice Cepl explains, lustration “excludes from governmental power those whose actions have manifested hostility to democratic principles. It also gives democracy a breathing space, a kind of grace period during which it can put down roots without the fear that enemies in high places will try to undermine it. Fundamental change in a society requires replacement of its elite. Members of the old communist elite . . . have questionable values and loyalties.”<sup>62</sup>

Lustration’s effects were both substantive and symbolic. On a substantive level, it prevented former power holders during communism from achieving (or maintaining) positions from which they could stall or block the transformation of the regime. From the vantage point of 1990-91, this threat loomed large. For example, even former Czech president Havel, who later opposed the extension of lustration, initially did support it as a “purely revolutionary, extraordinary provisional act” limited by a “certain transitional period” since he agreed with the idea that “supporters of the old regime should not be tolerated in influential posts.” And although he would have designed the program differently and restricted it to a shorter period, he did support and sign into law the 1991 lustration bill.<sup>63</sup> Demonstrating a decisive break with the past, the purging of high-level communist party and secret police agents and informants helped inspire confidence in the integrity of the new leadership and helped secure the new system of government. In Romania, for example, the continued presence of former secret police officials undermined the public’s confidence in the legitimacy of the National Salvation Front government following the fall of the Ceausescu regime.

While lustration served the political interests of some leaders, this is not an indictment of lustration, nor is it a refutation of the

61. Calhoun, *Dilemmas of Justice*.

62. Cepl and Gillis, “Making Amends,” 122.

63. ČTK, 7 October 1995.

ideational or ethical dimension of anti-communist programs. As Max Weber argued, ideas are more likely to survive and be influential when they do not conflict with, and even serve, existing interests. While past political science convention recommended that “ideas-based” arguments demonstrate that leaders’ interests were harmed for norms or beliefs to matter theoretically,<sup>64</sup> more recent theorizing on the role of ideas recognizes the futility of discussing interests and ideas as discrete and distinct from each other.<sup>65</sup> The presence of one variable does not repudiate the impact or the relevance of the other. Political behavior, especially in revolutionary moments, is the product of both ideas and interests, two phenomena that often overlap.<sup>66</sup>

On an ethical level, lustration was intended to help create a just society. It fulfilled the cathartic need to punish the perpetrators of past injustices without violating an individual’s right to life or liberty without sufficient evidence of past crimes. As Calhoun explains, it not only was a way to keep former collaborators from thwarting systemic change, simple disqualification from public service was also ideationally compatible with a new law-based polity, in which criminal prosecution based on retroactive applications of the law would be forbidden.<sup>67</sup> Moreover, lustration sought to avoid the spontaneous denunciations of political and industrial elites that occurred in the early days after the collapse of the past communist regimes. Many in East Central Europe wanted to avoid reliving their postwar experience with street justice in which collaborators with the Nazi regime faced the spontaneous punishment of the crowd.<sup>68</sup>

Cepl and Gillis provide a compelling moral explanation for lustration as a program motivated by anti-communist historical justice, rejecting baser motivations such as retaliation and revenge. They contend that lustration has been part of a moral

64. Goldstein and Keohane, *Ideas and Foreign Policy*.

65. Mark Blyth, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century* (New York: Cambridge University Press, 2002).

66. Bruce Ackerman, *Private Property and the Constitution* (New Haven, Conn.: Yale University Press, 1977).

67. Calhoun, *Dilemmas of Justice*, 34-40.

68. Luc Huyse, “Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past,” *Law and Social Inquiry* 20:1(1995): 51-70.

cleansing that society had to go through to transform itself. If simple retaliation or revenge had been the goals of lustration, they could have been reached more efficiently and directly.<sup>69</sup> After all, according to the design of the program, most collaborators could avoid being exposed by remaining outside government or beneath the relevant levels of public office, or they could resign quietly as in Hungary. In addition, the details of collaboration have generally been kept private, and there are strict limitations on who can initiate a lustration investigation.

In Poland, it is especially evident that retaliation did not drive the program, given that a person's open acknowledgement of past collaboration formally allowed him to maintain his government position.<sup>70</sup> The desire for truth helped society come to terms with the communist past. As David and others argue,<sup>71</sup> the more citizens learned about their history of human rights abuses, arrests, killings, and torture under communism, the more they wanted to know about the perpetrators of these abuses. The search for truth as part of the healing and cleansing process underlies the Truth and Reconciliation Tribunals in post-apartheid South Africa and in Chile after the Pinochet regime.

#### Thinking comparatively about anti-communist programs

Despite the legitimate criticisms of these programs, both lustration and restitution represent a need to correct for injustices perpetrated under communism. While the presence of anti-communist programs across Central Europe reflects the common desire to break with the past, the intensity of these programs varies substantially by country. For example, among the four countries discussed, anti-communist programs were pursued more vehemently in East Germany and the Czech Republic than they were in Poland and Hungary. It is unclear why the anti-communist legislation was more encompassing and more exten-

69. Cepl and Gillis, "Making Amends"; David, "Lustration Laws."

70. That said, sometimes the revelation of past collaboration created informal pressures for politicians to resign.

71. David, "Lustration Laws."



sive in the first two cases. Two plausible explanations are the greater rigidity of the orthodox communist regimes in the GDR and Czechoslovakia and the suddenness of these regimes' collapse. In both countries, the former communists steadfastly resisted political and economic liberalization up until their fall from power. Thus, when the communists fell, they fell harder. Likewise, they vigorously punished dissident activity until the end of their tenure. Not only should this have added directly to the populace's disdain for them, it should have also weakened the ability of former communists to block lustration and restitution attempts during the most relevant period—that is, following the collapse of the old regimes—the point at which the former leaders were most discredited. After the first democratic elections in Czechoslovakia and the reunification of Germany, former communists lacked legitimacy and power and thus were in no position to shape legislative outcomes. In Hungary and Poland, this is less true. Political and economic change emerged gradually in the 1980s with the aid or acquiescence of former communist elites. Moreover, relative to their counterparts in Czechoslovakia and the GDR, Hungarian and Polish leaders from the communist era gained legitimacy as center-left politicians quite early, as long as they embraced democratic and capitalist change. The relationship between the strength of the successor communist party and the strength of lustration programs is direct: as one rose, the other waned.

In short, both the political power of former communists and the speed with which communism was dismantled help to explain the relative intensity of anti-communist legislation. That said, anti-communism was potent enough in all four countries for several anti-communist programs to be adopted. Moreover, the relative strength of anti-communist programming does not mean that the East Germans or the Czechs are inherently more anti-communist than the Hungarians and the Poles. Such a case could not be made in any rigorous or definitive way. More important, the exercise would represent a misunderstanding of both the nature and the power of ideology. Asserting that anti-communism shaped the founding of the new regimes in East European

countries does not require rank ordering them. Furthermore, to argue that ideational motivations drove certain anti-communist programs, it is not necessary to show that these populations subscribed to an ideology with equal fervor or with identical interpretations.<sup>72</sup>

On a final note, it should be mentioned that the desire to return confiscated property and purge secret police informers from the public sector was not universal in the post-communist region. In fact, post-Soviet Russia did not experience the same demand for restitution or lustration. After nearly three-quarters of a century of Soviet communism, it is not that surprising that the demand for returning confiscated property was weak. That said, it was not altogether absent either. In response to demands for restitution, the Yeltsin government decreed in 1994 that the heirs of individuals who lost property during the Soviet period should be financially compensated, with compensation not exceeding one hundred times the average salary, about one thousand U.S. dollars.<sup>73</sup>

In terms of lustration, however, the long tenure of Soviet communism would not explain at all the failure to bring to justice KGB informants. In Yeltsin's Russia, one might have expected to see a rehabilitation program or a lustration program of some kind emerge. While some political rehabilitation did occur, lustration did not. Although the KGB acquired a new name, little restructuring or purging occurred. In Russia, the secret police was not equivalently discredited as in Central and Eastern Europe. After all, who could imagine a similarly popular, openly proud, former KGB officer serving as president in a Central European country, such as in the case of Russian president Vladimir Putin. Not only is Putin popular, but he has encountered virtually no backlash or public outrage over his promotion of an entourage of former

72. On the "unwarranted assumptions about the uniformity of convictions" among members of an ideological group, see Joseph Schull, "What Is Ideology? Theoretical Problems and Lessons from Soviet-Type Societies," *Political Studies* 40:4(1992): 728-41. Thomas Hansen also notes the tensions created by the "multiplicity of meanings inscribed in most ideological constructions." Thomas Hansen, *The Saffron Wave: Democracy and Hindu Nationalism in Modern India* (Princeton, NJ: Princeton University Press, 1999), 25.

73. Kozminski, "Restitution of Private Property," 97.

KGB agents to the highest echelons of government.<sup>74</sup> Certainly, it would be an interesting sociological study to investigate evolving attitudes of Russians toward the KGB from the glasnost years to the present. Such a study could produce fascinating insights into the transformation of national identity and political legitimacy in the post-Soviet era.

Perhaps the rejection of communism—through formalized anti-communist programs—is too closely linked to the process of developing a new national identity for these programs to be consistently popular throughout the region. For most people living in Central Europe, the rejection of communism can occur quite easily without perceiving it as a rejection of oneself. Moreover, those in Central Europe who might feel proud of the communist past do not share the same legitimacy or political clout as their counterparts in Russia. In Central Europe, anti-communist programs are part of redefining national identity in the post-Cold War era. Restitution in particular reveals the link between anti-communism and nationhood. Just consider the anti-Russian dimension to restitution in the Baltics and the anti-German dimension to restitution in Poland and the Czech Republic. The formal programs that help East Europeans come to terms with the communist past also help them to redefine themselves within the construction of the new democratic political system and the new geopolitical and social order.

74. Russia is certainly not the only place where a former secret police agent achieved the pinnacle position of power in the post-communist system. In Hungary, the past prime minister, Peter Medgyessy, was exposed just following the 2002 parliamentary elections to have been a counterintelligence officer. While anti-communist programs correcting for past injustices are generally weaker in Hungary than the rest of the region, this revelation was highly damaging. The Medgyessy case differs importantly from the Putin case, since Medgyessy had hoped to keep his background a secret, whereas Putin extolled his years as a KGB officer and even praised the former KGB chief, Aleksandr Kriuchkov, the leader of the failed 1991 coup attempt, in the months leading up to the presidential election. Vladimir Putin, *First Person* (New York: Public Affairs, 2000). That said, Medgyessy remained in office despite this revelation.