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Transitional Justice and the Rule of Law: Lustration and Criminal Prosecutions in Post-Communist States

I. Introduction: The Role of the Rule of Law in Transitional Justice

In the twenty years since the former communist countries of Central and Eastern Europe began the lengthy transition to democracy, their transitional justice processes have varied significantly. Using various mechanisms, post-communist societies have emphasized different priorities, stressing societal reconciliation, prevention of future conflict, and democratization to different degrees. All of these countries, however, agree on the importance of one specific objective of transitional justice: the establishment of the rule of law.

In post-communist states, and indeed in the vast majority of all other transitional societies, the rule of law is the key focus of state-building, as it is viewed as a “centerpiece of a good, orderly, liberal, economic state.” The United Nations defines the rule of law as “a principle of governance in which all persons, institutions and entities…are accountable to laws…consistent with international human rights norms and standards. It…ensure[s] adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law…avoidance of arbitrariness and procedural and legal transparency.”

Legal theorist Brian Tamanaha describes the rule of law as “the most important political idea today” and a necessary prerequisite for the cessation of human rights violations. In much the same way as democracy, freedom, and liberty have been embraced as “good” ideals, the rule

2 United Nations Security Council
3 Dancy, 12.
of law has come to be recognized internationally as a “good” norm. For this reason, the post-communist governments of Central and Eastern European countries actively pursued the rule of law as a way to legitimize their new democracies.

Although a common goal in the region, establishing the rule of law has become a significant point of contention in the argument over the legality of transitional justice policies. Both opponents and proponents of these policies use the rule of law to support their side. Those who argue against transitional justice contend that it violates the rule of law both in theory and in practice. They take issue with the concept of retroactive justice, which inherently contradicts the idea of fairness in the application of the law. Furthermore, the mechanisms used to implement transitional justice, including both criminal trials and lustration laws restricting employment, are riddled with rule of law violations, such as the use of questionable evidence and the lack of due process in legal proceedings. Given that new regimes are aware of these issues, yet have still pursued prosecutions and employment restrictions, some evidence suggests that “lustration [is] nothing but a political weapon.”

On the other hand, those in favor of transitional justice maintain that the transition period is a time in which the rule of law can be established using criminal trials and lustration laws—that these mechanisms in fact strengthen the rule of law rather than weaken it. Trials, when executed using proper rule of law considerations, can lay a good democratic foundation by creating both a tradition of the rule of law and, by “extricating the source of violence,” creating an environment safe for democracy. The argument follows that the removal of “members of the old Communist elite [with] questionable values and loyalties” allows the seed of democracy to

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4 Appel, 379–405.
5 Dancy, 8.
be planted and flourish uninhibited.\textsuperscript{6} In addition, prosecuting past human rights abusers establishes a sense of civic trust and governmental accountability.\textsuperscript{7} It assures the public that justice will not be forgotten, and the “travesty of former oppressors subsequently appealing to and profiting from democracy and the rule of law” will not be permitted.\textsuperscript{8}

Traditional transitional justice mechanisms include truth commissions, vetting and lustration boards, monetary reparations to victims, and domestic and international trials. This paper will focus on the trial aspect of transitional justice, including both criminal prosecutions and constitutional court rulings on lustration laws. According to Olson et. al., criminal trials are “the most emblematic of transitional justice mechanisms, epitomized by the Nuremburg Trials.”\textsuperscript{9} They are also the most controversial, due to the high level of supposed rule of law violations during the tribunal process. Opponents cite these violations as some of the gravest problems associated with traditional justice. Proponents also feel strongly about trials, arguing that prosecutions are the most effective way to deter future perpetrators, strengthen democracy, and establish the rule of law.\textsuperscript{10} Moreover, high profile trials draw the most attention and political pressure, and high profile prosecutions bring about what might be considered the most drastic consequence of misconduct for politicians: removal from office.\textsuperscript{11} Additionally, constitutional court rulings on lustration laws play a significant role in determining a country’s “style” of

\textsuperscript{6} Appel, 400.
\textsuperscript{7} De Greiff and Duthie, 266.
\textsuperscript{8} Horne, 719.
\textsuperscript{9} Olsen, Payne and Reiter, 17.
\textsuperscript{10} Ibid.
\textsuperscript{11} Schedler, 13–28.
transition, setting an important precedent for the way in which the rule of law will be interpreted henceforth.\textsuperscript{12}

Using the arguments presented by both proponents and opponents of traditional justice and examples of transitional patterns followed by the different countries, this paper attempts to answer the following questions: How have the post-communist states addressed the issue of transitional justice and the rule of law? Do trials, prosecutions, and lustration contradict or reinforce the rule of law in new democracies?

\section*{II. Criticisms of Criminal Trials and Lustration}

In her article “International Legal Rulings on Lustration Policies in Central and Eastern Europe,” Horne quotes Williams, “The wish to lustrate collided with a higher-order normative commitment to the rule of law.”\textsuperscript{13} As Horne points out, this statement frames the concepts of “rule of law” and “lustration” as mutually exclusive. It also implies that the rule of law exists on a higher plane and is therefore preferable to lustration; when the two come face to face in such a “collision,” the rule of law should always win out over the “lower” desire to pursue justice.

The Hungarian Constitutional Court was of a similar opinion when it coined the phrase “revolution under the rule of law.”\textsuperscript{14} The court took issue with the violations of strict rule of law guidelines in criminal law because of retroactive justice concerns. For the Court, this meant making national lustration and criminal prosecution illegal.\textsuperscript{15} Transitional justice through trials and employment restriction was therefore eliminated due to theoretical dead ends. This is the first theme of the anti-lustration and prosecution argument: enacting laws and then punishing

\begin{thebibliography}{9}
\bibitem{Solyom1} Sólyom, 133–161.
\bibitem{Horne1} Horne, 713–744.
\bibitem{Solyom2} Sólyom, 219.
\bibitem{Horne2} Horne, 717.
\end{thebibliography}
people for what they did before the laws were in place is inherently contradictory to the rule of law. Using this logic, the Hungarian Constitutional Court has repeatedly struck down laws aiming to reset the duration of the limitation period (although Germany, Poland, and the Czech Republic did allow the statute of limitations to be changed retroactively).  

The second reason many take issue with transitional justice trials has to do with informational problems. Evidence used at trials is often unreliable; some believe that there is no way to prosecute criminal violators and Communist collaborators under rule of law norms using the information currently available, which dates back to the time of former corrupt regimes. Lustration programs and criminal trials rely on information obtained through coercion, illegal wiretaps, and other similarly dubious means—“the very organs and methods that anti-Communists disdain.” Some evidence of government activity was actively destroyed, while some was openly fabricated. Of the 297 transcripts from the meetings of the Polish Political Bureau created between 1982 and 1989, only six survived the transition to the new regime. Furthermore, secret police units were revealed to have had special departments of misinformation, which sometimes fabricated evidence against political opponents. Even when overlooking the political manipulation of secret police files (which will be discussed below), the use of this evidence raises an important question: how will new democracies establish legitimate legal procedures when their court system is built on the foundation of such illegitimate means of prosecution and employment discrimination?

16 Sólyom, 139.
17 Horne, 722.
18 Appel, 397.
Even if a state were to operate under the assumption that information used in trials and vetting procedures was legitimate, lustration itself would still contradict fair employment norms. A prime example of this is the Czech Screening Act of 1991, which allowed for unfair employment discrimination in the interest of protecting democracy. The Act violates basic rule of law and human rights considerations, such as freedom of expression and freedom of assembly and association. In 1994, the International Labor Organization (ILO) Committee of Experts ruled that the law violated fair employment provisions, declaring that it “disproportionately limit[ed] employment opportunities on the basis of political opinion.”

Even though discrimination based on past membership or affiliations inherently violates the rule of law, laws of this sort are still extant in Lithuania, the Czech Republic, and Poland.

Some of the opponents of transitional justice trials, including international bodies such as the European Court of Human Rights (ECHR) and the ILO, are sympathetic to the goals of criminal prosecutions and lustration in theory, but are concerned by the manner of their implementation. These groups consistently reason that there is nothing fundamentally wrong with transitional justice trials while ruling against lustration policies because of due process concerns. Trials in particular are targets of suspicion because “transitional societies often lack the capacity… to conduct free and fair trials” under the rule of law due to their “insufficient resources and cooperation.”

Examples of such international rulings will be explored in depth in Section V.

The essentially political nature of transitional justice prosecutions and lustration programs serves as the most pressing argument against them. Some have asserted that

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20 Horne, 727.
prosecutions are “driven by vengeance”\textsuperscript{22} and have interpreted them as processes of “victors’ justice... motivated by a desire for revenge.”\textsuperscript{23} But is vengeance really the problem? In some cases, transitional justice certainly carries undertones of it, and the events of December 1989 in Romania serve as perhaps the most memorable and upsetting example. As Nalepa points out, however, most of the violence in communist Europe occurred more than thirty years ago; and a typical voter or politician in today’s society has few reasons to hold a grudge against former autocrats, many of whom are now elderly.\textsuperscript{24} Of course, the public’s sentiment often depends on the degree of violence that society endured during the communist era, but it is largely implausible that simple retaliation would be the sole motivating factor for contemporary political justice.

Despite the unlikelihood of lustration being a manifestation of basic “victors’ justice,” the ethical or ideological motives behind transitional justice policies remain in question. Particularly prevalent is the suspicion that transitional justice policies are being misused in order to discredit political opponents.\textsuperscript{25} Jan Kavan, a former parliamentarian in the Czech Republic, is a victim of this practice. In 1991, he was labeled a State Security (StB) collaborator because he opposed the economic program of then Prime Minister Vaclav Klaus. He fought the accusation and won in 1996, but the charge took a heavy toll on his political reputation. Former Czechoslovak deputy premier Vaclav Vales faced similar allegations. “Unscrupulous” and “unsubstantiated” attacks on him in the Federal Assembly eventually forced him to resign from parliament.\textsuperscript{26}

\textsuperscript{22} De Greiff and Duthie, 251.
\textsuperscript{23} Nalepa, 11.
\textsuperscript{24} Ibid.
\textsuperscript{25} Appel, 398.
\textsuperscript{26} Ibid.
Situations such as Kayan’s exist in all post-communist states, where accusations, investigations, and trials have led to the resignation of countless public figures. In Poland, more than 21,000 politicians, judges, and lawyers have been screened for links to the secret police; Hungary’s Lustration Committee vetted a total of 7,872 people; and in the Czech Republic, more than 420,000 citizens were required to apply for lustration certificates in order to avoid dismissal. All in all, by the end of 2004, lustration “affected the careers of thousands of politicians and millions of regular citizens.”

Because of the vast number of those impacted, the questionable nature of the evidence behind the charges, and the power that destruction of reputation through public exposure has in the world of politics, there is a need for extreme safeguarding against political exploitation of the proceedings. The Hungarian Constitutional Court stressed this need as well, proclaiming: “The superiority of the law ha[s] to be maintained above political demands.”

The development of transitional justice through constitutional rulings has also created political problems within the judicial system. Constitutional courts, seen as emblems of democratic advancement, were conferred with “revolutionary legitimacy,” though it would sometimes be correct to wonder if they were bestowed with too much legitimacy. Empowered by their democratic image, constitutional courts used verdicts to declare binding abstract constitutional norms, which were widely believed to be politically meddlesome. For instance, although the Hungarian Constitutional Court rejected lustration because of its complete devotion to the rule of law, it employed “abstract norm control,” giving an “excessively political cast to

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27 Nalepa, 4.
29 Sólyom, 139.
30 Ibid., 135.
31 Ibid., 148.
the court’s decisions, making it appear less like a court and more like a legislative chamber.”

This was a particularly dangerous situation in highly polarized courts like Bulgaria’s, which was almost evenly split between “reds” and “blues,” and every decision could have a large political impact.

Using the rulings of international bodies as political leverage exacerbates judicial problems. In Bulgaria, for example, the Communist-sympathetic constitutional court and parliament took advantage of an ILO ruling to justify delaying reforms. Similarly, Slovakia’s government used ILO’s recommendations not to structure lustration in rule of law terms as ILO had intended, but rather for political purposes. Although the ILO interfered to create a democratic state in Slovakia, ILO recommendations actually impeded its development. This is still a large concern for Central and Eastern European countries trying to distance themselves from the shadow of a Communist past.

Some rule of law advocates claim that it is best to evade these judicial dilemmas by avoiding the trials that lead to them. While pro-trial promoters maintain that reformed judicial systems can promote civic trust by showing the public that “justice can be fair” and “demonstrat[ing] credibly that previous patterns of abuse and impunity are rejected,” their opponents wonder what will happen when this new justice is revealed to be unfair as well. A legal structure that has its roots in transitional justice but theoretically and practically violates the rule of law is not a prudent beginning to a new democratic system.

III. In Defense of Trials

32 Herman Schwartz, 195–216.
33 Ibid., 207.
34 Horne, 730
35 De Greiff and Duthie, 266.
While certain criminal trials were poorly executed and violated the plaintiff’s due process rights, proponents argue that trials do not always breach procedural rule of law concerns. In reality, many trials are a positive method of establishing democratic norms and respect for due process in a recently liberalized society. This is especially true when they are conducted under the guidance of experienced international tribunals if domestic governments are not democratically stable enough to handle the cases alone. De Greiff and Duthie stress that “how it is done is as important as what is done.”36 Legal initiatives that abide by the rule of law are therefore potential instruments that can teach post-Communist societies about the role of the judiciary in the new social context.

Both criminal trials and constitutional court involvement send a clear message that the judiciary will be actively involved in the new regime’s approach to governance. Moreover, the attention the courts receive for highly publicized trials of politicians will make the judiciary more accountable overall.37 Creating courts with a democratic character is essential in this period of transition because the judiciary is a trademark of the new regime’s character.38 Transitional justice trials build the new regime's integrity; “By making full amends for past injustices…[the government] makes good on the promise of principled and responsible government.”39 Principled and responsible government can only be established permanently in an environment that fosters and accepts democracy. Thus, it is necessary for the ideology of the new regime to completely replace that of the old order. In this, too, trials and vetting can be effective. Czech Justice Cpel succinctly explains this idea, arguing that lustration and criminal prosecutions

36 Ibid.
38 Sólyom, 134.
39 Appel, 395.
“exclude 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.”

In essence, trials and lustration are methods of “moral cleansing” required of society before it is able to transform itself; they remove Communist sympathizers who are ideologically opposed to the creation of a democratic system under the rule of law. The ECHR agreed with this logic, stating that it was the “compelling duty of post-Communist governments to safeguard democracy by guaranteeing the loyalty of the civil service.” Of equal importance, trials are the most effective way to remove from power not only those who have a past record of human rights violations, but also those who would undermine confidence in the rule of law by escaping prosecution for past wrongs.

Those who endorse trials consider the restoration of public confidence to be a major tenet of their position. Trials, they contend, are the symbolic expression of the rule of law, embodying the promise of accountability to the law. The procedures by which former perpetrators are held accountable for their actions are a clear signal that the cruelties inflicted by the former regime will no longer be accepted. Not only do the criminal trials ensure a measure of personal justice for those who suffered previously, but they also “play an important role in enhancing the legitimacy of official structures and [in doing so] build the rule of law.”

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40 Appel, 395.
41 Ibid., 401.
42 Horne, 733.
43 De Greiff and Duthie, 266.
new institutions in this way inadvertently undermines their authority. In Romania, for example, the new governing body, led by the National Salvation Front, lost the public’s confidence after allowing former secret police officials to walk free.\(^{46}\)

Allowing officials to escape punishment is the main reason trial proponents object to abandoning criminal proceedings. Many cannot condone the idea that criminals are able to escape punishment because of “technical” rule of law considerations. Examining this issue, the ECHR observed a deeply ironic situation: “They barefacedly claim the very human rights which they spent their life denying to others, nay, often cold-bloodedly violating them in the most brutal fashion.”\(^{47}\)

Furthermore, justice through criminal trials deters people from committing crimes. Trials, specifically domestic trials, have the strongest deterrent effect.\(^{48}\) Because violence was committed on such a large scale, making it impossible to bring the majority of criminals to justice, post-Communist states must strategically decide whom to bring to trial.\(^{49}\) Trials should therefore be limited to the parties most responsible for ordering atrocities, developing particular forms of torture, and abusing power.\(^{50}\) This would serve justice while maximizing deterrence.

Finally, in response to their opponents’ assertions that trials and lustration are unavoidably political, advocates of transitional justice argue that the lustration processes and criminal trials in Central and Eastern Europe today are distinct from the political purges witnessed in other countries. Unlike other countries that base dismissals and prosecutions on

\(^{46}\) Appel, 400.
\(^{47}\) Horne, 735.
\(^{48}\) Dancy, “Justice and the Peace,” 34.
\(^{50}\) Olsen, Payne, and Reiter, 159.
party affiliations or political opinions, the post-Communist states of Central and Eastern Europe include due process; therefore the rule of law is apparent in the proceedings.

IV. How the Criminal Trial Debate Has Played Out

Each post-Communist state emphasizes different transitional justice mechanisms in accordance with its own interpretation of the rule of law. Some countries have actively pursued the prosecution of former Communist officials, although even the most rigorous court cases seldom result in convictions or imprisonment due to the defendants’ advanced age. There have been several high-profile cases, however, that have drawn international attention. For example, Wojciech Jaruzelski, the last Communist president of Poland, has faced criminal prosecution several times in the past twenty years. In 1996 he was put on trial for his role in the 1970 shipyard shootings in Warsaw. In the same year, the lower house of Poland’s Congress brought against him a series of impeachment hearings for the imposition of martial law, but both were dropped due to Jaruzelski’s health concerns. In 2008, the Institute of National Remembrance brought charges against Jaruzelski for the imposition of martial law, resulting in another round of legal proceedings that has yet to be concluded.\textsuperscript{51}

Poland has been generally supportive of criminal prosecutions as a method of imposing transitional justice. The Special Commission reopened eighty-eight cases of unexplained deaths from the Communist period, and while very few of these investigations resulted in a prosecution or conviction, they served the symbolic purpose of demonstrating the new government’s commitment to the rule of law principle of accountability.\textsuperscript{52} Prosecutions in Romania have followed a similar pattern recently, with the government launching aggressive investigations into

\textsuperscript{51} Rosenburg, 1.
\textsuperscript{52} Grodsky, 21–43.
nearly one hundred cases of human rights violations that ultimately resulted in only a handful of court hearings, guilty verdicts, and imprisonments.\(^5\)

Such restraint stands in stark contrast to the “revolution after the revolution” in 1989, in which former Communist dictator Nicolae Ceausescu and his wife Elena were brutally executed after a one-day *ad hoc* military trial. The country has struggled to come to terms with this undemocratic introduction to the new regime and has since been especially careful to observe rule of law guidelines. Making sure the events of 1989 would not set a precedent for the new regime, the state has been conscious of maintaining democratic standards in all criminal prosecutions since then. These standards are responsible for the small number of successful prosecutions.

In the period immediately following the reunification of East and West Germany, Germany held more conspicuous criminal trials than many post-Communist states. Furthermore, in Germany, the trials resulted in convictions more frequently. This may be due to the prevailing legal consensus, which former Minister of Justice Klaus Kinkel has articulated and numerous judges in criminal rulings have also supported, that punishing individuals for previously committed crimes is not a form of retroactive justice. “Even the criminal code of the GDR treated manslaughter, bodily harm, [false] imprisonment, and violations of the peace as punishable offenses. In numerous ways, the GDR’s rulers disregarded and infringed upon their laws, and thus they can be prosecuted today according to the criminal code of the GDR.”\(^5\)

Party Head Erich Honecker, who faced prosecution in the early 1990s, was the second head of state to be put on trial in over 800 years. His collaborators Kebler, Streletz, and Albrecht; Stasi leader Erich Mielk; and four border guards were accused of killing East Germans

\(^5\) Lavinia Stan, 1–16.

\(^5\) McAdams.
attempting to flee across the Berlin Wall. The various outcomes of these trials each contributed to the German construction of the rule of law. The charges against Honecker, for instance, were dismissed after Berlin’s Constitutional Appeals Court stopped the proceedings because of the defendant’s failing health. Honecker subsequently departed for Chile, where he spent the remainder of his life in exile. Despite accusations that its intervention was a “slap in the face” for Honecker’s victims, the constitutional court made a profound statement about the implementation of justice in the new system, “If the trial were allowed to become an ‘end in itself,’ …the [new regime] would be as guilty of violating the human dignity of its citizens as was the [old regime]. ‘The individual,’ as the judges put it, ‘[would] become a simple object of state measures,’ and a fundamental distinction between the two political orders would be obscured.”55 By maintaining this distinction, the judges were able to use their fair treatment of the accused as a testament to the rule of law.

German criminal courts were also merciful in the case of the four border guards. Although the defendants were found guilty in 1992, the judge later suspended their sentences, ruling that their crimes had not derived from “selfishness or criminal energy” but “circumstances over which they had no influence, such as the political and military confrontation in divided Germany.”56 This is not to say that the German courts were afraid to hand out guilty verdicts; in 1993, Honecker’s agents, Kebler, Streletz, and Albrecht, were all found guilty of the charges against them and imprisoned. Likewise, Stasi head Mielk was sentenced to six years in prison,

55 Ibid.
56 Ibid.
although, ironically, he was charged with a murder committed in 1931 and escaped prosecution for any crimes during his tenure as leader of the secret police.\textsuperscript{57}

The constitutional court of the Czech Republic upheld the 1993 Act Concerning the Lawlessness of the Communist Regime, which permitted the prosecution of individuals for crimes committed during the Communist period,\textsuperscript{58} allowing the state to pursue what were arguably the most aggressive transitional justice policies. The Czech Republic criminally prosecuted 168 people between 1995 and 2008, the majority of whom were either chiefs or investigators of the State Security (StB).\textsuperscript{59} The Czech Office for the Documentation and the Investigation of the Crimes of Communism Police spearheaded this initiative, which focused on offenses committed between January 1945 and 1948.\textsuperscript{60} The most prominent conviction was that of former StB head General Alojz Lorenc, who was allowed to escape to Slovakia when the countries separated. Several years later, a Slovakian court found Lorenc guilty of less serious crimes and gave him a suspended fifteen-month sentence, a punishment that reflected the country’s lenient attitude towards transitional justice. In Slovakia, for instance, fact-finding commissions do not have the power to start criminal prosecutions.\textsuperscript{61}

Finally, several members of the Hungarian Communist militia responsible for the deaths of unarmed demonstrators during the 1956 Revolution received sentences in 1996.\textsuperscript{62} The constitutional court judged these legal proceedings to be in adherence to the rule of law, though many other trials were forcibly dropped when found to be in violation of statutory limitations.

\textsuperscript{57}“Ex-Stasi Chief Dies.”
\textsuperscript{58}Appel, 382.
\textsuperscript{59}Ministry of the Interior of the Czech Republic, n.p.
\textsuperscript{60}Grodsky, 34.
\textsuperscript{61}Schwartz, 195–216.
\textsuperscript{62}Sólyom and Brunner.
More than any other post-Communist state, Hungary was extremely mindful not to turn criminal trials into “moral theaters,” so much so that the constitutional court’s decisions were often accused of “barring the way to justice.”\(^{63}\) Despite these condemnations and political pressure, the Hungarian Constitutional Court has been unyieldingly formalistic in its approach to interpreting the rule of law, stressing the importance of legal certainty above all else.\(^{64}\) In the 1992 statutory limitations decision, the court succinctly expressed its philosophy, “Simply put, historical situations, justice etc. are of no consideration… Exemptions from the guarantees of the criminal law are only possible with their overt disregard, an outcome precluded by the principle of the rule of law.”\(^{65}\)

**V. Results of the Lustration Debate**

Lustration has not occurred in the same way on a pan-European basis; each country has adopted its own “style” of transition that distinguishes it from the rest. Sólyom asserts that the attitudes of the constitutional courts determine this style, using the “restoration approach” as an example. This attitude is most closely linked to a respect for justice; it allows the statute of limitations to be reset and presupposes a total break with the law of the Communist era in order to prosecute former offenders. The constitutional courts of Poland, Germany, and the Czech Republic ascribe to this methodology. The latter two have the most drastic lustration programs,\(^{66}\) while the Polish Constitutional Court aspires to use lustration to achieve “social justice.”\(^{67}\) The Czech Republic’s constitutional court in particular has endorsed lustration programs. It confirmed the constitutionality of several laws that banned a relatively large group of people

\(^{63}\) Ibid., 20.  
\(^{64}\) Ibid., 38.  
\(^{65}\) Ibid., 19.  
\(^{66}\) Sólyom, 140.  
\(^{67}\) Schwartz, 201.
from a wide variety of posts. It justified its decisions based on the arguments presented in the original 1992 ruling of the Constitutional Court of the Czech and Slovak Federal Republic, which approved the unified country’s initial lustration law on the grounds of securing democracy. In the first decision, the court ruled that it was reasonable for a state to require its officials to be loyal to democratic principles during a transitional period. Later, however, the court took the ruling a step further by approving the indefinite extension of the lustration laws, reasoning that loyalty would be necessary beyond the period of transition.

Conversely, the Hungarian Constitutional Court has checked its lustration efforts, partly out of respect for individual privacy, but mostly because any form of collective responsibility was declared unconstitutional. The court, in its noteworthy statutory limitations case in 1992, decided that the right to human dignity implies that only the guilty actor can be punished. The guarantee of presumption of innocence was thus extended to all administrative law offices, and any previous association with the Communist Party was overlooked. By declaring lustration programs unconstitutional, the court therefore decided to discontinue them.

The Bulgarian Constitutional Court produced mixed decisions during the new regime's first decade. It struck down two early lustration laws, one barring Communist Party officials from holding managerial positions in banks for the next fifteen years and one declaring that time spent in Communist Party organizations would not be included in pension considerations. The court ruled the former to be in violation of the right to work; the latter, the constitutional

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68 Sadurski, 235.
69 Ibid., 237.
70 Ibid., 239.
71 Appel, 382.
72 Sólyom and Brunner, 19.
guarantee of welfare rights. Nevertheless, the court upheld the controversial Panev Law, which would have disqualified former Communist Party members from holding academic positions. Reasoning that no one was entitled to any specific job, the court found that the Panev Law did not violate the right to work. In Bulgaria, lustration laws were originally simple requirements of professional standards and not inherently unconstitutional. Constitutional rulings, however, are exceedingly political in this state, and in 2004 a reorganized court, citing an ILO ruling (Case of Sidabras and Dziautas v. Lithuania), repealed all national lustration laws.

The Bulgarian case is an illuminating example of Horne’s assertion that “the impact of international organizations on the framing of rule-of-law issues in Central and Eastern Europe could be particularly consequential.” The ILO has issued several verdicts condemning as violations of ILO Convention No. 111—criticisms that were seemingly ignored. The non-binding nature of the ILO verdicts, which allowed these countries and Bulgaria to either disregard or apply them as their political aims warranted, impeded the international body’s ability to foster the observation of the rule of law.

The ECHR, on the other hand, avoided commenting on the legality of states’ lustration policies and consistently produced verdicts that allowed each country to bring its procedural methods into line with rule of law guidelines. In several cases against Poland (Bobek v. Poland (2007), Matyjek v. Poland (2007), Luboch v. Poland (2008)), the court addressed due process violations of Article 6 of the European Convention on Human Rights: the right to a fair trial, the

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73 Sadurski, 248.
74 Ibid.
75 Horne, 729.
76 Ibid., 719.
77 Ibid., 727.
right to appeal, and the fair access to information, respectively.\textsuperscript{78} In the 2005 case Rainys and Gasparavicius v. Lithuania, the ECHR found that vetting processes do not violate principles of selectivity.\textsuperscript{79} Generally, the court has approved the information used in lustration programs as a viable source of evidence, confirmed that lustration does not inherently violate fair employment or due process, and asserted that states have the right (and indeed the responsibility) to assess bureaucratic loyalty in order to defend democracy.\textsuperscript{80} Despite differences in lustration programs and constitutional court decisions, the majority of post-Communist states have followed the ECHR’s leadership and adopted a similar stance on lustration.

\textbf{VI. Conclusion: The Importance of Time}

The last consideration is the question of time, which is certainly a central element in a discussion of transitional politics. In the end, transitional politics should be just that: transitional. Furthermore, the time frame is also contingent on the application of the rule of law. Sólyom asks: “What is the ultimate law that governs and determines all other legal norms? …Do extraordinary situations exist which suspend the formal rule of law?”\textsuperscript{81} Opponents of transitional justice policies respond with a resounding no. To the Hungarian Constitutional Court, for instance, “the rule of law cannot be set aside by reference to historical situations and to justice… A state under the rule of law cannot be created by undermining the rule of law.”\textsuperscript{82} Proponents of these policies disagree, saying that rule of law considerations are “historically and politically contingent.”\textsuperscript{83} However, in response to Sólyom’s original question, they argue that these minor suspensions do

\textsuperscript{78} Ibid., 725
\textsuperscript{79} Ibid., 726.
\textsuperscript{80} Ibid., 722.
\textsuperscript{81} Sólyom, 139.
\textsuperscript{82} Sólyom, 138.
\textsuperscript{83} Horne, 735.
not undermine the rule of law, but rather strengthen it in the long run. This opinion raises a question: how long it is appropriate to allow subtle violations continue in the name of creating an environment hospital to democracy? When is the transition over?

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