

UNIwersYTET JAGIELLOŃSKI
WYDZIAŁ FILOZOFII
INSTYTUT FILOZOFII

Lustration. The Case of Poland.

DARIUSZ GRZYŻŁO

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The purpose of this paper is to present in general the case of lustration in Poland. Its checkered history and basic aims. Because of the fact that in each post-communist country the ways of dealing with former communist regime were not the same, I would like to show briefly the case of Czechoslovakia to illustrate differences and, thus, place the case of Poland in wider context. The very arguments in favor of lustration, which I present in the third chapter, were divided into three groups based on moral, psychological and political principles. I will start with the concept of lustration itself.

1) What is Lustration?

The word „lustration” derives from the Latin “lustratio” for “ritual purification” and “lustrum” which means both “purification” and “swamp”. In Polish “lustró” means “a mirror” which suggests a process of self-examination, and a verb “lustrować” means “to look at someone very carefully in order to see what was hidden at first”. The last meaning is the most proper one for understanding how the word is used in public debates in Poland and in other post-communist countries.

Politically and legally lustration refers to means by which some post-communist states try to deal with their difficult past. After the fall of Communism in 1989 in Poland, Hungary, Czechoslovakia, East Germany and in other states of the Soviet Bloc appeared the need for taking a position on former non-democratic regime. The most obvious reason for that was a desire to punish those who were responsible for certain crimes and abuses of human rights. Nevertheless, since all newly liberated countries have its common goals in implementing democratic systems of government and moving to market economies, not less important was to protect new institutions of free state against former officials, for there was a high risk that they would undermine democratic attempts. Thus lustration could be generally seen as a tool of improvement and, in some respects, protection of transition. It consists in principle in ascertaining whether someone worked for or collaborated with communistic security services. It is particularly applied to those who are occupants of or candidates for important positions in the state.

There are, of course, many differences between particular states in implementing the Lustration Law and in its content itself. These differences have their origins in different history of the states, their values and needs, but mainly, as I think, in different character of the very nature of particular communist regimes and their collapses. Every country was forced to solve these kinds of problems on its own. It does not necessary mean that certain Lustration Law which works correctly in one state would be harmful if implemented in another. It means only that it does not follow from the fact that certain Lustration Law works correctly in one state that it would also work fine in another.

2) Lustration in the Czechoslovakia and Poland.

a) Czechoslovakia.

On October 4, 1991, the Czech and Slovak National Assembly adopted the Lustration Law, according to which former Party officials, members of the People's Militia and National Security Corps and collaborators were banned from holding important positions in state-owned companies, academia, and the media until January 30, 1996 (later parliament extended the law until 2000.) Investigations were based on the files of StB (Czechoslovak Secret Police) and concerned those people, whose names were there. The law was criticized by the international community for assigning "collective guilt by prosecuting individuals solely on the basis of membership of affiliation" (Ellis1996,182). Nevertheless more than 400,000 people have been screened.

Two years later, on January 1 the Czechoslovakia split into two countries. In the Czech Republic the Lustration Law was upheld in the same shape. Moreover, in the same year on July 9 the Parliament of Czech Republic passed the Law on Illegitimacy of and Resistance to the Communist Regime. It was an attempt to honor those who fought against the former regime and dishonor members of the Communist Party by stating its illegitimacy. Surprisingly, the Prime Minister of Slovakia Vladimir Mečiar and his government rejected the Lustration Law.

b) Poland.

In Poland, unlike in Czech Republic or Germany, first attempts of lustration introduced between 1990 and 1992 failed. On June 4 the Minister of Interior (MSW) Antoni Macierewicz delivered to the *Sejm Presidium* list which included names of 64 secret agents (e.g. Lech Wałęsa and then speaker prof. Wiesław Chrzanowski). That case evoked very strong criticism against Macierewicz himself and the government of Jan Olszewski. Most of the members of Parliament and a newspaper *Gazeta Wyborcza* of a former dissident Adam Michnik, which was held in high esteem among citizens, were against making the list public (Chwalba 2006). Finally, 273 parliamentarians passed a vote of no confidence against the government of Olszewski. Many persons who were on that list appeared later not to be involved in working for secret services. This case of “wild lustration” significantly delayed an implementation of a lustration law.

A lustration law was adopted at last in June 1997 thanks to a centrist coalition of Freedom Union (UW), Labor Union (UP) and the Polish Peasant Party (PSL). 214 members of the *Sejm* voted in favor of lustration and 162 against (mostly from Left Alliance Party (SLD)). President Aleksander Kwaśniewski, a former member of Left Alliance Party (a party of ex-communists), signed the bill into law. According to the lustration law all persons who apply for certain public positions have to deliver their affidavits whether they worked for or collaborated with the former secret services or not. Among such persons are the president, deputies and senators, persons assigned by president and other constitutional organs, judges, prosecutors, advocates and occupant of leading positions in public media. The Warsaw Court of Appeal was authorized as a lustration court and the Spokesperson of the Public Interest (RIP) was established as a special prosecutor (David 2003, 411). The lustration court was to verify whether the affidavits were true or false. Submitting a false affidavit meant the loss of the right of access to any public positions for 10 years. Affidavits that reveals collaboration are published in order to make it possible for every citizen to decide on his own whether someone is still trustworthy or not because of one's past. By the end of 2001 the Warsaw Court of Appeal decided that 18 affidavits were false (4 members of parliament, 2 high state officials and 12 advocates). 315 people revealed their collaboration with security services (Idem, 423). On December 27, 2006 the president of Poland Lech Kaczyński delivered a new project of lustration law to the *Sejm*. Among the most important changes was a widening of persons to be lustrated. Obligated to submit an affidavit according to the

new law were also journalists, academics and professors, legal advisers and notaries, publishers and others. (*Lustracja – Projekt Nowelizacji. Druk Sejmowy: 1258*) This new proposal has faced very severe public response. The president and the Law and Justice Party have been accused of serving rather their own political aims than justice. On May 15, 2007 the Constitutional Court ruled that most rules of the new lustration law as, for instance, lustration of journalists and academics were incompatible with the constitution. The individual declaration in its present form was recognized as misleading and, as such, not in compliance with the law. That marks the last step in a far too long process of lustration in Poland. But certainly not the final one.

3. Arguments in favor of lustration.

The arguments in favor of lustration are generally of three types: political, moral and psychological. I would like to start with the last one, for it seems to be less complex than others.

After the fall of Communist regime which was generally recognized by its citizens and the international public opinion as a totalitarian system violating human rights and based on falsehood, injustice and repressions people finally had an opportunity to break with the regime and its supporters. New institutions of the free state cannot be trusted if consists of the same people who just recently ruled the country. Removing those who made the repressive apparatus of the state provides a psychological break with the past. And that seems to be a necessary condition for efficient operation of public institutions especially at the beginning. At the same time it marks a new chapter in nation's history. Yet there were many of those who just like a former president of the Czech Republic Vaclav Havel thought that it is not easy to clearly separate victims and those who were simply guilty, for everyone was somehow co-responsible. Timothy Garton Ash noticed that "if that is true, it is much less clear who, if anyone, should be put on trial. Havel's implicit answer is: everyone, and therefore no one. Adam Michnik has made this answer explicit"(Ash 2000). Due to the very character of the communist regime in Central Europe it is in a way true, but still there is an entirely obvious difference between officials and, say, post officer or gardener (unless they collaborated). It would be hard to imagine that people will cheerfully allowed those because of whom they directly or indirectly suffered to become their new colleagues just because "they were all co-responsible". It was too abstract to be able to bring calmness. Furthermore,

stating that everyone is equally guilty and innocent is morally invalid. To say the least, innocent people do not need acquittal.

The moral argument is strictly connected with the psychological one. It is based on principle that the victims and their relatives have a moral right to know because of who they suffered. From the moral point of view a total lack of lustration is nothing but a forgiveness in the other people's name. And no one has a right to forgive in the name of harmed people without their permission.

At this level of a public debate on lustration it is often held that lustration is nothing but a revenge, which is very odd argument. Firstly, using a word 'revenge' in this context is not more justified than using it while someone reports at the police station that was robbed. Justice is not a revenge, though sometimes can be used as a tool of the latter. And secondly, as far as the current Polish lustration law is concerned, getting known of someone's connections with secret services does not imply a retaliation as long as it is in accordance with law.

Another case is the problem of something similar to *ex post facto* application of law, for people implicated in the collaboration could be seen simply as good citizens making their duty to support the state. There are some legal problems linked with that, but I would like to focus only on a moral aspect of it. The duty argument seems to be convincing in the case of those who decided to collaborate directly because of sense of duty. But how about those who informed against their neighbors, colleagues and etc. for money or career? And, on the other hand, how about those who were intimidated and forced to become informants? These things are very complex and ambiguous and that is why no one should be condemned to infamy only on the basis of being listed in secret agents files as an informer. Each case has to be considered separately and meticulously. That is another reason why affidavits should be published.

Having considered psychological and moral reasons for lustration, let us now see the political aims of it, which are the most interesting and important for the state affairs. Among the lustration motives raised in Parliamentary Debates in Poland the most popular was "national security and public safety argument" (52 per cent of all arguments) (David, 2003, 392). An obvious direct danger to democratic transition was a possibility of undermining its attempts by the officials of former communist regime. They were not only much more experienced in ruling the state and its institutions, but, thanks to the structures of the communist regime, also specialized in, less popular

in the free states, methods like, for instance, blackmailing. Moreover, after 1989 many former officers became officially and unofficially members of the new institutions. Two-thirds of the employees of UOP (replaced the communist SB) were former members of communist secret service (Łoś and Zybertowicz 2000). Some of the *apparatchiks* held even leading positions in the state. That was possible partly because of the very character of the Polish transition, namely, the Roundtable talks (“Okragły stół”), which was to be a kind of gentlemen’s agreement. Two very close associates of gen. Wojciech Jaruzelski who imposed the Martial Law in 1981 were the members of the first democratic government of Poland. What is more, both of them were the chiefs of the most important departments: gen. Czesław Kiszczak of the Ministry of The Interior (MSW) and gen. Florian Siwicki of Ministry of Defence (MON). They’ve lost their positions at last in July 1990. During this period many files of security services have been stolen or destroyed, which made many citizens to criticize the policy of “the Thick Line” (“Gruba kreska”) of the Prime Minister Tadeusz Mazowiecki which in practice meant to let bygones by bygones and look to the future. That brings us to another problem that lustration could solve or, at least, lessen : the threat of blackmail.

Knowing that many important documents were stolen, there was a great risk that someone might use them to control those who collaborated with secret services and now hold public offices. Being under constant threat of public slander and infamy they could be forced to act against new, and thus fragile democratic institutions in former officials’ interest. I would like to end with the conclusion that all these arguments have their ground simply in the need of legitimacy of the new government and officials of the state, and of transparency, which seems to be one of the crucial factor of an efficient institutions of the state in such circumstances. The case of a former Prime Minister Józef Oleksy from Social Alliance Party (SLD) showed how much the state has to pay because of an unclear status of files of the secret services. Józef Oleksy was accused in December 1995 of being Russian spy by interior minister Andrzej Milczanowski. Ultimately, he was forced to resign. Four years later another Prime Minister Jerzy Buzek from rightist party AWS was accused of collaboration.

During presidential elections in 2000 both most popular candidates Lech Wałęsa and Aleksander Kwaśniewski were publicly accused that they had collaborated with the Communist secret services. Wałęsa was accused of working for the secret services from 1970 to 1976 under the cover name of “Bolek”, whereas Kwaśniewski’s case concerned his connections with secret services (as “Alek”) in 1980s while he worked as a journalist (Rohozińska 2000). Their cases provoked serious debate among politicians and journalists.

They have been cleared of charges, but still the most striking question remained: who was controlling this process?

That and other cases of the type made many people think that transparent and reliable lustration has to be performed. If the most prominent persons of the state could be at anytime accused of such things the political situation would be under constant threat of crisis.

In comparison with other post-communist states, especially, with Germany and the Czech Republic lustration in Poland was very modest in scope. However, it does not mean that Poland succeeded thanks to applying its own limited methods. I think that we have definitely lost our opportunity of truly successful lustration if such was possible at all. Nevertheless, there is still chance to decrease the weight of former mistakes.

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