

I

Letting Sleeping Dogs Lie?

Chair of Vetting Commission: *Do you swear to faithfully serve the new Polish Republic?*

Franz Mauer: *I do, to the very end, be it mine or hers.* (Wladyslaw Pasikowski, *Psy* [Dogs])

After Generalissimo Francisco Franco died, the elites who succeeded him resolved on behalf of the Spanish people to let bygones be bygones. Formally, in 1977, they passed an Amnesty Law; informally, they agreed to a “Pact of Forgetting.” The rationale offered for this deliberate decision was to chose democracy over justice. Although the Francoist regime had committed numerous atrocities during the civil war of 1936–1939 as well as after the Nationalists’ victory, Spanish elites decided to “seal the archives” of the *Guardia Civil* and the *Policia Armada* (Franco’s secret police)¹ and not attempt any reckoning with the past. Even private conversation concerning the civil war and the authoritarian regime that succeeded it was rendered taboo. This “Pact of Forgetting” was shared widely by all sides of the political spectrum, including the communists against whom Franco’s Nationalists had fought in the civil war. For instance, Santiago Carillo (general secretary of the Spanish Communist Party at the time of transition) was quoted as saying: “In our country, there is but one way to reach democracy, which is to throw out anyone

¹ Both were security agencies designed to preserve the power of the Spanish dictator. The *Guardia Civil* was mainly active in rural areas, whereas the *Policia Armada* patrolled cities and metropolitan areas.

who promotes the memory of the Civil War. We do not want any more wars, we have enough of them already.”²

The informal pact became so entrenched that when, in 2007, a socialist government tried to revisit the past by proposing the mildest of transparency measures, victim rehabilitation, it was met with staunch criticism.³ The Spanish example stood in contrast with its geographic and temporal neighbors, Greece and Portugal, both of which thoroughly purged their former authoritarian leadership and its agencies. To see this contrast, one need only to look at Figures 1.1 and 1.2. Both are based on data from the Global Transitional Justice Dataset.⁴ Figure 1.1 shows the removal of leaders associated with the *ancien régime* in eighty-four countries that had such leadership purge events. Most notably, since zeroes have been omitted from these figures, Spain is not even listed among the countries that underwent such purges. Figure 1.2 shows thorough purge events, that is, instances of shuttering entire former authoritarian agencies. Spain had no such events either.

Incidentally, neither Greece nor Portugal fared as well recovering from their authoritarian pasts as Spain. By the early 1990s, Spain had risen to be come one of the leading nations in the European Community, with a GDP per capita of almost 68 percent of that of the United States in 1991 (based on purchasing power parity according to the International Monetary Fund, IMF)⁵ and a Polity IV score of 10. Scholars of comparative democratization, a popular and growing field of political science in the twentieth century, overwhelmingly agreed that Spain consolidated because of letting bygones be bygones rather than despite it. Regardless of what kind of authoritarian or post-conflict legacy a country was recovering from, transitional justice (TJ) was believed to jeopardize, not facilitate democratization (Huntington 1991; Linz et al. 1978; O’donnell et al. 2013; Przeworski 1991).

It is then hardly surprising that when twenty years later, a wave of democratization spread across Eastern Europe, Spain’s approach to reckoning with the authoritarian past was used as a model for (not) dealing with the legacies of communism. In Poland, this approach was

² See *Europe: Painful memories; Spain’s civil war* (2006).

³ See *Europe: A Rude Awakening; Spain’s Past* (2007).

⁴ The details on how this dataset was prepared are explained later in this chapter as well as in Chapter 4.

⁵ As a point of comparison, Portugal’s GDP per capita relative to that of the United States for the same year was 56 percent, barely higher than the 52 percent recorded in 1982, and Greece’s was 60 percent, down from 72 percent in 1980.

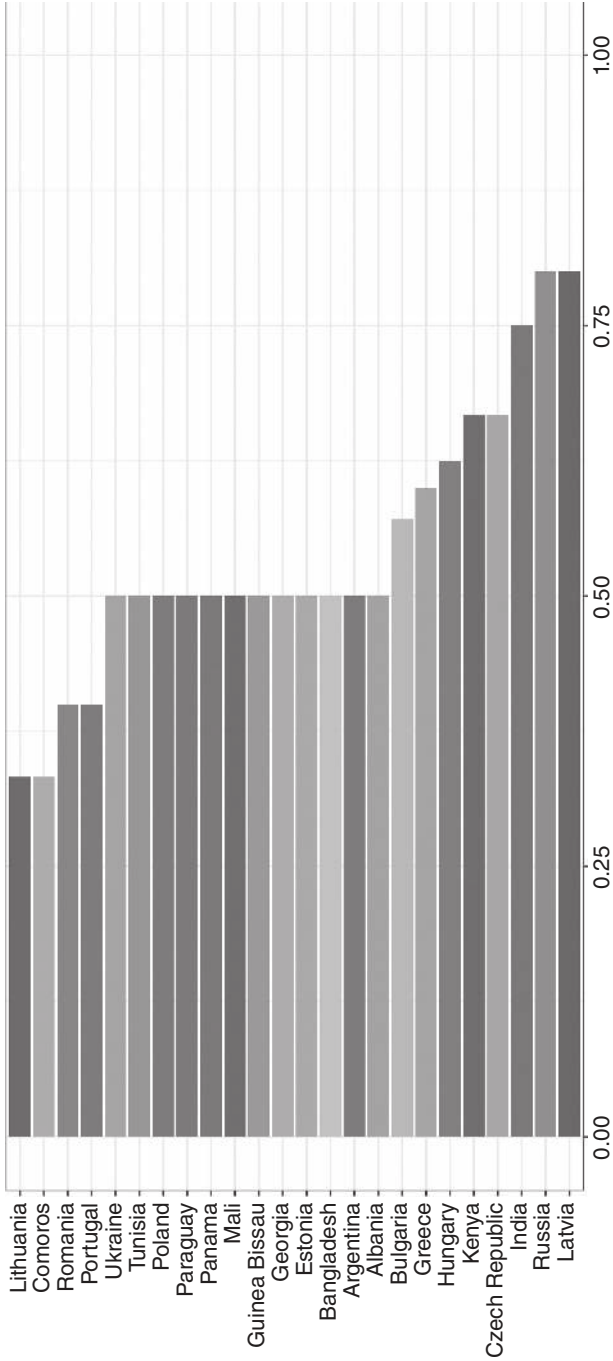


FIGURE I.1. Severity of thorough purges

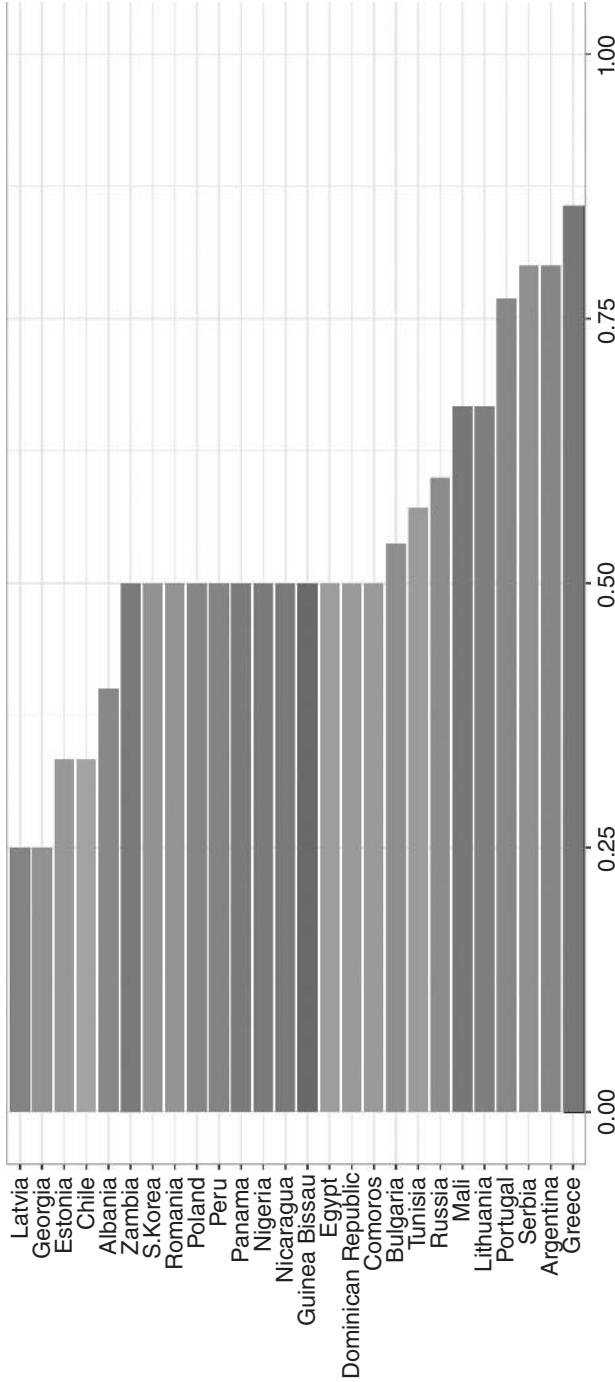


FIGURE I.2. Severity of leadership purges

summarized with the term “*gruba kreska*” (“thick line”). Although originally intended to represent the idea of a clean slate for the new noncommunist cabinet, which would only be held accountable for policies implemented after assuming office, it quickly came to represent the idea of forgiving the communists for all human rights violations committed during their 45-year-long tenure in Poland.⁶

In his 1989 inaugural speech to parliament as the first non-communist prime minister in 45 years, Tadeusz Mazowiecki announced *I present to you a cabinet that bears no responsibility for the mortgage it is inheriting today. Even though it affects the circumstances in which we must operate, we are separating ourselves from the past with a thick line* (Gostkiewicz 2013).

The international community of scholars largely applauded this decision. Jack Snyder argued that “the prosecution of perpetrators of atrocities according to universal standards risks causing more atrocities than it would prevent, because it pays insufficient attention to political realities” (Snyder & Vinjamuri 2004, p. 5). Samuel Huntington maintained that sometimes “amnesty...is necessary to establish a new democracy on a solid basis” (Huntington 1993, p. 214) and that “even if a moral and legal argument could be made for prosecution, this would fall before the normative imperative of creating a stable democracy.”

This policy was also widely endorsed by a group of social scientists formed around the law journal *The East European Constitutional Review* published in the 1990s; first, at the University of Chicago and later at New York University. Jon Elster and Stephen Holmes spearheaded this movement and used Spain’s most benign way of dealing with former authoritarian collaborators to build their case that “doing nothing” is the best approach for new democracies to deal with past authoritarian regimes (Elster 2004). “*Gruba kreska*” and the “Pact of Forgetting” in contrast to “witch hunts” and “ritual sacrifices,” they argued, allow typical political cleavages of left and right to form without the development of a “regime divide” where opponents of the previous regime overlook their ideological differences and maintain a united front against successor autocrats, even when these members of the opposition actually share ideological identities with the successor autocrats.⁷ Delayed democratic consolidation due to

⁶ These violations included torture, despite Poland signing the Geneva Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁷ In the context of post-communist Europe, for reasons explained later, “*gruba kreska*” failed and a regime divide did emerge (Grzymala-Busse 2001). Concretely, Grzymala-Busse defines the regime divide as the persisting conflict between the successors

a party system that fails to develop programmatically is but one of the possible costs of making TJ central to political debates.

Poland and Hungary, which transitioned in short succession, both refrained at least initially from harsh decommunization. In Poland, President Wałęsa and his supporters from the Citizens' Committee prevented any decommunization bills spontaneously passed on the legislative floor from being implemented.⁸ Latter attempts were halted by the Constitutional Tribunal, a constitutional court established a few years before the transition. In Hungary, the Constitutional Court was also responsible for first halting and then significantly delaying attempts to deal with the past.

Borrowing the Spanish Model and applying it to countries with completely different authoritarian legacies seemed like a perfectly legitimate thing to do. Scholars had not yet started to appreciate that how dictatorship operated has critical implications for the types of TJ that can and should be used. This is one of the misconceptions I will address in this book.

The key difference between Eastern Europe on the one hand, and Spain on the other, is that propping up communist regimes for more than four decades required a skilled and powerful secret police apparatus that collaborated with tens of thousands of secret informers whose identity at the time of the transition to democracy was unknown.

Some of those offering support to the regime were open collaborators, such as communist party functionaries and top-echelon workers of the state. Even salaried cops of the secret police, to the extent that they did not hide their policing activity were open collaborators. Others such as the informers and agents recruited by the secret police conducted their activity in secret. Procedures dealing with open collaborators are not only descriptively but analytically different from those that deal with secret collaborators. The latter, as painful as this may be, ought to be exposed. Failing to do so risks damage to the fledging democracy. The open collaborators, on the other hand, sometimes must be purged but sometimes should be kept on.

to the pre-1989 communist parties and the parties emerging from the communist era opposition. The deeper this divide, the lower the chances of coalition formation between the communist successors and their opposition counterparts based on shared policy goals.

⁸ In a spectacular takedown of legislation, aiming to reveal the identities of secret police agents by the Polish Minister of Interior, Wałęsa and his allies brought down the entire cabinet and replaced it with one that vowed to stay clear of dealing with the past.

1.1 NEITHER RETRIBUTION, NOR RECONCILIATION

The opening quote to this book features a policeman of the secret enforcement apparatus, Franz Mauer, during such a moment of reckoning. He is being interviewed by a vetting commission set up to decide whom among the communist law enforcement the new democratic state should rehire. Franz Mauer's file contains more red flags than honors, so in the end, the commission's chair asks Mauer directly if he will "faithfully serve the new Polish Republic." Mauer's cynical reply indicating that he is committed to the mission until the end, be it his or hers, does not dissuade the chair from rehiring him. Hence, a former communist cop is left unscathed by the purge. In contrast, many informers recruited by the likes of Franz Mauer will be exposed and sometimes prevented from holding public office.

This book will show that paradoxically, it is more important to expose the nonprofessional agents and informers than to purge the state of open members and administrators of former dictatorships. Though purging the former authoritarian state depends on the specific traits of the authoritarian regime, exposing collaborators who supported the *ancien régime* in secret is critical.

Secret authoritarian legacies have a way of undermining successor regimes even years after the transition. For instance, collaborators of the former regime may have engaged in acts that under a new democratic regime could tarnish their reputation. If these acts remain secret while former collaborators rise to positions of power, they may be blackmailed by those who threaten to release their "skeletons in the closet."

To illustrate this point, consider the following case from Poland. In February of 2016, the widow of Czesław Kiszczak, the former chief of communist Poland's secret police, discovered a thick secret police file containing evidence that Lech Wałęsa, Nobel Peace Prize Laureate and former Solidarity leader, had collaborated with the communist secret police between 1970 and 1976. The revelation raised serious concerns about the quality of Wałęsa's presidency, which had ended before Poland implemented its lustration law.⁹ Although Wałęsa's collaboration preceded his career as Solidarity trade union organizer, Kiszczak could have pressured him to avoid implementing certain policies by threatening to release the compromising file. This left many questioning the extent to which he

⁹ A lustration program would have vetted Wałęsa for connections to the communist secret police. Had it been in effect when Wałęsa ran for or held office, his political career could have ended had he falsely maintained his innocence.

represented interests of the electorate instead of those of the former secret police. More generally, it left scholars wondering about the prevalence of such acts of blackmail. How often did former authoritarian elites pressure their former spies into following their policy preferences over those of the voters? To the extent that one considers representing voters' wishes as a marker of high-quality representative democracy, the revelation left many wondering just how representative Polish democracy was of its electorate.

The arguments in support of the “Pact of Forgetting” and “gruba kreska” assume that TJ – the combined set of mechanisms designed to deal with past authoritarian legacies – cannot be democracy enhancing. The widely held belief is that TJ can at most promote reconciliation,¹⁰ though any brooding in the past comes at the cost of delaying normal democratic processes, normal political cleavage formation, and party system institutionalization. In this book, I challenge the belief that one can and must choose between democracy and justice. First, I argue that democracies do not emerge in a vacuum. Legacies of former authoritarian states permeate the new polity through unsettled scores of human rights abuses, staff of former security agencies, and archives of the former secret police that list the names of collaborators of the authoritarian security apparatus.

Without TJ mechanisms that reveal ties of politicians to agents of the *ancien régime*, voters cannot recall from office dishonest politicians. The ability to recall such “bad” representatives is a key characteristic of representative democracy. Blackmailed politicians keep their true identity secret and respond to demands of blackmailers, threatening to expose *kompromat* instead of their own constituents. According to the argument I present in this book, revealing evidence of human rights violations and collaboration with members of the *ancien régime* prevents former authoritarian elites from influencing policy in new democratic polities. Where transparency is lacking, former authoritarian elites can pressure politicians into policy concessions by threatening to reveal compromising information that could jeopardize these politicians' careers.

Not all forms of authoritarian dominance are as transparent as repression (King et al. 2013; Mattingly 2019; Nugent 2019; Tyson 2018). In many instances, the very acts that sustained the authoritarian regime were secret collaboration (Blaydes 2010), cooptation (Magaloni 2006), and

¹⁰ However, see criticisms of the reconciliation goal that hold that it is too ambitious and imposes a collectively shared belief about the truth of past events instead of allowing competing, conflicting narrative of that past Muller (2002).

sabotage (Dragu & Przeworski 2019). A key aspect of dealing with the secret acts of supporting the *ancien régime* is the disclosure of such actions and the revelation of the identities of collaborators, spies, and saboteurs. This transparency class of TJ mechanisms, revealing who among persons holding public office collaborated with the secret police to the detriment of the antiauthoritarian opposition are often left out of classical critiques of TJ, but they ensure the honesty of politicians and the ability of parties to be broadly representative. This book will show that transparency mechanisms (lustration and truth commissions) have a critical impact on who selects to enter politics and how well they are able to perform once in office. Such transparency mechanisms can improve the quality of representation by bringing policy proposals closer to the preferences of the median voter than keeping skeletons in the closet would. When transparency mechanisms reach deeper into society, they can help curb wide-scale political corruption.

Because transparency regimes regulate when and how skeletons in the closet are released, they have implications for the quality of democracy and the success of the democratization project. If democracy survives, damaging information collected by the former authoritarian secret police for the benefit of authoritarian elites may, if kept secret, turn elected politicians into clients of blackmailers who threaten to reveal their skeletons in the closet (Nalepa 2010b). Forgiving and forgetting may sabotage elected politicians' capacity to represent voters, a phenomenon that is hard to pick up on by studies focusing on the immediate aftermath of a transition. That is why in this book, I adopt a long time horizon to evaluate if mechanisms of dealing with the past are indeed working. The empirical span of my analysis reaches even decades into the democratization project.

In sum, there is no “gruba kreska:” New democracies do not have the luxury of separating themselves from the past with a “thick line” and starting with a blank slate. There are cobwebs of former authoritarian regimes everywhere. Some of them are secret and these must be, as this book will argue, exposed. What about the other legacies that are perfectly transparent?

The old regime relied on an enforcement apparatus and staff of the state administration. These networks are not secret, but dealing with them is no less consequential. The opening quote of this book underscores the dilemma of the administrative crisis that new democracies face: Who should run their state? On one hand, there are both normative and practical cases to be made for removing the Franz Mauers, the agents of the *ancien régime*. On the other hand, there is a clear trade-off to purging

the state and replacing existing actors with new agents: inexperienced people, lacking expertise. How can new democracies, emerging out of recent authoritarianism, construct a government that will be accountable and yet proficient?

For a different context, consider the case of Tunisia- until recently, the trailblazer of countries that transitioned during the Arab Spring. Zine El Abidine Ben Ali's predecessor, Habib Bourguiba, was famous for appointing all state administrators from among loyalists of the authoritarian party, Neo-Dustur. To ensure that none of them became strong enough to dethrone him, he frequently reshuffled persons at the top. The result of this was a bureaucracy with a very poor skill set. Ben Ali, in contrast, professionalized his governing apparatus and enforcement agencies. In sharp juxtaposition to Ba'athist states in the region, where positions were awarded according to partisan status, Ben Ali developed a cadre of professional bureaucrats.¹¹

To sustain his dictatorship, Ben Ali also relied for support on his police forces. This was necessary because, according to Safwan Masri, the army had "neither the power or political will" to quell the protests against the regime (Masri 2017). According to numerous accounts, in the critical moment of the protests, Rachid Ammar (chief of staff of the armed forces) outright refused orders to fire on protesters (Henry 2007). Later during the transition, it was the army that would provide cover for the protesters, while security forces under command of the interior minister fired on protesters.

Political alignments of authoritarian enforcement agencies also have consequences for how new democracies should conduct TJ if their goal is to stabilize democracy. Following the Tunisian transition, the security forces were thoroughly purged by the new democratic minister of interior, Farhat Rajhi.¹² Meanwhile, the army was largely left intact; their loyalties were clearly with the new democratic government. However, the issue of the police is more complex. As later events showed, Tunisia became the leader in the Middle East in terrorist attacks and supplying fighters to Syria (Macdonald & Waggoner 2018). Arguably, this happened because of Tunisia's weakened internal security forces after the firing of Ben Ali's enforcement apparatus.

¹¹ This should in no way distract from Ali's authoritarian methods.

¹² According to a March 7, 2011 decree issued by the Interior Ministry, the secret police and security apparatus were abolished "to bolster freedoms and civil rights" and to eradicate "outdated institutions that are vestiges of the regime."