

# Property reforms in rural Romania and community-based forests

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**Abstract:** *The article provides an overview of property reforms in Romania with a focus on collective/community forests. We start by a macro analysis of the laws and their results in the distribution of community forests and a longue-durée description of the principal legal forms of collective forests, such as pădure comunală, obște and composesorat. Furthermore, we concentrate on two case studies from Bukovina region to reveal the conflicts around the restitution process from an actor-oriented perspective. The conclusions point to the problems of the property laws and stress the fact that, in the context of indeterminate laws, restitution is a perpetual negotiation, influenced by mechanisms such as networking or power relations.*

**Keywords:** property laws, forests, common property, *obște*, conflicts, power relations, networking

**Cuvinte-cheie:** legile proprietății, păduri, proprietate comună, obște, conflict, relații de putere, rețele sociale

**Motto:** „Before the property reforms in Romania, the forest represented a technical issue, because we had planned forestry (*silvicultura planificată*). At present, after the property reform, the forest became a social issue.”

(Interview with Conf. Dr. Marian Drăgoi,  
Forestry Faculty of Suceava)

## Introduction

The undertaking of empirical research regarding forest restitution and management in Romania enjoys many arguments, on both the academic and the applicative sides. Concerning academic advantages, we would like to point out that Romanian specialists do not pay enough attention to environment or natural resources as a field of investigation for the social sciences. Reversely, worldwide social scientists in the field of natural resources studies do not pay much attention to Romania, with a few exceptions. Specific post socialism issues related to resources and development, to property reform and ongo-

ing conflicts might constitute a fruitful ground for the elaboration of new theoretical and empirical insights. On the other side, concerning applicative advantages, social analysis too needs to be applied in the field of property laws, nature reservation, or institutional arrangements and local development based on local resources. As this article shows, the Romanian laws and decentralization policies lack sufficient grounding in empirical interdisciplinary investigations around the process of property restitution in Romania, which ultimately leads to disbelief and incertitude regarding both legal and political matters.

The present study combines macro and micro investigation on property reform in Romania, by concentrating on forest property and moreover, on collective property over forests. The *macro approach* will give an overview of the restitution process, trying to grasp the spread, location and nature of common-pooled forests in Romania, the differences between what people expected and what they actually have gotten and the differences of conception between the two latest property laws, as they reflect in the actual restitution. The investigation is based on data available from recent statistics of National Service of Forestry (RNP)<sup>1</sup>. Furthermore, we try to reveal the characteristics of the legal collective forms of property over forests, which are very diverse all across Romania. The description will introduce a discussion on the history of such forms, based on bibliographical sources. It will proceed to describe also the present forms and their characteristics for a better understanding of variability and richness of details. This description is based on zealous successive fieldwork done by the authors from 2003 to 2008 with the help of teams of students in the counties (*județe*) of Vrancea (10 villages), Suceava (3 villages), Vâlcea (3 villages), Gorj (1 village), Brașov (2 villages) and Argeș (1 village). More detailed results of those empirical inquiries were presented with other occasions in articles (Vasile, 2006, 2007, 2008 a & b ; Măntescu, 2006, 2007). The *micro approach* will show through the analysis of two ethnographic examples how property restitution was actually done and how it determined further property relations. It is based on a fieldwork in the summer of 2007 and 2006 in Bukovina region<sup>2</sup>.

Property has been conceived in the social sciences, not only as a juridical or eco-

nomic topic, but as embedded in social relations (Hann, 1998). The property concept does not refer to a thing, as we often hear „this is my property”, but it refers to a social relation between people regarding an object.

*Property, in other words, is not a thing, but a network of social relations that governs the conduct of people with respect to the use and disposition of things* (Hoebel, 1966 : 424, *apud* Hann, 1998 : 4).

The study of collective forests engenders social issues twofold : first, it includes the dimension of property seen as social relation, and second, because it deals with „collective” rights and duties, which imply a wide range of relationships among shareholders.

After the property reform in Romania, many communities or families transformed into *homo homini lupus*. Since 2003 ; when our study began with timid inquiries in Vrancea region, we have heard many people saying that property restitution destroyed the social relations not only at the community level, but also at the family level. Many people have property-based conflicts with neighbours, fellow villagers or relatives. Moreover, the restitution of associational or communal forests brought into arena sharper conflicts than ever between community factions (interest groups).

## **The context of forest coverage and forestry in Romania : history and present**

We try in this section to give a glimpse of the forests in Romania from a historical point of view. The general picture is extremely particular from region to region, even from

1. Data from RNP (Regia Națională a Pădurilor), semester reports from 30.06.2007, for which we wish to thank wholeheartedly to conf.dr. Marian Drăgoi.
2. In 2006, together with a team of students we have spent 3 weeks in Suceava county and then we came back for another two weeks in 2007 to improve on our missing links. In both villages taken as example we applied 40 questionnaires randomly sampled and 45 interviews. We would like to thank our student colleagues for their help.

village to village, and this makes our intention to resume extremely difficult.

Romania is four percentage points under the European mean of forested areas. Considering its natural diversity, Romania should have 40% of its territory forested.

On the basis of cartographic documents it could be observed that in the last 300 years, the forested surface of the Romania has significantly reduced in size, concomitantly with the expansion of grasslands (Osaci-Costache, 2007). Before 1829, 80% of Romanian territory was covered by forests. Large scale woodcutting dates back to era of Turkish suzerainty over the Romanian principalities when tribute included wood purposes, carried to Istanbul from the ports of Brăila and Galați (Turnock, 1990 : 409).

After 1829, commercial pressures spread from northwest to southeast as the rail network widened access to Central European markets (Muica and Turnock, 2003 : 9). Scattered water-powered sawmills (*joagăre de apă*) worked by communities from the 17<sup>th</sup> century were being joined by the steam-powered installations of the capitalists producing sawn timber (*cherestea*) for export (*ibidem*). Foreign companies of timber extraction and processing from Italy, Austria and Hungary came in Romania and accessed private, most of them commonly owned forests. Thus, between 1829 and 1922, approximately three millions hectares were cut down, reducing the forested areas with 30%. Another 1.3 million hectares were cut down between 1922 and 1945. After Second World War, Romania was considered a defeated nation, and paid war compensations to the Soviet Union. Most of these compensations were fuel wood for the soviet heavy industry. In 1948, Romania had 28% of its territory forested (statistical data provided in Ecomagazine 2008).

The situation of property rights until 1948 is difficult to trace in a paragraph. Much local variability, struggles, different laws and interested social actors assert for a constant shift in the nature of use and property rights.

First, in Transylvania legal property titles were issued much earlier than in the Romanian Principalities (Wallachia and Moldavia). Here, most of the forested areas in the mountains were recognized as collective property of the borderline communes (*comunele grănicerești*). In the region of Banat, all the borderline villages, in all 94, had one joint property title, named Comunitatea de Avere, the Community of Fortune (according to Șișeștean-Popa, 2009). In other regions there were issued collective village or commune titles in the form of *composesorat* or in the form of communal forests subordinated to the municipality. Other villages, which did not have the statute of borderline communities, could redeem collective property titles from the domains of the state, also in the form of communal forests or *composesorat*.

In the regions of Wallachia and Moldavia, the free peasantry from the mountain area had access to the forests in a customary regime of joint property. In 1910 the Forestry code (*Codul silvic*) enables the communities to gain legal titles on their forests. These forests were merely named in the property law, but they covered very different realities. For example, some of them were equalitarian and based on residency, such as the ones in Vrancea region, while others were unequalitarian and based upon inherited rights (a difference to be detailed below). The Romanian state tried to regulate this form of private property, and imposed a fixed institutional framework, through a ruling statute voted in the Parliament. It was intended that the statute include the customary regulations, but ended up by totally ignoring the real diversity of customary laws.

In 1945, 48% of the forests were held in common property systems (Catwright, 2001).

### **Forest restitution**

Most of the literature on post socialist property relations in Romania has focused on the economy of land issues (Verdery, 2003 ; Kideckel. 1993 ; Cartwright, 2001) ; all over the post socialist block, forest were rarely

addressed; several exceptions are Cellarius (2003, 2004) who focuses on forests in Bulgaria, and Dorondel (2005) who dedicated one chapter of his doctoral dissertation to Romanian forests. The scarcity of forest-related studies seems curious, since this resource is vital for many rural communities and it is at the core of many types of social conflicts, representing thus an interesting and fruitful ground for scholarly creation. One explanation might be the concentration of forests into mountainous, isolated areas, where mainstream processes related to specificities of postsocialism would not be so visible; hence these areas remained largely uninteresting.

Regardless of the type of land, the property reform had several common features.

### ***Property laws and the forests***

First, each restitution process had to undergo two phases – validation (*validare*) and entitlement or putting into possession (*punere în posesie*). In many cases, people stopped the process at the validation phase and did not apply further for entitlement. Hence, they used the land/forest and treated it as proprietors, but without having final legal papers. Second, responsibility for deliberating restitution cases was devolved to local commissions (*comisia de retrocedare*). This meant that certain locals had the power and legitimacy to decide who gets where and how much. Third, property laws emphasized *restitution of land within historical boundaries* and not *allocation/distribution of land* (as in Albania, Hungary or Czechoslovakia, cf. Swain, 2000). This meant that where possible and convenient, people were supposed to receive land in the amount and boundaries of former plots (this was not the case with forests in law 18/1991, as we will see below). Moreover, it meant that the law was supposed to make historical justice for people who were abusively dispossessed.

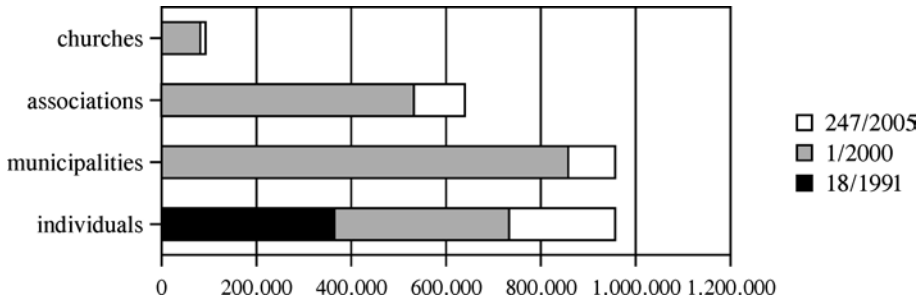
Direct restitution was thought to be the most chaotic way of privatizing (Verdery, 2003 : 143) because of the multiple claims

on the same parcels and the difficulties in re-establishing former boundaries (Verdery, 1996, 2004; Giordano and Kostova, 2002) and because of the resulting extreme fragmentation. Moreover, it was thought to be relying on false premises, ‘implying that the postsocialist future can begin by returning to a *status quo ante*’ and that the conditions should be recreated ‘as if socialism had never existed – or as if it existed only outside the „correct flow of history”’ (Giordano and Kostova, 2002 : 78). The ideological promise of reinstalling the traditional peasant society ‘envisioned as the depository of the nation’s most genuine values and virtues’ (*idem* : 79) was also proven to be impossible to achieve. Assuming the reversibility of events and treating the socialist era as a black hole without carefully considering processes of social change was probably wrong (Giordano, 1998 : 25), because rural households that were viable fifty years ago have now members who have died, emigrated, married and otherwise substantially changed their relationship to land (Verdery, 1996 : 134).

After communism, *the first property law, 18/1991* allocated forest only to individuals and in surfaces up to 1 hectare. Usually, these pieces of forest were not reconstituted on the old (former) property locations (*vechile amplasamente*), as prior to 1948. They were allocated in more convenient boundaries, such as in the margins of the State forest. Thus, this law did not relieve the thirst for social justice and it did not create an affective bond, as people were not provided with the whole amount and symbolic value of their former land. In addition, at that time, legislators did not impose high fines for deforestation (the ratio between the fines and the market price of 1 cleared hectare was 1/10, thus a proprietor would obtain a profit of up to 15.000 euros for *clearing* 1 hectare of forest). These factors contributed to massive deforestation in the period after law 18. 300.000 hectares were thus privatized and almost everything was cleared by the new proprietors (Cenușă, 1994 : 80).

The second law, 1/2000, restituted a larger amount of forest and included restitution to juridical bodies, among which churches, associations (*obști, composesorate*), municipalities (*primării*), as it is visible in the graph below. It emphasized the allocation within historical boundaries, but it stipulated that plots that were entitled with law 18 should not be removed or replaced. Because the process of property title emission, within the

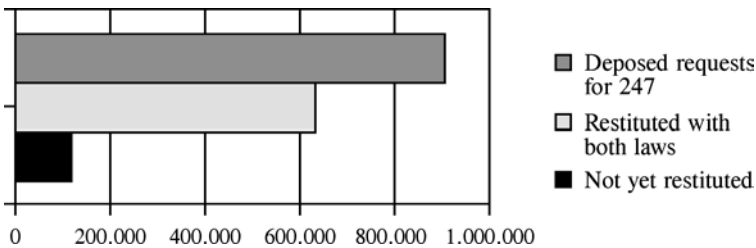
law 18, went very slowly (Cartwright, 2000) and in 2000 there were plots validated but not given into possession with titles, people received forest with the law 2000 on the plots that were already validated for another person with the law 18. Thus, conflicts have begun. We heard very often the story in which people were restituted in 2000 plots of forest that were already cut down by people who received it in 1991 without titles.



Graph 1. Surface of restituted forest (ha), distributed across categories of owners – RNP 2007

The third law, 247/2005, went for *restitutio in integrum*. This law was supposed to do ‘complete justice’ to former owners, by giving back everything that was exempted from restitution within former laws, public buildings, roads, watershed and protected areas.

The promulgation of this law produced a lot of expectations that were soon to crash. The sum of deposited requests for forests in associations exceeded by far the total amount of associations’ forest plots restituted with all laws (including 1/2000 and 247/2005), as it is visible in the graph below.



Graph 2. Comparison between requests with 247 and total actual restitution, for forest associations – RNP 2007

There are a few interesting features of the laws regarding the collective forests.

First, as a negative feature, the law fails to acknowledge the different types of collec-

tive forests, treating all of them without specificity, while they are very different on the ground, as it will become visible further in the paper.

Second, from the collective forests one cannot sell its parts to outsiders. In other words, the land on which those forests stand is not alienable individually and also not on the whole. The law says: 'the terrains of these associative forms cannot be alienated, neither as a whole, nor partially' (law 1/2000, art. 28, alin. 7). Thus, very interesting the law acts counter to the 'capitalist' ideology where everything must be for sale, regulated in the market economy in order to function properly. This ideology initially informs the privatisation process, but as we see, the specificities of the law prevent the commoditization of those forests, practically putting them out of the market system.

From what we found on the ground, it seems that in some of the forms, it is possible that the members of the association sell the rights between themselves (an example encountered in Voineasa, a small genealogical *obște*, named *Obștea Fraților Mirionești*), but in the encountered example people inside the association did not have enough money to buy what one of their fellow associates had to offer.

### *Communal and associative forests.*

#### **Pădure comunală, obște, composesorat**

It is commonplace thinking nowadays to conceive the land and forest commons as belonging to the past, to a sort of precapitalist order, or, where they still exist, as survivals, as markers of underdevelopment and 'primitivism'. This is happening merely because of the prevailing neoliberal ideas, bounded to individual-based conceptions. However, scholarly works all around the world, from different disciplines, have already dismantled the stereotypes regarding the commons. These works show the commons have not yet disappeared and common property regimes can be very functional and rewarding (Ostrom, 1990; McCay and Acheson, 1987).

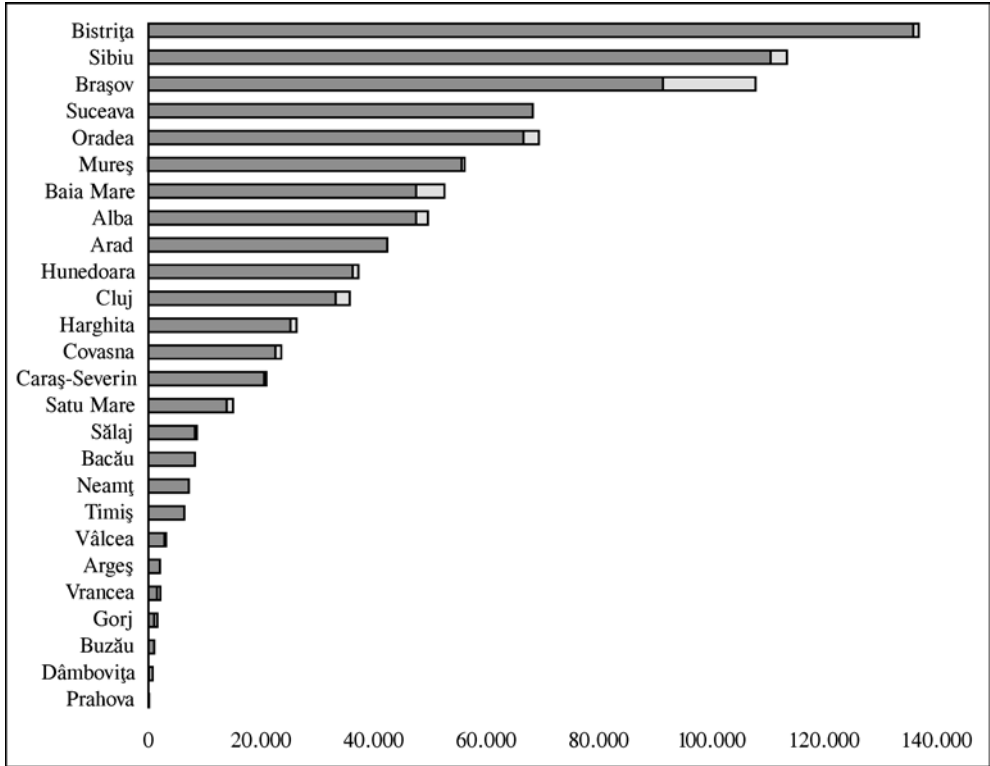
The commons are a very often found form of property in nowadays Romania, as the graphs above have already suggested. As we have seen in the historical section,

three major forms of collective forests could be found in Romania and were restored with the law 1/2000: 1) the forest owned by the territorial administrative unit, the commune, or municipality, named the communal forest; 2) the forest owned in an associative private form and administered by the totality of members, in the former Romanian Principalities – named *obște* and 3) the same form in Transylvania named *composesorat*. There is not only one form of *obște* or *composesorat*, and differences may be substantive in surface, number of members, form of governance or distribution of shares or revenues, as we will describe further in the paper.

*Pădure comunală.* A large percent from the privatized Romanian forests is owned by *rural communes, managed by municipalities*. These forests can be very large, as for example in the case of the Telciu commune from Bistrița County, which counts up to 12.000 hectares. This type of common property is quite different from *obște* and *composesorat*. The property belongs to the commune, so, theoretically, any inhabitant has equal right to access and equal shares. The administration and management are done by the commune council (*primărie*) together with the appropriate forestry district, which can be private or public. In some cases, the inhabitants do not perceive that they have a right at all, they see the wood coming from the municipality as an aid (*un ajutor din partea primăriei*) and people who actually have access to the forests are the timber entrepreneurs that grow rich (Chiburțe, 2008; Șișeștean-Popa, 2009). Although the common property is managed by the mayor and the municipality's councilors, municipality forest is a private forest which belongs to the commune and is *not* state property. In this case, there is a participatory management, the citizens of the commune do not effectively participate in the decision-making process, but people still put pressure on the councilors and mayor to manage the resource according to their will. Many of these communal forms resulted in Transylvania and Bukovina from the dismantling of the borderline institution of the Austrian-Hungarian

Empire (*Instituția Grănicerească – Pădurile Grănicerești*) in 1872, as already specified in the historical section. Most of them are con-

centrated in the former borderline departments (Bistrița Năsăud, Sibiu and Brașov – the regiment of Orlat, visible in graph 3 below).



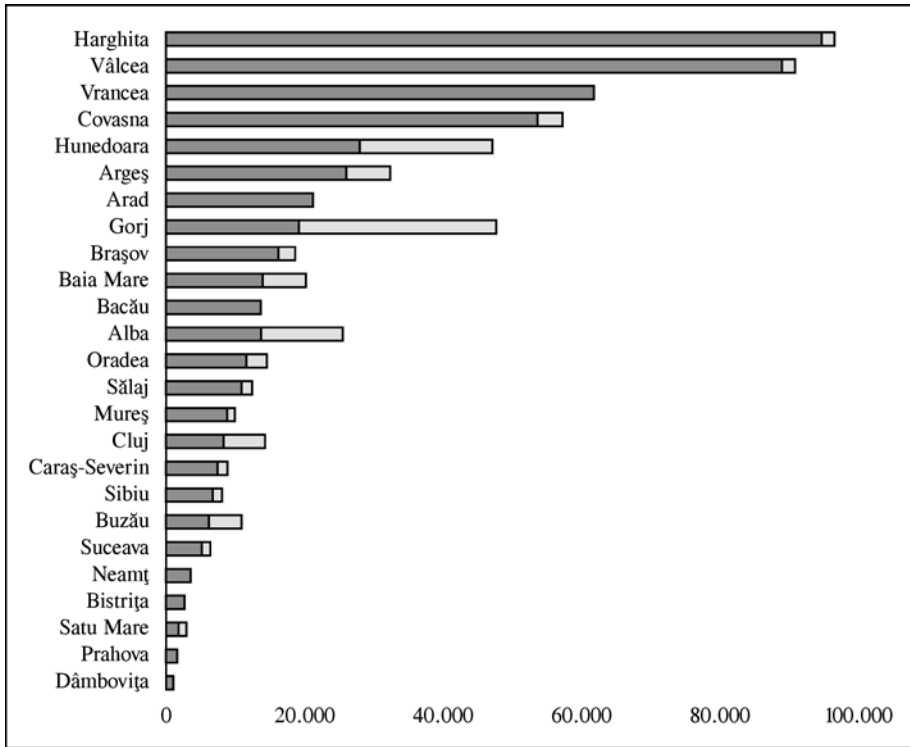
**Graph 3.** Communal forests restituted with law 1/2000 and 247/2005. Distribution across departments – RNP 2007

One major problem with the restitution of communal forests was the lack of concordance between former and current administrative units which had as a result the fact that present villages, which used to be political communes, did not get back their land. The land was incorporated in the present communes, together with other villages (below we will describe a case from Suceava with this kind of situation).

Other collective forms are the *obște* and *composesorat*, or what we called in the graphs the associative forests, according to their official denomination. Although they are named associations in the laws and in formal documents, these types of property can hardly be described as associations of pro-

prietors, because the shares that one has are not delineated plots of forest that were put together, but a quantity of products that can be withdrawn from the forest and a number of votes in the general assembly. In Romanian sociological and anthropological literature, these forms were excellently documented by Henri H. Stahl (1939, 1958) and Vasile V. Caramelea (1944, 2006).

As it is visible in the graph below, *composesorate* are present in Harghita, Covasna, Hunedoara, Arad, Brașov, Baia Mare and other *județe* from Transylvania, while *obști* are also covering a large surface in Wallachia and Moldavia, mostly in the *județe* of Vâlcea, Vrancea, Argeș, Gorj, Bacău and others.



**Graph 4.** *Associations' forests restituted with law 1/2000, law 247/2005 and in course of restitution – RNP 2007*

**Obşte**

According to the rights of access to the common property, one may find two types of *obşte*: equalitarian and non-equalitarian.

The equalitarian type means that everyone in the village has the right to equal shares of wood, and every man or woman over 18 has the right to elect the president of *obşte* and the councilors in the village assembly. In other words: one man, one share, one vote. As I mentioned above, *obşte* is managed in a participatory manner, and it has an institutional framework with one president, councilors and book-keeper. People receive annually one to three cubic meters of fuel-wood per person, and the same quantity of wood for construction, with the right to sell it. Local private companies

participate to auctions in order to exploit the surplus of wood from forest plots. With the resulting money, *obşte* improves village utilities such as: roads, repairing schools or churches, TV cable, water systems, gas system etc. The board of *obşte* may divide the profit to the villagers in equal amounts of money, if people vote as such, but this happens quite rarely. The equalitarian type is to be found mostly in Vrancea.

The non-equalitarian type might also be called the genealogical type: only some villagers have the rights to access, if, and only if, the parents had shares in *obşte*. The shares are inherited, in both male/female lines, and the votes in the village assembly are sometimes according to the shares – if



one has one share, he/she has one vote, if he/she has 100 shares, than he/she will have 100 votes. In most cases of non-equalitarian *obște*, the resulting money from the surplus of wood extraction is divided between the owners of shares, as shares from a company.

In both types, there is only one property title, the *obște* owns the forest. The difference is that in the first type *obște* means the whole village, while in the second one, only a part of it. However, in both cases the property is indivisible – one cannot fence his shares from the common property because one doesn't even know where these shares are located, and the surface of land cannot be sold outside *obște*, according to the law.

More clearly, *obște* is not an associative form of few individual forest owners, is a collective form of owning forest. *Obște* is in the same time an institution in the durkheimian sense, of formal and informal rules and regulations to access the common property, but it is also an institution in a managerial sense (Măntescu, 2007), with headquarters, a proper building in the village, most of the times new, well equipped with office tools, internet, equipment for exploiting wood, trucks and off-roads for its members.

### *Composesorat*

Usually, *composesorat* is the name for the inner circle of the Carpathians, in former Austria-Hungary and *obște* for the outer circle. As the *obști* do, *composesorat* can take various forms as well.

This type of joint ownership is similar to the non-equalitarian *obște*. One village might have one, two, three or more *composesorate*. This depends, like in the case of non-equalitarian *obște*, on the genealogical heritage. For example, four families bought three mountains for their herds in the late 19th century. Later on, their heirs decided to separate and the common property be-

came divided in four *funii* or *moșii* with shares inherited by their children and so on.

The associative forests, as we already mentioned, cannot be divided among members, and cannot be sold as terrain either partially or totally. If the association is bankrupt or decides to dissolve, the forests become communal forests, enter the public domain. Thus the associative forests are designed by law to remain 'fixed', attached to the communities and not blown by the wind of the market into foreign hands.

The main difference between communal and associative forests is that the latter give more power and rights to the members, who are aware that they hold actually property rights and that they have to vote and to decide. In the case of the communal forests, the members of the communities are not aware of their rights and perceive the quotas of wood more as an aid, a favour from the mayor. Many people actually perceive that the communal forests are still the domain of the State, while the associations are certainly perceived as private.

### *Claims and expectations: law 247/2005*

From the graph above, showing the distribution of restituted associative forests across departments (*județe*), we can see that law 247/2005 had a significant contribution, in some cases it doubled the surfaces of forest already allocated (the cases of Hunedoara, Gorj, Alba) with law 1/2000. It is also visible from the graph above that the forests are almost equally distributed among areas with *composesorate* (e.g. Harghita, Covasna, Hunedoara, Arad, Brașov, Maramureș, Oradea, Sălaj) and areas with *obști* (e.g. Vâlcea, Vrancea, Argeș, Gorj, Bacău, Buzău)<sup>3</sup>.

From the department of Caraș Severin, it is observable that the former 'huge' domain of Fortune Community did not yet reconsti-

3. Unfortunately, this is the most specific data that is available. A comparative statistic between *obști* and *composesorate* does not yet exist.

tuted its forests. Nevertheless, in this case, as in others as well, claims are very high.

Of all departments, Vrancea is the one with the lowest level of claims. From the findings of my research, indeed restitution in the case of *obști vrâncene* went very smoothly. Documents were available, the collective memory functioned very well and witnesses helped the boundaries-tracing process. By 2005, when the law was published, these property forms were already well established.

As explanations for the big differences between requests and actual restitution, as it is visible in graph 2 above, one may find: (1) the multiple claims made for the same plots, sources of conflicts and court cases; (2) the lack of evidence produced to sustain the claims; (3) the malevolence of State structures (*Ocoale silvice de stat, Direcții silvice*) to give up forest possession in favour of particular claimants. Causes (1) and (2) are produced by the fact that before 1948 only in Transylvania property entitlements existed in municipality registers (*Carte Funciară*); in the other historical regions (represented by Dâmbovița, Buzău, Prahova departments), that were not incorporated in the Austrian-Hungarian Empire, the claims are higher due to the lack of evidence and fuzzy situation before 1948.

## Laws and forests – intermediary conclusion

First, from this brief macro description we see the importance of common property systems in Romania nowadays. Forest privatization meant devolvement into the hands of juridical bodies, such as associations and communes, in proportion of 60% of the total restitution. Thus, at a theoretical level, communities were empowered for development.

We showed that forest restitution was made in three steps: (1) the first step was a

very small and stumbled one and the result was that only 7.8% of forest surface got privatized<sup>4</sup> and almost all of this deforested; (2) the second step was a brave one, although it was a little hindered by the previous one, 34% of the total forest surface went into the hand of private owners (including individuals, associations, communes); (3) for the third phase, everybody took a deep breath for a huge step, but could not get much further, many of the claims encountered hindrances from the State that was seeing its domain diminishing. After this law, the estimation is that 45.6% of the total forest resource will be privatized.

We have seen the importance of associative forests, their richness in ethnographic details and emerged social relationships and also their curious feature conferred by the law: their complete inalienability. Transactions concerning the land on which these forests are placed are not allowed, thus the law somehow keeps those forests outside the fermenting market. This is very interesting anti-neoliberal stipulation which tends to preserve the forests for the communities to which they are attached, instead of throwing them to ready-to-buy international companies. Moreover, this is a particularity of the Romanian law.

If we go back to the motto at the beginning of the chapter, we can better understand why property relations mean social relations. The conflict dimension, the organizational and symbolic one (concerning historical justice) – all contribute to identifying property as a social issue. Expectations which crashed, associations which were formed – all of these acknowledge for a reconstruction of social relationships in rural areas and reconstruction of personhood, because having and owning is an important component of the self, contributing to self-esteem and the placement of persons in the social environment.

4. At the end of 2000, information from the RNP internet site, consulted in September 2007.

### ***Restitution of common forests from a micro perspective: conflict and actor-oriented perspective***

We want to show in the following pages the deeper mechanisms that underlie the processes of restitution.

We begin our analysis with the case of the village of *Slătioara, Suceava County*<sup>5</sup>. Here, before communism there was a *communal forest* (820 ha), because the village was formerly a commune itself. The forest passed on to the nowadays commune, Stulpicani, that includes the village of Slătioara and four other villages that benefit from it (apparently much more than does Slătioara). The neighbouring village, *Gemenea*<sup>6</sup> succeeded to escape this trap of the *primărie* and to transform the former communal forest into an *obște*. The *obște* of *Gemenea* (783 ha) is genealogical, based on the principle of inheritance<sup>7</sup>. It does not have any history; it is not a restored form, but an 'invented' or 'borrowed' one, in order to keep the property from slipping into the hands of the commune (as we will describe below).

The case of the twin-villages, Slătioara and Gemenea, which had the same situation before communism and now differ very much, speaks for the way in which the law functions differently according to the agency of the actors who make the claims. The success or the failure of restitution depends upon their ability and their social network or *clientele* relations. The situations are best described as conflicts.

In the cases that we encountered all over the country, conflicts concern various top-

ics. For the case of Vrancea, in some villages smaller and isolated conflicts occur, most often concerning the distribution of wood and profit. In other villages, sharper conflicts concern abuses and corruption (Vasile, 2006: 119). For other cases, like in the communities from southern Carpathians, the major conflict is between *obște* and the State structures, such as forestry districts or national parks (Vasile, 2008b). There are no local arenas and mechanisms for a 'low-cost' resolution of conflicts. Customary law and local norms seem to have no effective power in regulating them and controlling their escalation.

The wider concept of conflict has been discussed in relation to issues such as 1) *resources*. Here, conflict is explained in terms of interests of the groups and persons involved, especially their competition for resources or gains (Schlee, 2004: 135). Another issue under which we can understand conflict is 2) *identification*. Here, attention is drawn from the object to the subject and the question is 'who fights whom?' The researcher becomes interested in the identity of the conflict actors and in their alliances and subjective appreciation of their attachments, which patterns of identification they follow (*ibidem*). Third, conflict is about 3) *power*. In this approach, power is the central concept of the research and conflict is one possible point of entry, a methodological setting in which power relations are revealed (Nuijten, 2005: 9). The researcher focuses on power relations, manipulation, networking, statuses and hierarchies.

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5. The village is located on the Suha Bucovineană Valley and it does not comprise more than 200 households.
  6. This village is bigger than Slătioara, it comprises around 300 households.
  7. In the past, both Gemenea and Slătioara did not belong to the confederation of free villages from Câmpulung (*ocolul Câmpulungului Moldovenesc*), but were submitted to the Voroneț monastery.

### ***Slătioara (Suceava) inappropriate laws and divergent identifications***

As we briefly described above, Slătioara is a low developed village, although it is surrounded by forests and it is placed right next to a beautiful natural site, the Centenary Forest of Slătioara (*Codrul Secular Slătioara*), with a high potential for tourism. This paradoxical situation is partly due to the very bad condition of the road that leads to the village (by car, driving carefully to avoid holes, it takes 8 km in half an hour) and impedes tourism activities. People from the village consider that for this bad shape of infrastructure in Slătioara are guilty the commune (Stulpicani) officials, who often cut down the village from investments. Of interest for the present study is the misappropriation from the commune of the collective forest of the *slătioareni*.

Slătioara was a commune itself before 1948 and had a communal forest of 820 ha (as we already mentioned above). Unlike other villages in the area at that time, it did not follow the trend of forest individualisation or privatisation (namely, transformation of communal forest into individual private forest or into an *obşte*), because the former mayor had business interest in keeping it that way. Therefore, they didn't have any list of individuals claiming the forest from the pre-socialist period, or any other list of 'proprietors' upon which to reconstitute nowadays the property rights only for the villagers from Slătioara (and we will come back to this issue to explain the role of law later in this paper). Thus, the property of the former commune of Slătioara passed on to the present commune of Stulpicani, which includes four other villages as beneficiaries of the forest.

A few people from the village consider that the forest should be used only by the *slătioareni* and thus sued the commune and still try to regain the forest. This restitution claim does not have many chances of success for several reasons. The most impor-

tant reason is that the village of Slătioara does not act as a corporate body, and *a conflict exists among villagers*. On one side, there are two old men who made the claim and continue the case in courts. On the other side, a group from the state forestry structure, also residents in Slătioara, works together with the *primărie* (commune officials) of Stulpicani. One of the most powerful members of these groups, a ranger, has his brother councillor at the *primărie*. Other lay people from the village fairly know about the claim that has been made. And although some of them know about it and would rather support it, they owe submission to the rangers and forestry people, either because they are their clients for wood, or simply because they do not want to get into trouble with 'important' people. The two old claimants do not have enough financial and relational power to win the case alone.

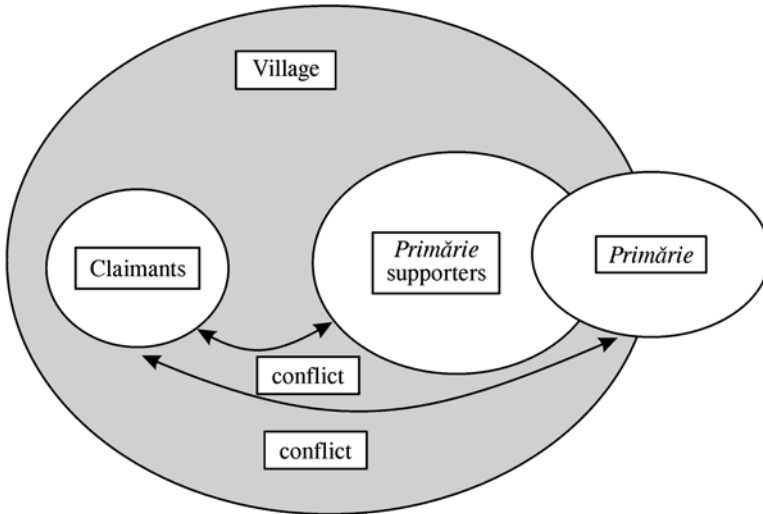


**Picture 1.** *The two claimants from Slătioara*

If we consider that conflicts start from interests in the same resource, there might be identified several interest groups: 1) the two claimants – who might have the interest to benefit from a restrictive use of the forest; 2) the *primărie* group – which holds the *de jure* interest of exploiting the forest for investments in the commune and the *de facto* interest to subtract illicit advantages; 3) the *primărie* supporters, a group that partially overlaps with the *primărie*, but also with the villagers of Slătioara, part of them are

rangers in the state forestry structure (ocol silvic) that administrates the respective forest; the latest category holds the interest to

have the forest in administration and the others are supposed to have some illicit material advantages out of this situation.



**Figure 1.** Illustration of the multi-sided conflict around the forest in Slătioara, Suceava

The resource-related interests presented above might work only up to a certain point. We especially cannot understand how the two old claimants are so keen in pursuing the case, because their economic advantages would not even cover their trial expenses. The identification and power approach to conflict shed more light on this type of conflict. The claimants legitimate their action through the idea of land as heritage (*this is the land of our ancestors*) and by associating themselves with *the people*. It is necessary to understand the importance of their collective identity, as villagers and as descendants for their own motivation.

However, it seems that this type of motivation is not shared by the other villagers, or that other dimensions prevail in their choices. The two old claimants are rather outstanding characters, as one of my key informants puts it :

‘They are exterior to the community, S. (n.a. the most important from the two claimants) through his nature, he is not integrated, and this is why he cannot convince people to participate’. (I.U., age 40, priest)

The two have limited power for winning the case, because they have limited knowledge about legal means, limited financial possibilities to carry on the case into justice and also no support from the community members. Meanwhile, the ‘supporters of the *primărie*’ group inside the community (councillors, rangers) has more power ; they have the institutional power that gives access for their clients to resources. Their rhetoric tries to emphasise belonging to the village and taking its side, but they admit that they have never raised a finger to solve this conflict. For them, identification with the institution of *primărie* is more important. The category of forestry rangers identify themselves more with the forestry structure that they represent, than with the village and they try to justify the situation as normal :

‘...without any doubt the forest belongs to the village, but the *primărie* holds the title, because it is the only legal way and, moreover, it is not a hindrance for development...’ (V.T., age 54, councillor)

We gave above a few ways to understand the conflict from within, from a perspective in which the actors and their interaction construct the situation. However, the presented problem might be understood also in a more structural light. As structural causes for the conflict we might point out to: 1) *the problem of administrative units* in Romania – communes are not organic and stable ways of territorial organisation<sup>8</sup>, thus successive restructurings bring diverse problems; 2) *the weakness of property laws* concerning the restitution of communal forms – there is a constant lack of specificity; in this particular case, to whom should the forest be restituted and into what transforms the former commune, into the new commune or into the political entity of the village in the form of an association?

We will introduce here an *essential mistake of law 1/2000*, concerning restitution for associative forms. The Romanian laws perpetuated for decades a misunderstanding of collective types of property. Being inspired from the very beginning from the Roman Civil Code (Stahl, 1958), they have the tendency to constantly reduce the collective to the individual. In the light of these rules, a collective body means a sum of individuals. Thus, an entitlement for a community must take into account a list of individuals that form the respective community. This stipulation is essentially wrong because collective bodies, such as a village, are constantly changing, persons leave or join the village, people die or are born. However, the law, or, more precisely, the lawmakers are not aware of such realities and require tables of members, regardless of the particular property form (*annex 54 from the law 1/2000*), in order to reconstitute the property rights. Slătioara did not have such a table, because the political commune was an entity beyond its members, and for that specific reason it loses out today.

Nevertheless, our analysis above demonstrates that important *explanations* are to be found *on the ground level*, within the dynamics of the community that is unable to act as a political entity. Groups and individuals with divergent interests and identifications act in different directions. Why? Because they have different economic interests, different incentives (also familial and personal ones) and social identities; furthermore, because they hold different powers with respect to persuading villagers and to conducting a court case.

Moreover, the presented situation indicates that even if the property had been in the hands of the village, internal conflicts would have prejudiced the management of the forest, as it happens in other cases as well.

### *Gemenea (Suceava), networking and legitimacy*

Gemenea is a village from the above mentioned commune of Stulpicani, neighbouring Slătioara, which succeeded to transform its former communal forest into an *obște*. Despite this initial success, what followed was disappointing for many villagers.

We have chosen to speak about this case for two reasons: because we want to show how the same law that did not permit Slătioara to reconstitute its forest can become favourable in other circumstances. Second, because we want to describe a case where abuse and generalized internal conflict are striking.

The restitution of *obște* Gemenea is the work of a woman who succeeded, with the support of the community, to sustain in court that the former communal forest of Gemenea was about to transform (or it really did) into an *obște* before 1948<sup>9</sup>. Thus, she argued that

8. We documented this idea through another example on property rights, in the village of Hăulișca, Vrancea; see the forthcoming *Sociologie Românească*; 4, 2007, and the introductory study in Romanian of Monica Vasile's doctoral dissertation.

9. Although what follows resembles the tonality of an investigation, it is only the presentation of ethnographic data upon which our analysis relies; we admit that it is a reconstruction of a case based on interviews; we admit that we provide our version after interviewing many persons and we assume responsibility for it; many of these issues were subject to newspapers' articles.

the forest should not have been restituted to the commune of Stulpicani, but to the village, as *obște*, based on the multiple senses of the word *obște* (*obște* as a village, as the totality of members of a village or as a property institution). She brought as proof a document extract in German regarding the forest, naming Gemenea '*Gemeinde Dzemine*'. She showed in a dictionary that *Gemeinde* means community, so, she said, community is necessarily *obște*. *Gemeinde* in German may also mean village or commune, and from my bibliographical investigation it means rather commune than *obște*<sup>10</sup>. Another proof was an incomplete table from 1940 with several inhabitants contributing for trial expenses. The expected result of the trial from 1940 would have been the division of shares (it is not specified what kind of shares – pasture, forest, land) into individual hands (of the respective contributors). This was indexed as a proof for the fact that before 1948 people transformed the communal forest into an *obște*. We can notice that the proofs were rather weak and the legal recognition of *obște* Gemenea was based more on the good will of the judge.

The key element of the entire successful enterprise was the woman's efficient networking. By means such as political affiliation and gifts for 'important people', she smoothed the path towards legal recognition of *obște* Gemenea. In addition, she set up a campaign for convincing people in the village that they should support the initiative of *obște* restoration and thus, contribute with money, a lamb, a car ride in exchange of a position on the table<sup>11</sup>. After the *obște* was

established, the table became the apple of discord. *Obște* was reconstituted only with the heirs of persons inscribed on it, which represent approximate half of all inhabitants.

People from the village sued the woman president for faking the table and adding her 'clients' on it. In addition, people from other villages who worked in the Restitution Commission at the municipality sustain that the table was modified. Her father<sup>12</sup> also recognized that the table was modified indeed, but only for removing people who left the village (mostly Germans and Jews) and adding poor people. The father argues that at the time the table was made, there were people in the village that had more power and wealth and this is why they appear on the table twice or more (they contributed twice to the respective expenses). He believes it is not fair that poor people did not have a chance to become entitled with forest and this social differentiation has to be undone in present days. In addition, they legitimize their action by consulting the elders of the village, who are members in the official committee of the *obște*. *They see their act not as a false, but as a way of establishing social justice.*

In the newly formed *obște*, the *local democracy does not function very well*. Although, *de jure*, there exists the largest *obște* committee that we have ever seen since we investigate the subject, formed of nineteen members, and the village assembly has important powers, *de facto*, the president has the ability to impose her will in almost every circumstance<sup>13</sup>.

10. Dictionaries translate *Gemeinde* as community, congregation, parish, municipality, corporate town; in books (Diacon, 1989: 86) about the region we found the description of old village seals, all with the inscription 'Gemeinde Dzemine', 'Gemeinde Slatioara' (description of seals from 1863), meaning that this is a generic denomination for a political entity, such as village or commune; it results that the presence of *Gemeinde* does not demonstrate that there was a legally constituted *obște*.

11. Several people declared to us this kind of barter – a contribution for 1 ha on the table.

12. 80 years old, he was presented as one of the pylons of collective memory.

13. We assisted a committee meeting, held in the living room of the president (in picture 2), and it went like the following – the president made her point, asked for an approval of the committee, the committee discussed different issues, everybody chaotically expressed opinions regarding diverse topics, without reaching any conclusions, and at some point, the president intervened, and concluded 'I believe things are clear, you approve, so you have to sign here'.



**Picture 2.** Council meeting at Gemenea  
(the president, in the middle, and eight members)

The committee is legitimated mostly as an elders court, nine of the members being over 70. The president frequently legitimates her decisions and opinions by saying ‘*the elders said...*’. Moreover, usually the general assembly, which is supposed to gather all the members of the *obște*, doesn’t function, because people do not participate (from our 40 questionnaires survey, 85.7% participated rarely or not at all). In this case, for legalizing decisions, she collects signatures in the village. Because of her antecedents with false papers, this procedure is contested. In addition, the democratic procedure is highly vitiated by the fact that the president and the committee are elected for a period of 10 years.

The conflict at Gemenea escalated very high. During our fieldwork, people kept inviting us to talk to some people, while forbidding us to talk to others; each time we entered a house, people started searching for documents, attesting their ancestors and their property. In a metaphorical way, our fieldwork resembled a court case, where everyday new proofs were brought to the file and new witnesses were audited.

Since the *obște* was established, the village divided among supporters and opponents, very outraged ones against the others. The accusations of the opponents were about

the following points: 1) the president falsified the tables and put her relatives and her allies on it; she removed entitled people that she had quarrels with; 2) she manipulates the *obște* committee and takes abusive advantages from the *obște* revenues. In response, the *obște* officials proclaimed themselves the establishers of social justice and the knowledgeable elders’ court. They accuse their opponents of greediness and malevolence. Moreover, they say that the *obște* revenues are merely prejudiced by the existing trials and the continuous reclamations.

This case shows that access to property rights has to be negotiated. The law does not grant entitlement automatically to sound documents providers, as in the case of Slătioara, and it does not exclude people who are very able to ‘produce’ their documents in a speculative way. Networking appears to be the most important skill for negotiation. It is more valuable that somebody important supports the claim, than the fact that the documents are not accurate.

Another necessary skill is *manipulation* through covering action in the *cloth of legitimacy*. In our case, legitimacy is obtained through ideas of social justice, wisdom of elders; moreover, legitimacy is conferred by work. People who are not directly involved in the conflict often approve for the



*obște* officials and above all, the president, because 'she worked immensely to gain this property back' (from the survey 62.5% appreciate that the *obște* officials are doing a good job). Finally, *courage* plays an important role; or, in the way that some of my informants put it – shamelessness. The claimants from Slătioara told me that they were counselled by the president of Gemenea to do 'this and that', 'to open certain doors', but they did not want to 'have nightmares'.

### **Conclusion : indeterminate laws, 'savage arena' of personal skills and social relationships**

The micro analysis reveals processes that accompanied the restitution of the forest property, which could only be guessed from the macro level. Following Slătioara and Gemenea examples, we notice how rights can be obtained despite lack of evidence to support them, but only by certain skillful social actors and through certain mechanisms, including manipulation and networking. These mechanisms are enacted in a vast process of negotiation, horizontally, between local actors, and vertically, between the local actors and State institutions.

From the macro data detailed in the first part of the article we could easily identify the relation between the inconsistency of forest property restitution process and the social history of certain regions in Romania. The law fails not only to acknowledge diversity, but also fails to acknowledge a changing collective body such as a village and mistakenly insists on defining concrete members on paper, such as the problem from Slătioara (the problems that this particular mistake of the law caused back in the '20s and '30s in Vrancea are treated in Stahl, 1939 and Vasile, 2008a). Whoever understands that those members have to be 'produced' has a chance to win.

Today, the conceptual gaps from the law system concerning communal/collective

property, together with the weakness of law-enforcing institutions, draw the image of a savage arena where actors fell free to play their roles according to 'natural regulations'. The micro data is once again important in our analysis because it reveals exactly this arena and its rules. In other words, we have the possibility to follow the *trophic chain* of property restitution and to better understand the property relations around this process. We saw in this article how some particular social actors might deliberately keep confusing the rules of forest restitution in order to manipulate. By this, and by ignoring basic knowledge of local social history, altogether compiled the image of a *genealogical obște* ruled by the *elders who know the things*, but who are easily manipulated. In this 'savage arena' the justice system plays an important role, keeping the arena in this way, by playing the same game and granting favourable decisions to socially skilled people, sometimes despite legal evidence, as we have shown.

In the same time Slătioara stays as a good example for how the system of territorial-administrative units influences the restitution process. The basic Romanian administrative unit, commune – *comuna*, is no longer valid in this context. We have to keep in mind that the current administrative system recalls the communist time of concentration/decreasing (*sistematizare*) rural areas. Thus, most of current communes are not organic administrative units of a territory and they block the process of local development.

We recall the problems which arise today, partly because of bad legislation: deforestation; local abuses of power, unjust restitution; acute conflicts inside villages and families; crashed expectations. However, there is one interesting paragraph in the law, the one that makes the forests tied to the communities no matter how high the pressure of the market can get. The associative forests cannot be divided or alienated, the worst that can happen is to transform into communal (municipality) forests if they turn insolvable.

This shows that the ideology encompassing the whole process, the neoliberal ideology of private property did not fully resonate with the ideology of Romanian legislators who favoured collective forms and, moreover, made sure that those collective properties do not get commoditized on the land market. Furthermore, the two ideologies are just rules and ideas which do not get enacted on the ground. The ‘reality’ is more com-

plex, and exploits every niche of the laws in such ways that we encounter a huge diversity of forms and outcomes.

To return to our *motto*, administrating forest is no longer a technical forestry issue, but first of all a social one. We have seen how property over forests is not only about economic motivations, but issues such as ancestry or social status are brought up in this process as motivations and outcomes.

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