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Formalizing commons, registering rights: the making of the forest and pasture commons in the Romanian Carpathians from the 19th century to post-socialism

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Abstract: The formal recognition of rights to the commons that occurred in the Carpathian Mountains since the 19th century has proved to be vital to their continued existence and recent post-socialist revival. However, in the course of history, the processes of formalization produced negative consequences: shrank the peasant entitlements to their land commons, fueled conflicts, cemented existing inequalities and favored opportunistic behavior. This essay examines two waves of formalization: (1) the modern delineation and recognition of commons, and the division of shares in the commons – first in the region of Transylvania, under the Austro-Hungarian rule after 1848 and second in the region of Wallachia, under the Romanian Principalities; and (2) in 2000s, the post-socialist restitution of the commons to groups of former owners. It shows how in Transylvania, the division of shares was based on former feudal class relations and in Wallachia on segmentary lineage techniques. The focus is on past and present politics of quantification embedded in property formalization, as enacted by social actors and material devices, such as official and unofficial registers and lists. The findings are based on primary and secondary historical sources, ethnographic fieldwork and surveys conducted over the past two years.

Keywords: Common rights, forest and pasture commons, land-use, property, property formalization, Romania, Transylvania

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I. Introduction

1.1. State of the art and argument

Formalization is a common tool for states to document, legalize, and make legible land rights on the ground. The vision that land titling and rights registration are necessary steps in securing livelihoods and alleviating poverty gained ground among political leaders, especially since the influential book of de Soto (de Soto 2003). The tendency among communities to make their own registration procedures, in an attempt to reduce uncertainty, seems to confirm a demand for formalization also at a grassroots level (Benjaminsen and Lund 2002; Mathieu et al. 2003; Sjaastad and Cousins 2009). According to Ostrom (1990), formalization is a powerful tool to settle disputes over use of the commons and robust common-pool institutions usually display clear membership rules and resource boundaries. However, over the past 20 years property rights scholars have leveled sharp criticisms against rights formalization, assessing its ineffectiveness, despite the best of intentions (e.g. Platteau 1996; Benjaminsen et al. 2009; Bromley 2009). The literature has shown how formalization can cause opportunistic behavior, cementing existing inequalities, often deepening processes of social exclusion and paving the way for local and global land grabbing, by facilitating sales of land by smallholders in the wake of financial hardships (Ensminger 1997; Benjaminsen 2002; Peters 2004; Meinzen-Dick and Mwangi 2009; Toulmin 2009; Borras Jr and Franco 2012; Putzel et al. 2015). Formalization programmes, through their processes of surveying and registering rights, can change the rights themselves, and it has been shown to be a cause of the privatization of communal lands (Benjaminsen et al. 2009; Cronkleton and Larson 2015). Also, it has been shown that it does not necessarily settle disputes over common-pool resources, but conflicts continue, and moreover fuzzy boundaries might be important for accommodating the ever changing nature of lively customary institutions (Cox et al. 2010; Laborda Pemán 2017).

In Western Europe, formalization of access rights to the commons occurred between the 11th and the 15th century, as a response to either increasing imbalance between arable and pastureland, or disagreements due to increasing land scarcity (Laborda Pemán and Moor 2013, 13). Laborda Peman and De Moor (2013) link the formalization of commons to the rise of free peasantry in Europe, which allowed for the interests of peasants to be better heard and recognized, coupled with a commercial revolution that triggered concerns about environmental sustainability of economic practices. Historians of Europe see the formalization of rights to the commons as a means to secure peasant livelihoods against external threats, as they analyze mostly bottom-up, grassroots processes of legal recogni-

tion of commons and establishment of rules. Massive state-driven registrations of rights to commons, such as the contemporary land reforms in the global South, were rather absent in Western Europe during the medieval and modern periods. Formal recognitions were mostly regional and local affairs. When centrally driven property reforms occurred after the 18th century, they allowed for most of the historical European commons to be enclosed, rather than transformed (De Moor et al. 2002; Bravo and De Moor 2008).

In Transylvania and Wallachia, currently regions of Romania, large mountain ranges were held in common by various communities of users – territorial villages, lineages, groups of freeholders or feudal serfs. Common lands were important for local livelihoods. The pastures next to the villages were used for cattle and horses and the remote alpine ranges were grazed in summer by sheep. Forests were used for harvesting firewood and construction timber, leaf litter, for digging peat, also for grazing pigs and other animals in early spring (Csucsujá 1998; Botezan 2002). The freeholders would also earn monetary income from leasing the common to stockmen or logging companies. Before the 19th century, some of these commons were legally recognized and functioned in a *de jure* democratic form, with councils, village assemblies, and detailed by-laws. But, as in other parts of Europe, this fairly democratic system did not entail equal and equitable access to the common resources (Netting 1993; Van Zanden 1999; Lana Berasain 2008; Bonan 2016). State-driven formalization occurred in Transylvania in the mid 19th century and in Wallachia at the beginning of the 20th century, organizing the commons and their user-groups into legal entities, ‘moral persons’ (different from the municipalities), institutions called *composesorate*, *asociatii urbariale* (Transylvania), and *obști* (Wallachia), which owned and managed the resources. In most of the cases, after the formalization process, rights to the commons legally took the form of personal inheritable quota-shares, expressed in various units, listed in tables and registers. According to terminology applied to English commons, the commons were stinted, and peasants held personal rights in gross. As in the case of English stinting, the very act of expressing the rights in terms of a stint, changed their character, by gaining a ‘substance’ and a quantifiable nature (Rodgers et al. 2010). Also, as quantities, rights became tradable commodities.

Post-socialist property reforms (post 1990) emphasized ‘restitution’, forwarding the ideological promise of reinstalling the traditional peasant society (Giordano and Kostova 2002, 79). This wave of rights recognition in Romania assumed the reversibility of events and treated the socialist era as a black hole without considering the processes of social change (Giordano 1998, 25), without reflection on the fact that rural households that were viable fifty years ago had members who have died, emigrated, married and substantially changed their relationship to land (Verdery 1996, 134), or on the fact that the land itself, the forest and the pastures that were reclaimed have changed. Claims were often overlapping and contentious; they were assessed based on formal knowledge from legal documents and also based on informal local knowledge of kinship and labor; land assignments and contestations often became struggles of memory (Verdery 2003).

The process of restitution entailed negotiation among actors, which allowed for the elite to capture the benefits (Dorondel 2009, 2016; Sikor et al. 2009).

Basic statistics on the restituted forest and pasture commons of Romania are either inconsistent or entirely missing. From my research, pieced together from various sources,¹ it can be said that around 1500 forest and pasture commons dot the Romanian Carpathians, counting 873,000 ha of forest,² 14% of the total forested surface of the country, and about 330,000 ha of pasture.³ These are historical independent commons, managing resources owned by over 400,000 commoners,⁴ organized as self-governance legal entities. The area of forest commons has decreased moderately over the past 100 years, by around 22%.⁵

Examining two Romanian regions, Transylvania and Wallachia, from the 19th century until post-socialism in the 21st century, the paper addresses questions that are fundamental to understanding how transformations of commons unfold in various historical and contemporary contexts. Unfortunate consequences can be observed in the formalization of property rights to the commons in Transylvania and Wallachia, such as pervasive injustices and dispossessions of community members. Nevertheless, in a realm of increasing bureaucratization, formalization was necessary for the survival of the Romanian commons, at a time when they were already in a far more reduced state in many other European countries, or had long since been dissolved by state-driven interventions.

This paper addresses two waves of formalization of rights to the commons in the Carpathian Mountains: (1) The delineation and recognition of commons in Transylvania, coupled with a formalization of personal rights in the 19th century; this process was a massive, centrally-driven policy by the Austrian state and later the Austro-Hungarian Empire, which essentially transformed the entitlements of peasants. A similar process happened in Wallachia in 1910, a region under

¹ Such data sets include official forestry statistics, reports provided by the state Court of Accounts, databases with registered associations. The research presented in this paper is part of a broader project, entitled “Associative Environmentalism”, funded through the Romanian National Authority for Scientific Research and Innovation. The project has a quantitative dimension, enabling comparison of over 330 forest and pasture commons across the Carpathians and a qualitative dimension, researching in-depth representative cases.

² This official figure is presented for ‘traditional associative forms’ by the Romanian Court of Accounts in a report 2014, consulted under the following link http://www.curteadeconturi.ro/Publicatii/Sinteza_FF.pdf. However, other sources indicate other figures, such as 788,694 ha (year 2015), source official report filed by the Ministry of Forest and Waters http://www.mmediu.ro/app/webroot/uploads/files/2016-12-16_Raport_Starea_padurilor_2015.pdf.

³ This is an estimate, as other official data is absent. Estimates were calculated from a database of surveys collected in 330 commons between 2016–2017 with the representatives of commons’ executive boards. Other articles (Sutcliffe et al. 2013) give 1.8 million hectares as an estimate of ‘common’ pasture, but they refer to publicly owned, municipality run common pastures, not to the private commons.

⁴ This is an estimation based on the database including 330 commons mentioned in footnote 3.

⁵ According to Stinghe and Sburlan, *Agenda Forestiera* (Stinghe and Sburlan 1941), in 1929 there are 1,113,000 ha of forests in commons.

Romanian rule, covering the Southern Carpathians; a centrally driven operation of legal recognition and registration of commons, with roots in local customs of rights demarcations, based on lineages. (2) The paper then analyzes a second large wave of commons formation, the post-socialist re-creation in 2000s, after a period of state ownership and management (1948–1989). This occurred simultaneously in Transylvania and Wallachia, both part of Romania after the unification in 1918. These processes are significant for the creation of legal commons across Central and Eastern Europe, territories that, under Austrian rule, followed the same laws during the 19th century, and subsequently experienced socialist regimes and post-socialist recreation of commons, as mentioned by studies from Slovakia (the *urbars* treated in Sulek 2006; Kluvánková-Oravská 2011) and Slovenia (Bogataj and Krč 2014; Gatto and Bogataj 2015; Premrl et al. 2015).

The focus of the paper is the calculation of shares within the formalization process. The study argues that numerical abstractions and relations had a crucial role in the making and remaking of access to communal Carpathian forests across different periods of time. They came to mediate the relation between people and their land, and the relation between the government and the people with regard to land. The approach that I take in the paper is based on understanding numbers and calculations assembled in lists not only as semantic shortcuts to value, as providers of cognitive maps, but also as performative (Guyer 2004, 60), and as merged into ongoing activity (Lave 1988, 120), enacted by human actors and their material devices. Taking into consideration that, as Callon and Muniesa suggest, “there are always several ways of calculating values and reaching compromises” (Callon and Muniesa 2005, 1254), I examine how the commons as bureaucratic objects were made, and what the numbers came to represent. In the formalization process, political and economic choices were made about “what to measure, how to measure it, how often to measure and how to represent and interpret the results” (Agrawal 2005, 37). Each of the choices made in the process was subject to contestation, embedded in power struggles that allowed for privileges, like all other standardization processes (Lampland and Star Leigh 2009), as formal bureaucratic artifacts are ‘vulnerable’ to manipulation by private individuals, facilitating contingent outcomes (Hull 2012). The state vision about rendering the reality of commons and the knowledge thereof more schematic and more legible through graphic administrative tools (Scott 2008) such as lists, maps, genealogical trees, validated by authorities – judges and notaries – proved to be a much more complicated task than planners envisioned (Hull 2012). This study approaches the history of commons through the lenses of text and practice. It aims to reveal the histories around the process of formalization by analyzing the text of laws and procedures, also the content and form of court documents, local lists and documents; the paper also examines how these documents were produced and in what socio-political contexts. The paper pays attention to the career of documents produced in the course of rights recognition processes and asks: how were they used at later points, how were they understood, reworked and manipulated in successive waves of formalization? What were the consequences of previous measure-

ments to the contemporary commons? How did the commons deal with the old calculations and what kind of measures were recently instituted, in order to make sense of these inherited systems?

1.2. Approach and methods

The data presented in this article comes from various sources. The analysis is primarily based on extended fieldwork. In 2015–2017 I conducted research in the Carpathian highlands and interviewed council representatives of 330 different commons in the regions of Transylvania and Wallachia, as part of a broader project that aims at producing extensive knowledge on the Romanian commons, which remain largely under researched. In some cases I also conducted interviews among the commoners. During fieldwork I collected documents, legal decisions, property records, commons' by-laws, tables with entitled members, with the aim to understand the described processes. I found rich information in a few descriptive local monographs, *monografii*, an amateur genre in Romanian literature that started at the beginning of the 20th century, giving valuable insight into local histories.⁶ I also use secondary sources by local scholars (Brezulescu 1905), law-makers (Radovici 1909; Botez 1923; Jivan 2014 [1940]), as well as historians (Panaitescu 1964; Imreh 1982; Csucsujá 1998; Botezan 2002), and a sociologist Henri Stahl (Stahl 1980, 1998).

2. Transylvania: reinforcing feudal class relations

2.1. Feudal class relations, delineation of commons and the land registry after 1848

Up to this day we can find in Transylvania commons named 'noble *compossessorate*' (composesorate nobile) and '*compossessorate* of former serfs' (composesorate urbariale, composesorate de foști iobagi), a blunt reminder of class relations from more than 150 years ago. The old inequalities are evident not only symbolically, but also materially, as the nobles' commons are usually much larger in surface than those of the ex-serfs.⁷

⁶ The monographs are usually thick volumes, written either by regional historians (e.g. Lazăr and Balasz 2012), or local actors, such as priests or village teachers, who interviewed locals and researched documents; they describe issues otherwise inaccessible, and occasionally include archival documents. For example, the monograph written by Florea Vlădescu (Vlădescu 2003), a local teacher from Titești, Vâlcea County, includes an impressive number of documents from three commons in the region. He has personally transcribed the documents, which he treasured in a large register that contained everything relevant to the commons.

⁷ The historical origins of the noble *compossessorates* vary according to geographical areas, e.g. in Southern Transylvania, in the area of Făgăraș, *Tara Oltului*, the entitlements of freeholders date back to when the area was under Wallachian rule, and the rulers donated land to the freeholders of the area, *boieri*, who were to pass on their rights to the biological descendants. Differences between the two types (noble *compossessorates* and ex-serfs *composesorates*) in Southern Transylvania are described by Vasile V. Caramelia (Caramelia 1944, 1945).

Freeholders of Transylvania, the ‘lesser nobility’, *nobili, nemeși* (different from the large nobility, the aristocrats) held property rights to forests and pastures from before the 17th century (Petercsák 2000), granted to them either by local medieval rulers, or later on between 1761 and 1764 by Empress Maria Theresa for military purposes (the borderguards, *grăniceri*) and were organized in common property institutions, called *noble composesorates*. Alongside freeholders, the feudal villages of Transylvania were composed of serfs entitled to arable land – *iobași*, and cotters without land, *jeleri*. They benefitted from restricted use of forest and pastures on their landlords’ lands, regulated under the document called *urbarium* (Csucsujá 1998; Jivan 2014).

The former serf-landlord relationship was conceived in terms of reciprocity – serfs were granted use rights in the common forests in exchange for their labor. After the wave of revolutions in Europe 1848 that abolished serfdom in Transylvania, landlords started to informally prohibit their former serfs to collect wood, or to graze their pigs in the woods. When serfs ceased to serve, the landlords argued that use-rights should no longer be granted. This situation created friction. In an attempt to solve this problem, the imperial decree from 1853 initiated the delineation of common forests and pastures for ex-feudal tenants and the formalization of their property rights. The portion of segregated common land was redeemed from the former landlords with monetary compensations.

A plethora of further laws regulated the distribution of rights and the operation of commons: Law 53/1871 demanded a ‘proportionalization’ of the commons into shares for each peasant (Jivan [1940] 2014), according to former social status and size of holding, called undivided quota-parts (*cote-părți indivize*). In 1879, law 31 required that the common lands be administered by the state, according to forest management plans; following conflicts and confusion, law 19/1898 gave guidelines about the internal organization of the *compossessorate* commons, and it allowed for those who held shares larger than 57 hectares (100 *jog*) in the commons to enclose a plot as individual private property; however, due to conflicts, this option was removed in 1908 (*ibid.*).

For organizing the commons and calculating shares, formalization of rights to the commons was based on previous large-scale operations of measuring and registering land. The surface area of agricultural holdings in Transylvania was measured in 1820, in the state-driven land registration called the “Czirakyan conscription” (from Count Cziraky, who directed the operations). These measurements were far from being objective reflections of reality. For fear of taxation, peasants declared less land, sometimes only 1/3 of their actual holdings (Metes 1921; Botezan 2002). Also, the translation from local peasant measures,⁸ expressed in buckets and wagons, to Austrian official measures operated with approximations, to the disadvantage of the peasants (Botezan 2002). These flawed measurements were to determine the later proportionalization of shares in the commons.

⁸ Peasants were used to measuring agricultural land in buckets (of grain), *găleată*, and hayfields in wagons (of hay), *care*.

Transylvania had sophisticated land registration procedures. The most important public system of documents was the land registry (*cartea funciară*), a central register introduced in 1849 and built over many years. The land registry included three types of documents: (1) sheet A – the ‘estate sheet’, or the asset description record (*foaia de avere*), in which the grounds were described; (2) sheet B – the property record (*foaia de proprietate*), in which the persons holding rights were named, also transactions were inscribed; (3) sheet C – the claims record or the legal burden record (*foaia de sarcini*), with mentions of the nature of rights (Herlea 1945). The land registry also contained commons – descriptions of their limits, tables with members and their shares, and transactions that occurred. Introducing and keeping a land registry involved massive operations meant to render the land and the relationships between citizens and land highly legible. As the land registry became part of life in rural areas (Müller 2015), a bureaucratic culture was formed. Although inscriptions were often flawed, missing or seldom updated, the land registry proved over time to be a useful tool in securing rights.

2.2. Calculations, ‘undivided parts’ and personal inheritable rights

To delineate the commons and further calculate the peasants’ ‘portions’, legislators took into account the size of their holdings, the uses of land, the value of labour, and the production capacities of forests. Through multiple operations that lasted for decades, ‘experts’ quantified human labour, needs, and measured forests and land. What counted in these calculations?

There were two ways to delineate the commons. If the delineation was achieved through local consensus, the experts took as reference the agricultural land plots owned by the former serfs (*sesie*) and their rights to use the land (harvesting for construction timber, firewood, grazing pigs, also, in some places, the right to sell timber) to evaluate the total entitlement of the village community of former serfs. The larger the plots and the quantity of uses, the larger the delineated common lands. In case the peasants were not satisfied with the delineation and appealed the decision to the *urbarial* courts, other measurements were done, taking into account former duties of peasants to landlords (*servituți*) and the qualities of the forests. For example, in the village of Surduc (comitat of Bihor), in 1866, an amicable understanding was reached. The experts calculated that the community used 150 m³ of wood, which had to be evaluated in money and further equated with a patch of delineated common forest (Csucsujá 1998). Such monetary evaluations disadvantaged the peasants. The wood price considered in the calculation was that of 20 years before, at a time when timber prices were much lower, before a rapid rise in value due to increased wood-consuming industrialization. Thus, using a lesser value resulted in a smaller piece of land. The delineated common forest for Surduc village was thus only half of what would have been fair (*ibid.*), a situation that was representative of what happened elsewhere.

Furthermore, law 53/1871, the ‘law of proportionalization’, provided that individual shares were calculated in the delineated commons for each household

that happened to be a part of the community at the time. The shares were called ‘undivided quota-parts’ (in Rom. *cote-părți indivize*). A ‘key of proportion’ was calculated, determining how many fractions the commons should be divided into, so that the smallest share could be expressed. The calculation method is explained by Iosif Jivan, a judge in the tribunal of Dej, in 1940: Say the total forest surface measures 300,000 *stânjeni* (old land surface measure) and the smallest share of surface calculated for a peasant is 200 *stânjeni*, then the total number of rights of the commons was $300,000 \text{ stânjeni} / 200 \text{ stânjeni} = 1500$ ‘undivided parts’ (*părți indivize*). The share of a peasant would then be expressed as e.g. “24 parts of 1500 parts”. The cotters (*jeleri*), who only owned a house and garden, were entitled to only 1/8 of the portions granted to feudal tenants who owned cultivated land (*iobagi*). Before the abolition of serfdom, priests and teachers also had the right to use the common forests. Thus, the law granted the priests one full portion and the teachers 1/2 of a portion in the common forests.

Most of the calculations turned into conflicts and ended in *urbarial* tribunals. Peasants pressed charges that the segregations were based on vicious land measurements, to the advantage of the powerful. The large landowners resisted giving up their lands. The former serfs had to prove in court that they used a certain forest and that they were actually providing their services to the landlord prior to the abolition of serfdom. In Transylvania, in 1867, 20,000 *urbarial* court cases were registered, which involved 300,000 persons (Lazăr and Balasz 2012), approximately 8% of the population at the time, meaning at least 30% of all households.⁹

The rights to the commons that resulted from the formalization process were personal rights, transferable only to insider co-members, inheritable, with rights split among children. They were not tied to owning private property in the village – thus similar to, e.g. the Swiss feudal common rights system, as described for St. Gallen (Stevenson 1991), but different to other European sharing systems, e.g. Sweden (Lidestav et al. 2013; Sandström et al. 2016) or England (Rodgers et al. 2010). Expressing a quantity of benefits or uses, the rights were not enclosable as a piece of land; enclosures were punishable, considered to be damage to the common. The rights could be retained after the rightholder moved away from the community, a difference to what has been described in the literature as usual institutional arrangements for common-pool resources (e.g. Ostrom 1990), where out-migration usually implies losing the right. Despite the presence of individual shares, the common was owned and governed jointly and the community retained a large amount of rights through the commons assembly. Forest management was mostly done through the state forestry service.

Historians deemed the law that constituted modern commons unfair, as it excluded a category of former feudal serfs that did not hold any land, a “moment of definitive exclusion of the landless paupers from their rights to the ancestral commons” (Imreh 1982), as the most impoverished classes and newcomers without

⁹ The census of 1869 gives the total population at 4,224,436 inhabitants of Transylvania (including the regions of Banat, Crișana and Maramureș) (Varga 1999).

rights to the newly established commons were forced out of the villages, pushed towards becoming proletarians (Csucsujá 1998, 85). Meanwhile, large amounts of land ended up back into the hands of the large landowners (Imreh 1982).

Because of the rule of equal partible inheritance, splitting up the shares in the long run generated increasing fragmentation. The calculations took into account only momentarily household needs, without an outlook into the future. Passing on the shares to the next generation, and splitting the shares between 4–5 heirs, would not provide sufficient support for future livelihoods (Csucsujá 1998, 77). The quantification of individual rights inside the commons in the spirit of bourgeois liberalism also allowed for commodification of shares inside the villages, generating elite capture of shares in some areas.

Nevertheless, despite the making of individual shares, the community of users, the institution of the *composesorat*, through its assembly retained certain powers regarding the sales of shares, e.g. the power to limit the maximum number of shares members can acquire (to a cap of 2%, or 5%), or regarding access and the distribution of benefits. Overall, the formalization of common property, and the prohibition to alienate shares towards outsiders offered protection to peasants against businessmen and land sharks (Csucsujá 1998, 81, 85).

3. Wallachia: ancestors, lists and clients in the cash economy

3.1. A kinship-based system

In Wallachia, the rights to the mountains were allocated to lineage groups of freeholder peasants, *moşneni*, a category of smallholder peasants similar to the lesser nobility of Transylvania¹⁰ (Panaitescu 1964; Ciobotea 1999). The centrally-driven formalization in 1910 followed grassroots demarcations that took off already in the 17th century, on principles related to lineage divisions (similar to the African segmentary lineages, Shipton 1984). At the frontier territories of the Ottoman Empire, the feudal villages of Wallachia enjoyed a high degree of political autonomy and the freeholders devised their own institutions for self-governing the collective resources, frequently recognized by local courts. Various laws demanded the registration of land, starting with the Ipsilanti Register in 1780, then the Calimah Code in 1817, and the Caragea law in 1819 when measurements were undertaken to draw ‘property delimitations’ (*hotărnicii* and *cărţi de alegere*). However, unlike Transylvania, these remained local registers; a public central land registry that would ensure secure rights and legibility was not introduced in Wallachia until the contemporary period, despite attempts in the interwar period.

¹⁰ *Moşneni* were a feudal social category, which survived until today. The *moşneni* peasants, amounted to 50–60% of all peasants inhabiting the northern counties of Gorj, Vâlcea and Argeş. They were defined by the Ministry of Water, Forests and Domains in 1899 as those peasants who were not dependent, did not pay tribute to monasteries or landlords, and freely owned their lands prior to the agrarian reform from 1864, on the basis of their ancestral rights (Ciobotea 1999).

Local issues related to commodification, leasing contracts, and settlement of conflicts between commoners, required periodical recognition of rights and allocation of access shares by regional courts of law. Yet, despite grassroots formalization and establishing written rules, most often conflicts continued (as in cases recounted by historians from other parts of Europe, e.g. Navarra, Laborda Pemán 2017), and new dispute settlement allowed for frequent changes. These scattered rights recognitions followed various rationales, but they had in common the notion of a nested system: (1) common rights to mountains for entire descent-groups and (2) personal rights expressed as ‘parts’ within the descent-group. They were rights in gross, not tied to a holding in a village, or related to its size, but to various contributions of peasants to payments and to the position of the individual in lineages.

One can distinguish two phases of quantifying and enlisting of shares: (1) the local, scattered and voluntary creation of different lists with entitled persons and their associated use-rights by communities dealing with internal use conflicts – issues of free-riding – or issues of contracts and revenue distribution from communal territory; (2) in 1910, the state carried out the centrally-driven formalization of rights to the mountains, and the legal recognition of communities and descent groups as legal entities.

Land changed hands successively from landlords to monasteries to various groups of freeholders, through transactions, ‘redemption payments’, donations and other methods. The relatively free circulation of land and readiness of cash is attested by many documents starting with the 16th century. Peasants often reclaimed estates communally from other landholders, local boyars, monasteries – reclamations enabled by various local court decisions or larger property reforms, especially the property reform of 1864. On the occasion of such reclamations which often involved monetary compensations, peasants paid what they could afford, which meant unequal amounts. The unequal payments generated long-lasting conflicts about the equity of sharing benefits, conflicts that resulted in grassroots establishment of rules and the making of individual quota-shares in the commons. By and large, a dense web of complex tenure relations was created over time by successive redemptions of land piece by piece with various groups of peasants and families participating in the payments. The state attempted to clear up the ‘customary mess’ through the formalization in 1910.

The peasants did not redeem land from local landlords in all areas. There were areas inhabited by freeholders who owned common land as donations from feudal kings. It also happened that the collective memory swept away less glorious moments of transactions and burdening payments to landlords, and instead peasants based their claims on contriving myths of pioneer settlers and immemorial donations from kings. In these cases, calculations of individual shares in the commons were based on genealogies, on kinship relations to the presumed initial settlers. The pioneer settlers were considered to have equal rights to the land, by virtue of donations by the local rulers (*voievod*) or by virtue of first occupancy, meaning entitled for their labor in the process of creating property by

slash and burn techniques. The initial settlers were considered to be the biological founders of all the village lineages. Thus, by partible inheritance rules, rights were allotted to all descendants of the initial settlers, preferably to males, but occasionally also to women through dowry and when there were no male heirs (Panaitescu 1964, 175–176). Thus, uniquely in Europe, the right to the commons literally originated in foundational myths. Rights to common land were thus granted only to the autochthonous population, *de jure*, and transactions were closed to outsiders. *De facto*, there were multiple ways in which newcomers could acquire rights to land, for example through becoming sworn brother with a lineage member, called ‘brotherhood of land holding’ (*înfrățire pe ocină*) (Panaitescu 1964, 179–181).¹¹ According to Romanian sociologist Henri Stahl (1998), genealogies were a way to legitimize the protection of patrimonies against unwanted outsiders, and to justify inequalities. His opinion is that the presumed lineages did not necessarily consist of blood-based relations and the reconstruction of genealogies dealt with a certain degree of fiction; also the notion of initial settlers as biological founders of lineages is controversial, and other historians suggest that it would be more appropriate to understand them as elected ‘chiefs’ of bands that occupied the land (Panaitescu 1964, 25). Other scholars follow in this opinion. Dumitru Brezulescu, writing in 1905 about his own area in the Southern Carpathians, Novaci, showed that tracing genealogies back to the initial settlers usually ended up in a “labyrinthic confusion” (Brezulescu 1905). He also shows how the literate elites of villages, who made the genealogies, usually took advantage of various inconsistencies.

3.2. Enlisting shares locally: reclaiming land, leases and walking on ancestors

In the local delineations of property, the whole village territory was divided into ‘ancestors’, *moși*, meaning first settlers, heads of lineage, also old men, related to the word *moșie*, meaning holding, estate.¹² It was said that the village ‘walks on 7 ancestors’ (or 42 ancestors – as in the case of the town of Câmpulung), meaning it was divided into 7 strips according to 7 lineages. The focal point of the calculations was the number of lineages, thus the number of initial founders. The key to the allotment was to find out who these pioneer settlers were, or actually not who they were, but how many, in order to divide the territory in as many strips. The strips, named differently in different areas, as ‘belts’ (*curele*), or ‘ropes’ (*sfori*, *funii*), cut across the whole village territory (similar to strips of East African segmentary lineages Shipton 1984). They started in the inhabited areas and went along agricultural fields, then into the hills, and pastures. The land strip division

¹¹ Such ‘brotherhood of land holding’ was validated by church rituals and also by village councils, but in reality it was merely a transaction – sometimes the price and the deal were shown in the documents of brotherhood (Panaitescu 1964, 179–181).

¹² The word *moș* is at the origin of the word *moșnean*, meaning free small-holder, and nowadays it means member in a commons, implying part of the autochthonous population.

ensured that each lineage received equal qualities and the same quantity of every kind of land available. Oddities in the calculations of ancestors indicate that the ‘old men ancestors’, *moși*, were abstract measures couched in familiar and moral language.¹³ The archival documents contain a few expressions that would appear odd to someone not grasping the sense of ‘ancestor’ as a land measure. For example, someone ‘donates a full ancestor’ to a landlord. Or, if monasteries received a portion of the land, an ancestor was invented for it, the ‘monastery ancestor’ (Stahl 1998). Thus, the ancestors became a mere abstract value, a sort of land currency. Genealogies lost their biological significance and became a land register.

Forests and alpine pastures were not divided in strips but kept in larger common holdings (in *devălmășie*), usually delineated as mountains. It was said that ‘the group of freeholders has rights in that mountain’. In time, the rights became shares. The formal recognition of who was entitled to what, drawn up into documents by local judges and jurors, followed different particular rationales, in a rich diversity of local practice. By and large, the introduction of shares was facilitated by the participation of peasants into the cash economy and by the presence of a developed land market. They start to appear in documents from the 17th century (Panaitescu 1964, 153).

One occasion of share making was when peasants reclaimed common land from local landlords or monasteries, by ‘redemption payments’ (*răscumpărări*) legalized in courts of law, as mentioned earlier. Every lineage contributed to the payment unequally. The payments were translated into lineage entitlements to the common land, expressed in ‘ancestors’ – e.g. from the village of Titești, the lineage of Popești was entitled to two ancestors (*moș*) and a half, the lineage of Vârvorești to half an ancestor (document from 1891, Vlădescu 2003). Furthermore, lineage representatives were delegated by the courts to calculate the entitlement quota-share of each household. The bought plots of common land were not to be divided up, or sold to outsiders (act of peace from 1849 Titești, Vlădescu 2003). Such agreements and entitlement calculations were not fixed for long periods, they happened periodically, with every new transaction or conflict that occurred.

Other occasions for enlisting shares were legal settlements of land-use conflicts and the drawing of contracts dividing up monetary revenue from the mountains. Such revenues could include leasing the pastures to outside sheepmen, or leasing the forests for pasturing of pigs, leasing land for water-activated sawmills (e.g. the commons of Dragoslavele, Argeș County was collecting rent on the commons from up to 50 sawmills installed on its territory around 1850, according to the local monograph of Mogoș et al. 2014). Later on towards the end of the 19th century, leases of forest for commercial purposes by foreign companies would become a

¹³ According to Stoicescu (1971), “the ancestor, *moș*, is an entitlement without correspondence on the ground”, “it is a part of the village territory that belonged initially to a real or presumptive founder of the respective village”.

major point of conflict and reason for scattered formal recognitions, leading up to the centrally-driven formalization of commons from 1910.

Grassroots formalization was also driven by settling disputes over villagers' enclosures of common land or abuse of pasture. Such occasions produced 'documents of peace', in which genealogical trees were drawn and the rights of villagers delineated by court judges. But the rules established through documents of peace were then often broken and conflicts would not end easily, as in the case of Titești in Vâlcea County, a village where conflicts over pastureland have never ceased, up to this day. In a remarkably rich local monograph, Vlădescu (Vlădescu 2003) presents documents showing that rights and lists with rights/shares of the commons of Titești were established when the villagers redeemed their land from the local landlord, and paid the noble family of Bucșănești a price for their estate. The villagers borrowed money with interest from pawnbrokers from Căineni, the neighboring village, and managed to pay back in 7 years, in 1858.

Further documents presented in Vlădescu's monograph allow a glimpse into the functioning of commons in the 19th century: acts of peace from 1878 and other documents from the period show that villagers had incessant conflicts concerning common land, and their settlement required the enforcement of state courts. Many local shepherders had competing interests in the common pastures and various sharing arrangements were tested out. Every time an act of peace was drawn in the court of law, a delegation of representatives from each lineage was charged with further drawing a table of shares for each commoner and with the obligation to 'keep a precise accounting'. The insistence of judges in keeping updated records suggests that once such acts were made, they were not rigorously followed. The acts of peace were done at various local courts, and also at higher courts, as agreements between the lineages and delegates were appointed by each lineage by letters of attorney signed by the village mayor.

The documents from Titești suggest that sharing was mediated by the presence of money. For an easier distribution of uses/benefits, around 1870 every commoner would pay a price for keeping cattle on the common pasture, or sheep, or for firewood, or for grazing pigs in the forest; the commoners also had revenue from renting out the common for an annual fair (St. Elias Fair, 20th of July); the amounting sum was then divided up among commoners proportional to shares. People who were not part of the free lineages were also allowed to use the common for a higher price, but were not participating in the distribution of benefits. The *lăturași* were dependent peasants who did not initially participate in the payment of the land.

The shares of the entitled commoners were in some cases calculated in cheese measures – cheese received as payment for renting out the pastures, which was commonly weighed in *dramuri*. Also, 'cows', and its subdivisions 'feet' (a cow had 4 feet, obviously), and 'sheep' were used as measurement of shares. For example, if a pasture could hold 1000 real cows and the village walked on 5 ancestors, each ancestor counted 200 cow-shares. Then, each household would receive a number of cow-shares according to their position in the genealogy. The

matching of the use-rights, or cow-shares to the needs of the household was to be achieved by annual transactions; those with many use-rights cow-shares and less real cattle leased annually use-rights to the ones with more cattle than use-rights. In time, these temporary transactions led to permanent sales of use-rights.

Also, forest lease contracts drove much of the list-making operations (Brezulescu 1905). In Wallachia as well as in Transylvania, private forestry companies appeared towards the end of the 19th century. The unorthodox deals of the companies and the spoliation of peasants were depicted by many scholars, journalists, and politicians of the time (e.g. Iuga 1936; Stahl 1998). The companies needed lists with signatures to prove that the peasants sold their forest use rights. By the accounts of Brezulescu (1905), the contracting went on like this: The company representatives arrived in the village, usually at the pub. The elites received them – the mayor, the pub owner. They made up the lists of entitlements, putting themselves first, and then a few loyal co-villagers. The other commoners barely appeared on the lists, and if they did, their entitlements were quantified at lower values. The lists were full of “absences” and “selfish lies”. So strong was the power of the lists, that commoners who were absent or in conflict with the elites, sometimes tried to talk “with tears in their eyes” (Brezulescu 1905) to the company representatives to write them down in the contract, knowing that unless they were mentioned, they were going to lose, not only the rent money, but their rights in the future. They felt the urgency and the threat of irreversibility of the material artifact.

These conflicts and abuses led to the centrally-driven commons registration policy, the massive common property formalization from 1910.

4. Between 1910 and 1948

4.1. The Forestry Code in 1910: formalizing customary rights to the commons

Recalculations of access-rights and sales happened periodically. Towards the end of the 19th century, technological development and demographic pressure increased the demand for resources and commoners sought to limit access and harvesting (Stahl 1980). Conflicts rose among commoners about abusive grazing, enclosures, or cash distribution. Villages were taking steps to register commons as legal entities, drawing up written by-laws, validated by courts of law. On these occasions new lists were drawn, new demarcations of property borders and new authenticated agreements and rules of access and use appeared. Some commons diminished, even disappeared, as land was sold to forestry companies, and commoners with larger shares enclosed land. On the ground, the materiality of commons also changed, as forest was devastatingly cut down (Giurescu 1980) with over 100,000 hectares being harvested yearly in the late 19th century (Munteanu et al. 2015).

Observing delays and abuses in such grassroots operations of formalization, as well as environmentally and socially threatening practices of the industrial forestry companies (Botez 1923), political actors launched a state-driven formalization of rights to the commons, through the adoption of the Forestry Code

in 1910. In Transylvania, the Code was also taken on in 1923, after the unification in 1918 and the property reform from 1921.¹⁴

The customary common property regime, *devălmășie*, contravened to the legislators' ideals of order and legibility, was deemed anarchic and destructive, an anachronism, a relic of the past and an expression of primitivism (Mateescu 2013); yet, it was used in the text of law as recognition of the value of customary notions and as a signal that the new modern laws are rooted in peasant local practice. As Mateescu (2013) argues, the archaic flavor worked in favor of the Romanian commons, in the context of national debates of revitalizing associations and cooperatives as a way of improving the situation of peasants – a protectionist, collectivist-nationalistic concept of property (Müller 2015) that went countercurrent to the anti-communal liberal-individualist European tendencies of the time. All in all, the formalization of 1910 intended defending the weakest peasants against inequity. This tendency to attribute property a 'social function', was to be inscribed as such in the Romanian constitution of 1923.

In addition to stopping the abuses of the logging companies, the supporters of the Forestry Code also aimed at preventing individual abuses of peasants, by enforcing customary rules (customary only for certain areas, as they were) of allocating shares and harvesting quotas. The narrative related rational forest harvesting with a rational, bureaucratically recognized, allocation of shares (Botez 1923). The underlying premise was that if everyone would respect his or her rightful share, the ecological disaster of deforestation could be stopped. The code proposed legally enforced by-laws as a solution for local self-governance of forests, by-laws that would explicitly limit rights of harvesting.

The Code aimed at achieving the precise quantification of the rights of each peasant enlisted in the "register of rights", validated by legal courts. In the name of clarity and legibility, the proponents of the Code intended to organize the commons on modern civil principles, akin to individual property concepts, considering commons merely as 'forced and perpetual co-property', akin to corporations. The Code also proposed to protect the interests of peasants by centrally-mediated monitoring of sales: all sales of shares were to be done with the authorization of the Ministry of Domains, which would ensure a fair price (Botez 1923); by and large the intention was to 'conserve the rights' of the peasants and prevent alienation.

The formalization of rights in the commons was ideologically a mixed bag of liberal individualism and nationalistic collectivism. It created a 'crossbreed' of mountain commons. While recognizing the collective as a legitimate owner and governor, thus trying to incorporate customary tenure principles, the 1910 Code was keen on institutionalizing a system of shares. To some extent, it recognized what was already being practiced at grassroots level, the form of undivided (non-enclosable), inheritable personal rights to the commons, similar to the system in Transylvania, and with the same negative consequences of fragmentation and

¹⁴ The 1910 Forestry Code was adopted as Transylvania became part of Romania after WWI; all the previous laws were abrogated.

delocalization. The technical management of the forests was to be done by the specialized state forestry service, the *House of Forests*, according to management plans, that were yet to be created and implemented from 1910 onwards. The communities of users, through the commoners' assemblies and the local institutions of *obște* and *composesorat* retained the right to devise their own rules (by-laws) for using the land, for electing executive boards, for voting, for distributing benefits, or instituting sanctions. The commoners' assembly also had to be consulted in the case of sales.

The operations of drawing up registers were often contested and took a long time. The intention of the Code was not to reiterate local calculations from scratch, but to certify the existent customary ones, and to inscribe them graphically into local registers. The local judges (*judecător de ocol*) had a large amount of power in establishing the rights of peasants to their commons. They were in charge of drawing up the registers, based on the documents handed in by the entitled people. In order to establish the rights and quota shares, the judges were to work in the local communities, to hear every peasant, examine the presented evidence – deeds, agreements – hear witnesses, research into local customs and “use any means in their power to establish the rights of each commoner” (Forestry Code, art. 31, Botez 1923). Legal procedures recommended to take lease contracts as a basis for calculating shares, however, many judges observed such contracts to be fraught with abuses and elite capture, similarly with the contracts described by Brezulescu (1905), discussed earlier in the paper, and took the liberty to create other sensible systems of sharing (Botez 1923).

In Wallachia, despite the centrally-driven operations of quantifying entitlements, the absence of a public land register and a cadastral system overall hindered the security of rights. After 1910, and after the Unification between the Romanian Principalities and Transylvania, the property reforms of the interwar period (1920) attempted to apply the Habsburg legacy of bureaucratic land recording to Wallachia too, however, these attempts failed. On the other hand, after the unification in 1918, the Transylvanians were not satisfied with the compulsory adoption of the Romanian Forestry Code, and considered the new Romanian regulations to be a step backwards from the ‘advanced’ forestry and land regulations (Iuga 1936) in place since the ‘time of the [Austrian] Empire’. Further complexity of land tenure emerged in Transylvania on the occasion of the property reform from 1920, which created another type of communal land, mostly expropriated from large landowners, ex-feudal estates, now owned and governed by municipalities, but without participation of the commoners, a public-private form of property, parallel to the previously formalized self-governing commons.¹⁵ These municipality

¹⁵ The municipality lands were conceived as community lands, inclusive of all residents; nonetheless, decision-making was not vested in the village assemblies, but in a few official representatives, i.e. the mayor. Large landowners were primarily targeted by expropriation, but in a large number of cases, the *composesorate* commons, especially the larger ones were expropriated in favor of municipality lands.

lands were primarily pastures, created with the aim to atone to some degree for the deficit and unfairness of the previous delineation of commons for the communities of ex-serfs. To fulfill the requirements of the law, such pastures were often produced straightaway from cutting forest, amounting to massive deforestations. In time, the creation of a parallel land-owning structure, considered communal, would create confusion, especially in the restitution process from 2000.

4.2. The transience of calculations – case-study from Hunedoara County, Transylvania

The recognition of common rights and formalization of property cannot be singled out as a moment in history, neither for Transylvania, nor for Wallachia. Rather, it should be understood as a constantly ongoing process. The late 19th century and the first half of the 20th century faced successive reorganizations of communal land tenure and periodical recalculation of shares. Even though the formalization of rights in the commons is purposefully meant to give a fixed and reliable character to the entitlements, the experience of periodical changes shows, in fact, the transitory and reversible nature of the formalized entitlements, their vulnerability to the manipulation of powerful actors. In this section I will illustrate such ongoing changes with an example of reassessing personal rights in the commons, the ‘undivided quota-shares’, which resulted in a radical shift from inequality to equality of shares.

In 1940, 70 years after the first delineations of commons in Transylvania, judge Ion Pop exposed in a legal document the motives that lead him to completely change the sharing principles in the commons of Sălașu de Sus, Hunedoara County, Transylvania, considering that the previous creation of unequal shares was flawed. This case was recounted in the court decision from 20th of December 1940.

After 2 weeks of work in the community, the local court of Pui area found that the inscriptions from the land registry of the community forest (*composesorat*) did not correspond to what was actually happening on the ground. Apart from being mentioned loosely in the land registry, the shares were not properly inscribed in each individual land registry sheet, which should have detailed each person’s entitlement (the ‘B’ records of the public land register), as the law stipulated. In the land registry of the commons it was written that two landlords held shares of $\frac{1}{2}$ of the total common forest, the lesser nobility of the village (freeholders) held $\frac{1}{4}$, and the former serfs $\frac{1}{4}$. However, the court committee could not find any old list with the names of entitled people and evidence of their respective unequal shares. This created an “impossible situation”. This meant, in the interpretation of the judge, that all the transactions with shares that occurred in the previous 70 years were not legally valid.

But, they did find an old document dated the same year as the period when the delineation of unequal shares occurred (1869), according to which the forest was to be used by all inhabitants equally, “without any privileges”. The judge

conjectured that this was in fact the true wish of the previous generations, that, “according to the custom of the place, equal sharing between households/families is the most rightful and equitable principle to distribute an immobile good”. Therefore, with the help of elders, they proceeded to establish a list with old households, as far as memory could go, and their descendants. To that list, the committee considered equitable to add the newcomers, because “they are also members of the community and participate in the public service and do their duties”. The committee established a number of 301 rights (households) to a surface of 1208 *iugăre* (688 ha). They also stipulated in the decision that further procedures were to be taken, to register the rights in the individual “property sheets” of the public land registry (*foi de avere, cărți funduare*).

The judge proceeded to a simplification, an equitable solution akin to local customs. The straightforward, reasoning of the judge, Ion Pop, and his committee suggests that much calculation is useless in drawing equitable conclusions. It also shows how state regulations were in fact only partially followed, and graphic bureaucratic artifacts could be interpreted, cancelled, reworked, even though they were framed in a grandiose legalistic language that gave the impression of fixity and irreversibility.

Even more, the reworking of shares did not stop with Judge Pop’s decision. The translation of his decision into ‘further procedures’ operated yet additional changes. During fieldwork in Sălașu de Sus in 2016, I learned what happened after the court decision: when locals had to register the number of use-rights (parts) for each family in the individual property documents, there was again a pull towards inequality. In the words of the current commons’ councilors: “inscriptions were twisted by interests: in front of the notary, the commons’ president inscribed two shares on his name instead of one; or, if someone had a weaker mind, he got only half a share.” However, despite these manipulations, as the current councilors recount, more than 80% of the members appeared equal in the register from 1942.

5. Contemporary restitution of the commons

5.1. Laws, documents

After 60 years of interruption, the commons were reconstituted following the property law 1/2000. The law demanded that a list of claimants, “Annex 54”, descendants of the ones registered on the lists from before 1948, should be handed in to municipality-based land restitution committees, as a basis for restituting the commons. The problem was that, after 50 years, not all the descendants were to be found or were able to find the necessary documentation. Shortly after this, in 2001, a governmental ordinance (OUG 102/2001) applied a radical modification: from then on, only the shares that were claimed back could be restituted, and only up to 20 ha for each claimant. This regulation posited the commons as a sum of parts and led to the restitution of less amount of land than the commons actually had before 1948. The shares not claimed were to be passed in state-ownership and

municipality use. This regulation started severe conflicts between municipalities and commons institutions. In 2002, further regulations (L. 400/2002) mentioned that the common land cannot be sold to outsiders. However, prior to this, in the two years window between 2000 and 2002, a few commons were already sold. Another law was passed in 2005 (L. 247/2005), called *restitutio in integrum*, aiming to make amends to the previous law 1/2000. This law permitted many commons to reclaim land up to their entire surface, regardless of how many claimants appeared (Vasile and Mantescu 2009). Because of the successive laws, many commons had to go through the titling procedures several times. The cumbersome restitution process allowed for multiple conflicts, lawsuits and rent-seeking practices (Dorondel 2009; Sikor et al. 2009; Vasile and Mantescu 2009; Nichiforel and Schanz 2011; Bouriaud and Marzano 2016).

The Transylvanian land registry became a very important tool in the reconstitution of commons' properties; the pre-socialist standardized bureaucratic artifacts in Transylvania allowed villagers to reclaim land easily. In Wallachia, the absence of a unified public registry is frequently invoked as a reason for the unruly restitution process, with jealous reference to the more bureaucratically organized Transylvanian neighbors. However, restitution in Transylvania was also problematic, because of land disputes resulting from the creation of municipality lands in 1921.

Reconstituting from old documents was not possible everywhere. Both in Transylvania and Wallachia documents were lost, burned, or confiscated at the beginning of the socialist regime in 1948. Remnants of recollections and documents were pieced together from the villagers' personal archives. The state archives were flooded with the descendants of old commoners trying to understand their entitlements and seeking evidence needed in court for official validations. For Transylvania, many of the old documents only existed in the archive in Vienna, in other words, in a place and a language to which very few commoners had access.

5.2. Deciphering old calculations, making new ones – two case-studies

Despite the hardship, some commoners hired translators and went as far as Vienna in order to be able to claim their rights. In the community of Râu Alb from Hunedoara County, Stoicuța, the current president of the commons, hired someone to go with him to the Austrian archives and translate a document from 1900 with the distribution of shares. He spent a fortune, but he assembled outstanding documentation; with old lists, official land records, maps and everything else needed. Stoicuța boasted about his documents; he proudly laid on the table all the maps and hand written files with tables, surfaces and calculations of shares that he had meticulously produced over the years.

Stoicuța's commons is well organized. He deciphered the old calculations meticulously and currently applies them with diligence. Since he reconstituted the commons *composesorat*, which is based on unequal shares, not all the right-

ful heirs of the old owners brought official documents to prove their ancestry and their 'portion' of the shares. Already existent documents and local knowledge would be clear enough to attest the genealogical lines and to calculate the shares; however, Stoicuța demands official papers from all the current members. To be equitable, Stoicuța says he will distribute the revenues from the commons equally, until everybody will produce the papers. He presented to me folders that contained old individual deeds, copies of original documents from 1902. At the beginning of each folder, he had diligently hand-written the explanations: the surfaces of each mountain, differentiated in 'forest' and 'pasture', in both m² and hectares, the cadastral numbers, the calculus formula for each share $x/72784$ 'parts'. Knowledge is power, diligence is a talent, he seemed to imply. He explained to me that he was in the military, so he believed himself to be the right man for this kind of meticulous work. He was thrilled with measurement and order. What others detested, he loved.

Eight kilometres away from Râu Alb, in the village of Mălăiești, I was presented with a completely different story. Here, the commons did not manage to make any sense of the old calculations. The secretary, Mihaela, a professional accountant, repeatedly mentioned that "everything is subjective, nothing has any logic, it is hard to understand". The board members knew from the land registry that there should be over 90,000 'undivided parts' (shares), but they did not find any further clear instructions about how these should be distributed among members. The gap of two generations meant a loss in the knowledge of the commons. Pointing to the land records, Mihaela recounted feeling nauseous from calculations: "we calculated until all the body liquids started to boil; went from one descendant, to their parents' property documents, counted parts of parts, going back two generations". In her first attempts from 2000, she gave up. Back then, the board of which Mihaela was part, decided to calculate in a simpler way. They reached the same sensible conclusion as the judge back in 1940: they divided the surface by all the households in the village and made equal shares. However, they did not register this decision officially, they only used the calculation to distribute informally whatever profits were made. Eight years after the reconstitution, members started to be dissatisfied, to come up with property documents and claim unequal portions. Everything had to be recalculated and new lists made. Those who did not have the documents handy, like Mihaela, had to pay large amounts of money for an official 'inheritance succession' with a notary. Releasing a sigh she said "it was damn hard, but now it is correct, according to the regulations; before it was more simple and it was equal, better in my opinion."

In 2016, I interviewed representatives of 40 commons in the county of Hunedoara (one quarter of all commons in the county). From these, 67% had lawsuits regarding land restitution, and 20% have large amounts of land that were claimed but could not be regained. In 30% of the Hunedoara commons, many rightful descendants could not be found, and 15% of commons at the time of research still use the old members registers (from before 1948), as they did not draw up new ones.

5.3. ‘New’ commons, new papers, new measures

Currently, most of the commons in Wallachia and Transylvania are based on unequal shares.¹⁶ In Wallachia most commons are large, with an average above 1000 hectares per commons. Also the freeholders’ commons of Transylvania (the noble *compossessorates* or the *compossessorates* of former borderguards) are large, with average surface areas above 500 hectares. By contrast, the commons of ex-serfs, *urbariale*, (e.g. in Cluj and Arad counties) have average surface areas below 200 hectares, and even below 100 hectares (in counties Sălaj, Bihor, Satu Mare).¹⁷

Scholarly literature highlights poor management practices in the Romanian forest after restitution (Sikor et al. 2009; Vasile 2009; Nichiforel and Schanz 2011; Griffiths et al. 2012; Knorn et al. 2012; Bouriaud and Marzano 2016; Dorondel 2016), with an emphasis on corruption and illegal logging, resulting in forest loss (Knorn et al. 2013). Today, small forest commons face many problems, in a context of ex-socialist forestry oriented towards large-scale management. Commoners complain that “small commons are not ‘profitable’ or ‘worthwhile’ enough as a resource to be managed responsibly”. Such small commons are by law administered and guarded by the state forestry district of the area, and the commons has to pay for the forestry service. Commons below 100 hectares cannot even apply for a standalone management plan from an authorized forestry service, which would allow legal cutting. Thus, the commoners of smaller commons often cannot legally use the forests for household needs.

What are the current uses and benefits from the forests and pastures? Some commons distribute wood for building and heating houses, also in many cases the commoners graze their sheep and cattle on the common land. However, most commons distribute cash dividends: income from selling standing timber to logging companies, pastureland subsidies and other productive enterprises, such as tourism ventures, fish farms or forest fruit factories. Also, many commons invest in communal utilities (e.g. roads, church reparations, wedding and celebrations halls). Currently, shares are not allowed to be sold to outsiders.

The previous personalization of rights to the commons as shares posed significant challenges to the contemporary commons. Due to increasing urbanisation and outmigration, many of the descendants left the rural communities (an average of 30% of total current members, according to my surveys). As personal

¹⁶ Only in Vrancea region (SE Carpathians) is equal sharing significantly practiced, for further information of the equal sharing commons in Romania please see (Vasile 2007, 2015; Vasile and Măntescu 2009); also in various scattered communities in Transylvania. Comparisons between the two systems are fascinating, however, the space in this paper does not allow details.

¹⁷ Some *compossessorates* are mixed, formed initially by borderguards, freeholders, and ex-serfs. There are different compositions in different places, depending on local negotiations at the time of formalization.

property rights, they 'leave the village' together with the persons,¹⁸ producing absentee commoners. This process of delocalization of rights creates a series of problems. Although assiduously advertised, commons assemblies are rarely attended by the urbanites; this constitutes a problem for the functioning of the commons, because assemblies can only be valid with the presence of 50% of the members (or 50% of the shares). Another problematic instance is that the 'use-rights' can barely be related to actual use anymore. Direct harvesting of wood by the commoners, which involved social interaction between commoners, also interaction with the materiality of the forest, in most commons ceased to exist. Also, some commons have ceased to distribute firewood to their members, because this would be unfair towards the urbanites who do not need the wood; thus it is easier to deal with a standard value, that of money, and only distribute cash dividends from commercial logging and grazing subsidies. Thus, the 'uses' were streamlined into monetary benefits, standardized and easily transferable, accepted by all.

Graphic inscriptions come to mediate access to resources and the validation of local knowledge. Tacit social norms and implicit understandings become contestable and devalued in the absence of paper evidence. Written requests, authorizations, certificates, receipts, necessarily stamped and signed, come to mediate the recognition of rights and access to the forest. Many commons require graphic evidence to substantiate their members' claims to membership, such as birth certificates, official inheritance records, although their rights are informally acknowledged by the community. However, official descendance papers are not always considered necessary. Mutual trust and knowledge can govern the distribution of benefits in case of absent up-to-date registers. 17 years into the restitution process, many commons still do not have a clear record of current members. They operate with registers from 60 years ago, consisting of deceased persons called 'authors' or 'founders'. This is either because it was too complicated for the councils to produce genealogies, or they could not afford the costs of official registration. In cases where the old tables of deceased 'authors' are still authoritative, genealogies have to be remembered and negotiated informally every year, on the occasion of distributing cash or wood benefits. For example, when Ion goes to take his share of wood, he says "I have to take 1/4 from my uncle Petru, 1/2 from my grandmother Zenobia's, and 1/6 from my grandfather Itu, here on the table." However, more often than not these informal arrangements create misunderstandings, and thus executive boards care to produce large amounts of paper evidence.

¹⁸ There are no provisions that a person loses the right if they leave the village, although many commons representatives would see this as a positive new rule. In most of the studied cases, common property rights are exclusively blood-based. There is one exception: in the 30 commons of the Vrancea region, the system of rights allocation is altogether different, it is residence-based.

Alongside increasing amounts of paperwork and extensive use of the money standard, the new commons also tend to change the old measurement units into something more familiar. During my survey in 2016, I found more than ten existing measurement units including: parts, keys, sheep, cows, hearths (*vetre*), rights, money (*lei*), stocks (*acțiuni*), old cheese measures (*dramuri*). However, there is growing usage of hectares as units of shares measurement. The passage to hectares is a natural process. A quasi-universal surface measure, portable and communicable, makes obviously more sense to everyone, and eases much of the calculations. Hectares have the ability to cascade across places. In Latour's terms they are "objects which have the properties of being *mobile*, but also *immutable*, *presentable*, *readable* and *combinable* with one another" (Latour 1986, 7).

However, standardization into hectares created further confusions.¹⁹ In the process of restitution, equating the old cryptic units with hectares allowed for abuses and enclosures. The elites from the land restitution commissions took advantage of the unfamiliar units of surface to allocate less land to the commons and more to their individual clients (Dorondel 2016). In addition, the passage to hectares created the perception that 3 ha in the commons are an actual plot of land, in a certain spot, with certain characteristics, creating the (illusory) understanding that shares can be enclosed. I came across frequent situations in which the commoners sued the commons' executive boards in attempts to enclose their share. Furthermore, the commensuration of shares in hectares highlights the commoners' rights as commodities in the land market, increasing the threat posed by companies and land sharks.²⁰

6. Conclusion

The formalization of shares in the commons, both in Transylvania and in Wallachia, were massive, dramatic and sophisticated operations of quantification and measurement. The process encompassed complex social issues, serfdom and freedom, use and needs, genealogies, history and myth, class and social status, cows and sheep, cheese and money, all put into equations from which numbers rose. These numbers were put in tables, and then used further to combine with other numbers and result again in numbers; values of wood, values of money.

I showed how the policies of shares allocation draped the operations in 'objective' numerical abstractions and in moral terms of ancient custom and inheritance, legitimized by state-driven narratives of legibility, clarity and uniformity.

¹⁹ In frequent situations, the translations from various historical surface measures – *jugăr*, *pogon*, *stânjen* - into hectares were faulty, almost the same issue signaled by historians in the case of the Czirakian conscription in Transylvania in the 19th century. The members of the restitution commissions were frequently overwhelmed by the difficulty of calculations.

²⁰ I encountered a few cases in which this happened. Taking advantage of confusing regulations, companies bought large percentages of the shares and gained monopoly of decisions. In some of the cases, the commoners contested such sales and won back the rights after long trials (e.g. the commons of Runcu in Gorj).

However, such bureaucratic vehicles and numerical expressions were legible only for the administrative elites, while for the commoners they were inaccessible and misleading. Lists replaced local knowledge, fulfilling the function of wider cognitive maps, but they also became powerful means of appropriation. From the outset, the bureaucratic artifacts created in the process of formalization, deeds, lists, maps, registries, were not what they appeared to be, i.e. fixed, clear, stable and secure objects. Instead, they were constantly renegotiated, confusing, and uncertain, sensitive to shifting social relations and political contexts. Over time, omissions, poor record keeping, as well as successive calculations, generated more confusion and opacity. Increased use of numbers and complicated abstractions often resulted in simplification. Unequal shares, undivided quota-parts, were in some cases reassessed as simple equal divisions among households, as a convenient solution to opacity of old calculations. In the same vein of simplification, old peculiar measurements of rights in keys, *dramuri*, parts, with which many commoners are not familiar today, were transformed after the restitution into hectares, a universal surface measure. Despite bringing more transparency and insight, the introduction of the hectare standard allowed for abuses and misleading comparisons.

The power of paper increased in time. One hundred years apart, the two described formalization processes share numerous features, but it can be said that contemporary bureaucratic processes rely on material artifacts far more, the amount of documents required to circulate between different instances of governance multiplied. Processes of material validation and authentication by external legal mediators also multiplied, suggesting that social relations, as well as relations between people and the land have grown outside the reach of mutual trust and local knowledge.

Formalization invested the administrative elites, especially judges and notaries, with large amounts of power, as brokers of the state law into communities. In pre-socialist Wallachia, the judges had more liberty to select, interpret and rework customary tenure relations into juridical formulas. In Transylvania, the quantification of shares followed fixed and uniform formulas, detailed in successive laws and legal procedures; it was less place-specific. In both regions, the biased equations of value and the often fraught list-making processes, resulted in reinforcing inequalities. In Transylvania the legal recognition of the commons reinforced former feudal divisions between freeholders and serfs, and set these identities for years to come; they are still remembered today. In Wallachia the process of disentangling overly complex tenure relations and fuzzy customary lineage-based rights often allowed for the local elites to reap the benefits of formalization.

The share-making process was intimately linked with the cash economy and issues of financialization. The land market and the capitalist cash economy of leases, rents and profit-making triggered the necessity of recognizing and recording peasants' rights. The calculation of shares was facilitated by evaluations in cash. In extensively commercial local economies of the 19th century,

the presence of money as a measure of value of the entitlement, determined that the newly defined rights were not directly related to use, but to monetary ‘benefits’.

Meant to protect the commons and align them to modern liberal conceptions of property, formalization forced the Romanian commons into a ‘crossbreed’. The bundle of rights included communal arrangements and personal rights. The personal inheritable rights of use were not tied to property or to residence in the village. They were attached to the person, much as individual property rights are; they were transferable only to co-members in the commons. They were secured by state law and, in Transylvania only, were inscribed in the public land registry. This meant that the community could no longer change the rules of membership in the commons. For example, the community could not decide to remove the rights of individuals who left the village, because such rights were guaranteed for life and could be passed on. However, the community of users still retained the right to decide over the distribution of benefits, or the allocation of voting power for each share. Yet, the registered personal rights, numbers on sheets of paper, were easy to commodify. In the years after the formalization, the equation of use rights with fixed abstract quantities established the conditions for selling when crisis or uncertainties arose, excluding the poor and concentrating the rights in the hands of the village elites.

And yet, despite the vicious ways in which formalization operated and a sum of negative consequences, the formal recognition of personal entitlements to the commons has contributed to the survival of commons into the 20th century and to creating the possibility of restitution in the contemporary period.

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