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LIVIU BORDAȘ
CAMELIA CRĂCIUN
RALUCA GROSESCU
OANA MATEESCU
NORBERT PETROVICI
EMANUELA TIMOTIN

Editor: Irina Vainovski-Mihai

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New Europe College
Str. Plantelor 21
023971 Bucharest
Romania

www.nec.ro; e-mail: nec@nec.ro
Tel. (+4) 021.307.99.10, Fax (+4) 021. 327.07.74



OANA MATEESCU

Born in 1979, in Focșani

Ph.D. Candidate in the Anthropology and History Program,
University of Michigan, USA

Dissertation: *Forests and Documents: Evidentiary Practices in
Romanian Property Restitution*

Fellowship, Department of Comparative Literature,
University of Michigan, 2008

Humanities Research Fellowship, University of Michigan, 2007-2008

Dissertation Fieldwork Grant, *Wenner-Gren Foundation for
Anthropological Research*, 2005

International Dissertation Field Research Fellowship, *Social Science
Research Council*, 2005

Participation in conferences and workshops in the USA, Germany and Romania

Articles on anthropological theory, new media, property restitution, illegal
practices, corruption

HISTORICAL AND JURIDICAL SUCCESSION: COMMUNAL OWNERSHIP IN VRANCEA, 1910, 2000

The paper is strongly guided by the importance of historical sequentiality as a source of tension for the present. One can play an 18th century clavichord after the instrument's revival in 1900, but one cannot hear it after two intervening centuries of the pianoforte in the way it was heard in 1700 (Daston and Galison 2008). The same goes for the reconstitution of communal ownership practices in contemporary Romania, and particularly taking into account the intervening decades of socialism. Inevitably, the resurgence of the communal in Romania and elsewhere in Eastern Europe invites also inquiry into the ways in which the socialist collectivization of everyday life has subtly transformed previous communal and cooperative practices. In this sense, historical sequentiality affects not only the practical realization of social forms in the present, but acts also retrospectively on their very conceptualization. That is, contemporary understanding of 19th and early 20th century scholarship on these issues has to contend with a certain degree of indeterminacy (Hacking 2002).

The very passage of time, its serial order, affects irrevocably the past. The sequential order of a conversation is constitutive of the meaning of things said: a second thing said throws light on a first and so on (Garfinkel 2002), creating thus an ongoing order of forward-backward conversational interaction. Likewise, within the parameters of the "historical ontology" articulated by Ian Hacking (2002), new ways of naming and classifying can reach back into the past and change it retroactively. As Hacking (2002) puts it, understanding past actions under new descriptions – such as dishonorable desertion in WWI as an instance of post-traumatic stress disorder (PTSD) – introduces indeterminacy in the past. For Hacking this is inevitable inasmuch as "human kinds" – descriptions that define the gambit of possibilities for human ways of acting and being – are characterized by

“looping effects”, that is, forms of feedback that turn knowledge back onto the known. Being described as a certain kind of person affects someone by opening up or foreclosing choices and ways of acting. Along the temporal axis, one cannot claim that new descriptions actually change the past – the invention of PTSD now cannot affect the lives of World War I deserters – but they do transform the way we understand the past and this transformation – even if it only introduces an element of uncertainty – is just as irrevocable as the summary deaths which those deserters were put to. In a similar, but perhaps more ambitious, vein, Bruno Latour (1999) contends that not only human kinds, but things themselves, such as the microbes discovered in 1864 by Louis Pasteur, have their own historicity. His half playful, half serious question, “did microbes exist before Pasteur” hints in part at what Hacking calls retroactive description. For Latour though, the other part of the answer involves “backward causation”, that is actual work by Pasteur and his followers “to retrofit” the past and thus make it appear that microbes have existed all along. In this sense, the year of discovery 1864 changes with each succeeding year along an axis of sedimentary temporal succession – there is an “1864” of 1865, an “1864” of 1866 and so on – that traces the unfolding triumph of Pasteur’s theory of airborne germs over the failing theory of spontaneous generation. Latour’s (1999: 173) answer to his own question is thus ingenious: “‘After 1864 microbes were there all along.’ This solution involves treating extension in time as seriously as extension in space. To be everywhere in space and always in time, work has to be done, connections made, retrofitting accepted.”

It is precisely such work of retroactive description and, at some moments, even backward causation that characterizes the existence of communal ownership, both as an object of scientific inquiry and as a form of practice. This paper discusses the continuous description of communal ownership in Vrancea as an anachronism, a thing of the past, dead or on the verge of extinction at the moment of encounter. Communal ownership died many such deaths at various points in time, ranging from early 19th century to early 21st century, every time at the hands of different actors motivated by sometimes contradicting reasons. This perpetual relocation to the distant past accomplished agendas as different as those of 19th century peasants who worked to prove immemorial possession against the claims of encroaching noblemen, those of interwar scholars who were interested in rewriting the history of Romanian feudalism and those of contemporary state officials who tried to legislate it out of existence. Anachronism is most often understood as a historical fallacy, at best instrumental in the

dating of questionable documents and at worst indicative of an inability to understand the past in its own terms. For my part, I take it as a device of temporal misplacement that signals and sometimes even solves problems raised during the process of reconstituting communal ownership.

Particularly relevant here is the temporal stratification of the ownership practices constituting the object of restitution and their simultaneous coexistence in the present. What is being re-created now is not a temporally stable set of relationships but one that has been already constructed on several levels and at different points in time. Thus, is the new communal forest to be such as it was made recognizable to the state at the beginning of the 19th century, as it was in the 1920's after the codification project of the first national Forestry Code, as theorized by sociologists and historians during the interwar period or perhaps as it persisted in various practices during socialism? Which communal forest is to come into being? How are such practices, with their different temporal inflections, assembled in a newly ordered state of affairs? What kinds of knowledge are created and erased in the course of this process? Constructing a phenomenon out of successive layers renders it more real, but also vulnerable at the points of juncture: the work of keeping constant the "circulating reference" (Latour 1999) of communal property throughout its temporal transformations is at the same time a history of mistranslations, omissions, and fabrications. A biography of communal property would have to account for this multiplicity of temporally stratified phenomena as well as the conditions of their coalescence into a working form of contemporary practice.

In my own attempt to narrate these entangled temporal strands, I use a form of decoupage (Veyne 1984: 44) that takes "1910" as a pivot to help turn the mechanics of my story. I do so not only because I am motivated by the desire to create my own historical plot, but because "1910" is indeed a significant cut into previous history; after 1910, there is no more continuity, at least not of the kind that characterized communal ownership as an immemorial and hence atemporal practice. To put it briefly, 1910 stands for the meeting (or better yet, collision) between civil law and local custom. However, this is a creative collision, to the extent that it affords the emergence of something like "local custom" in the first place as well as of a historicity defined by civil law notions of succession.

1910 is the year of the first national Forestry Code and thus of the first state attempt at organizing communal forests from a juridical and administrative point of view. But 1910 itself came into being as the effect of other novel practices of forestry and commerce. Communal ownership and

the social forms that supported it began to deteriorate in the last decades of the nineteenth century when industrial logging first appeared in the region. With the help of local middlemen, foreign companies (German, Hungarian and Austrian) tried and, in many cases, succeeded to buy the right to use forests from the villagers and to harvest thus large quantities of timber. In 1910 the Romanian state enforced a Forestry Code that attempted to prevent the complete deforestation of Vrancea (as well as of other regions) by giving legal recognition to communal forests (*Obște*) and trying to re-organize them according to modern property norms. This attempt at imposing legibility on what seemed as an incoherent mode of ownership worked by quantifying the “shares” that each villager was supposed to have in the communally owned forest. As in Vrancea the forest property of each individual was not localized or bounded in any way, the 1910 legislators and judges were forced to come up with an abstract notion of individual “right”, which in turn created a novel way of understanding communal membership and the form of its succession.

Therefore, I will discuss the problems of sequentiality and anachronism, by focusing on several issues, most importantly, on the form of 1910 archival records of communal forests and on the definition of communal membership as it is presented in such records. During the application of the Forestry Code, the problem of membership was already framed as a question of graphical representation, in the form of lists of individual names or tables by family, a question that had in turn effects upon the creation of rules for updating membership in the event of death, birth, marriage, and on the debates regarding the legitimacy of practices of inheritance and transmission. As such, the paper covers rather extensive historical ground, but not in a chronological or exhaustive manner. That is, I follow those historical strands of events and practices which coalesce in the present.

1.1. Death

We have often spoken of *the death of Vrancea*, and we must now recognize that this death is present, in a much more painful way, in the very soul of Vrancea... This is the fascinating psychological drama of a community that was extremely alive only a century ago and that now dies in a painful agony (Stahl 1939: 382).

Historiography uses death to articulate a law (of the present)
(de Certeau 1988: 101).

Only when the past and the present were effectively separated, could modern historians begin their work, argues Michel de Certeau in his influential account of “the historiographical operation” (1988: 56-114). Their work aims at establishing temporal distance and difference, at burying the dead in order to redeem space for the living, refusing to allow death to continue as a mode of presence. In this sense, history is a science of “heterology” (de Certeau 1988: 3) that needs first to establish the past as that which is missing so that it can, then, conjure it up. However, this is a paradoxical endeavor, for such a “negative ontology of the past” (Ricoeur 1988: 150) is forced to reckon with the numerous and uncanny ways in which the absent past returns to haunt the present. “The dead souls resurge, within the work whose postulate was their disappearance and the possibility of analyzing them as an object of investigation” (de Certeau 1988: 37).

“Death is present ... in the very soul of Vrancea” wrote in 1939 Henri Stahl, the most dedicated historian and ethnographer of this highland region. What did he mean by asserting, at the same time, the strange *death* of a place, an immaterial death that is located at the elusive core of a place’s soul, and its irrepressibly painful *presence*? It is easy to understand this statement as yet another lament about the disappearance of tradition - in this context, a long and rich tradition of free communal ownership that succumbs under the attack of the market economy, foreign capital, the modern state, law, and other such enemies. But the drama of Vrancea is also a story about the changing faces of time and feeling. The archeological narrative turns into a visceral history that obeys in fact the rhythmic movement of Stahl’s feelings as they pulse forward, bearing into the present the image of an intense and disquieting past. Disturbed by “the extremely vivid memory of ancient times” (Stahl 1939: 232), the social archeologist realizes that he has to excavate the layers of a haunted landscape of memory:

Only one thing is undeniable, the fact that the villagers of Nereju long today after the bygone times of their independence. The conscience of the past is vivid and painful as a wound in the heart of the people of Vrancea. (...) The Nereju villagers will talk of nothing more nostalgically than of these customs of their ancestors, which nobody respects anymore since "the world has decayed." It is such a great bitterness (*amertume*)... (241)

For Stahl, the depth of local memory is revealed through the movement of a history that he had exhumed from documents and archives. But he also realizes that the dissolution of the ties by means of which the past continues into the present is intelligible only through a poetics of crisis. The dominant theme then is that of loss, of the impossibility to recapture the past and to archive memory and of the inability to deal with this excess of presence of the past that is still haunting the present. There is an evil magic about this *trop vive* memory that brings the past back to life only to underline the painful discrepancy between independence and quasi-colonial servitude, harmony and dissolution.

Even though Stahl meant more than an epitaph to the memory of the dying Vrancea, that additional meaning was soon effaced by the official obituary, swiftly proclaimed by the Romanian communist state with the 1948 decree for the nationalization of forests. However, some four decades later, there begins the story of a ghostly claim to property, for the "dead" Vrancea comes back to a kind of afterlife, asking for "legal resuscitation" (Caruth 2002) and for the restitution of its forests.

"What does it mean (...) for the dead to speak - and to speak before the law? And what does it mean, moreover, for the law to listen to this claim coming, as it were, from the dead?" - asks Cathy Caruth in an unsettling analysis of Balzac's 1832 novel, *Colonel Chabert*, the tale of a soldier, thought dead, who appeals to the help of a lawyer in his attempt to reclaim his identity, property and wife. In 1999 Romania, the law, speaking through one of its many voices, Deputy Șerban Mihăilescu, responds in shocked disbelief:

Unbelievable, but true! In the year of grace 2000, there will be established traditional communities (*obști*) of freeholders (*răzeși* and *moșneni*), communal ownership (*composesorate*) and other Dacian-Roman or Austrian-Hungarian vestiges so that we can restitute forests to them now, in the third millennium!¹

Here, a representative of the Social Democratic Party uses irony to express his incredulity in face of calls from the Peasant and Liberal parties for the passage of a law establishing the recreation of traditional communities and the restoration of their rights to communal ownership. Although he had previously deployed elaborate arguments to resist the restitution of forests to former private owners, the Deputy's stance seems to suggest that it is pointless to even argue in the case of communal ownership. If one simply points out that this is basically a claim from the dead, then it is impossible not to recognize the ludicrous nature of the whole attempt – such “vestiges” have no place in “the third millennium”! What he mainly resents is the temporal affront posed by such a law that stands in utter contradiction to his taken-for-granted sense of historical progression. In contrast, a representative of the Liberal Party contended that the law must face its traumatic past, advocating an imaginary return in time as a model for empathy:

We try to repair whatever can be still repaired from a moral, juridical and legal point of view, by restituting those properties that can still be restituted. (...) Unfortunately, this law cannot repair the suffering that these former proprietors, many of them already gone, have endured once they lost their right to property. This is one thing that cannot be rectified in any way. Besides discussing the pragmatic side of this debate, all those who come to this microphone should at least attempt a return in time – mentally, of course – in order to understand what it means to lose one's property, but, at the same time, to lose also one's life, one's liberty, one's children ... this is beyond any material loss.²

The 2000 law that emerged from these debates did indeed provide for the re-establishment of communal ownership over forests, but did not address in any way the question of loss or that of temporality. Moreover, the Vrancea peasants, and others like them, were successful only because they could prove that their ownership claim had been previously recognized by the state - in their case through the 1910 Forestry Code - and not because of any genealogical, historical or sentimental connection they could invoke with respect to their place.³

Interestingly enough, this previous recognition had to contend with similar arguments against the anachronism represented by communal ownership. The 1910 opposition to the Code anticipated the outrage of the 1999 opposition to the reconstitution of communal ownership. Take

Ionescu, a liberal MP as well as a lawyer for early 20th century lumber companies, condemned the Code as an unconstitutional “revolution of the Romanian property regime” (APR 1910: 1423) and an instance of historical regression:

Everywhere, in all the civilized societies, collective property is a leftover of the primitive state. I do not share the opinions of those who think individual property is an evil which should be suppressed. I share the opinions of those who obey our present Constitution and who understand the present society – those who think individual property is the best form of allocation. From the point of view of the current constitution of property, indivisible property with all its complications and difficulties is surely a rest of barbarism. (...) [The Code supports] the same wretched idea of going back to collectivity instead of going forward towards individuality (APR 1910: 1422).

Already in 1910, communal ownership appeared as an embarrassing relic and raised fears of a return to barbarism or primitivism. Such panic was well informed by the movement of 19th century legal codification throughout Europe towards the dissolution (by means of enclosure, partition, heavy taxation) of existing communal forms of landed property, in alignment with the prevalent liberal ideology of individual property as well as the precepts of the scientific (and hence, efficient) agronomy inaugurated by the French Physiocrats (Vivier 1998; Demélas and Vivier 2003; Moor and Warde 2002).⁴ While European states were slowly but surely extinguishing the communal, Romania appeared to give it a new life in the guise of the *Obște* and even tried to protect it from the influence of capitalism and modernity. It was precisely this archaic flavor – the anachronistic persistence of communal ownership into the 19th and even 20th century – that was irresistible to the Romanian historians, jurists, economists and social reformers who debated the origins of property in late 19th and early 20th century.⁵

In the 1920s, once the Romanian School of Sociology embarked on an ambitious fieldwork project in Romania’s remaining communal villages, the topic became a crucial ingredient for the very disciplinary articulation of the social sciences and humanities (Rostas 2001). At this point the emergence of communal ownership as an object of scientific (sociological, historical, juridical) study interweaves with and makes possible the foundation of an anthropological tradition in Romania. While late 19th and

early 20th century students of communal property had only occasionally ventured outside the bounds of archives, libraries and legal collections, a new generation of scholars in the 1920s questioned the limits of written evidence and proposed to read the past of communal ownership in the landscapes and social relations of contemporary surviving communal villages.⁶ In this context, the anachronism of communal ownership seemed to offer a new way of writing history backwards and thus rethinking major topics such as the characteristics of feudalism in Romania, the existence and features of “second serfdom”, the impact of capitalism, as well as the relationship between law and custom (Panaitescu 1964; Stahl 1939; 1958; 1980). However, their main arguments rested on the “unique” evidence of a Romanian communally organized free peasantry. In this sense, it is difficult to estimate the extent and density of their ties to the vast comparative research projects that turned communal or collective ownership into one of the most debated juridical and historical questions of 19th century Europe (including European Russia).

In mid-19th century, European jurists, historians, economists and sociologists were locked in or furnished material for the controversy over the historical antecedence of communal over private property.⁷ At the same time, this was a debate on the status of Roman law (and implicitly natural law theory), the value of the comparative method as a proof-making process, the claims of written and unwritten evidence, the nature of relations that make up social entities as well as the manufacturing of historical periodization.⁸ The terrain of the communal was particularly fertile in this sense, inviting inquiry into the nature and form of social bonds, the moral and legal personhood of associations, and, implicitly, their “real” or “fictive” character. Historical investigation provided a rich register for the understanding of social association: from the Roman notion of *corpus* and variously inflected concepts of *collegium*, *universitas*, *societas* and *communitas* (Black 1984) to vernacular notions of community and togetherness, such as the Romanian *devălmășie* or the Russian *obshchina*. Thus, the debates over communal ownership were also debates about the patterned effects of social connectivity, extending in some cases (such as the work of German historian Otto von Gierke) to the articulation of a *Gemeinwesen* (lit. common being) that could be read as a characteristically Romantic formulation, but also as an early attempt to tease out the contours of a social and historical ontology.

Moreover, applied to the question of communal ownership as an originary, yet present phenomenon, the comparative method which was

the mainstay of 19th century scholarship was inevitably faced with the problem of anachronism. As Vico (2002) had emphasized, any inquiry into the problematic of origins and succession depends also upon the taxonomy of anachronism. While probing for historical depth, the comparison of ancient Roman property with the surviving 19th century Russian communal village required the fabrication of simultaneity. Such phenomena became part of a contemporaneity that seemed slightly out of joint.⁹ In this sense, the communal was in a state of perpetual mediation, either between the deep past and the present or between the present and the distant future. Such debates over communal property promise to reveal just how productive anachronism as a form of temporal incongruity could be for the project of a historical periodization relatively detached from the rigors of absolute chronological time (Chakrabarty 2000; Davis 2008; Kracauer 1969; Wilcox 1987).

Even at the time of the critical legal debates involving Romanian communal villages in early 19th century, specifically, the lawsuit carried by the peasants of Vrancea in 1801-1816 to contest the possibility of royal donation, the regime of communal ownership was understood as the relic of an immemorial past (Constantinescu-Mircesti 1985). This transmutation into the past was a practical achievement of the peasants of Vrancea and of the kind of documentary evidence they could produce in order to support their claim of continuous possession. Just as Pasteur worked hard to show that microbes existed all along after 1864 when he discovered them, the participants to this lawsuit collaborated into proving that after 1816 communal ownership existed all along, or, at the very least, since the donation performed by king Stephen the Great in the 15th century. Inevitably, such extension in time became a given for the subsequent practitioners and interpreters of communal ownership, bringing together past, present and future in a series of nested inclusions.

A telling example of how inclusive temporality works is another juridical conflict, this time in 1995 over the boundaries of communal forests belonging to two neighboring villages, which shows how the manipulation of anachronism extends not just the past but also the future. In 1995, that is, five years *before* communal forests were restituted to their communities and while they still existed under state ownership and administration, two villages went to court over the contested boundaries of *their* communal forests. In the course of the lawsuit, the lawyers of both villages presented themselves as acting in the name of the *Obște* – an entity that had existed before 1950 but had still not come into being in 1995 – and fought over

the division of forest properties that nominally did not even belong to the parties named in the lawsuit. They did so based on the documentary evidence produced by the villagers – interestingly enough, this evidence consisted of an accounting of debts between the two villages at the closing of the 1801 lawsuit that I mentioned above. Thus, one can look at this 1995 event as a double anachronism: on the one hand, the re-emergence of debts almost two centuries old into the present; on the other hand, the present invocation of an entity that had not yet come into being. In this sense, the 1995 lawsuit performs a double temporal extension, bringing into the present both the distant past and not yet realized future and doing so strategically at a moment when the question of restitution for communal forests was already on the political agenda.

More to the point, these instances of anachronism as well as my previous discussion of recurrent moments – 1801, 1910, 1920, 1999 – when communal ownership is invariably pronounced dead or just about, share an important element. In each case, the confusion between past and present, extinction and existence occurs at the intersection of different modes of knowledge, more precisely when communal ownership comes under the metropolitan gaze of 19th century noblemen, the modern civil code, interwar sociologists, or the contemporary state. Temporal incongruities arise out of the different referential systems present in these encounters (see also below). In a bold move, Timothy Jenkins (2010) argues that the persistence of practices of property and inheritance – in his case the Béarnais house ‘discovered’ in the 19th century by Frédéric Le Play as the stem family just as it was transformed by the Civil Code and in the twentieth by Pierre Bourdieu as a paradox of inheritance – relies precisely on presenting to outsiders the appearance of being on the verge of extinction. Neither party in these encounters – the Béarnais local society and the sociologists – is left unchanged, but Jenkins (2010: 159) claims that “the results of these encounters between local and modern life appear to lead to prolongations of local life rather than its obliteration.” His attempt to tease out “the life of property” through time concludes that that it is a form of existence based on “the mode of ‘being about to disappear’” (Jenkins 2010: 24; 63).

It is certainly significant that Jenkins’ analysis is focused on practices of inheritance and thus on the part that death (in this case, literal, biological death) plays in enabling the continuity of ownership practices. In what follows, I discuss how a local way of life is codified with the result that inheritance itself becomes the problem and “death” is produced as a

relevant ownership phenomenon where it had not existed before (Ingold 2000). This is, in other words, the encounter between an ownership identity that lies in people's belonging to the forest – and thus excludes death as irrelevant to continuity – and a set of norms, proposed by the Forestry Code, in which ownerships appear as a property of persons themselves and is extinguished by death, making thus continuity impossible in the absence of succession.

1.2. Succession

The 1910 Forestry Code attempted to regulate all forms of communal ownership (*devălmășie*) over forests by instituting special commissions that would investigate and codify local customs, thereby offering them the protection of the law (Botez 1923). It was the first time the Romanian state tried to intervene directly in the workings of such communities and the debates that preceded the adoption of the Code amply illustrate the legislators' ignorance and even bewilderment about "this ancient and extremely complicated juridical problem" (APR 1910: 1422). The intervention was framed as protection: the state had a duty to shelter the weak and the ignorant, that is the freeholders who lived in *devălmășie*, and to institute itself as their guardian against foreign or domestic "exploiters" who persuaded them to sell their forests at ridiculous prices and then cut them down for a profit. To this purpose, the Code organized freeholders in *Obști* (communities) after the model of joint stock companies, stipulated their form of administration, instituted rural judges as their foremost guardian authorities, prohibited individual sales of rights unless the buyers were members of the same community and prevented unfair transactions by forbidding the division of communal forests, unless it was performed in kind and approved unanimously by the community. The latter prohibition was, in fact, a permanent one, as the Code drafters explicitly acknowledged the impossibility of territorial division for highland forests as well as the improbability of unanimous agreement in communities of hundreds of people; it was, nonetheless, meant to reflect and perpetuate local customs of indivisibility however far removed they were from the current constitutional regime of private property.

The *Obște* of 1910 was a legal creation that embodied a precarious compromise between the precepts of the 1864 Civil Code and the various local customs gathered under the umbrella of the term *devălmășie*. Even

though the Forestry Code charged local commissions with the codification of local customs, the statutes of the *Obște* were uniformly drafted and perpetuated several important misunderstandings about the form of communal forests. The most relevant one concerned the confusion of *devălmășie* with indivisible property as recognized by the Civil Code. In the latter sense, indivisibility was a temporary state that resulted from unfinished acts of succession; it was an accident that would be corrected as soon as the inheritors divided the property among themselves. When applied retrospectively, this understanding of indivisibility reframed communal forests as the effect of a sequence of unfinished acts of succession. Following this logic, their origin rested with one or several ancestors whose descendants multiplied but never completely exited the state of indivisibility. It also meant that communal forests were organized genealogically from the very beginning, that is, the original private property had slowly decayed into an indivisible communal property. This genealogical principle was, moreover, in perfect agreement with the civil law rules of transmission for private property. The Code drafters were encouraged in this interpretation by several more known cases of *devălmășie* in Central and Southern Romania. These were genealogically organized communal forests where each member of the community was entitled to a definite share calculated by rules of inheritance. In these instances, the unequal rights of community members could be neatly mapped onto genealogical charts and divisibility appeared indeed as the underlying basis of property organization. It was only later, in the interwar period, that historians and ethnographers (Stahl 1939; Caramelea 1944) criticized this view and argued instead that genealogical arrangements were later stages of an original state of total, egalitarian *devălmășie* – what Henri Stahl called “absolute joint ownership.”

When inscribed in the *Obște* statutes, this vision of indivisibility resulted into what the Code drafters called “joint stock company” organization (Botez 1923). Each community member was entitled to an abstract share – the right – that could be variously calculated in local terms, according to territorial units of measure, money, kinship lineages, etc. This made some sense for the genealogically organized communal forests, where members could end up with one right, half, quarter or even one tenth of a right according to their lineage. In Vrancea, though, these registers of rights prescribed by the Forestry Code created chaos and confusion. As articulated by Vranceans, *devălmășia* meant primarily that “the forest was free” for all the locals to use, „the rich and the poor, the old and

the children" (*cum bogatul, cum săracul; cum bătrânul, cum copilul*). It was indeed upheld as an "unruly togetherness" that denied any form of divisibility: anyone could go into the forest and cut "without measure, without limit" (see paper 2 for a discussion of the implicit measurement of rights). The 1910 commission for the constitution of the *Obște*, headed by the county judge, did make an effort to translate local usage patterns into something resembling customary law. After questioning villagers throughout Vrancea, it condensed *devălmășia* into the following set of rules of inclusion, exclusion and transmission:

Obșteni [community members] are considered all the inhabitants, men and women, who are settled in the village and are born of parents who were themselves *Obșteni*. Everyone's right is equal, both in what concerns pasturage and the taking of wood from the forest. This right belongs to all the children who come of age, even though their parents might be living, and disappears with death. The *Obșteni* who leave the village with no intention of returning lose their right but regain it should they return, even if after many years (Hârnea [1930] 2007: 47).

Faced with such a radically professed egalitarianism, the local commission ended up compiling membership lists where each villager was inscribed with the mention "one right" next to their name. In this context, the register of rights was basically a list of all the villagers, recognized as natives (*de baștină*) by a community gathering. Those excluded were usually only the newcomers recently settled in the village or people who had moved to a different village upon marriage. Several villages made amendments to the *Obște* statutes offering to newcomers from outside Vrancea— identified as *lăturași* (literally, the marginal) – the right to use the forest upon payment of an annual tax. Similarly, people who married into the village were also acknowledged as members, but only if they also came from within Vrancea. In contrast, those who had moved to another Vrancean village lost their right quite irrevocably, and especially so since they were expected to be admitted into the *Obște* of their residence.

Nonetheless, the inscription of membership did not go as smoothly as the Code drafters had intended. The registers of rights themselves were not taken seriously by villagers until the late 1920s, in part because of the lengthy and expensive updating procedures they required. Each new member who came of age had to write and deliver a petition to the County Tribunal; this application of membership would then be reviewed

and voted upon in the annual gathering of the *Obște*. The first decade, nobody actually bothered to write such petitions or even to hold the annual meetings stipulated by the Code. In many cases, the first constitutive gathering of the *Obște* was held only in 1919, after the war, while the proper membership updating procedures were initiated as late as 1927. As long as everyone knew who belonged and who didn't, the membership documents had little consequence for the actual business of forest usage. In the meantime, the *Obște* on the paper and the *Obște* in reality began to drift farther apart as these registers remained frozen in time, finally turning into lists of the dead. After his fieldwork in Nereju in 1927, Stahl (1939) observed that the membership register was in fact a diptych (*pomelnic*) where more than half of those inscribed were deceased.

However, the registers demanded by the Forestry Code were by no means the first or only documents to deal with the configuration of communal forest rights. The codification instituted by the Forestry Code came after two decades of industrial logging and an assiduous commerce in "rights" to the forest initiated by international logging companies and their local delegates. Such companies had been ignoring local customs since 1890 – except those that declared rights of use to be unlimited – and had purchased dozens of rights from villagers who had left the *Obște* of their residence. This regime of transactions had already established the alienability of forest rights to outsiders as a regional practice that conflicted with the newly recognized customs. Soon after World War I the County Tribunal was flooded with contestations of the 1910 membership lists. The contestants – some of them the same logging companies – were not at all bothered by the locals' laxity in updating the membership registers. On the contrary, they immediately recognized the benefits of this documentary regime and embarked upon remarkable feats of "necropolitics" (Mbembe 2003), readily transacting with the dead but properly listed members. As a visiting forestry specialist noted in 1936, industrial logging societies would make a wholesale purchase of 76 "rights" from 73 villagers, of whom 17 were dead and 10 had long left the village. Ridiculing the situation in the annual meetings of the *Obște* that approved such transactions, the same observer exclaimed: "You are not really impressed when the living vote with the dead, but the dead who vote with the dead – this was possible only in Vrancea!" (Anon. 1943: 105-6). This industrious presence of the dead was possible only because of the agentive role acquired by membership lists. The documents themselves became actors in their own right, opening up paths for transactions that would otherwise have been

almost impossible. As in the case of identification papers such as birth certificates or passports, the documentary substance of membership lists was more pertinent than the corporeality of members, persisting even in the afterlife.

The reason for these contestations concerned rather the manner of updating membership lists, and particularly the question of how to perform the transmission of communal forest rights. After the war, companies that had bought the majority of rights in a village had to suddenly deal with the descendents of the villagers they had originally transacted with: these young men, many of whom had returned from the battlefield restless and penniless, demanded either payment or the right to take lumber from the same forests leased by their parents. Their demands were not couched only in a juridical register, but often took the form of direct confrontations with company employees and acts of sabotage, such as the derailing of forestry trains and the burning of company buildings.¹⁰ The conflict came to be known as “the battle of the majors” (Hârnea 1930; Stahl 1939), pitting the youth who came of legal age after the formulation of the 1910 membership lists against logging companies, juridical authorities, and even their own parents.

The contestations of these young Vranceans whose parents were still living reached two different sections of the County Tribunal: one gave precedence to civil law norms of inheritance over local custom, the other considered local custom first, according to the Forestry Code. In the first view, communal forest rights, just as any other property, could be transmitted only after death and then divided equally to all the descendents of a member. In the second view, “the custom of the place” (*obiceiul locului*) denied any possibility of transmission in the communal ownership over forests. Juridical and ethnographic accounts of the 1920’s cite repeatedly the same local saying that had suddenly become popular in the region: “The Vrancean is born and dies together with his own right” (*Vrînceanul se naște și moare odată cu dreptul lui*), or, more rarely, “The right of the Vrîncean is born and dies with him” (*Dreptul Vrînceanului se naște și moare odată cu el*) (Harnea 1930; Sava 1929; Stahl 1939). This was basically a tangible right to use, whose materiality extinguished together with that of the person, being indissolubly attached to the body and its actual capacities of forest work. The tenets of this ostensibly “customary” law, articulated so rigidly in the context of opposition to civil norms of inheritance and especially to the attempts of industrial logging companies to commodify these local “rights” (Stahl 1959: 215-7), asserted

a non-genealogical principle that is still taken for granted in the workings of today's communal forests: "rights" cannot be inherited and all those who are natives of the village (men, women and children who come of age) have the same kind of entitlement to the use of the forest. The origin of this right lies not in an act of succession, but one of regional and local citizenship and the nature of this belonging is a form of social relatedness that cannot be simply circumscribed by family ties.¹¹ In 1927, one of Stahl's informants put the matter quite starkly: "there's no tie between children and parents, except the biological one."

The result of these two contradictory juridical interpretations was that those villages that appealed to the first section of the County Tribunal had their statutes modified according to civil law while the others continued according to local custom. Not surprisingly the locals were bitter about this state of affairs that divided the region into a patchwork of conflicting membership rules and, more importantly, into equal and unequal configurations of communal forest rights. Simion Hârnea (1930), a clerk at the Naruja Courthouse, deplored the example of a villager with five children: two of them were of legal age in 1910 and were listed together with their father, each with their own right, while the other three who came of age after the ruling of the County Tribunal were entitled only to a fifth of a right and only after their father's death. As a result, the question of inheritance was hotly debated throughout the 1920s: in 1922, the Obștea of village Paltin, in conflict with the logging company SARIF, took the matter to the Supreme Court of Justice and obtained an annulment of the County Tribunal's decision and a further confirmation of the legality of local custom (Hârnea 1930). Spurred by this success, several other villages initiated procedures to amend their statutes until these local claims resulted in 1930 in an inheritance amendment, specially designed for Vrancea, to the Forestry Code (Botez 1923). In 1927, Aurel Sava, county judge and amateur historiographer of Vrancea (Sava 1929; 1931), presided over an extraordinary gathering of the Obștea Naruja, called for the express purpose of amending membership updating procedures, that is, "inscribing the children who have come of age and erasing the dead."¹² The villagers present at the meeting argued emphatically for the prevalence of "immemorial customs" that had already been recognized by former kings of Moldavia and even by the recent Forestry Code. Judge Sava, sympathetic to their claims, agreed to the proposed amendments and went even further, taking it upon himself to organize, analyze and turn into "general principles" the customs described by the villagers.

Beginning from the oft repeated saying – “everyone is born and dies with their right” – he proceeded to extrapolate and codify the customary vision of *devălmășie*:

1. A person becomes *Obștean* through the simple fact of his birth, from within the group, regardless if his parents live or not. The birth generates rights, not in relation to the parents, but in relation to the community to which the parents also belong.
2. The right of the *Obșteni* is a usage right. This right does not end according to abstract juridical norms, but in a natural manner, through death or definitive departure from the village, that is, a material impossibility to continue using the forest. Thus conceived, the right dies together with the person, because it is a personal right tightly linked to the physical body of the *Obștean*. “Everyone is born and dies with their right.”
3. The *Obștean’s* right being tightly linked to the material, physical possibility of usage, it follows that minors are fully or partly incapable from a juridical and actual point of view of exercising the rights which they acquired through birth. Settling upon the age of 21 as the date of full juridical capacities combines in a felicitous manner the principles of civil law and those of the custom of the place.
4. Since all the members have the right to use the communal forest to the limit of their physical powers, they all have equal rights. “The rich as the poor, the children as the elder”, all together (*deavalma*), “without limit, without measure.” In this context, there can be no actual distinction between the member with one right and the one with two rights. (...).¹³

Judge Sava’s principles codified a series of ownership practices in order to make them amenable to the forms of inscription demanded by the Forestry Code. This definition of membership and succession was not just a translation of “immemorial custom” but also an effect of the particular form of the register of rights, and, by extension, of the entitlements and obligations that followed from the very act of inscription. The register of rights was, in theory, the only document that identified the members of the community created by the Forestry Code – a community that could not achieve a legally valid meeting unless two thirds of its members

were present, that was supposed to take decisions by voting procedures, that decided the payment of tax contributions or revenue dividends according to the number of listed members, in short, a community that was accountable to a list. “The battle of the majors” was thus not simply a conflict between civil law and custom, capitalism and the traditional economy, the individual and the community. It was rather an ensemble of actions brought on by the realization that counting and accounting procedures had an intrinsic effect on the configuration of communal forests.

In this context, the denial of succession – more precisely, the idea that “rights disappear through death into the common mass of *devălmășie*”¹⁴ – was a way of controlling the effects of accounting. Rights would not disperse or fragment into tenths and fifths according to the arbitrary dynamic of family demographics; instead, the community remained the single originator and repository of rights, creating itself anew with each generation rather than succeeding the previous one. Needless to say, the documentary form of the list with its sequence of numbered names and its procedures for inscription and erasure, made this transformative process visible, accountable, and, ultimately, open to manipulation. What used to be an amorphous togetherness based on mutual recognition developed in time and dependent on the time that it took to ascertain belonging became an instantly accessible list of names and an instantly computable number. The list itself could exert a similar degree of control over the definition of succession, and implicitly, of community.

The tensions brought by these accounting procedures returned with a vengeance after the 2000 reconstitution of Vrancea’s communal forests. As the villagers of Nereju soon discovered, legal recognition is not tantamount to the exercise of property rights. Their newly created *Obște* is still largely dependent upon the local branch of the State Forestry Office (*Ocolul Silvic*) which is in charge with the rational administration and guarding of the forests as well as with overseeing all the steps of the timber-cutting process (the amount and type of timber, the area, the time, etc.). In fact, the state, through its local forestry agents, has hijacked the new communal organization: besides the president (a native of the village of Nereju), all the other four members of the first administrative council are state forestry agents. State control is deemed necessary by the *Obște* leadership (and by the law) because, otherwise, people will “indiscriminately” cut down the trees, supposedly destroying the whole forest.¹⁵

The strangeness of this situation is brought into focus by the fact that, according to the *Obște* statute, only natives of the village are allowed to exercise full rights of control and voting.¹⁶ Establishing what makes one a “native” is as complex a matter as it was in the 1920s.¹⁷ Autochthony in this case does not necessarily rely on a rigid genealogical memory or a denial of historical movement (Loraux 1996: 82; Geschiere 2009:12), but constitutes rather an insistence on a certain kind of commitment to the place, which can only be judged internally and according to the particulars of each context. In this sense, the widow of a local priest commented about two state foresters who come from local families: “they’re from here, damn them, but now they’re of the state (*de-acum sînt de-ai statului*).”

However, as many people complain, not even the full members of the *Obște* receive their timber quotas and many of them have to pay dearly for the “privilege” of getting timber cutting permissions from the state foresters. At the same time, foresters give discretionary permits to local and county-based businessmen for cutting large amounts of timber in exchange for bribes or other facilities. The father-in-law of the *Obște* president owns the largest sawmill in the village, equipped with modern power saws and several large trucks that make daily transports of timber. The lawyer of the *Obște* is another important player in the local lumbering industry. Former party activist and organizer of pyramid games in the early 1990s, godfather of the County Prefect’s niece, this businessman apparently profits from the large exports of timber from the Vrancea forests and villagers estimate that timber worth more than half a million USD was illegally exported in 2000-2002 through shady procurement deals.

In this context, the law’s capacity to bring about resurrection is seriously undermined, in part by the skillful performances of a ventriloquist state. “This is not our *Obște*. It’s *theirs!*” exclaims a peasant from a distant hamlet of Nereju, referring mainly to the ubiquitous foresters and their simultaneous impersonations as businessmen and *Obște* councilors. “It is *they* who have the power, the connections, and the money! They cut the forest and they threaten to kill us if we speak against them.” Another villager who has actually sued the local Forestry Office expressed the same dilemma with bitter concision: “The forest is our milk cow: we hold it by the legs and they milk it!”

These conflicts spurred by the role of the State Forestry Office took at first an electoral form and divided the village into two factions that ended up engaging in quarrels and street fights that made the headlines of county newspapers and determined the Prefect of Vrancea to send in special

police troops. During the first two years of its existence, the leadership of *Obște* Nereju was hotly contested by almost two thirds of the villagers. Trying to fight back by legal means, they organized new elections in February 2002. The elections, called by the then village mayor and his brother, director of the village Cultural House, benefited from widespread participation (more than a thousand members) and supported a candidate with no ties to the State Forestry Office as well as several changes in the *Obște* statute, such as the creation of private forestry agents. The acting leadership did not recognize these results (nor did the County Tribunal) and decided, in turn, to respond by organizing a separate round of elections.¹⁸ As less than 200 people answered their call, the organizers appealed also to the nether world, enlisting the ignorant help of dead villagers. Upon realizing this maneuver, an old villager expressed his astonishment: "I went and looked at their lists; they were posted on the fence. And there were 70 dead people there. Believe me, I checked and they were dead, they weren't alive. Still, they signed and they voted, yes, they did..."

This arguably classic example of electoral fraud serves not just to illustrate yet another conjuring trick on the part of "those who have the power", but, more importantly, to reveal the many guises in which membership documents disrupt and reconfigure everyday relations of ownership. The presence of the dead on the electoral lists was not really accidental, as the former village mayor pointed out to me. The *Obște* president has refused to update the membership lists, so that now there are dozens of dead proprietors who can be easily mobilized, while, at the same, preventing the living from exercising their ownership rights.

While the dead members could be brought to vote by counterfeiting their signatures on ballots, they could hardly use their voice to change the balance of power in the general meetings of the *Obște*. This could, however, be achieved by denying the youth the right to vote and the right to be elected in the administrative positions of the *Obște*. The same inheritance debate that had raged throughout interwar Vrancea was revived in contemporary Nereju, just three years after the restitution of communal forests. The initial statute of the *Obște*, drafted by the County Council and identical for the entire region, distinguishes between three categories of members: founding, associated and members. The first includes the people inscribed in the last membership lists of the interwar *Obște* or, if they are dead, their direct descendents, establishing thus the present community as a successor of the past one. The last refers to non-natives, newcomers to the village who are only entitled to a heating wood quota in virtue of an

annual subscription and have no electoral rights. The associated members are the young: men and women whose parents – founding members themselves – are still living. The statute makes no difference between the rights of founding and associated members, preserving thus the customary denial of inheritance with regard to the communal forest. However, in the course of the electoral conflicts discussed above, the administrative council decided by itself to amend the statute, an illegal maneuver since only a general meeting of the entire community was entitled to such action. The new rule, presented as accomplished fact in the general meeting, specifies that associated members have the right to vote and the right to be elected only after the death of their parents (their rights to timber quotas remain unchanged). Since the main contender to the position of President of the Obște was just such an associated member, the new rule effectively cut him off the electoral run and together with him all his young supporters. With a single strike, 2,565 associated members were taken out of the electoral equation and deprived of any say in the general meetings of the Obște. The rest of 1,250 founding members and their successors constitute a much more manageable quantity, given that many of them are elderly and can be more easily manipulated or even intimidated in exchange for their support. The statute document itself remains unaltered, but the new unofficial rule can be temporarily invoked to silence vocal youths in the general meetings or to browbeat them into submission to the decisions of the administrative council. From a political point of view, the newly manufactured rule of inheritance is eminently useful for the manipulation of electoral numbers. In this sense, the re-emergence of inherited rights could be taken as the sign of an intrinsic problem of counting within the organization of communal ownership over forests.

Nonetheless, from a historical point of view, it begs the question of sequentiality anew. Few people in contemporary Nereju are aware that this same inheritance debate was successfully settled in the interwar period. There are no explicit memories of “the battle of majors” as in other Vrancean villages, in part because the Nereju of the 1920s was so adamant in refusing the application of the Forestry Code that the question of updating membership lists did not even come up. The villagers of Nereju insist that the forest has always been free for all, but this memory of ideal *devălmășie* lacks the concise and unassailable clarity of the bootstrap codifications performed in those villages that had to actually navigate the interwar maze of forestry rules and documents. The allegedly immemorial saying “Everyone is born and dies with their right” is simply absent; in its

place there is a sense of wrongness and anger about the idea of inheritance, but no “customary” maxim to express it. In turn, the very invocation of a rule of inheritance was possible only because of the distinction already established in the statute between founding and associate members. Whatever officials of the County Council were responsible for drafting this uniform statute for Vrancea’s communal forests, they clearly operated with an underlying notion of genealogically transmissible rights: members of the interwar lists became founding members (also called “authors”), while their descendents are members only in virtue of genealogical association. The origin of rights resides not in the community, but in the person of a certain number of people; rights do not die with their users, but postexist them indefinitely. If the customs codified on the occasion of the Forestry Code had been fully upheld, there would have been no need for this distinction: the founding entity would have been the community as a whole, establishing the 2000 *Obște* as a *historical*, rather than genealogical, successor of the 1910 *Obște*.

The local 2000 restitution commission in Nereju received the statute document with the in-built distinction, but read it and applied it initially as though there were none: all members have the same and equal rights. Nevertheless, as soon as political conflicts developed, the membership loophole became instantly visible and attempts to revive inheritance were underway. The fact that Nereju is the only village in Vrancea so far to contend with this problem only serves to draw attention to the potentiality of inheritance as it is already inscribed in the statutes of all other communities. In this sense, the present *Obște* is a true historical successor to the past one, embodying anew the latent potential of its contradictions. What it succeeds is not the ideally free community of “custom” and not even the legally valid 1910 community, but the sequence of actually existing communities shaped by successive acts of codification, documentary inscription, and political and economic conflicts.

The 2000 law for the reconstitution of communal forests explicitly acknowledges historical succession as its purpose, but treats it as an exclusively legal achievement. Within the situated practices of reconstitution, though, succession unfolds as a process of assemblage, alternatively actualizing various historical versions of the communal forest. This is not simply a form of historical recapitulation or inevitable re-occurrence giving rise to awkward instances of *déjà vu* or inconvenient temporal incongruities. The (re)emergence of different latent potentialities depends both on their resilience – the extent to which they remain

recognizable in the form of memories, archival documents, types of graphical representation (such as the membership list) – as well as on the contingent concatenations of present events which constitute their contexts of actualization (such as, for instance, the electoral conflicts of 2003). If there is a regime of latency at work here, it is the substantive achievement of variously situated actors, and not an inherent feature of formally designed processes of recapitulation. Contemporary reconstitution consists of local actors working through a register of potentialities that depend on social occasioning, individual purposes and projects, and social recognition, in order to be variously actualized (Cole 2001: 106; Lambek 1996).

The temporality of this process might variously appear as a form of succession, duplication or anachronism, but such labels ultimately obscure the complexity of any sequentially organized event or situation. Erving Goffman (1986: 9) argues that any inquiry into the temporality of a situation has to contend with multiplicity: “in most ‘situations’ many different things are happening simultaneously – things that are likely to have begun at different moments and may terminate dissynchronously. To ask the question ‘what is *it* that’s going on here?’ biases matters in the direction of unitary exposition and simplicity.”

1.3. Emergence

Given the radical misunderstanding between the 1910 code drafters who insisted on treating local communal ownership as a distorted form of indivisible property and the villagers who continued to see the forest as “free for all to use”, the new statutes were often ignored in practice. The “authentic social palimpsest” of the late 1920s Vrancea villages, wherein the official (state) and unofficial (local custom) function in parallel, triggered the “despair of the social archeologist” who was investigating them at the time: “Today one needs to work hard in order to be able to recognize in a ‘Community Council’ what is it that derives from the Forestry Code and what from the judge who wrote the “establishment”, that is, the Statute of the community and, finally, what constitutes the custom of the place” (Stahl 1939: 232).

The social palimpsest described here makes a mess of the proper sequential order of historical events. Time is conventionally structured by succession and not by coexistence, which is a proper spatial attribute. It is only at the intersection of time and space and from the perspective

of an observer, in this case the locally situated social archeologist, that simultaneity becomes noticeable. Even so, this simultaneity is more properly a form of collocation in which events ascribed different temporal affiliations occupy the same place, rather than the modern notion of simultaneity instituted by relativity theory, which requires an observer mediated coincidence of events at different locations (Jammer 2006).

The simultaneity of events that are, as Kracauer puts it, “asynchronous” serves to underline the fragile texture of contemporaneity, and indeed of all historical periodization. Reinhart Koselleck’s meditation on *Zeitgeschichte* as the meeting point of present presents, past presents and future presents is only a vivid illustration of what he considers to be the plural nature of all historical time or “the temporal multilayeredness of historical experience” (2002: 141). The coexistence of temporal layers or what Koselleck (1985: 95; 247) refers to as “the contemporaneity of the noncontemporaneous” (*Gleichzeitigkeit der Ungleichzeitigen*) suggests an implicit critique to the project of historical periodization when based on the idea of a chronologically determinate and homogenous time. In a similar vein, Siegfried Kracauer (1969: 150), one of the most articulate critics of the notion of periodization and indeed of the pernicious effects of chronology in the writing of history contests the idea that the period can be “a meaningful spatiotemporal unit” and sees it instead as a kind of “meeting place for chance encounters – something like the waiting room of a railway station.”¹⁹ The inconsistent nature of the period arises from its double constitution: it requires a sequential order out of which it emerges and a simultaneous assemblage of elements that might or not have the same chronological age.

In the broadest sense, this paradoxical formulation of the period, blending both sequence and simultaneity, could be taken as another way of conceptualizing the effect of history. Indeed, Koselleck’s very notion of *Gleichzeitigkeit der Ungleichzeitigen* (alternatively translated as “the simultaneity of the nonsimultaneous”) has a much longer biography, cropping up in accounts as various as Karl Marx’s famous musings on history in the *18th Brumaire*, Karl Mannheim’s and Edward Shils’ theorizations of the encounter between tradition and modernity and Claude Levi-Strauss’ influential critique of “the historian’s code” – that is the ordinal structure proposed by historical chronology – in response to Jean-Paul Sartre’s model of historical progression-regression (Chandler 1998). I do not have the space here to rehearse such debates on the intrinsic values of diachrony versus synchrony or indeed history versus anthropology (see Fabian 1983).

I focused on Koselleck's and Kracauer's formulations because they suggest the opposition is an artificial one; for them, sequence and simultaneity cannot be thought apart precisely because they work implicitly with a notion of time based on multiplicity.

What does it mean to work with a plural notion of time? One of the most comprehensive and least considered answers (but see Abbott 2001), is that of George Herbert Mead (1932) in his posthumous publication, *The Philosophy of the Present*. Mead is primarily concerned with integrating the findings of relativity theory into a working notion of social time (Joas 1997). He does so by firmly grounding time into the present, which has indisputable ontological priority over the past and the future. However, the central notion of his metaphysics is the notion of emergence, or more precisely, the emergent event, which is, at the same time, a social event. Emergent events can occur only within a social reality and with this insight Mead constructs a theory of time that is based on the ontological ground of sociality. True, he operates with an extended concept of sociality that includes humans, objects, nature and even, at an abstract level, the cosmos. In his most concise formulation, "sociality is the capacity of being several things at once" (Mead 1932: 49). In this view, "every event that is simultaneously of two different kinds can be called 'social.' (...) To be of two different kinds at the same time means, therefore, belonging simultaneously to two referential systems" (Joas 1997: 182). The simultaneity of this membership occurs within the moment of emergence, that is, in the "phase of readjustment" when an event passes from one referential system into another. Thus, time is constituted by emergence which is a dynamic negotiation among multiple frames of references or, to put it otherwise, a continuous "exchange of perspectives" (Mead 1932).

In this paper I have discussed 1910 and 2000 as such emergent events defined by the presence of multiple referential systems: in this case, custom and civil law. The analysis of succession (in juridical terms) is a very appropriate illustration of the conditions of emergence, not just because it entails a profoundly temporal dimension of transmission, but also because it underlines the necessity of anachronism in the persistence of communal ownership. It does so by pointing out the distinct notions of ownership that are at stake in the two versions of succession – one of them a genealogical model and the other based on coexistence with the forest, or even citizenship in the forest. It is only from the latter point of view, of customary law, that one can grasp the fallacy of reading as succession what is in fact simultaneity.

NOTES

- 1 Transcript of the June 10, 1999 session of the Chamber of Deputies regarding general debates over the legislative proposal for the reconstitution of property rights over agricultural fields and forests. www.cdep.ro
- 2 Deputy Gheorghe Cristea, Transcript of the June 10, 1999 session of the Chamber of Deputies..., www.cdep.ro
- 3 Elizabeth Povinelli's (2002: 153-85) investigation of native Australian land claims shows the perverse ways in which "the cunning of recognition" affects the extent to which such more elusive connections can or cannot be brought within the sphere of the law. Moreover, as she points out (172), the Australian Supreme Court identified the authenticity (and thus, validity) of native claims with temporal distance, stating that "native title obtains its value from its ability to signify fixity, stasis and resistance to a historical dialectic."
- 4 For the Russian context, and particularly the effects of the Stolypin agrarian reforms on rural communal property arrangements see Atkinson (1983), Bartlett (1990), Heinzen (2004), Pallot (1999). A few studies of Romanian 19th century property relations touch also on questions of communal ownership (Mitrany 1930; Roberts 1951; Chirot 1976).
- 5 Some of the early 20th century Romanian scholars involved in the discussion of communal ownership, and particularly the study of free communal villages were Alexandrescu (1896), Angelescu (1909), Brezulescu (1905), Calinescu (1908), Creanga (1907), Mototolescu (1910), Petriceicu-Hasdeu (1878), Radovici (1908), and Sarbescu-Lopatari (1906). It is no less significant that such debates over the nature of property and community developed in the context of a relatively coherent cooperative movement that explored forms of association for ownership, production and consumption, not only in an attempt to improve the condition of rural populations, but also to articulate alternative political ideas. For a history of the Romanian cooperative movement as well as its connections to European socialist thought, see Angelescu (1913) and Mladenatz (1931). On cooperatives in Eastern Europe and Russia see Coffey (1922); Carlson (2007) and Kotsonis (1999).
- 6 The main reference here is the work of Henri H. Stahl (1938; 1958), a prominent member of the Romanian School of Sociology in the interwar period. But see also Caramelea (1944); Jivan (1936); Poni (1921).
- 7 Though the list is not exhaustive, among the European scholars debating communal ownership I can name here Frédéric le Play (1855), Georg Ludwig von Maurer (1856), August von Haxthausen (1856), Otto von Gierke (1950; 1990), Henry Sumner Maine (1986; 1871; 1874), Emile de Laveleye (1874; 1885), Denis Numa Fustel de Coulanges (1879; 1885; 1893), and Ferdinand Tonnies (2002 [1887]). For Russia, see in particular the work of Nikolai Chernyshevsky (1911 [1858]) and Maxim Kovalevsky (2000) in the context

of 19th century Russian social thought and early socialism (Vucinich 1976); more generally, see Kharkhordin (1999).

⁸ The 19th century debate over communal property overlapped with and provided material for early Marxist theory (Marx 1972). Its echoes are also discernible in the historical sociology of Max Weber (Momigliano 1994) and the beginnings of economic and historical anthropology in the work of Karl Polanyi and Moses Finley (Nafissi 2005).

⁹ Given the temporal entanglements faced by the 19th and early 20th century scholars of communal property, it is only fitting that “the commons”, with its attendant variations as communal or collaborative ownership, has become again a useful register for the resolution of historical shifts. Paolo Grossi (1981) argued that the emergence of the communal as an object of study in the 19th century provided also a glimpse into the formulation of a different way of possessing, alternative both to the tradition of possessive individualism and Marxist ideology. Currently, the expansion of a virtual economy of information calls for the renaissance of the commons as such a potentially alternative framework for rethinking intellectual property and indeed for imagining the very production and transmission of knowledge (Biagioli and Galison 2003; Ghosh 2005; Hess and Ostrom 2007).

¹⁰ Interviews Paulesti (Vrancea), 2007.

¹¹ This principle is non-genealogical in a limited sense, to the extent that it denies the possibility of inheritance within the family with respect to communal property rights (but not to private property rights such as those concerning the house or the household land plots). That is, the children who come of age do not have to wait for the death of their parents in order to become full members of the village *obște*. However, in a more diffuse sense, genealogy permeates the whole mechanism of communal ownership: ideally, one cannot become a member of the *obște* unless one is a Vrancean (that is, an inhabitant of Vrancea), someone born of Vrancean parents and within Vrancea’s borders. In this sense, there exists a feeling of relatedness that unites the whole region, but this is not particularized to the level of each village or each household. See also Stahl 1939; 1959.

¹² ANVN, F514 Naruja Courthouse, file 101/1919, p. 652.

¹³ ANVN, F514 Naruja Courthouse, file 101/1919, p. 661.

¹⁴ ANVN, F514 Naruja Courthouse, file 101/1919, p. 660.

¹⁵ Nereju (which is composed of five different hamlets) covers a surface of 18, 500 ha land of which 1,587 ha are agricultural land and 16, 913 ha forest. The property of *Obște*a Nereju covers 4, 325 ha forest, the rest of the forest being state property. Both types of forest fall under the supervision of the State Forestry Office.

¹⁶ People foreign of the village, the newcomers, at they are called, are members only in virtue of an annual subscription in exchange for which they have the right to receive a certain quantity of heating wood.

- 17 In 1927, when Henri Stahl did a census of the village, most of the respondents claimed that their families were “truly ancient” whereas the others were “newcomers” from Moldova and Wallachia (1939, vol. I). At the same time, most of the 18th and 19th century documents (Sava 1929; 1931) show that hamlets established by newcomers were allowed to make their own temporary forest clearings but their representatives were not accepted in the Great Council of Vrancea, which administered the communal ownership of the whole region.
- 18 The two parties (that of the former village mayor and that of the present *obște* president) tried to settle the dispute in court, but the trial was postponed several times, mainly because of procedural inconsistencies. In addition, trying to stop what they see as the plundering of “their” forest, the former mayor and his supporters called in a control from the National Anticorruption Office. Before the arrival of the control team, the local state foresters threatened (and in several cases beaten up) villagers who wanted to guide the controllers to those forest areas that had been abusively deforested. The control did not yield any conclusive results and the mayor called a general meeting of the *Obște* to decide upon a form of protest. In September 2003 almost a hundred villagers from Nereju arrived in the Romanian capital city and protested in front of the central government building, dressed in traditional local costumes in order to draw more attention to their cause.
- 19 Siegfried Kracauer (1969: 147) develops his argument in this sense: “Any period, whether ‘found’ or established in retrospect, consists of incoherent events or groups of events – a well-known phenomenon which accounts, among other things for the occurrence of events relatively unaffected by the *Zeitgeist*: thus the overstuffed interiors of the second half of the 19th century belonged to the same epoch as the thoughts born in them and yet were not their contemporaries. The typical period, that phase of the historical process, is a mixture of inconsistent elements.”

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