# MAX PLANCK INSTITUTE FOR SOCIAL ANTHROPOLOGY WORKING PAPERS


Working Paper No.10

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# STATE LAW AND THE RECOGNITION OF PROPERTY IN RURAL ROMANIA

Halle / Saale 2000
ISSN 1615-4568

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# In from the margins? State law and the recognition of property in rural Romania[1]

## Introduction: Recognising and recording rights

All property regimes have methods for formally recognising property claims, sifting the legitimate from the illegitimate. Under English law, records of property rights are supposed to work like a mirror. Anyone who wishes to find out what rights go with the land, what duties, etc., need only examine the records and they will discover a perfect reflection of the actual state of the property. Often the very act of registering a right transforms it from a personal, unprotected interest into a legally guaranteed right. Sometimes this is achieved by following certain procedures - English law requires all dispositions of property to be made in writing and a failure to follow the law's procedures can mean that an action, such as a sale, is invalid. The relevance of this threat might be more or less serious, depending on such factors as the scale of threat to peaceful possession, the costs involved in securing legal protection and the predictability of the outcome.

Legal recognition of property claims is not the only way in which someone can acquire a right to use something, although it may be more accurate to speak of powers rather than rights. In many places, membership in a household or kin group is sufficient to grant effective access to land. In such cases, recognition is based on other authorities.

After the fall of the Communist parties in eastern Europe, property ownership was transformed. From belonging to the people, the state and the collective, property in the 1990s became increasingly held in private hands and, in order to protect and regulate this new order, successive post-Communist administrations, advised by western legal and financial consultants, introduced new legal frameworks. The main aim of this paper is to examine how some of these laws work in practice, through a case study in rural Romania. The research addressed two main questions as a way of exploring the practical reality of state law. First, how can you find out who owns what and, second, how is land bought and sold? A second purpose of the article is to understand whether or not there is a move toward greater or lesser (state) legality and to speculate on the reasons for this situation and the prospects for further change.

This paper is based on fieldwork conducted in two villages in Transylvania during summer 2000. The village of Plaiesti is located near the city of Turda in the county of Cluj-

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Napoca, and the village of Mirsid is located along the main road between the towns of Zalau and Jibou and in the more northerly county of Salaj. Official written records such as the legal title – *titlu de proprietate* – and the local agricultural register of households were compared with what villagers themselves said when asked about their land. A sample was made by taking every fourth house from the agricultural register and then visiting each to ask a series of questions about ownership, sales, purchases, exchanges, use and disputes. Both villages had been part of an earlier study into the implementation of the main post- Communist land reform.[2] They show many of the typical features of post-Communist Romania, even though each has of course its own unique history.

**Background explanations**

Compared to other countries in the region, collective farming in Romania did not enjoy a great deal of legitimacy.[3] Although perhaps the scale of destruction was not as great as in Albania, in 1990 and 1991 many collective farm buildings were destroyed or taken apart for private building use. And, in this wave of spontaneous reforms, many former land owners simply went back to their old plots and started working them again as private, peasant farmers. The 1991 land reform law (Law 18/1991) validated many of these land seizures, but it also tried to prevent a complete restoration of the pre-collective system of tenure. No more than ten hectares of land could be claimed back, land might be given back in the old places but this was 'not necessary' and new agricultural associations had priority in the distribution of the old collective's machinery. Despite government efforts to prevent a wholesale return to small scale subsistence farming, at least in the early 1990s, this is what seemed to have happened. For foreign commentators such as Frydman et al; Romania was an example of how not to reform socialist agriculture. In 1993 they argued that 'the application of the Land Law resulted in excessive fragmentation of land, incompatible with agricultural equipment designed for large surfaces. This …caused a huge decline in agricultural output, resulting in the necessity to import grain'.[4] In addition to these immediate problems, the process of dismantling the collectives took such a long time. While various legal provisions from Law 18/1991 anticipated a land settlement and distribution of legal

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[2] A.L Cartwright, *'The Return of the Peasant. Land reform in post-Communist Romania'*. Reading. Ashgate Publishing. Forthcoming January 2001.

[3] See Swain, N. (2000), 'The Rural Transition in Post-Socialist Central Europe and the Balkans', Max Planck Institute for Social Anthropology Working Papers No. 9, for a succinct comparative account of the development and demise of socialist agriculture.

[4] Frydman, R., Rapaczynski, A. and Earle, J. et al., (1993), *The Privatisation Process in Eastern Europe*, London, Central European Press. p.255f.

titles within a year, in practice, there are still those who at the time of writing (December 2000) are still waiting. In Mirsid, for example, in the sub sample of households using inherited land, 6 out of the 25 households were still waiting for their final legal title.

Aside from the bureaucratic explanations which focused on the lack of resources available to the cadastral offices, the land reform process was drawn out because it led to many thousands of conflicts, between heirs, between village and town authorities, between state agencies and between individuals both claiming to own the same piece of land. In the latter case, it may well be that both parties were at one time in the past the owner of that piece of land, both claiming to have acquired it lawfully and lost it abusively. Such disputes prevented the issue of the final, definitive version of title.

As a counter to this bleak assessment, I would argue that these reforms should be seen as part of the country's wider recovery from the disastrous final years of President Ceausescu. If this is taken seriously, then certain legacies can be accepted as taking longer to deal with than others. For example, the system for recording private property rights began to fall apart almost as soon as the Communist party came to power. During the late 1940s and the 1950s numerous ownership changes took place which the state was simply not aware of. Now, when that period is being unravelled, the question of proof becomes vital. Yet, without acceptable or standard forms of proof, conflicts are that much harder to settle.

A second counter is to look at the land reforms as only one stage in the reconstruction of private property in Romania. Private property was tolerated under Communist rule, but there was little actual 'right to quiet enjoyment'. The personal use plots granted by collective farms for example could be withdrawn almost at will, despite being crucial sources of food for village households and their urban relatives. Many villagers lost their plots in Mirsid in 1987 because the local Party activists became convinced that villagers spent too much time on the personal plots and not enough at the collective farm. It is significant that one of the very first acts of the post-Ceausescu government was to extend the size of these personal use plots and declare the land around the house of the peasant – the courtyard and the garden - as his or her own private property.[5]

[5] Article 8 of Decree-Law 42 published in Monitorul Oficial No.17/30th January 1990 established that the courtyard and the garden surrounding the house, constitutes the private property of the property holder – detinator – and can be sold or passed on via inheritance. In some cases this amounted to little as the occupier was already the legal owner. There were others though who had been given land by the collective in order to build houses upon. For these people Decree 42 supposedly gave them people the right to call this land their own. In practice, and despite this law, there were numerous cases in Mirsid of original owners successfully reclaiming these lands as theirs, despite the fact that this could leave the occupants with no land whatsoever.

From the state's perspective, re-constructing private property involves not only creating new property laws but trying to ensure that they mean something in practice. Law 18/1991 're-constituted' the private property rights of former owners and, for others groups 'constituted' new property rights. The new constitution also declared that 'private property shall be equally protected by law, irrespective of its owner'.[6] And, since then, a range of laws has been brought in to provide a new framework for property. Legislation governing renting was introduced in 1994[7], the system of land registration was reformed in 1996[8] and additional reforms to the system of buying and selling land were introduced in 1998.[9] Following the change in government in 1996, two subsequent laws extended the rights of former owners to more of their old property, one in 1997[10] and the most recent in January 2000.[11] Given the existence of all these property laws, what is their actual impact on ownership and use practices in the countryside?

**Generating inaccuracy**

In both villages there were big disparities between the official written record, the local agricultural records, and the accounts offered in the household survey. Part this is due to the peculiar way in which titles were drawn up. Following the dismantling of the collective farm, all those who were entitled to some of the land received from the local Land Commission a temporary certificate of ownership, an *adeverinta*. The idea was that together with the land maps, these would allow the cadastral authorities to draw up definitive titles which would also be recorded in the official Land Register, *Cartea Funciara*. Yet as mentioned earlier, titles were slow in coming out and when they did, as we will see later, they were seriously flawed. Usually the delays are criticised because they were said to impede the development of a land market and secondly, because they prevented owners from using their land as collateral. However, now that most titles have in fact been issued, lending institutions still do not take land as collateral for loans, preferring other valuables such as machinery, urban flats or cars. With so much land unworked, it is highly unlikely that a bank would be able to re-sell land that it repossessed on default of a loan. The second qualification to the criticism of the delay is that not having the correct legal papers did not prevent individuals from selling and buying land, they simply relied upon other ways of proving the right to sell and recording the sale.

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[6] Article 41 (2) published in Monitorul Oficial, Part 1, No. 233/November 21st 1991.
[7] Law No. 16 published in Monitorul Oficial, No.91/April 7th 1994.
[8] Law No.7 published in Monitorul Oficial, Part 1, No.61/March 26th 1996.
[9] Law No. 54 published in Monitorul Oficial, No.102/March 4th 1998.
[10] Law No. 169 published in Monitorul Oficial, Part 1, No.299/ November 4th 1997
[11] Law No. 1 published in Monitorul Oficial, No. 18/ January 12th 2000.

Perhaps a bigger problem for the state created by the late issuing of final title is that it gave the institutions of state law, and legal title is included here, only the most marginal place in life of rural property. There are several ways to demonstrate this and then some of its consequences.

*Recognising land divisions*

For those who received one-half hectare of land because they had worked for the collective but had not contributed any land to it, titles were issued almost straight away[12]. For those received land on the basis of prior ownership or via inheritance, title was more of a problem, albeit perhaps not seen as a very serious one. Titles were usually issued in the name of the original owner who had 'brought' the land to the collective. In Plaiesti the first collective was started in 1950, in Mirsid 1960. Clearly some of these owners had since died. So, in both villages, there were many cases of the heirs re-claiming their grandfather's, father's etc. land and, in these cases, titles were often issued in name of the heirs. However, in both fieldwork villages, for reasons that were not altogether clear, all the eligible heirs were sometimes listed on the title and in other cases they were not. This was despite the fact that the unlisted heir might be working his or her share of the inheritance. Sometimes the reason was because the heir no longer lived in the village and they effectively delegated the work of managing the original land claim to one of their village-based relatives. And, as a result of various family dynamics, the name of these distanced relatives never made it to the final title. A more serious distortion to the title mirror is that only in a very few cases does it actually record how land is divided between heirs.

In Plaiesti, in 47 out of the 84 households visited, members of that household worked on land they had inherited. In each case there had been some effective division of land between families. Often inherited land had come from more than one source. A few households divided each of the inherited plots between each of the heirs, thus making even smaller strip holdings. The more common way of dividing the inheritance was through 'understandings' reached between the various heirs. Sometimes, those who had more animals took land that was best used as pasture. In other cases, those who lived outside the village took their inheritance in places more conducive to renting to the local agricultural association. In some of the households, the original owner was alive and the household worked the land in common. In many others though, the inherited land had been clearly divided. Despite this, in 31 of the 47 households, the title remained in the name of the original owner. In 10 cases, title was issued in the name of one or all

[12] One villager in Plaiesti assured me confidently that in fact people like him who inherited land did not get titles. They were only for these new owners.

of the heirs and in the others the informant was not aware of the details of the title. Where title was not in the original owner's name this was usually because he or she was long dead. Still, it is hard to identify precise patterns. There were cases where sons and daughters inherited land from their parents and were issued with titles in their own names for their own plots. Although this cannot be said for certain, it appears that none of this group in Plaiesti had been to the notary to authenticate the land division. The 'understandings' remained in the family. Without the official stamp of the notary, it was not legally possible to have new, accurate titles issued.

In Mirsid, there were proportionately fewer households with inherited land, 24 out of 57. Again, there was effective division of land between the heirs, the main difference with Plaiesti was that 3 households had actually been to the notary to authenticate their land division. In one case, this was connected to a conflict between the household and the local agricultural association, in the case, the heirs were advised by some relatives who worked in the local authorities and 'who know how to do these things' and, in the third case, it appeared to be connected with the religious beliefs of the head of the household and his pride in doing everything honestly, 'properly', with 'nothing to hide'. One common feature was that each of these households owned more land than the village average of just under 2 hectares.

Why do so few heirs validate their land divisions with the notary? Plaiesti was larger than Mirsid, 282 households as against 219 in Mirsid. It was also more isolated than Mirsid, the latter being on the main road between two towns, both of which have notaries. The nearest notary from Plaiesti is about the same distance, but the road is much poorer and the bus passes through only three times a day. There is simply less traffic from Plaiesti to Turda than there is from Mirsid to Zalau and Jibou. In terms of land use, agriculture is far more important in Plaiesti than it is in Mirsid. In the former, the majority of villagers earn some income from agriculture, whereas in Mirsid, most villagers commute to work in the nearby towns and agriculture is primarily a subsistence activity. In Plaiesti, even for those who were fairly successful, who continued to buy land and who could be said to be adopting a more commercial approach to agriculture, going to the notary was not an urgent matter.

In both villages probably the greatest disincentive was the costs involved, both in money terms and the time it would take. Authentication requires bringing all the heirs together, drawing up the necessary papers and then taking them to the notary. The notary's fee was large, being fixed according to the value of the land. The next stage was to have new titles drawn up and registered in the Land Registry (*Cartea Funciara*). To give some approximate idea of the costs involved, one household said that they were going to register their house plot in the Registry

because they hoped that this would be the land on which their children would build their home. The cost of entering this change for 40 *ari* of land (0.4 hectare) within the inner boundaries of the village – the *intravilan* land - was 1 million lei (around 100DM). At that time (August 2000) the average monthly wage was less than 2 million lei per month and there were many old people, in particular, who were receiving much less than that. In the context of a depressed agricultural sector, formalisation of inheritance was a very low priority.

*Mis-recognising owners*

So long as many of the original owners are still alive and with so much land not actually being used, is it very important that all the formalities concerning inheritance have not been complied with? I would argue that it is, the first reason being economic. Government support to small farmers has in the past missed its mark because it has been premised on the information contained in the legal titles. So in 1999, agricultural subsidies with the value of 100,000 lei per voucher were issued to all those owning over 50 *ari* of land. For each 50 *ari* a voucher was issued. Initially these were distributed directly to the address of those listed on the title (and in *Cartea Funciara*) as being the owners. As described above, many of the original owners no longer work the land, being dead, having left the village or simply having someone else work the land. The latter could be a relative and maybe even a potential heir. On the other hand, particularly in a village like Mirsid where so many people work outside of agriculture, the land might just as likely be farmed by an agricultural association or through an informal sharecropping arrangement. By distributing the subsidies according to what is described on the title, the policy of supporting small working farmers easily misses the target. In spring 2000, the policy was changed and subsidies were issued on the basis of declarations which were then cross checked against the local agricultural register. This is a record produced locally, updated every year and including information on the amounts of land that are worked and the amount that is rented out. Both the agricultural association from Mihai Viteazul which works land in Plaiesti, and the association that rents land in Mirsid, were also wise to the flaw. Both of them insisted that as they were the ones working the land the vouchers should go to them and not to the owners. All villagers with land in the association had to sign a form transferring their rights to the vouchers directly to the association.[13]

[13] That is only vouchers for the land they rented out to the association. For land which they worked, they obviously kept the vouchers for themselves.

A second reason why the failure to validate title is significant relate to the way in which land may be bought and sold and this goes back to the role that state law could play in village property relations. Law 18/1991 provided for certain procedures for buying and selling. Some, like the rights of first refusal granted to neighbours, co-owners and renters, were revivals of pre-Communist legal practices designed to encourage the consolidation of fragmented holdings. Others, concerning the involvement of the notary and the importance of the contracts being 'authentic' were, in theory, mechanisms to prevent abuse and to guarantee that the seller actually had the right to sell the land that he or she said he or she had. Despite the deep attachments that some villagers had to their land, for others, selling made more sense than owning. Those who lived in the towns, for example and who did not envisage moving back to the village kept some land for subsistence use: the rest, though, could be sold off. As inflation increased in the early 1990s and more people started to lose their jobs, the number of those wanting to sell land increased. In both Mirsid and Plaiesti, villagers left for Hungary, Germany or further a field and before going sold their land.

From a state law perspective, almost all the land sales that took place in the 1990s were illegal. Part of the irony is that the state itself was one of the chief causes. Law 18/1991 provided that all land sales should first be reported to the National Agency for Rural Development which would then ensure that those with rights of first refusal or rights of pre-emption were notified of the sale. Yet, as the Organisation for Economic Co-operation and Development pointed out in 1998, the agency was not in fact set up making, 'technically speaking', all land sales illegal.[14] Now, given the land trading that had already taken place in both Mirsid and Plaiesti before the land reform was introduced in 1991, it is hard to envisage many owners feeling that they had to inform a national agency in Bucharest before selling their half hectare of land. The Romanian Ministry of Agriculture conceded as much when it commented in 1998 that for the individual private owners of land (by that time accounting for almost three-quarters of the total agricultural surface), the dominant characteristic of their associations and their activities was informality[15].

Whereas this failure to establish the rural agency might have rendered all sales technically illegal, this could be seen as a procedural rather than a substantive matter. Other illegalities were more serious. As with earlier land reforms, the post-socialist land reforms tried to prevent a

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[14] OECD, (1998),*'Romania: An Economic Assessment 1997',* Paris, OECD.

[15] Ministerul Agriculturii si Alimentatiei, (1998), *Evolutia sectorului agroalimentar in România. Raport anul 1997 al Ministerului Agriculturii si Alimentatiei,* Bucuresti.

rapid unravelling of the land reform settlement by preventing certain categories of owner from selling their land until ten years had elapsed. This included the landless workers who received one-half hectare for their past labours for the collective. In both villages, however, there were stories of such owners selling land with the merest of formalities. According to rumours and hearsay, some even sold their newly acquired land on the strength of some cash and a handshake witnessed in the bar. According to the law, this was not only not an authentic contract; the owner had no right to sell in the first place. Where law enforcement is weak, such ignorance appears to have little consequence. On the other hand, it does not mean that most villagers will agree to sell their land on the strength of a handshake in the bar.

In the formalities that are actually adopted, there is a sense of a local law and, when this breaks down, remedies may be provided despite having no basis in state law. To give an example, in the early 1990s in Plaiesti, a woman, the local shopkeeper, claimed to have bought land from an old man soon after Ceausescu's fall. Despite the fact that the seller had no written evidence of his ownership, she paid for the land. He simply claimed to own that piece of land. The woman accepted his word and believing that he would later tell the mayor's office about the sale, only asked that he sign a receipt for the money she had paid. In her words, the night before the old man was supposed to go the mayor's office, he died. For the shopkeeper, who was a relative newcomer to the village, that was when the problems began. Not only did the old man's heirs refuse to accept that the sale had actually taken place, but the Land Commission said the old man never owned land in that area. For two years the woman complained to the Land Commission and the heirs who, being from a town 40 kilometres away, came to the village only infrequently. The Land Commission refused to change their position, having assigned the land in question to the, now, real owner. This did not deter the shopkeeper though. The woman would berate the heirs each time they came to the village, asking 'how they could have so little shame'. Eventually, despite the fact that the heirs did not have the land supposedly sold by their father, they conceded and as settlement gave the woman an equivalent sized piece elsewhere[16].

Such a lack of formality might be an extreme case and practices have certainly changed since the early 1990s. Some land sellers claim that they always attach a photocopy of their title to the contract as a means of proving their right to sell. Yet others laughed at such 'proofs'. What was to stop the heir from selling the same piece of land once again, they ask? All the

[16] Although this dispute took place over 8 years ago, in Plaiesti there are still signs that villagers are prepared to sell and perhaps buy on the strength of future events. According to one woman in Plaiesti, a market in forest land was starting to appear. This is despite the fact that the implementation of the law which extended the scope of restitution of forest land had effectively become stalled at the level of the mayor's office.

photocopy proved was that the he had some unspecified share of the land described in the title. In practice, titles rarely passed on sale for the simple reason that not all the land listed on the title was being sold. To illustrate the process, in Plaiesti, a man inherited, along with his sister, four hectares of land from his long deceased grandfather. All four hectares were registered in the man's name. His sister lived in Cluj and, at the beginning of 1992, she told her brother than she wanted to sell her 2 hectares. To his regret, he did not have enough money at the time to buy the land and so it was sold to various buyers, including a young family from Turda. The brother cheerfully admitted that he has good relations with this last family, helping them as they try to learn the basics of agriculture. At the same time, they have not acquired any formal title to the sister's land they had bought, the brother holds on to that.

**Ambivalent legality**

These actual uses of state law, or at least the local interpretations of it, are clearly ambivalent. While individuals do sell without proper legal authority, by-passing the required formalities and keeping the sale unrecorded and unregistered, there are other indications that state law might be coming in from its marginal position. Whereas in the early 1990s, sales were very informal and were more based on personal rather than legal authority. As more land was bought by outsiders such as returning heirs and those who could no longer afford to live in the town, there was a greater formalisation of sales. In both villages, the homemade contracts were increasingly rejected in favour of the standard form ones offered by the mayor's office. And despite its inaccuracies, even the use of the photocopies of title can be seen as a change in the form of sales.

There are some powerful incentives for villagers to comply with the law. In Mirsid the agricultural secretary recently declared that she will only change the agricultural register on the basis of legal contracts, i.e. those that have the mark of the notary. Prior to this she would accept the temporary titles, the *adeverinta*, as proof of purchase. As entries in the register were the basis for calculating household entitlement to agricultural vouchers, it was in the buyers' interests to bring their sales to the notice of the mayor's office. On the other hand, going to the notary appeared to many as a cost without a benefit. Now that the register only takes legal sales, there has been a flurry of legal activity even if it is of slightly fictional variety. In order to comply with the law, Law 54 from 1998, offers to sell land must be advertised for 45 days on a notice board in the mayor's offices, thereby giving those with rights of pre-emption notice and an opportunity to make an offer to buy. Although many villagers in Mirsid complained that no-one was interested in buying their land, the notice board was full of offers to buy and sell land. On closer look, it

appeared that many of the offers were undated. When asked about this thriving market, the secretary pointed out that the majority of these offers were for land that had been sold years before. This late announcement was, in fact, the first stage towards getting the sale legalised. A second encouragement towards state law is the expected arrival of a new land tax law in 2001. A villager in Plaiesti who had sold some land said that the buyer had not gone to the mayor's office to register the sale and that as far as the previous owner was aware, the land he sold was still registered to his household in the agricultural register. However, while he, the old owner was prepared to let the matter go at present, should the new land tax be introduced, then he would be forced himself to inform the mayor's office of the sale.

Do these features signify a move towards greater compliance? Is state law becoming harder to avoid? In addition to these very specific forces promoting greater compliance, perhaps it is worth taking into account the wider relationship that villagers have with their land and the impact this might have on their attitudes towards state law. Although many people often gave very personalised and vivid accounts of their land, where it was, how difficult or straightforward it had been to 'get it back', and whether it was profitable, full of good soil or prone to problems such as wild boars, flooding, theft etc, there was another sense in which land was actually lost to them. In a few cases this was literally true.

In Plaiesti in 1998, the agricultural association that most villagers rented their land to went bankrupt. Soon after a new association came to the village, asking who wanted to rent out their land, which turned out to be as many as before. The transition between associations was lost on a number of villagers, partly because so little had actually seemed to change. There might be individual contracts now rather than a collective list, but the amounts of produce offered were still the same and the local agent was still the same. The big difference though was first, that the new association rented 100 hectares less than the old one and, second, it wanted to measure all the plots that it proposed to rent - something the last association had not done. Many villagers were angry that 'the association' no longer worked their land as if the two associations were in fact the same. As many of the households were not in the position to work much of their land themselves, the 100 unwanted hectares remains unworked.

The second source of loss was in the measuring process. The previous association had been happy with a loose form of measuring, renting whole fields from the villagers. All those who owned land in those areas rented to the association and, as all this land was worked together, no-one thought there was any need to measure out each individual plot. Perhaps it is not hard to imagine what came next. When the new association started measuring the land it found that there

was less land in reality than what there was on paper, in this case, the provisional title. In the transition between the associations, the family I stayed with lost 10 ari, or about 100 metres squared, despite the fact that their land had at least one 'hard' boundary in the shape of a road.

A third aspect of this loss can be seen in the disputes that take place over land boundaries. The evidence is not unequivocal here because there were many ways in which villagers fell out and made up over the actual position of the boundaries. Sometimes the disputes led to fights and there were big differences between disputes on *intravilan* land, usually over garden boundaries, and disputes on *extravilan* land, out there in the fields. Nevertheless, there were some features which illustrate an increasing distance between owners and their agricultural land. The council secretary in Mirsid said that 'if people cannot see the boundaries of their plots then they are afraid that someone might steal it'. So plots were marked with wood or iron posts, sometimes an empty row was left after ploughing or, more spectacularly, a single row of sunflowers might be planted to separate the plots. As mentioned earlier, there is a lot of unworked land in both villages, some estimate over 40% in Mirsid. In this situation, people do not see their boundaries because they do not go to their land. Partly as a result of this, boundaries are less distinct than before. Sometimes the blurring might be deliberate – the neighbours plough straying in spring time. Other times though, boundaries become lost because the plots have become overgrown. Those involved in disputes over *extravilan* land often talked about discovering what had happened by chance, a neighbour telling them or finding out some months after the plough had originally drifted. A small minority demanded compensation and there were the odd fights, the more common response was to re-measure and hope it would not happen the next year. For the secretary, the problems with agriculture – low and uncertain returns, labour intensive production methods and few resources to fall back upon in case of disasters - alienated many people from their land. As it does not bring much satisfaction, they are less prepared to defend it.

At the same time, the state does not appear to offer much effective protection for private property. In both villages, there were many complaints about the increase in theft and the fact that the police did so little about it, despite the fact that in Mirsid there is actually a police station and the police were given half a hectare for their own personal use in 1991. In both places the police were reported to say the same thing in reply to complaints about missing produce – 'Catch us the thief and we will do the rest'. While responses to the theft ranged from depressed resignation, to self help and in Plaiesti even attempts to revitalise the old village institution of the *pasnic* or nightwatchman, there is not doubt that it reinforced the impression that the state was practically indifferent to the everyday problems of the village.

One final consideration that might help to keep things informal is a generational issue. In both villages, younger villagers said that the old owners did not want to formally hand over their land to their children because they were afraid that the latter might then sell the land, something that filled them with dread. In one household in Plaiesti, the very elderly matriarch held all the household's land in her name. In all, there were four generations living in this house, a husband and his wife and their young child, two of the man's brothers and their mother. It was the latter's mother who held the title deeds and, at least according to the youngest mother in the house, she would not divide the land formally so long as she believed that one of her grandsons might sell his share. As he supposedly had 'money problems', she was probably right. Nevertheless these generational differences over the value of land can, at least in the short term, prevent greater formalisation of rights.

**In from the margins? Some conclusions**

How can the relationship between actual practices concerning property and state law in post-Communist Romania be characterised? Clearly there are many things that, as the lawyers say, are technically illegal. Laws introduced as a means of regulating and protecting property have been systematically ignored, partly due to the costs of compliance, but also because of deep flaws in the 'products' supplied by the state to make property legal. Villagers are well advised to be careful before placing too heavy a reliance upon the products in question, title being probably the best example. For a mirror, *titlu de proprietate* is badly flawed and this is reflected in the way it is used. Rarely does it pass into the physical possession of the new owner. It is more likely that nothing passes between the parties, save the cash and the land. The standard form contract is more significant and it was authenticated in a way that was meaningful for the villagers. An *adeverinta* drawn up by the local mayor's office was sufficient proof for the agricultural register to be modified. As this was the basis for calculating the level of agricultural subsidies, there seemed little point in taking the matter further and applying for a new title.

In the early 1990s when the collectives were being dismantled in both villages, recognition of property ownership was very much a local affair. In the 1991 land reform, for example, villagers said that formal written proofs of ownership were not that important, oral testimony was enough because everyone knew their old neighbours and, if someone didn't, the older people would remember. The actual process of re-establishing the old, pre-collective boundaries is a perfect emblem of this local level recognition of ownership. Owners stood in their old fields and, by pointing and shouting out, formally recognised their neighbours from

yesteryear. A second example of the localness of property was in the low status of official written records. Not only did the *adeverinta* lack crucial information, in both villages the agricultural secretaries admitted that the local agricultural register was inaccurate too. Some villagers 'forgot' they had sold land, others exchanged parcels without informing any third party, and with inheritances, the great majority of households kept their 'understandings' inside the family or the household.

Do these local ways of recognising rights and powers constitute a kind of local law that competes with state law? In some ways it is tempting to answer yes. State law procedures for buying and selling land were and are routinely ignored, while alternative forms of proof and recording were constantly being created. Even in the early part of the 1990s, however, when there were all manner of ways of selling land, some practices were generalised. Land sales had to be in writing, identify the land that was being sold clearly, be signed and witnessed. Perhaps the Plaiesti's shopkeeper problem was that she did not follow these prescriptions. If her sale had been witnessed and there was more documentation than simply a receipt for money received, she might not have had the problems she had. Secondly, the treatment of boundary disputes displays some characteristics of a civil system of compensation norms, with different tariffs depending on whether the original straying was seen as deliberate or accidental. Thirdly, those inheritance 'understandings' were widely accepted as constituting the beneficiaries' right (or power) to use and sell.

On the other hand, there are several features that weaken the case for calling these practices as informal or customary or local law. First, there is a great lack of overall coherency to them. In both villages, especially in the early part of the 1990s selling practices seemed to be more about individual tactics and powers in negotiation rather than adopting a common form that was locally accepted as binding. Furthermore, it is hard to identify any actual institutional mechanisms for enforcing *this law* should disputes arise. When the agricultural engineer was asked to intervene in boundary disputes, for example, she did so on the basis of her official position, using legally recognised maps similar to the ones used in the state cadastral office.

In the future it is highly possible that state protection of private rural land will remain weak or at least very uneven. However, the scope of state law recognition of property might change and provide a basis for future enforcement reform. At present, legal title offers a very poor reflection of the land. Yet, this is not the only way in which ownership is officially known. A more accurate version could be constructed by drawing together diverse sources. The state knows about land from the taxation system, from social security, and through economic policies

such as the regime of voucher subsidies. Even if title was not reformed in this way, active farmers have greater incentives to adopt state law over informal, ad hoc arrangements - the requirement that sales now be legal before they can be entered in the agricultural register is a good example. Second, keeping with the commercial metaphor, there might be increased demand for state law to supply a reliable product (title) as the composition of the rural population changes. Increasing numbers of people are moving to the village, some from economic necessity but others because they prefer the village life to the town. Such changes raise the value of legal title to levels local recognition simply could not reach.

Finally there is the generational dimension to the future expansion of state law title. Many villagers who currently hold onto their land and who prefer understandings to legal formalities face the prospect of being taxed on all the land they own. Many of these people survive on extremely low pensions and, in both villages, they have great difficulties in arranging for the all their land to be worked. A land tax over all their land would force their hand, whether to sell or to formally transfer land to their children. In such a scenario, the state's mirror might well become the choice for the majority.[17]

[17] The quantitative data which was collected during this fieldwork will be shortly made available for the use of other researchers on the Max Planck Institute for Social Anthropology website: http://www.eth.mpg.de/data. It consists of entries from the agricultural registers from both villages with data on household composition, agricultural land registered to them, forestland and whether any of the land was rented to a third party. There are also tables created from the household survey covering land division among heirs, sales and registration as well as a guide to the column headings.