Law & Society REVIEW

The Loss of Property Rights and the Construction of Legal Consciousness in Early Socialist Romania (1950–1965)

Mihaela Şerban

What happens to legal and rights consciousness when rights previously protected are taken away? In this article, I investigate the process of contesting urban housing nationalization in Romania in the early 1950s in order to understand how the loss of property rights led to new hybrid types of legal consciousness. I find that the construction of socialist legal consciousness was grounded in the interaction between the legally constituted selves of former owners and state bureaucrats who drew from distinct legal and property rights ideologies. This process underscores continuities in legal consciousness even under drastic regime changes, which in turn has implications for the construction of new hegemonic legalities and power regimes. The article is based on extensive document and archival research.

In the 1950s, the Romanian communist regime nationalized approximately a quarter of the residential units in the country, primarily under its flagship Decree 92 from 1950. Despite the repressiveness of the regime and the lack of a formal mechanism for challenging nationalization, nationalized owners contested the takings relentlessly for more than 10 years. The petitions were partially successful, nonviolent acts of micro-resistance through law that mobilized petitioners' ideas about law and property and directly challenged socialist legal instrumentalism (Serban Rosen 2010). Yet the petitions were not only acts of resistance, but also of cooptation, sites of active construction of socialist legality. They raised questions about how the newly marginalized "enemies of the people" who were explicitly excluded from the protection of socialist law related to this rapidly changing legal system. The responses from within the socialist apparatus further raised questions about

The field research for this project was supported by a National Science Foundation Doctoral Dissertation (grant #0752404). I am grateful to Sally Merry, Christine Scott-Hayward, and Francesca Laguardia for their comments and suggestions. I received helpful comments and advice from participants at the conference *Complaints: Cultures of Grievance in Eastern Europe and Eurasia* (Princeton University, 2013), as well as LSR's editors and anonymous reviewers.

Please direct all correspondence to Mihaela Serban, Ramapo College of New Jersey, 505 Ramapo Valley Road, Mahwah, NJ 07430; e-mail: mserban@ramapo.edu.

Law & Society Review, Volume 48, Number 4 (2014)

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

the varying degrees of internalization of new laws and policies regarding property.

The petitions against housing nationalization and the responses to them offer fruitful avenues of inquiry for a question largely not tackled in sociolegal studies: What happens to legal and rights consciousness when rights previously protected are suddenly taken away? I understand legal consciousness as a dynamic, constitutive process, a type of social practice encompassing individuals' recursive engagement with the law in all its manifestations—institutions, norms, processes, meanings, categories, boundaries, etc. (Comaroff and Comaroff 1991; Merry 1990; Silbey 2005).

In this article, I investigate the process of contesting the nationalization of houses in early socialist Romania and what this process reveals about the construction of legal consciousness under repressive conditions in a transitional context (from capitalism to communism). The focus of the analysis is on the process of constructing legal consciousness, on continuities and changes, in particular how and to what extent changes in legal consciousness occur for both nationalized homeowners and socialist bureaucrats in charge of the nationalization during periods of radical transformation. I find that the marginalization of former owners and their loss of property rights had two distinct outcomes.

First, former owners actively and strategically mobilized the law to reclaim their lost property rights, while the bureaucrats—the agents of state power—were mostly on the defensive, exhibiting a combination of weary cynicism and instrumentalism vis-à-vis the law. These are unexpected findings, particularly in light of sociolegal studies that discovered correlations between social, economic, or political marginalization and distrust of the law (e.g., Bumiller 1988; Engel and Munger 2003; Ewick and Silbey 1998; Merry 1990). I examine this unexpected positionality by analyzing the interaction between the legally constituted selves of former owners and state bureaucrats who draw from distinct legal and property rights ideologies. Former owners and state bureaucrats' understandings of law shaped their ideas of themselves and their relationships to others in a normative sense (commitment to law and rights), as well as the extent to which and the manner in which they mobilized law (skills, prior knowledge, and prior orientation to the law). Moreover, these two groups drew from different ideologies about law and its role in society. Former owners' concepts of law and rights were distinctly pre-communist, positivist rule of law and rights based. By contrast, socialist bureaucrats drew from both pre-communist legal ideology and from the socialist ideology that emphasized substantive justice as class justice. Socialist law had an explicit class character—representing the interests of the working class, promoting social and economic rights—and rejected the

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

formalism and proceduralism of pre-communist "bourgeois" law (e.g., Auslander 1951; Feller 1955; Lavrov and Tătaru 1959; Nedelschi 1949). Socialist law's substantive thrust was mitigated by its "relative autonomy" from the economic base and to some extent from the state itself (e.g., Bratus 1949; Chkhikvadze 1969), a type of "legal positivism lite."

Second, both former owners and socialist bureaucrats clearly distinguished between legal consciousness and property rights consciousness, and variations in legal consciousness between the two groups did not translate in similar variation in terms of property rights consciousness. There was a significant overlap between owners and bureaucrats, reminiscent of pre-communist property discourses.

The importance of these findings goes beyond legal consciousness as they contribute to a better understanding of the role of law in authoritarian and other highly repressive regimes. The multiplicity of legal and ideological discourses regarding a key issue for the communist regime indicates the limits of revolutionary legality and of instrumentalizing law. This diversity also suggests avenues of legal mobilization and resistance to authoritarian regimes located outside of courts and rooted in speaking the new language of power, yet simultaneously subverting it.

The article is structured in the following manner: After a short methodological section, I briefly discuss the key sociolegal findings on the relationship between marginalization and legal consciousness, and the centrality of legal consciousness for the communist regime. I then introduce the housing nationalization process in the early 1950s in Romania, followed by a section exploring the construction of legal consciousness in the petitioning process, and last, a section presenting the key property rights discourses advanced by the former owners and the bureaucratic responses to these discourses. The conclusion discusses implications for further studies of legal and rights consciousness.

Methodology

The article is based on extensive document and archival research conducted in the city of Timişoara, Romania, in 2007–2008. The archival material is from the Timişoara branch of the National Archives of Romania (187 files in 14 collections), mostly pertaining to the activity of the local state bodies. I used the qualitative research software HyperRESEARCH (ResearchWare Inc., Randolph, MA) for coding and analyzing the archival material (unless otherwise noted, all translations from Romanian are mine). I examined the petitions filed by former owners with local

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

administrative organs, the responses they received, as well as the internal correspondence between various levels of the state apparatus. There are almost no complete petition files in the archives, and access to files was allowed only up to 1965. I preserve the anonymity of the petitioners and state bureaucrats throughout the article.

The chronological boundaries of the article are determined by the centrality of the 1950 housing nationalization decree and by the limited access to archival material post-1965. These temporal boundaries and the use of archival materials for the study of legal consciousness raise some methodological issues briefly addressed here. The first issue is the reliability of archival sources from deeply politicized times and places. This has not been an issue because I use local administrative sources (rather than the Party archives), archival materials over time corroborate each other, and recent historical research similarly supports my findings. Gaps and silences on sensitive topics are occasionally confirmed in the written materials, often accidentally.

Another key issue is the extent to which archival materials are an appropriate resource for a legal consciousness study. As Lovell (2006) remarked in his study of letters written by Americans between 1939 and 1941 to the Justice Department's Civil Rights Unit, this type of material is particularly suited for studies of legal consciousness because it reveals directly people's ideas of law, justice, etc., rather than what they might narrate later in interviews. Petition writers in my study are forceful, straightforward, and thorough. They are pleading their cases marshalling every argument they can muster. The petitions reveal their struggles to reconcile old and new discourses of law and property, to speak the new language of power, and adapt to changing circumstances, while simultaneously mobilizing pre-communist conceptions of law and property rights. As such, they are an excellent window into the very process of construction of legal consciousness during the period studied.

This study does have an important limitation, however, since the archival materials are incomplete. A large number of documents from the period have been lost or destroyed (e.g., poor storage conditions), and a significant number have not been catalogued at all. The data that I found are fragmented and were spread among 10,000 pages of documents in various files. I identified, collected, organized, and analyzed each one over a six-month period in order to build as clear a picture as possible. I thus created the first ever complete list of petitioners from the city. However, despite finding dozens of petitions, there is no complete petition file that includes all the petitions from a specific claimant, all the administrative responses, and the final resolution.

Legal Consciousness, Marginalization, and the Construction of Socialist Legality

Studies of legal consciousness overall have focused on three broad areas: engagement with the law (attitudes, use, mobilization, variations in legal consciousness); relationship with power (resistance, hegemonic legality); and the creation of meanings, identities, and subjectivities (Engel 1998; Silbey 2005: 334; see, e.g., Bumiller 1988; Engel 1984; Engel and Munger 2003; Hull 2003; Marshall 2003, 2005; McCann 1994; Merry 1990; Tyler 1990, Tyler and Huo 2002). Legal consciousness studies primarily explore legal consciousness in the context of rights mobilization, for example, claiming rights that formally exist, or entering a specific legality framework, such as antidiscrimination.

Left relatively unexplored is the nexus between loss of rights and legal consciousness: What happens to legal and rights consciousness when rights previously protected are lost? What is the impact on legal and rights consciousness of changes in socioeconomic status, such as the creation of a newly marginalized group whose interests had been previously strongly protected by the law, as was the case of pre-communist property owners? Moreover, are there any distinctions between legal and property rights consciousness in this context, and if so, what are possible explanations for these differences? A further distinguishing characteristic of this study is that the loss of rights takes place in the context of rapid and deep changes in the formal legal system—from capitalist to communist legality.

Primarily in the United States context, sociolegal scholars have found correlations between social, economic, or political marginalization and ambiguous rights mobilization. Merry (1990) found that although there is widespread legal entitlement, working-class people do not turn lightly to the courts and are aware of the costs of doing so. In their 1998 groundbreaking study, Ewick and Silbey hypothesized that marginalization correlates with distrust of the law. Various marginalized groups hold deeply ambivalent attitudes toward rights mobilization, for example, individuals with disabilities (Engel and Munger 2003) or victims of racial and gender discrimination (Bumiller 1988). Yet not all marginalized groups are the same from a legal and rights consciousness perspective. Same-sex couples are more inclined to mobilize the law (Hull 2003), while for illegal immigrants, legal consciousness varies based on age at migration and social position (fear vs. stigma), which in turn impact claim making differently (Abrego 2011). In the contemporary Chinese context, different facets of marginalization and the environment in which it is experienced shape the legal consciousness of those marginalized, such as sex workers (Boittin 2013: 248).

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

Studies of variation in legal consciousness do not necessarily focus on marginalized groups, but sociolegal scholars have documented variations based on race (e.g., Fleury-Steiner 2003; Nielsen 2004), gender (e.g., Nielsen 2004), socioeconomic status (Cowan 2004), and conceptions of social change (Kostiner 2003). Recent research on legal and rights consciousness in somewhat comparable frameworks to Romania, such as China, has found clear distinctions between legal and rights consciousness (e.g., Boittin 2013).

My focus here is on exploring the legal consciousness of the newly marginalized, as former house owners in the early socialist period lost their privileged status (owners protected by capitalist law) and became "strangers to the law" who had to try to reassert their rights to inclusion (Abrego 2011), outsiders to formal law looking in (Kirkland 2008). Meanwhile, state bureaucrats gained access to the levers of power and implicitly its instrument, law. The construction of socialist legality itself took place through the interactions between the former house owners and the officials throughout the housing nationalization process, through the meanings and cultural practices at the intersection of these interactions (Ewick and Silbey 1998: 22).

For the individuals in both groups, their prior understandings of and relationship with law represented two different starting points in the construction of their legal and rights consciousness, which also shaped their ongoing participation in the construction of socialist legality. The socialist regime in Romania saw legal consciousness as a key part of the general category of consciousness, and assumed it could be shaped at will to help create the ideal communist subject, which in turn was essential for the legitimacy, longevity, and hegemony of the communist regime. Simultaneously with coercion and terror, therefore, and like other communist regimes, the Romanian regime became interested in power as the imposition of internal constraints: the creation of the communist man/woman through the shaping and naturalization of new beliefs and desires (Lukes 2005: 13).

The creation of socialist legal consciousness—emphasizing legal instrumentalism and the centrality of state property to the detriment of private property—was the linchpin for the creation of communist subjects (see Naschitz 1964). Housing nationalization aimed to achieve both goals. Yet its implementation and the former owners' legalistic resistance to it raised unexpected problems, as former owners and regime officials simultaneously deployed both "bourgeois" and socialist concepts of law and property.

This article highlights the deployment of multiple legal ideologies in the field of urban housing nationalization, which underscores the hybridity of socialist legality itself (see Ajani 2002; Hazard 1970; Markovits 2007). I understand socialist/communist

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

law in Romania as a quintessentially modern, hybrid type of legality constructed by four main discourses: repression, statist-instrumentalism, substantive (class) justice, and legal positivism. As hybrid legality, it draws from multiple normative and discursive sources, primarily modernity, the civil law tradition, the Marxist–Leninist–Stalinist ideology, and the constraints of the transition to communism.

Modernity, both as embodied by Lenin's "high modernism" (Scott 1998) and as the constantly unfulfilled, deferred desire of "catching up" with the West, encouraged a view of law as a purely compliant instrument of social and political engineering. Marxism–Leninism amplified this statist-instrumentalist discourse with a particular focus on repression and separately subjectification—creating the new socialism man and woman. Yet similarly to other modern legal systems, rationality and its own internal momentum conspired toward creating some "relative autonomy" for law, while formal continuities with bourgeois (civil) law reinforced habits of legality, legal positivist strands, or simply inertia (not unlike other authoritarian systems, e.g., Toharia 1975). More importantly, these continuities also acted as a web of invisible links still rooted in the pre-communist *nomos* and its narratives of property law and property rights (Cover 1983).

In this article, I show how dispossessed owners and regime officials mobilized various legal and property rights ideologies in the process of nationalization. This mobilization matters not just for studies of legal consciousness, but also for understanding how constructing hegemony through law is inherently problematic for authoritarian and other repressive regimes. In his 1975 study of courts in Franco's Spain, for example, Toharia analyzed the duality of ordinary and extraordinary justice systems at the time, the ideological diversity among Spanish judges, and their fairly high degree of independence from the political sphere. Studies of former communist countries also highlight the coexistence of law and terror, ordinariness and arbitrariness, normative and prerogative (Hazard 1970), and "the paradox of socialist legality" (Ajani 2002: 2) as "the law of political repression and that of ordinary daily life" even at the height of repression (Markovits 2007: 237). More recent studies of authoritarian regimes as diverse as Chile and Egypt (e.g., Hilbink 2007; Moustafa 2007) dispel the myth of the lack of importance of courts in authoritarian regimes and emphasize their complex roles supporting, legitimizing, and occasionally subverting the power structure through their potential for legal mobilization (Solomon 2007). The focus on legal consciousness shifts attention away from courts toward law in everyday life, yet similarly highlights ideological diversity, the limited effects of political structure on legal culture, possibilities of resistance through law by speaking the

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

language of power to make a different set of claims than what the authoritarian regime intended, and ultimately new ways of legal mobilization outside of the formal court system.

Housing Nationalization in Timişoara, Romania

Between the two world wars, Romania was a constitutional monarchy and rapidly developing modern capitalist state with a civil law system. Its first civil code was adopted in 1864 and remained in force until 2011, so throughout the entire communist regime. It literally translated many of the articles of the Napoleonic Code, but also drew inspiration from the Italian Civil Code and Belgian law. In 1938, King Carol II assumed dictatorial control of the country. During the Second World War, Romania was a German ally under the leadership of General Antonescu. The transition from authoritarianism to communism began on August 23, 1944 when Romania broke ranks with the Axis Powers and joined the Allies. Under Soviet control, the political transition was relatively gradual, although expropriations began as early as 1945.

The communist reshaping of property took place in five short years between 1945 and 1950, primarily on the basis of three distinct ideologies: postwar transition of punishment (expropriation of ethnic Germans, Hungarians, of abandoned property, and all those considered to have collaborated with the Nazi regime); land reform; and the elimination of property as exploitation ("the great nationalization"). The height of the transformation was in 1948–1950, with the passage of the 1948 Constitution of the Popular Republic of Romania, the nationalization of most industrial and commercial enterprises, and the finalization of land reforms. Urban houses were lost through every one of these avenues.

The 1948 Constitution of Romania was based on the 1936 Stalinist Constitution and espoused for the first time the socialist state's ideology regarding property. The constitution acknowledged only three types of property: state, cooperative, and private (in that order of importance). The constitution directly nationalized certain assets (e.g., mines, forests, telegraph, telephone, post, radio) and established that all means of production, banks, and insurance companies became state property when necessary for the general interest.

The term "nationalization" commonly refers to the process of governmental takeover of private industries or businesses. The early Romanian communist regime purposely used it vis-à-vis houses in order to emphasize that houses were also a means of exploitation within the Marxist–Leninist framework, similar to business and industry. Decree 92 from April 19, 1950 was the main

legal instrument used to nationalize urban real estate. It targeted "some houses (of former manufacturers, bankers, great merchants and other elements of the high bourgeoisie, houses of exploiters of housing, hotels and others like them)." Its goals were "to strengthen and develop the socialist sector in Romania," "to better administer the housing stock at risk of dilapidation because of the sabotage of the high bourgeoisie and exploiters who own a large number of buildings," and "to deprive exploiters of an important means of exploitation."

The decree itself was very short, with only 12 articles. Importantly, Article 2 of the decree excluded from nationalization buildings that belonged to workers, civil servants, small craftsmen, intellectuals by profession, and retirees. The appendixes to the decree, unpublished and "strictly secret," listed the nationalized buildings in alphabetical order by owner's last name for each town and city. For example, the Timişoara appendix has 1,022 names (a few repeat). Decree 92 nationalized between 120,000 and 140,000 residential units in the entire country, approximately a quarter of privately owned houses (Chelcea 2004: 1, 112; Dawidson 2004: 125; Stan 2006). In Timişoara, the total number of nationalized dwellings was 11,132 (according to City Hall records), which represents about 35 percent of the total number of dwellings in the city at the time.[1] This total number includes de jure nationalizations (owners were listed in the decree's appendix) and de facto nationalizations (owners were not listed in the decree's appendix, but the house was taken "in the spirit" of Decree 92). Many of these apartments and houses were among the best in the city: centrally located, spacious, relatively new, and in good to very good condition (Mioc 2007: 208).

The communist takeovers of private property are commonly understood as moments in time that fractured the pre-communist and communist realities. Nationalization of urban housing, however, is best seen as a process that lasted for years, as former owners contested it and the regime responded while planning more takings. Furthermore, Decree 92 itself did not have a sunset provision and local authorities used it as their default legal mechanism for urban takings until the early 1960s.

The nationalization process was characterized by secrecy, lack of transparency, arbitrariness, and ambiguity. Instructions for the implementation of housing nationalization were issued three years after the nationalization decree in 1953, and restitution procedures only in 1955. Instructions for the restitution of urban housing seized through other legal acts were issued throughout the 1950s.

[1] Collection Primăria Municipiului Timişoara [Timişoara City Hall], File No. 12/1950, page 62. There were 14,471 buildings in 1947 (Munteanu and Munteanu 2002: 218).

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

All of these acts were unpublished and "strictly secret." Secrecy was deployed both within the state apparatus and against the population. Archival documents indicate that on occasion local authorities themselves were unsure whether a house had been nationalized, and neither were the owners. The initial list of nationalized houses was hastily compiled at the local level, but as the nationalization process unfolded local bureaucrats rotated frequently and did not necessarily have access to the secret appendixes. This is one key reason for inconsistencies in the nationalization and restitution processes at the local level, compounded by the regulation delays described above.

The archival materials indicate which state agencies were charged with implementing the nationalization process. Between 1950 and 1953, nationalization and restitution were within the purview of the Executive Committees of the People's Councils, the newly installed local agents of state power. Nationalization commissions were only created in 1953 and functioned at municipal, regional, and central levels. They were also accountable to their respective People's Councils, and ultimately to the Council of Ministers. Their membership varied somewhat over the years, but included only the most senior and "trusted elements" within the local power structures.[2] The 1953 Instructions for the implementation of Decree 92/1950 and the restitution Decree 524/1955 established the composition of the nationalization commissions at four members: the secretary of the Executive Committee of the regional People's Council (formally the most important position in the regional state administration), the head of the financial section, the head of the communal husbandry section (which included all housing-related matters), and the regional head of the labor union. The entire process took place "under the supervision of the municipal Party organs,"[3] which practically meant that the Party's decision was important in two types of cases: when municipal authorities proposed restitution, and if the municipal and regional administrative authorities disagreed about restitution.[4] Throughout this period, the nationalization commissions did not function on a permanent basis but were recreated every time there was a new decree or instructions or simply as needed, and thus there was a fair amount of turnover.

[2] In the early 1950s, members of the nationalization commissions had to be vetted by the Party organs before being appointed. Collection Sfatul Popular Banat, Secretariat, File No. 95/1953 [double], pages 22–28; File No. 64/1960, page 1; File No. 43/1960, pages 7–10.

[3] Collection Sfatul Popular Banat, Secretariat, File No. 64/1960, page 1. This version of the nationalization commission was to be created on March 15, 1960 and was instructed to work until they were done. Collection Sfatul Popular Banat, Secretariat, File No. 43/1960, pages 7–10.

[4] Collection Sfatul Popular Banat, Secţia de Gospodărie Comunală, File Nos. 2/1964, 20/1963, pages 1–4.

Official reports noted that the general mood of the population during and immediately after the nationalization in 1950 was good: The poor were happy about it, renters were indifferent, and the former owners were calm, signing the nationalization notices in proportion of 97 percent (Mioc 2007: 208). In reality, many owners had no idea they had been nationalized, sometimes for a long time, and found out only when they attempted to sell their houses and were denied the required administrative permit to sell, or when local officials seized construction materials from houses under construction.[5] Some petitioners who thought they might be under suspicion of nationalization became proactive agents and preemptively asked for either restitution or to be exempt from further nationalization. This creative way of mobilizing the law points to a micro-economy of resistance through law as yet undocumented.

Many former owners were allowed to continue to live in the nationalized house, although in significantly more cramped quarters, including kitchens, hallways, and the like, sometimes for entire families (Comisia Prezidentială pentru Analiza Dictaturii Comuniste din România [The Presidential Commission for the Analysis of the Communist Dictatorship in Romania] 2006: 616). The best of the nationalized houses were reserved for public use (Party, local officials, medical offices, etc.) while the rest were subdivided and new tenants were brought in through the rental offices (state agencies established in 1948 controlling the rental market and all relationships between landlords and tenants). Former owners and new tenants frequently clashed because the latter did not take care of their new housing.[6] In addition to losing their homes, dispossessed owners were labeled "former owner of a nationalized house," which entailed lack of access to jobs, education, social services, etc. They became official second-class citizens, barred from political and social participation, at best aspiring for anonymity and very low-key lives. Against this background, the former owners' petitions against nationalization are thus even more poignant. The unfolding of this process is the subject of the next section of the article.

The Petitioning Process and the Construction of Socialist Legal Consciousness

> The undersigned Nicolae S., retired and a war veteran, disabled from the world war from 1916–1919 . . . please order the restitution of my family's house . . ., where I live, mistakenly nationalized

[5] Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, page 125.

[6] Collection City Hall, File No. 12/1950, pages 48, 69–71.

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

> in 1950, despite the provisions of art. II from the nationalization decree . . . In the spirit of this article, please see that I fit the criteria for exemption from nationalization . . . I come from a poor peasant family, my father was an agricultural hand, as shown in the reference letter provided by the retired teacher from my native village. . . . When the Communist Party was illegal, I provided help, as shown by the attached authentic document. . . . Before 1944, when I worked at the prefect's office, I helped the working class . . . I was also persecuted by the Iron Guard, who suspended me and locked me up during the Iron Guard rebellion [far-right political movement in Romania at the time]. Today I have no wealth, as shown by the attached declaration from the financial office. Since I was wounded in the kidneys during the war, I could not serve during the last one, but I worked conscientiously at my job . . . I was not a member of any political party. In light of what I have shown, it can be seen that we, the simple and anonymous people, served the Party and the working class without asking for any rewards, because we thought it was our duty and something natural to serve the working class, where we also came from. As you can see from the annexed documents, I suffered enough in the past, when still in school I had to tutor the rich children for a slice of polenta, to work in factories and the landowners' land, in order to support myself while in school. I am thus convinced that today, in the regime of liberty and legality, you will repair the mistake and return my house to me, especially since because of the nationalization I am in danger of losing my pension as well and starve, even though the house is only a simple family home. (June 22, 1960)[7]

Nicolae S. was a small rags-to-riches story. He came from a poor peasant family in Moldova and through his own efforts became a teacher, artillery officer, and head accountant for the prefect's office in Timişoara. In his petition, he alternately tried to shame the regime, to negotiate with it, but also to flatter it. He was proud of his hardworking life that allowed him to escape the poverty of early twentieth-century Romania, but also confused as to how this same hard work so lauded by the new regime landed him in this difficult position. He had bona fide credentials that he had performed his part of the social contract before the communists took power, and that at the very least he expected that his home would not be taken away. His self-understanding was infused with "bourgeois" values: labor, individualism, hardship, status, wealth, and knowledge. His is a narrative where past suffering and poverty created the entitlement of a good life later on. He drew equally from bourgeois and socialist discourses while trying to reconcile them, with labor a clear, if contested site of intersection, thus revealing his own reluctant path toward becoming a socialist subject on his own terms.

[7] Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, pages 2–3.

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

Like so many other petitioners, Nicolae did not openly question the nationalization per se, but merely its implementation in his particular case. In his understanding, it was not the law that was his enemy in the new regime of "liberty and legality." He appealed not only to "the law" but also to the compassion of those he claimed to have previously protected, and the end of his petition was a reminder that nationalization meant not just the loss of the house, but also of social security and retirement benefits, which could easily lead to abject poverty if one had no family to fall back on.

Nicolae's arguments help us understand how and why nationalized house owners mobilized the law, and how the process of petitioning contributed to the creation of their socialist legal consciousness. His arguments further illuminate changes in the meaning of property and property rights during this period, and changes in how former owners conceived of themselves and their communities. I focus in this section on the process of petitioning itself and its role in the construction of petitioners and state officials' legal consciousness.

Petitioners' Legal Consciousness: Mobilizing the Law

Decree 92 did not include any mechanism for challenging the nationalization. Despite this, however, almost half of the nationalized owners contested the taking, often multiple times, through administrative and court channels, and the process of petitioning and answering the petitions lasted for years. I manually counted 444 petitions contesting the taking of houses listed in the Timişoara appendix to Decree 50, and 75 more petitions contesting de facto nationalizations (houses not included in the Decree 92 appendix, but similarly treated by the local administration), and it is likely that more were lost. The total number of petitions for this period (1950–1965) that are documented in the archives is 666, which includes multiple, nonrepeat petitions filed for the same house or apartment by different petitioners, including members of the same family (this is thus higher than the simply adding the previous two numbers). My research is among the first to find evidence of petitions as a type of nonviolent resistance to nationalization, and to document the extent and impact of this resistance.

The filing of petitions and responses to them raised and waned throughout the period studied: Almost half of the petitions were filed between 1951 and 1953, and they appear to have been discussed by the local authorities in 1953 and 1956 (further proposals for nationalization were also put together in 1953). More than 350 petitions were filed in a second wave roughly between 1957 and 1960, and they were tackled mostly in bulk in 1959–1960 and 1964–1965. This breakdown does not include repeat filings of

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

petitions or appeals to reconsider a rejection, most of which took place between 1960 and 1965. Almost 20 percent from this initial wave of petitions was approved for partial restitution by the local administration, pending final approval from the central authorities (eventually only five percent were admitted). The second wave of petitions was even less successful, and overall less than one percent of nationalized housing in the entire country was approved for restitution.[8]

Dispossessed owners pursued multiple simultaneous, nonlinear avenues to challenge the nationalization. I found four main paths: petitioning the local administration, the central administrative bodies in Bucharest (both initial petitions and appeals), separately the local Communist Party branch, and going to court.

Most petitioners complained administratively following a hierarchical route that started with the municipal People's Council (the lowest executive agency at the local level). The Council's nationalization commission undertook the field investigation and made a recommendation. The entire file was then forwarded to the regional People's Council(s), and eventually to the Council of Ministers in Bucharest, which had the final say. If they did not hear back from the local authorities, it was not unusual for petitioners to request an audience with the local Party organs, as was the case with a retired forester who submitted petitions regarding his house in 1957, 1959, and 1964. In his case, the local nationalization commission proposed restitution, but the final confirmation never arrived from the central nationalization commission (this was one of only two cases of proposed restitution in that area).[9] Petitioners whose house was not listed in the Decree 50 appendix but was seized nonetheless also sued, usually requesting a judicial declaration stating the "inexistence of nationalization" (if the house was not listed, they argued, how could it be nationalized?).

However, this was not a linear process and the court was rarely the last resort. A nationalized locksmith, for example, started out by petitioning the local People's Council, "where we were always told that our petition would be solved favorably, but we have not received any official answer to this day." The locksmith then sued, asking the court to declare that the house could not have been nationalized, and if it was, it was wrongly nationalized because Decree 92 did not apply to the petitioner. Both the trial and the appeal courts rejected his claims, declining jurisdiction. The

[8] As of 1960, only 1,082 housing units in the whole country were returned to their former owners. This represents approximately .009 percent of the total number of nationalized apartments. Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, pages 82–84.

[9] Collection Sfatul Popular Banat, Inventory 1630, File No. 2/1964, page 169.

locksmith then wrote directly to the Presidency of the Council of Ministers, which sent the petition back to the municipal council, restarting the entire process.[10] Petitioners like him were thwarted in their efforts by the abolition of judicial review of administrative action in 1948. I found other cases of resistance to nationalization through the court system all ultimately unsuccessful, with most decisions written in a language somewhat sympathetic to the petitioners.

A typical petition, whether handwritten or typed, started out with a brief life history of the petitioner and of the nationalized property. The petitioner would then self-categorize as an "Article 2 exemption" and argue that the house had been obtained through labor, not exploitation, that its primary function was as a family home and not rental income ("exploitation"), and furthermore that others in a similar position had not been nationalized, thus highlighting the arbitrariness of the taking.

Many petitioners went to great length in preparing and submitting their petitions in terms of the documents submitted, persistence, and arguments employed. An elderly couple, for example, included a justifying memo, extracts from the land registry, the diagram of the house, a notarized copy of the nationalization record, as well as notarized certificates from their workplaces and from the municipal housing authority.[11] Collecting these documents was difficult, time consuming, and expensive. Other petitioners included evidence of real estate registration, affidavits from former coworkers or supervisors, proofs of donation or inheritance, mortgage payments, court decisions, etc. Many documents were authenticated by a notary public, which added significant costs to their petition effort. Many petitions were typed, relatively concise, using precise language and referring to specific laws and policies, which suggests that the petitioners had received professional help, possibly from a lawyer (the massive purging of the bar had left many lawyers adrift, and there was a flourishing black market in legal services).

The process of petitioning itself—conceptualizing the wrong and the claim ("naming, blaming, claiming," Felstiner, Abel, and Sarat 1980), writing the petition, gathering supporting documents, mailing the petition, asking for an audience, waiting for a response that was often cryptic and delayed, following up, starting all over again—pushed the former owners to articulate perhaps for the first time, both for themselves and the local authorities, their own sense of property rights and of the injustice they thought was done to them. It thus reinforced, rather than weakened, the connections

[10] Collection Sfatul Popular Banat, Inventar 1630, File No. 1/1956, page 105.

[11] Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, page 139.

between the house, property rights, labor, history, and family for the petitioners. Equally importantly, the petitioning process showed that dispossessed house owners were willing and capable to mobilize the new legal system, ostensibly taking the regime at its word and consequently pushing its officials to play by the rules.

The former owners were well aware of the mixed messages of the early 1950s: on the one hand, extensive takings and a prolonged nationalization process; on the other hand, some restitutions (particularly for ethnic Germans and Hungarians who repatriated after the Second World War), encouragement of new private constructions, primacy of labor, and continuity of property law. For many, this could only mean that in their case nationalization was a mistake that could be repaired through persistence and patience: "we are convinced the nationalization was done through error and against the law" (May 24, 1950); "my family's house . . . , where I live, mistakenly nationalized"; "As I have been told, family homes are not nationalized, so I think there must have been a mistake and therefore I ask that you investigate and annul the nationalization order" (Aug 28, 1950); "but the house was nationalized only by mistake"; "the house is not gained from commercial business . . . and thus was mistakenly nationalized . . . with respect we ask that you order the re-examination of the situation . . . find our petition founded, order the restitution of our house and do us justice, correcting a mistake" (underlined in the original) (October 5, 1959); "I believe that the . . . local organs did not and do not know in detail my situation and did not objectively understand it, because if they had, they could not have proposed my house for nationalization" (June 16, 1961).[12] The "mistake" narrative suggests that the petitioners were desperate, yet savvy enough in terms of advancing a narrative that displaced and depersonalized guilt from the regime. Petitioners believed that a proper investigation would reveal the truth and ensure the return of their house. This truth, from their perspective, was that they were not "exploiters," but mere hardworking people who did not deserve to be deprived of their homes.

These demands for investigations indicate that the petitioners understood justice in both procedural and substantive terms—the return of their houses. The municipal and regional nationalization commissions did in fact order the investigation of most petitions, but the result was not what the petitioners wanted, as substantive justice meant class justice for the communist officials. Nonetheless, the owners' complaints forced the regime to clarify both the nationalization procedure and its ideological position, for example, to

[12] Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, pages 257, 115, 118, 287.

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

determine when a house was considered "means of exploitation," as well as to reconsider further nationalizations. The regime eventually halted housing nationalization (early 1960s), in part as a result of the petitions and requests for restitution, and of its own mishandling of the process. The open-ended nature of housing nationalization, its indeterminacy, and lack of clarity showed the former owners that this was a poorly thought-out and poorly implemented measure. By engaging with the petitioners, moreover, the regime admitted as much, which in turn gave former owners hope and reinforced their "bourgeois" concepts of private property.

Former owners turned to a legal system that was suddenly and purposely excluding them, that was not supposed to protect them. They could have chosen to resist violently or to submit completely, the latter perhaps the safest choice. Yet they engaged with the regime, and while they did not openly challenge the law or its legitimacy, petitioners did challenge its interpretation and application in their particular cases. They attempted to capture socialist law for their own purposes, saw it alternatively as a resource to be harnessed or a potential objective arbiter. The petitions reveal that petitioners also saw law as a link with the past and internalized ideas of self, property, and legality. Drawing from pre-communist, positivist understandings of law, dispossessed house owners tried to remake law in that image, so paradoxically they turned to law even though they had the most reasons to distrust it. Their legal consciousness was thus deeply subversive—rejecting the communist system while trying to capture and reverse the direction of its legal system.

The State Responds: Caught Between Competing Visions of the Law

The owners' persistence and reliance upon formal legal processes hit a wall of confusion, rapid changes, legal instrumentalism, and cynicism inside the state apparatus. Housing nationalization happened during a period of rapid bureaucratic and policy changes as well as purges that often left local authorities confused and unsure about what they were supposed to do (see Ionescu-Gură 2005). Communications among various levels of state bureaucracy reveal that the push for increasing centralization was balanced by decentralizing efforts and passive resistance from local authorities. Central government and Party controls were tempered by relatively frequent mini-policy changes that were often not communicated further down the power chain, and by long stretches of regulation void that encouraged local decisionmaking but also increased uncertainty and local conflicts. Consequently, local authorities exercised a fair amount of discretion.

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

In the exercise of this discretion, local authorities veered between two opposite legalities—socialist legal instrumentalism versus legal positivism reframed as "relative autonomy of the law." They primarily thought of law as an instrument that could not be fully trusted, yet they were also drawn by the charms of formalism and proceduralism and their promises of predictability and certainty. These formal rational dimensions help explain some of the everyday dynamics of power and resistance within the administration and vis-à-vis citizens. On the one hand, for example, local bureaucrats were rather generous with the early petitioners. Yet, on the other hand, and somewhat mitigating this generosity, they chose the safest ideological route and expanded the nationalization net by interpreting "exploitation" broadly.

The unholy combination of formalism and ideology had consequences in the nationalization decision-making processes, the most curious of which was the imposition of some procedural fairness leading to predetermined ideological outcomes (rationalizing the takings). The 1953 implementation instructions for housing nationalization introduced a points system to help local bureaucrats quantify exploitation and eliminate arbitrariness in the nationalization and restitution process. For example, houses with separate bathrooms and heating were worth more points than those without, and houses without plumbing and electricity were exempt from nationalization.

Nonetheless, legal instrumentalism was hard to resist, despite regular attempts from the central authorities to reinforce the majesty of law. In a 1956 memo, the Council of Ministers admonished the regional council to stop working superficially and "play with the decrees" ["să nu ne jucăm cu decretele"].[13] Sometimes, members of the regional or municipal executive committees thought of law as something that could be manipulated whichever way necessary in order to achieve their goals. In August 1962, for example, the regional council sent a secret memo to all municipal councils in the region with instructions regarding houses seized de facto without "legal formalities for entering them into state property." The regional committee asked them "to verify whether these houses fulfilled the legal conditions for becoming state property under Decrees 111, 224, etc. If they do, you will conclude legal formalities for them becoming state property. If they do not, you will keep them on file [le veţi ţine în evidenţă] until legal provisions regulating their legal status are issued. If the legal owners of these houses sue, you will deploy art. III of Decree 218/1960" (concerning the statute of limitations for goods not reclaimed

[13] Collection Sfatul Popular Banat, Inventar 1630, File No. 1/1956, page 245.

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

within a specific time limit).[14] These officials clearly thought they had at their disposal a buffet of statutes and decrees for the takings to be used more or less interchangeably, and as a last resort the failsafe mechanism of the statute of limitations decree. The regional council was perfectly aware that these houses were not legally owned and that the legal owners could potentially raise challenges. The memo both acknowledged and tried to legalize a state of illegality, revealing a combination of legal instrumentalism and cynicism, as well as traces of fear of the law and of the costs it could impose.

Law was not just a tool or an obstacle, however, but also an arena where local officials and former owners could "fairly" square off. After the rejection of a petition contesting the nationalization of a pharmacy in the village of S., the head of the state pharmaceutical agency that took over the space nevertheless approved in 1955 that the petitioner/former owner and his daughter temporarily live in the building, occupying two rooms and a kitchen, until the pharmacy hired a new pharmacist. A new pharmacist was indeed hired in 1956, and the pharmaceutical office "asked the petitioner, who has no legal title to this space—not owner, not tenant, only TOLERATED [caps in the text]—to free one room for the new pharmacist. He absolutely refused, and for the past two years has been writing petitions to any and all authorities in the Popular Republic of Romania asking for the building to be exempt from nationalization, which is contrary to the current laws." The state pharmaceutical agency sued him and the local popular tribunal held that he should be evicted from one room. The former owner appealed and the Timişoara regional tribunal rejected his appeal. He further contested the order to execute the eviction, which was rejected as well. On October 5, 1957 he was evicted from one room, and was left with one room and the kitchen. Frustrated, the attorney of the pharmaceutical office argued: "the entire process was perfectly legal and was done observing the law. Comrade T.L. is not right. . . . We propose to tell him to stop complaining against the nationalization, because the building was legally expropriated."[15]

There were clear variations in legal consciousness within the administrative structure, depending on the type of legal ideology officials drew from. Officials at various levels experienced internal conflicts between the simultaneous pull of expediency and the habit of legality. Municipal people's councils were caught between extremes, sometimes attempting to circumvent legality entirely, while at other times treating law as an objective, external reality in

[14] Collection Sfatul Popular Banat, Secretariat, File No. 84/1960, page 39.

[15] Collection Sfatul Popular Banat, Secţia de Gospodărie Comunală, File No. 23/1953, pages 135–44. The pharmacy was nationalized on the basis of Decree No. 418/1953.

the positivist tradition. Both approaches, however, underscore their lack of comfort with law as a mere tool of the state. The local officials' engagement with the law, their legal consciousness, can be best described as "wary instrumentalism"—they used the law, yet they also kept it at arm's length and would have preferred to avoid it, as it was not always a wieldy tool and had its costs. They were caught between extreme visions of legality—from utter cynicism and expediency to visions of law as objective, majestic, autonomous, and ultimately constraining their actions.

There was more consistency at the regional level, more bureaucratic consciousness, more focus on managing people and things, and more acquiescence to changes through law. At the top, the Council of Ministers pushed toward "socialist legality" that prized a certain type of legal formalism, yet policy and ideology undermined this push. By contrast, various legal consultants and attorneys predictably operated with an understanding of law as relatively autonomous, even as they tried to adjust law and communism. These are different and somewhat contradictory visions of law within the power structure, which in turn shaped law's effectiveness and impact. To a certain extent, local officials fell back on deeply internalized ideas about law and law's role, which were also congruent with the project of socialist legality. The result was the blending of ideology, arbitrariness, bureaucratism, and formalism in local practices of urban housing nationalization, as well as distinct, hybrid types of legal consciousness throughout its power apparatus.

The Power of Private Property Rights in Petitioners' Discourses and Bureaucrats' Answers

The process of petitioning is one element that helped construct the petitioners' emerging socialist legal consciousness. This process kept open channels of communication between competing property ideologies and privileged legal over nonlegal discourses. Petitions contesting nationalization forced the regime to continue a discourse over the meaning of property rights over houses, something the regime would have preferred settled, and constructed it as a *legal* discourse, shrewdly attempting to colonize legal spaces officially belonging to the regime. The content of the petitions, in particular the types of discourses deployed by the petitioners, is an equally important indicator of how owners related to the changing property regimes and how they understood their position vis-à-vis a legal system that suddenly classified them as enemies. In this section, I explore the three key discourses commonly deployed by the petitioners: labor, rights and justice, and the implied social

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

contract. They reveal both the owners' intractability regarding their homes and their simultaneous slow adaptation to the new regime. The last part of this section discusses the bureaucrats' responses, and in particular the continuous hegemony of the pre-communist property rights structure.

Labor

Labor was the most commonly used argument marshaled by petitioners in support of their claims, often in conjunction with an understanding of the house as their home and the embodiment of family. These were efforts to contextualize and historicize the nationalization and to counter the regime's own discourse of houses as means of exploitation. For the petitioners, the houses taken were the pinnacle of years of hard labor, rather than investment properties detached from family and belonging. Labor represented a common ground between the petitioners and the regime, as both considered it a legitimate fountain of private property rights. In a 1960 petition, for example, a widow explained: "I started working in the tobacco factory when I was 11 years old, but after three years my weak body could not stand anymore the harmful atmosphere, and then I learned tailoring and I worked diligently until I got married, having put aside some money. My deceased husband was a waiter all his life, and from our honest work we built together our home in three years—from 1926 to 1929, which was three times bombarded during the war."[16]

This narrative of deep poverty and hard work, including child labor, underscores a basic Lockean understanding of labor as a legitimate basis for private property rights. Other petitions similarly stressed the former owners' labor as the basis of their property claims that satisfied both bourgeois and socialist narratives. Petitioners described themselves as mere employees, "simple people who worked to earn our existence," and emphasized their humble beginnings, such as the widow who asserted that "both my husband and my father are the first generation in our families to wear shoes," or the retired World War I disabled veteran who was born in a poor peasant family and built his house with a 30-year loan from the prefect's office.[17] Another petitioner quoted an article in the main Party newspaper, *Scânteia* (*The Spark*), where the Party had given assurances that houses obtained through labor would not be nationalized. He explained that he took out a loan from the Railroad Credit Company and that he paid it back over 10 years from

[16] Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, page 104.

[17] Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, pages 139, 2; File No. 74/1959, pages 4–5.

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

his monthly paycheck. "If this does not mean labor," he concluded, "then nothing in this world does."[18]

The commonality of labor as a fundamental value for both the petitioners and the new regime did not mean, however, that they understood it in the same way or that the petitioners had increased chances of success. The regime labor competed with other values, such as equality, while the petitioners struggled to differentiate capitalist property based on labor from socialist property based on labor.

Petitioners saw no contradiction between the agenda of building communism and their property rights over their homes. Teodor S., "a faithful and devoted PMR member" since 1945, former Party secretary, lecturer, and propaganda official, mentioned three times in the course of his petition that he was forced by housing regulations to rent out rooms: "in my own house I have to put up with tenants." Teodor S. also explained that he and his wife bought their house from savings, making payments over four years, "from my honest salary and my wife's." He wanted his granddaughters, both of whom were "utemiste" (members of the Romanian Union of Working Youth), to marry and live at home and help support him in his old age.[19] Although many petitioners were old, this cannot be defined as a generational issue, since often the heirs took up the petitions after the owners' death.

Ultimately, the instrumental and ideological convergence around the discourse and value of labor between the petitioners and the regime had two important consequences: it allowed the petitioners to engage with the regime on its own terms, and it reinforced their ideas of the legitimacy of private property rights based on labor. For the former owners, property rights encompassed ideas of labor and protection—the house as a buffer between one's family and the outside world (Underkuffler 2003), an idea prominent during the prior capitalist regime. Labor became the only acceptable basis of private property in communism, while property as protection was a main target for denaturalizing ideas of property through both takings and housing policies. This is a key area of disagreement between the communist regime and its subjects, and one that did not disappear throughout communism.

Rights and Justice

Most petitions against urban housing nationalization reveal a Lockean pre-communist "property and self" narrative: Whether

[18] Collection Sfatul Popular Banat, Secţia de Gospodărie Comunală, File No. 27/1962, inv 1630, page 68.

[19] Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, pages 280–89.

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

born poor or not, one worked hard and slowly acquired some wealth and a house or more, mostly intended for the extended family and some additional income. The family home represented not just the epitome of labor, but also the nexus of family life, basic insurance against old age, and other events (Chelcea 2004). Property rights consciousness for the former owners was more than just the basic "it is mine" because I worked for it, but also that "it is mine" in a specific way: It is legally mine, it is registered in the property registry, it is where the family lives, it represents security and protection from the outside world for the head of the household and his family. It is, in this sense, a modified version of Macpherson's "possessive individualism" (MacPherson 1962), as family is a crucial aspect of it.

The language itself is revealing: As late as 1965, former owners routinely referred to the nationalized houses as "my house" and asked explicitly for their "rights," as the widow Margareta W. did: "Because of these just reasons, please investigate this case and return my house to me . . . return my keys and give me all my rights" (December 8, 1955).[20] An 80-year-old blacksmith and his wife asked the Council of Ministers to investigate their case and order "restitution of possession" to them as "true legal owners" (November 12, 1956). A university professor reassigned to Bucharest asked to be allowed to sell his Timişoara house (proposed for nationalization), arguing that "our request is just, and we do not ask for anything else but the free exercise of a citizen's right, explicitly guaranteed by the RPR Constitution" (September 1957).[21] Adrian I., a construction worker, vividly recalled how in 1950 "the local authorities kicked us out of my own home . . . We know that the right of property for workers is guaranteed by the Romanian Popular Republic State [*sic*], yet from me they took my house off my back [mi-au luat casa din spate]."[22]

Many petitioners viewed law as one element in a multi-varied arsenal, and had their own ideas of law, justice, and rights, attempting to distinguish between "factual" and "legal" situation ["situaţia de fapt" and "situaţia de drept"]. They were equally likely to deploy legal ("it is my right," "I qualify as an exemption from nationalization"), moral (compassion), or economic (more efficient not to nationalize) arguments. Petitioners brought up both rights claims and justice claims—claims that they were wronged, that the taking

[20] Collection Sfatul Popular Banat, Inventar 1517, File No. 30/1955, page 28.

[21] Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, pages 85, 25–26.

[22] Collection Sfatul Popular Banat, Secţia de Gospodărie Comunală, File No. 1/1956, page 5.

was not right, not just.[23] Elisabeta F., a 67-year-old widow "without any kind of wealth" . . . "respectfully ask the Central Committee to please listen to my complaint regarding the injustice done to me by the local expropriation committee" (March 1, 1956). A doctor from a small town nearby Timişoara spoke this way of the nationalization of his house: "the injustice of which revolts me" (May 20, 1963).[24] Other petitioners talked about their "very righteous petition," "righteous request," "just reasons,"[25] "our request is just," "appeal . . . to your justice," "do us justice," "it is not right to take away my house,"[26] "it is our right to ask for the restitution at least of the house we live in," "just request," "screaming injustice" [nedreptatea strigătoare].[27]

The petitioners' understanding of what was just had natural law undertones and was entirely at odds with the local authorities' understanding, for whom justice meant class justice, specifically the protection of workers against those who exploited them. To the extent that the owner or anybody in his family was tainted by exploitation broadly defined (e.g., having had house servants), the nationalization as class justice was justified. Furthermore, as long as the legal formalities were observed, petitioners were told point blank that they were "not right."[28]

The majority of the petitioners were close to or past the retirement age, many were widows, and more than half continued to live in their houses post-nationalization. From their perspective, the nationalization was not a progressive measure toward building socialism and eliminating exploitation, but an illegal taking, a punishment, an injustice. A Party member proposed for nationalization implored in his petition: "Deeply distressed by this, I beg of you to do everything in your power to exempt me from this undeserved punishment."[29] The regime's hesitancy, the adoption of implementation instructions, and the occasional restitutions merely reinforced the former owners' beliefs in the righteousness of their petitioning efforts.

[23] Most petitioners used the word "nedreptate," which I translated as "injustice" or "wrong," depending on the context. In Romanian, it implies both moral and legal injustice, lack of fairness, wrongness.

[24] Collection Sfatul Popular Banat, Secţia de Gospodărie Comunală, File No. 1/1956, pages 3–4; File No. 27/1962, pages 69–70.

[25] Collection Sfatul Popular Banat, Inventar 1517, File No. 11/1955, page 10; File No. 30/1955, page 28.

[26] Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, pages 25–26, 28–30, 118, 287.

[27] Collection Sfatul Popular Banat, Juridic, File No. 22/1957, pages 11, 26.

[28] Collection Sfatul Popular Banat, Secţia de Gospodărie Comunală, File No. 23/1953, page 141.

[29] Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, page 280.

The Implied Social Contract

A separate thread in the petitions is the claim that nationalization was wrongly applied in the petitioners' specific cases because they were not the other, the class enemy, but part of the new regime, and therefore the regime violated an unspoken social contract. Like Nicolae S., some petitioners felt they were wronged because they had been on the side of the Party, who was now abandoning them and not fulfilling its side of the bargain. Nicolae argued that he was a member of the working class and that he had helped the Party while the Party functioned illegally during the interwar period. He might have thought it was natural and did not expect any rewards for his service, but he also made it clear that he was outraged by the nationalization, which he saw as a punishment. Mary Fulbrook makes a similar argument about the German Democratic Republic (GDR) and the unwritten social contract that rewarded active participants in the system, at the very least, with small privileges and opportunities (Fulbrook 2005: 238–39).

A doctor explained in the fourth petition he submitted that he had been wronged on multiple levels: he had built his house through honest labor, he had served the Communist Party's antifascist agenda during the war because he had helped the town's Jewish population, and both he and his family were active Party members who had passed the purging. The nationalization of his house was thus both wrong per se and from a socialist justice perspective. He was not the only one to feel he had been deeply wronged by the new regime, nor the only Party member whose pleas were ignored.

An engineer pointed out that he had been given awards for innovations improving the production process and thus did not deserve to lose his house. Teodor S., the one-time Party secretary mentioned earlier, brought up his son-in-law who had worked for the counterintelligence agency between 1947 and 1950, "in hard circumstances, when the reactionary forces were organized in gangs." He came as close as anybody to true bargaining: "myself and all my family worked with devotion and showed our attachment to the Party through actions and in difficult and even dangerous conditions. . . . I am convinced that my Party activity . . . weighs more than the insinuation that I am an exploiter because I rent two rooms at the price established by law. . ." (June 16, 1961).[30]

In a similar vein, other petitioners explicitly argued that it was wrong to nationalize their houses because they were part of the previously downtrodden who were now on the winning side of history: "Comrade president, we are not from one of those

[30] Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, pages 8, 266, 287.

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

aristocratic families that in the old days disrespected us and splashed us with their limousines as they passed us by, the same way they did to you . . . This is our origin and our past of hard work in the middle of the working class, always with sympathy towards the fight for freedom."[31]

While neither the doctor nor the Party secretary received the positive news they were hoping for, other Party members did. The wife of a colonel and mother of an enlisted 22 years old did not receive her house back, but did receive additional housing for her family. A former employer was exempt from nationalization because he had "distinguished himself in the collectivization of craftsmen," while a journalist and member of the Writers' Association decorated with the "Labor Award" [Ordinul Muncii] got to keep his very large six-room apartment.[32]

In summary, there are three primary discourses of resistance in the petitions: the labor discourse, the legal/rights discourse, and the implied social contract. Secondary discourses include compassion (appealing to the officials' sense of mercy) and more rarely economic arguments (the inefficiency of nationalizing a particular house). Labor and law are not separate threads, however, as labor justified the former owners' property rights and their beliefs in the righteousness of these rights. The very meaning of property rights for these petitioners did not fundamentally change, and their property rights consciousness remained firmly shaped by Lockean discourses embedded in the 1864 civil code.

Bureaucrats' Responses: Bourgeois Property Rights and Exploitation

How did the local bureaucrats respond to the petitioners and what kind of discourses underpinned their responses? To the former owners' discourses of labor, the local authorities replied "exploitation"; to their discourses of rights and justice, the authorities replied with a discourse of class justice, only superficially softened by procedural fairness (e.g., the points system discussed above). Despite this contrast and the rejection of most petitions, former owners and the regime's officials were not so far apart, as they continued to function within the pre-communist property universe and its hegemonic property structure.

Decree No. 92/1950 specifically intended "to deprive exploiters of an important means of exploitation," but the meaning of "housing exploiter" and "housing exploitation" was never clarified

[31] Collection Sfatul Popular Banat, Secretariat, File No. 74/1959, pages 4–5.

[32] Collection Sfatul Popular Banat, Secretariat, File No. 74/1959, pages 1–3; File No. 85/1960, pages 11–12; File No. 127/1960, pages 70–73.

for local authorities. The implementation of nationalization shows that the construction of "exploitation" in this context was a haphazard process. It was not limited to the obvious criterion of obtaining profit from rent, nor was it strictly about eliminating exploitation in the housing market. The criteria for defining "exploitation" in the housing field were overbroad and vague. There were four such criteria related to the house itself (e.g., size), the owner, the level of state investment, and need (1953 implementation instructions). These criteria were applied both in the examination of petitions and for generating new nationalization proposals. Usually, fulfilling one of these four criteria was sufficient for nationalization or rejection of restitution claims. Three of the criteria in particular—the house, the owner, and need—were interpreted very broadly, for example, the owner's socioeconomic status was a stand-in for exploitation. Furthermore, a presumption of "nationalizability" existed for those who already had another building seized. The former owners' labor discourses were therefore dwarfed by the officials' exploitation discourses.

The 1948 constitution and various nationalization and expropriation acts of the late 1940s and early 1950s threw a pall over property rights and hinted at an ever darker property future. Yet they need to be understood within a broader context: first, they were not unprecedented as they followed a long period of wartime takings; second, the underlining property law structure, primarily the civil code of 1864, remained unchanged; third, the ideological guidance did not touch upon this structure, for example, in terms of titling (a key element in Transylvanian real estate) or property conflicts. Naturally, therefore, local authorities continued to employ legal categories that originated in pre-communist property law.

Discussing a repeat petition against nationalization, for example, members of the executive committee of the municipal council showed disdain for the petitioners who "were not even CF owners" (May 20, 1961).[33] The CF (Cartea Funciară—Land Book) is a public registry that both records and represents proof of title for land and houses. The CF title, in other words, is the key formal rational element that anchored and defined real estate property in the pre-communist system in Transylvania and Banat, one that incoming communist bureaucrats continued to operate in. Its hegemony was undisputed throughout the archival material I examined, revealing the relative autonomy of socialist law even in the property field, and the extent to which petitioners and bureaucrats alike drew from similar pre-communist property rights ideologies.

[33] Collection Sfatul Popular Banat, Secretariat, File No. 102/1960, page 1.

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

Restitution efforts also hinged on property titles, for example, in a 1956 case where restitution claims were hampered by the fact that "the beneficiary had died and the legal heirs could not prove their property right, even the deceased had not had a CF right, just a private contract" (May 19, 1956).[34] In one successful restitution case, the petitioner got back the house "in her quality as both legal heir of the deceased and former owner of the house with the right of lifetime usufruct and widowhood" as recorded in the CF—as if the nationalization was just a brief spell in this otherwise unquestioned "natural" flow of ownership through time.

As late as 1966, when considering selling off to the tenants houses that were in bad shape, the head of the local householding section of the regional council, an engineer, had no doubt that "once the tenant becomes the owner of the house, he/she will show an interest in repairing and maintaining it" (June 2, 1966).[35] Official efforts to ensconce concepts of socialist property and to internalize the "property of all people" paled by comparison with this kind of deep-seated certainty about what private ownership meant.

Perhaps the most striking indication of the continued hegemony of pre-communist property rights on the path to communism is the odd juxtaposition of calling the petitioners "owners" or "former owners," sometimes years after the nationalization, while also labeling the house "state property." Commonly, nationalized companies, pharmacies, stores, etc. were labeled in the files under their former names, which were often the names of the former owners. Ease of identification was one reason, yet names carry their own power. It is not uncommon throughout the files to see a house simultaneously classified as private and state property, for example: "The house is private property, CF number . . . The owners of the house are: based on Decree-Law no. 302/1948 it became state property, used by the Ministry of Health. The CF notes the appeal filed by the original owner, Dr Liviu G., against the 1956 decision" [to nationalize].[36] Even official instructions regarding the composition of a petition file centered on title and "how is title proved" ["cu ce elemente se dovedeşte proprietatea"], as if this was a strange double-ownership situation, both with their own validity.[37]

Overall, the officials operated within a "double property rights consciousness": on the one hand, ideological commitment to the communist agenda, and on the other hand, continued deep

[34] Collection Sfatul Popular Banat, Secţia de Gospodărie Comunală, File No. 1/1956 [missing page number].

[35] Collection Sfatul Popular Banat, Inventar 1630, File No. 1/1966, pages 51–52.

[36] Collection Sfatul Popular Banat, Secretariat, File No. 84/1960, page 31.

[37] Collection Sfatul Popular Banat, Secretariat, File No. 43/1960, page 27.

internalization of bourgeois property rights and the overall pre-communist property law structure, which had been challenged but not fundamentally destabilized by the takings. The taken for grantedness of the bourgeois property structure, of the centrality of ownership and title, was not questioned or doubted—they defined the boundaries of the universe within which nationalization, other takings, and restitution happened, and consequently undermined the construction of a new property rights consciousness inside the communist power structure.

Conclusion

The starting question for this article was what happens to legal and rights consciousness when rights are taken away during periods of rapid, dramatic transition, in this case from capitalism to communism. This study of petitions contesting urban housing nationalization and the regime's responses found that dispossessed owners resisted the taking despite their marginalized position. They actively and strategically mobilized the law drawing from both pre-communist and communist legal and rights ideologies. They understood law as a resource, arena of battle, and occasionally objective arbiter, and property rights as rooted in labor, the civil code, natural rights, and as the price for obedience. By contrast, communist bureaucrats understood law from two key contradictory perspectives: either as an instrument of the state or from a relative autonomy position (legal positivism lite). Their understanding of property rights was contingent on their interpretation of labor and exploitation, and on privileging class justice. Yet both petitioners and bureaucrats continued to operate in the property field defined by the Romanian civil code of 1864, itself a monument to capitalist property values. The result was a culture of property that failed to knock private property rights off their bourgeois pedestal.

These findings suggest that both law and property were sites of contestation characterized by hybridity and plurality from the very beginning of communism in the region, which challenges the generally accepted alignment of law, policies, and values between the communist regimes and their subjects in the region (see also Markovits 2010; Verdery 2003). The various ideologies deployed by the petitioners and bureaucrats contributed to the creation of differentiated types of legal consciousness that were only partially a by-product of communist power and were infused by multiple conceptions of legality and justice.

What are the broader implications of these findings for legal consciousness, transitions, and the relationship of law to power and

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press

resistance? One implication is that law is an instrument of power as well as a site of resistance even under deeply repressive conditions, as was the case in 1950s Romania, and that the symbolic power of law and rights is always somewhat independent of political power. Resistance is rarely "pure" or stable and is often contradictory, embodying fragmented identities and interests (Mittelman and Chin 2005). Under communist and other authoritarian regimes, it is deeply ambivalent and accommodating to power, and there is variation within both powerful and powerless groups. It is not only the exercise of power that adds up in time, but also that of resistance, especially if legitimacy wavers and core demands are not met. While it may bubble under the surface, resistance based on divergent ideologies rarely entirely disappears and is clearly illustrated in studies of legal consciousness, such as the present case study. These studies also clarify the importance of micro-resistance (Scott 1990), of mass oppositional states of being underpinned by diverse, if submerged ideologies that can ultimately lead to counter-hegemony.

Property rights consciousness was so deeply embedded in pre-communist conceptions of self, family, labor, and bourgeois civil law that there were significant lingering effects for both petitioners and bureaucrats, who continued to embrace older meanings of property and property rights. Their loss of property rights thus only partially engendered new conceptions of the self and of their communities (Munzer et al. 2001; Verdery 2003). This helps account for the "visceral power" of the concept of property and its unproblematic revival post-1989, and draws attention to continuities in legal consciousness and their potential for rights mobilization.

Law during periods of transition, as Ruti Teitel (2000) pointed out, is a site of both transformation and continuity—institutional and normative continuities, as well as continuities in legal consciousness. Former owners' knowledge and sense of rights were drawn from a prior legal regime, yet they deployed them in entirely new circumstances. This can be understood as a subversive type of legal consciousness that prompted the newly marginalized to mobilize and thus recreate lost rights. Crucially, marginalization did not displace prior orientations to the law, as both former owners and regime officials continued to draw from "reserves" of legal consciousness rooted in the prior regime and moreover distinguished between legal and regime legitimacy. Such continuities in legal consciousness even under drastic regime changes and variations within types of legal consciousness pose significant challenges to the construction of new hegemonic legalities, and ultimately to the consolidation of radically different power regimes.

References

Abrego, Leisy J. (2011) "Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants," 45 *Law & Society Rev.* 337–70.

Ajani, Gianmaria (2002) "Formalism and Anti-Formalism Under Socialist Law: The Case of General Clauses Within the Codification of Civil Law," 2 *Global Jurist Advances*.

Auslander, Maximilian (1951) "Lucrarea Tovarăşului Stalin Cu Privire La Marxism În Lingvistică Şi Unele Probleme De Teorie Şi Practică Judiciară [Comrade Stalin's Paper Regarding Marxism and Linguistics and Some Issues of Legal Theory and Practice]," 4 *Justitia Nouă* 386–389.

Boittin, Margaret L. (2013) "New Perspectives from the Oldest Profession: Abuse and the Legal Consciousness of Sex Workers in China," 47 *Law and Society Rev.* 245–78.

Bratus, S. N. (1949) "Unele Probleme Ale Proiectului Codului Civil Al URSS [Some Problems Concerning the Draft Civil Code of the USSR]," 1–2 *Justitia Nouă* 113–43.

Bumiller, Kristen (1988) *The Civil Rights Society: The Social Construction of Victims*. Baltimore, MD: The Johns Hopkins Univ. Press.

Chelcea, Liviu (2004) State, Kinship and Urban Transformations During and After Housing Nationalization. PhD dissertation, Department of Anthropology, University of Michigan.

Chkhikvadze, V. M. (1969) *The Soviet State and Law*. Moscow: Progress Publishers.

Comaroff, John, & Jean L. Comaroff (1991) *Of Revelation and Revolution: Christianity, Colonialism, and Consciousness in South Africa*. Chicago, IL: Univ. of Chicago Press.

Comisia Prezidentială pentru Analiza Dictaturii Comuniste din România [The Presidential Commission for the Analysis of the Communist Dictatorship in Romania] (2006) Raport Final [Final Report], Bucharest, Romania.

Cover, Robert (1983) "Nomos and Narrative," 97 *Harvard Law Rev.* 4–68.

Cowan, Dave (2004) "Legal Consciousness: Some Observations," 67 *Modern Law Rev.* 928–58.

Dawidson, Karin E. K. (2004) "Conflicts of Interest in the Restitution and Privatization of Housing Since the Fall of Socialism: The Case of Central Timişoara City—a Problem of Democracy?" 56 *Europe-Asia Studies* 119–41.

Engel, David (1984) "The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community," 18 *Law & Society Rev.* 551–82.

——— (1998) "How does Law Matter in the Constitution of Legal Consciousness?" in Garth, B., & A. Sarat, eds., *How Does Law Matter?* Evanston, IL: Northwestern Univ. Press.

Engel, David, & Frank Munger (2003) *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities*. Chicago, IL: Univ. of Chicago Press.

Ewick, Patricia, & Susan Silbey (1998) *The Commonplace of Law*. Chicago, IL: Univ. of Chicago Press.

Feller, S. (1955) "Încă Odată Despre Folosirea Literaturii Juridice Burgheze În Munca Noastră Practică De Înfăptuire A Legalităţii Populare [Once Again About Using Bourgeois Legal Doctrine in Our Practical Work of Popular Legality]," 6 *Legalitatea Populară*.

Felstiner, William L. F., Richard L. Abel, & Austin Sarat (1980–1981) "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . . ," 15 *Law & Society Rev.* 631–54.

Fleury-Steiner, Benjamin (2003) "Before or Against the Law? Citizens' Legal Beliefs and Experiences as Death Penalty Jurors," 27 *Studies in Law, Politics and Society* 115–37.

Fulbrook, Mary (2005) *The People's State: East German Society from Hitler to Honecker*. New Haven, CT: Yale Univ. Press.

Lavrov, Gheorghe, & A. Tătaru (1959) "Despre Partinitatea Judecătorilor Socialişti În Legătură Cu Principiul Independentei Judecătorului Şi Supunerii Lui Numai Legii [On the Partiality of Socialist Judges and the Principle of Judicial Independence]," 4 *Legalitatea Populară*.

Hazard, John (1970) *Communists and Their Law*. Chicago, IL: Univ. of Chicago Press.

Hilbink, Lisa (2007) *Judges Beyond Politics in Democracy and Dictatorship: Lessons from Chile*. New York: Cambridge Univ. Press.

Hull, Kathleen (2003) "The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage," 28 *Law & Social Inquiry* 629–57.

Ionescu-Gură, Nicoleta (2005) *Stalinizarea României. Republica Populară Română 1948–1950: Transformări Institutionale [The Stalinization of Romania. The Popular Republic of Romania 1948–1950: Institutional Transformations]*. Bucharest: Editura BIC ALL.

Kirkland, Anna R. (2008) "Think of the Hippopotamus: Rights Consciousness in the Fat Acceptance Movement," 42 *Law & Society Rev.* 397–432.

Kostiner, Idit (2003) "Evaluating Legality: Toward a Cultural Approach to the Study of Law and Social Change," 37 *Law & Society Rev.* 323–68.

Lovell, G. I. (2006) "Justice Excused: The Deployment of Law in Everyday Political Encounters," 40 *Law & Society Rev.* 283–325.

Lukes, Steven (2005) *Power: A Radical View*, 2nd ed. New York: Palgrave MacMillan.

MacPherson, C. B. (1962) *The Political Theory of Possessive Individualism: Hobbes to Locke*. Oxford: Clarendon.

Markovits, Inga (2010) *Justice in Luritz*. Princeton, NJ: Princeton Univ. Press.

Markovits, Inga S. (2007) "The Death of Socialist Law?" 3 *The Annual Rev. of Law and Social Science* 233–53.

Marshall, Anna-Maria (2003) "Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment," 28 *Law & Social Inquiry* 659–90.

——— (2005) "Idle Rights: Employees' Rights Consciousness and the Construction of Sexual Harassment Policies," 39 *Law & Society Rev.* 83–124.

McCann, Michael (1994) *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago, IL: Univ. of Chicago Press.

Merry, Sally E. (1990) *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans*. Chicago, IL: Univ. of Chicago Press.

Mioc, Eugen (2007) *Comunismul În Banat [Communism in Banat]*. Timişoara: Editura Excelsior Art.

Mittelman, James, & Christine Chin (2005) "Conceptualizing Resistance to Globalization," in Amoore, Louise, ed., *The Global Resistance Reader*. New York: Routledge.

Munteanu, Ioan, & Rodica Munteanu (2002) *Timişoara. Monografie [Timişoara. A Monography]*. Timişoara: Mirton.

Munzer, Stephen R, et al., ed. (2001) *New Essays in the Legal and Political Theory of Property*. Cambridge: Cambridge Univ. Press.

Moustafa, Tamir (2007) *The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt*. Cambridge: Cambridge Univ. Press.

Naschitz, Anita (1964) *Conştiinta Juridică Socialistă [Socialist Legal Consciousness]*. Bucharest: Editura Ştiinţifică.

Nedelschi, Gheorghe (1949) "Împotriva Cosmopolitismului În Ştiinta Juridică [Against Cosmopolitism in Legal Science]," 7–8 *Justitia Nouă* 725–738.

Nielsen, Laura Beth (2004) *License to Harass: Law, Hierarchy, and Offensive Public Speech*. Princeton, NJ: Princeton Univ. Press.

Scott, James C. (1990) *Domination and the Arts of Resistance: Hidden Transcripts*. New Haven, CT: Yale Univ. Press.

——— (1998) *Seeing Like a State. How Certain Schemes to Improve the Human Condition have Failed*. New Haven, CT: Yale Univ. Press.

Serban Rosen, Mihaela (2010) "Surviving Property: Resistance Against Urban Housing Nationalization During the Transition to Communism (Romania, 1950–1965)," 51

Special Issue: Interdisciplinary Legal Studies: The Next Generation Studies in Law, Politics, and Society 29–65.
Silbey, Susan (2005) "After Legal Consciousness," 1 *Annual Rev. of Law and Social Science* 323–68.
Solomon, Peter H. (2007) "Courts and Judges in Authoritarian Regimes," 60 *World Politics* 122–45.
Stan, Lavinia (2006) "The Roof over Our Heads: Property Restitution in Romania," 22 *J. of Communist Studies and Transition Politics* 180–205.
Teitel, Ruti G. (2000) *Transitional Justice*. New York: Oxford Univ. Press.
Toharia, José J. (1975) "Judicial Independence in an Authoritarian Regime: The Case of Contemporary Spain," 9 *Law & Society Rev.* 475–96.
Tyler, Tom (1990) *Why do People Obey the Law*. New Haven, CT: Yale Univ. Press.
Tyler, Tom, & Y. J. Huo (2002) *Trust in the Law*. New York: Russell Sage Found.
Underkuffler, Laura (2003) *The Idea of Property: Its Meaning and Power*. Oxford: Oxford Univ. Press.
Verdery, Katherine (2003) *The Vanishing Hectare. Property and Value in Postsocialist Transylvania*. Ithaca, NY: Cornell Univ. Press.

Mihaela Serban *is Assistant Professor of Law and Society at Ramapo College of New Jersey. Her research interests include law and society in Eastern Europe and human rights.*

https://doi.org/10.1111/lasr.12103 Published online by Cambridge University Press