

**CHARY OPPORTUNISTS: MONEY, VALUES, AND CHANGE IN POSTSOCIALIST  
ROMANIA**

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This dissertation examines the connections between shifting notions of money and values in contemporary Romania as a way to analyze the unfolding economic, political, and social changes during postsocialism. It is based on the ethnographic analysis of disputes following the collapse of several mutual funds during the late 1990s. Such ongoing disputes have taken the form of public protests, petitions to state authorities, media interventions, suggestions to improve regulations regarding the capital market, and, most conspicuously, legal actions against those responsible for the bankruptcies and for compensation to the investors whose money was lost. I situate such contentious interactions within histories of institutional importation after the end of socialism, such as the emerging capital market at the beginning of the 1990s, the electronic market created soon after that with support from USAID, the mutual fund sector growing at the end of the 1990s, and the regulatory reform of the capital market with Romania's accession into the European Union in 2007. My informants were living not only a postsocialist transition to capitalism but also a neoliberal transformation in the global architecture of financial capitalism, and a reorganization of the state with its inclusion into the EU. I found that an ethos of chary opportunism was emerging both as a response to and as a catalyst of the economic transformations experienced by my interlocutors. I also argue that, as the financial instruments materializing indexical and performative forms of money engendered volatile registers of value common for the capital market, my informants faced growing economic uncertainties through a

wary form of opportunistic conduct, the appeal to courts for solving key disputes about money and its value, and constant demands to the state to mitigate risks and the effects of the market. Their outlook makes it easier to understand that change is not determined by pre-existing configurations of values, but is often the result of attempts to apply previously tested routines to new situations. Change happens while many are still looking backwards, and the past enters the present not as continuity but as a template replicated instrumentally in situations of radical uncertainty.

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## LIST OF ABBREVIATIONS

AAF	<i>Asociația Administratorilor de Fonduri</i> [The Romanian Association of Asset Managers]
ASE	<i>Academia de Studii Economice</i> [Bucharest Academy of Economic Studies]
AVAS	<i>Agenția pentru Valorificarea Activelor Statului</i> [The Authority for State Assets Recovery]
BNR	<i>Banca Națională a României</i> [The National Bank of Romania]
CEC	<i>Casa de Economii și Consemnațiuni</i> [CEC Bank, the Romanian state savings bank]
CESR	The Committee of European Securities Regulators
CNVM	<i>Comisia Națională a Valorilor Mobiliare</i> [The Romanian National Securities Commission]
EFAMA	The European Fund and Asset Management Association
ESMA	The European Securities and Markets Authority
FNI	<i>Fondul Național de Investiții</i> [The National Investment Fund]
FNA	<i>Fondul Național de Acumulare</i> [The National Accumulation Fund]
FOA	<i>Fondul Oamenilor de Afaceri</i> [The Businessmen's Fund]
FMOA	<i>Fondul Mutual al Oamenilor de Afaceri</i> [The Businessmen's Mutual Fund]

GELSOR	<i>Gelsor Securities</i>
IMS	<i>Ioana Maria Vlas</i>
SAFI	<i>SAFI Invest</i>
SOV	<i>Sorin Ovidiu Vîntu</i>
SOV Invest	<i>Sorin Ovidiu Vîntu (SOV) Invest</i>
UCITS	Undertakings for Collective Investment in Transferable Securities

## **DEDICATION**

To Alice and Matei

## PREFACE

Many people and organizations have contributed to this dissertation to extents that well exceeded my expectations. Fellowships from the National Science Foundation, the Council of European Studies, the Department of Anthropology, the Center for Russian and East European Studies, and the University Center for International Studies at the University of Pittsburgh, CERGE-EI in Prague and the Global Development Network, and the Romanian National University Research Council have funded and offered advice on various parts of the research that informs my dissertation. Many thanks are due for their support; the shortcomings of this project are entirely mine.

Civic associations representing Romanian mutual fund investors have been the main locale of my research. Members of the National Association for the Protection of Investors (*ANPI*) and of the National Association of Investors in *FNI* (*ANI-FNI*) proved tolerant hosts and excellent discussion partners during many of their meetings in which I took part as observer or interviewer. Investors turned civic activists such as Vasile Constantin, Daniel Florea, dl. Georgescu, and Sorin Volcescu were great teachers, making me understand the mutual funds as lively collectives of people rather than just the institutional abstractions described by textbooks in Finance. Among my Romanian informants, Mihai Nicolaevici and Andrei Jurcă turned from inexhaustible discussion partners into friends with whom very personal conversations were

habitual. Present in the dissertation in so many places and so varied forms, I see them as my partners in research and writing rather than as my informants. The most insightful comments in the dissertation belong to them.

Romanian politicians or government officials such as Ionuț Popescu, Varujan Pambuccian, Ionuț Popescu, and Beatrice Ramașcan showed great openness and support for my project, blatantly contradicting the stereotypes of the disinterested and opaque people exercising public office. Similarly, Carlo Comporti, Victoria Powell, and Richard Stobo at the Committee of European Securities Regulators in Paris were great hosts and open discussion partners making me understand the goals and means of the further integration of European capital markets.

My colleagues at the Bucharest Academy of Economic Studies and at the University of Bucharest, where I taught seminars and courses and participated in various other research projects during my fieldwork, have created a highly stimulating environment where ideas about money, values, and change could be discussed critically. Freedom House Romania and Cristina Guseth have opened numerous institutional doors for me and have generously hosted me and my project for a good part of my research. My one year residence at the New Europe College (NEC) in Bucharest at the time I started writing my dissertation gave me the chance to meet numerous brilliant Romanian graduate students pursuing research on the most fascinating topics. Anca Oroveanu, Andrei Pleșu, and the NEC staff managed to entertain the illusion that research is a vocation and that one can live for it and by it even in Romania, at a time when the fate of the social sciences and the humanities does not look great.

Members of my dissertation committee at the University of Pittsburgh have endowed me with a gift that keeps on giving. Robert Hayden, my advisor, helped me become a better person and a more professional student of anthropology. He taught me that a life in the service of

scientific truth, academic integrity, and ideological neutrality is the best contribution we can bring to society. Nicole Constable helped me understand that writing is at least as important as fieldwork; issues and choices that are more conspicuous in writing should actually shape one's research design and interaction with informants. Irina Livezeanu combined felicitously constructive forms of criticism addressed to my work and a very understanding approach to my personal problems; she made me understand a lot about contemporary Romania by looking at its convoluted past. Gabi Lukacs has turned from a critical reader of my projects into an engaging discussion partner about the shifting regimes of value-production characterizing neoliberalism. Andrew Strathern has been involved as much as anybody else in most aspects of the dissertation; thanks are due to him although he was not able to participate in the very last phases of the dissertation.

Unlikely, brief, but very rewarding encounters with Jean and John Comaroff, Susan Gal, Jane Guyer, and Keith Hart have come to mean a lot for my dissertation. Such encounters have contributed greatly to my current understanding of money and neoliberal financial practices as cultural phenomena. Courses by Alberta Sbragia and Shirley Cassing on the politics and economics of the European Union helped me frame my research and later understand the implications of Romania's EU integration on the processes I studied. A seminar organized by Arpad von Klimo gave me the chance to present parts of my dissertation and receive generous comments from Andrew Behrendt, Veronica Szabo, Adelina Ștefan, and Mădălina Vereș. Dan Hammer and Megan Hamm commented on my project in a more informal dissertation writing group at the University of Pittsburgh.

In Romania, Ionuț Biliuță, Valentin Săndulescu, Eugen Stancu, Anca Șincan, and Cristian Vasile saw and heard about parts of my dissertation project and provided unanticipated

comments. Emanuela Grama and Oana Mateescu generously helped me when drafting a proposal for my dissertation research. Puiu Lățea has greatly helped me with various stages of the dissertation: from the identification of the topic and the writing of the proposal, to providing comments on the drafts. Always more than a colleague and friend, he personified well a sense of intense and enduring solidarity. My debts to him have only grown bigger in time.

Finishing this project would not have been possible without the resilient patience and enduring support of Alice and Matei. This dissertation is dedicated to them.

## **1.0 INTRODUCTION: MONEY, VALUES, AND CHANGE IN POSTSOCIALIST ROMANIA**

It was the counterfeit coin," he replied tranquilly, as if to justify his prodigality.

But into my miserable brain, always missing the obvious [...], entered suddenly the idea that such conduct on the part of my friend was only excusable on the grounds of a desire to create an event in the life of that poor devil, perhaps even to learn the diverse consequences, whether deadly or otherwise, that a counterfeit coin might produce in the hands of a beggar. [...] the counterfeit coin might also just as well serve as the seed for several days' wealth, in the hands of a poor, small-scale speculator.

But he brusquely broke my reverie by repeating my very words: "Yes, you are right: there is no pleasure sweeter than surprising a man by giving him more than he had hoped for.

(Charles Beaudelaire, *Counterfeit Money*, 1869)

### **1.1 DEPARTURES AND RETURNS**

Late in October 2001, and a fresh graduate of finance from the Bucharest Academy of Economic Studies [ASE], I was given the chance to join the National Securities Commission [CNVM]. I had had an interview with the Commission in September, soon after my college graduation exams, but I had not heard from them afterwards. The commission interviewing us, candidates mostly students of the Academy of Economic Studies, included the president of the CNVM, the vice-president, and several people from the human resources department. They were trying to rejuvenate the workforce after the scandals that had shattered the institution, and were happy that

so many of us had applied for the positions. I did not hear back from them for several weeks but I was then called by one of my former university colleagues, inviting me to come to work at 8.00 A.M. the next day. Although I found it awkward to be announced of the result by another candidate rather than the employing institution, that could not match my experiences as an employee of *CNVM* for the following four months.

I went enthusiastically to the Commission the next day, eager to start my first full-time job just out of college, and to work in the field of securities. The American SEC was a constant reference for my university professors and for the editors of Romanian financial newspapers. The images of competence and of an intransigent attitude towards infringements of rules had to be emulated by the Romanian regulator, I imagined, especially as the local government was taking pride in the fact that *CNVM* had been created with advice from American specialists. Furthermore, as the recently appointed president of *CNVM* was a professor with whom I had taken a course on capital markets in college, I thought I had no reason for reticence and that the things I had learned as an undergraduate would serve me well on the new job. But what I witnessed while working for *CNVM* was unlike anything I had learned as a student of finance or a reader of financial news.

A former class mate at *ASE* and I had been assigned to the Department of Control and Investigations of the Commission. As we were to find out, those working in that department were making periodic checks and full scale investigations of the compliance of market actors with the rules adopted by *CNVM*. The department investigated anything from the theft of securities from investor accounts and fake transaction orders, to some of the most sophisticated frauds organized by financial elites. But the learning process started rather late: for an entire week we were not asked or instructed to do anything. We were expected, as we were later told,

to pick up the skills of the trade, to volunteer to assist more senior staff, and to learn on our own as much as possible.

What could have served as an unorthodox training method looks, in retrospect, as an inadequate and involuntary strategy in the absence of financial, technical, and professional resources. The securities commission occupied a few floors of a formerly modernist building that had been erected in interwar Romania and that we shared with the Institute of Mathematics of the Romanian Academy and the Center for Management and Informatics<sup>1</sup> of the Minister of Industry. Now decrepit, inappropriate for the technologies supporting contemporary information flows, and too small for the numerous staff of *CNVM*, the building was a serious constraint on the activity of my colleagues. “My” department, made up of about fifteen people, occupied a single 20 by 30 ft. room. The directors in the department and the personnel crowded around six office desks and three computers, which formed the IT “network” of the department, where laws and regulations, reports on past investigations, templates for acts of control, music and dubious movies (present in any state office) were stored electronically. Working, chatting, drinking morning coffee, eating smelly lunches, or calling one’s family from the office phone, everything took place in that room. Even the occasional discussions with plaintiffs or hearings of people under investigation were done in there. For hearings and discussions, one of the desks near the door was cleared of files and folders and turned into an ad-hoc conference table. The only hazard for such meetings was the wooden hall-stand that constantly threatened to collapse over the table under the weight of all the coats and umbrellas. Doors and windows had to stay closed at all times as the currents of cold air were seen as threatening headaches and back pains by more

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<sup>1</sup> The institute had played a key role in the privatization process of the mid-1990s, elaborating the list of companies to be privatized and subsequently creating the initial registries of shareholders and shares once the public subscription process was over.

senior employees. *Curentul* [the ailment induced by cold air or sitting/sleeping in between two open windows/doors] is a local set of symptoms in Romanian and the Republic of Moldova, closely related to the “drafts” feared by the neighboring south Slavs. Beyond a lay vocabulary for the description of the causes of colds, viral infections, and other minor ailments, *curentul* articulates the fears induced by change, the contrasting experiences of being at home and away from home, the hazards of travelling, and, more generally, people’s relation to the environment. The physical isolation was also supposed to be conducive of the activity of the department, which was wary to keep an appearance of prudence and discretion.

As a result, the air was literally un-breathable much of the time and all of us had to take regular trips to the toilet room at the end of the hallway, where the wide-open window was everyone’s salvation from lethargy. Few things could fit into the small office room and some of the most important ones were left outside. Thus, while the office door was usually locked at night, the files and folders with official documents from previous investigations or transcripts of hearings were kept in unlocked desks and file-cabinets at all times. Other documents were kept in barely locked folder cabinets in a semi-public hallway next to the office. Record keeping arrangement would not have been significant if they had not also been a constant source of stress, mutual accusations, and even occasional panic. Documents or entire folders could be negligently stored or maliciously hidden away, and were often hard to locate when needed. This disorderly storage of official documents added to accusations of wrongdoing and complicity with people who my department was supposed to investigate, made both by the commissioners and among colleagues, and fostered an atmosphere characterized by weariness and distrust in the office.

Tensions and accusations such as the above led to archival practices and audit procedures that seemed to blend a modernist bureaucratic logic with informal procedures of verification, giving them a quasi-ritual aspect. Such rituals of verification are well illustrated by an episode towards the end of 2001. Having gone through a meeting with the Commissioners (the highest ranking officials of *CNVM* directly appointed by Parliament) in which they had to explain rumors about the disappearance of documents and had to face renewed accusations of wrongdoing, the directors decided to do an inventory of the existing documents and to improve the storage procedures. They gave the unusual exercise the appearance of a banal audit procedure performed at the end of the year. Concretely, we had to go through each folder, check its index against the existing documents, try to recover or replace the missing elements, and later rearrange everything in good order, keeping the most sensitive files in the safest places, and re-indexing the location of files in a custom-made computer database. Not only were we supposed to collaborate on each task and do everything in plain view (a procedure probably used by many bureaucracies), but, in the end, each of us had to walk by the folder-cabinets, check the existence of each folder in its designated location, and finally sign a report of the process confirming the existence of the files. While all of this made sense given the circumstances, it was also rather awkward as many of the folders were thereafter kept unlocked and could easily be removed and lost during use, or even stolen.

As I later came to understand, the ritualistic procedure was both a search for the proof of existence of elusive documents and a prospective securing of the position of those who worked with the documents, against recurring accusations of wrongdoing. Beyond their pragmatic use, such verification procedures signified a precarious modernization process. Visibility evidenced a premise of trust and belief, rather than the procedural abstractions of modern bureaucracy.

Documents were supposed to be “there” because they were seen, rather than because they have been indexed and stored properly. Bureaucratic contents were materialized in order to be archived and this was an inherently slippery process as its products were subject to deviation, loss, theft, and continuous re-signification. In a context of semiotic ambiguity, the forms of collective witnessing performed in ritualistic acts of verification insured the local mediation of even the most abstract procedures that were implemented by the department of control.

To my surprise, directors in the department went through weekly meetings with the commissioners in which they were accused of wrongdoing and threatened with being reported to the police. The directors usually transferred such accusations onto us, something I found both troubling and amusing. How could regular employees, and even more so two fresh college graduates yet to be given any assignment, be complicit with market actors and had plotted to cover up financial fraud? The more senior colleagues and financial journalists whom I interviewed years later believed that such cascading accusations were both meant to cover the lack of effectiveness of the new leadership of *CNVM* and to parasitize protests by the lay public over the poor performance of the controlling department during the crisis affecting the mutual fund sector that had occurred just one year before.

Many of my colleagues had lived through the period of public protests and isolated episodes of violence over the summer of 2000 that were triggered by the collapse of the National Investment Fund [*FNI*] and National Accumulation Fund [*FNA*]. Initiated and discretely run by Sorin Ovidiu Vîntu, one of the most controversial figures in postsocialist Romania, the two mutual funds were siphoned of cash and valuable assets, collapsing just a few months before the general elections of 2000. Investors accused the securities commission of having failed to perform its supervisory function. Their public protests had moved from the Government to

*CNVM* headquarters, and several of *CNVM* staff had been verbally and physically abused. Such memories were still fresh for my colleagues and made more acute the sentiment of frustration triggered by the undeserving accusations against lower level employees by *CNVM* commissioners and directors. Employees of the Commission also shared a reverential attitude towards the image projected by Vîntu – that of a brilliant financier, a self-made man, a rough player in economics and politics, and a character well-connected to the secret services that have formerly controlled Romania. This attitude not only extended to almost all the best known financiers in postsocialist Romania, but was continuously reinforced by the undeserved accusations and harsh criticism from those who were supposed to encourage self-confidence and provide the political leverage in support of the investigative actions of experts.

Growing increasingly frustrated with the tense atmosphere and the lack of learning opportunities, I decided to quit my job with *CNVM* after four months of employment. Several years later, I returned to Bucharest to conduct my dissertation research in anthropology. A series of unanticipated events, a few more or less obvious choices, and what I perceived as favorable circumstances, ultimately led me to study the collapse of *FNI* and *FNA*, the two mutual funds, and the unending disputes afterwards, as ways to understand the reconfiguration of money and values in postsocialist Romania. Unavoidable for anyone doing research about the capital market, I ended up conducting interviews with some of my former colleagues at the Commission. I also conducted research and taught seminars in the Department of Finance of *ASE*, the university from which I had graduated.

*CNVM* had by then moved into a recently built headquarters in an expensive commercial area of the city. Although everybody now had sufficient office room in the new glass building, people confessed to feeling a bit strange with all these facilities. The younger professionals were

affirming an ethics of transparency and commitment to public service, as well as unreserved endorsement of the modernity engendered by the European Union. They had become used to travelling abroad to consult with their peers ahead of Romania's integration into the EU, but the public image of *CNVM* was still negative. To blame were the scandals generated by financial frauds and inside trading episodes with which some of the commissioners were associated by the media, as well as an image of ineffectiveness when it came to supervising the market. Also, *CNVM* did not seem to know how to manage its public positioning as it was accused of being either deaf to demands by market actors or, on the contrary, too close to financial intermediaries to properly safeguard the market. A persistent stigma, this was present throughout all my dissertation research, in which the Commission played an important part.

The Academy of Economic Studies was itself not short of convulsions during my employment after 2008. As a nest for future financial professionals, business executives, and government officials since its creation in the 1910s, the university's role in training the economic elite has become greater after socialism. Yet responsibilities coming with its prominent role were a permanent source of anxiety. Successive reforms of the education sector had left my new colleagues wondering about the criteria of academic accomplishment. They oscillate between the demands for training practitioners to fill the increasing number of positions in government and businesses (accentuated with Romania's admission into the EU in 2007), and the criteria of academic performance premised on innovative research and peer-reviewed publications. Although this seems to be true of professional schools in Western universities also, the pace at which the criteria of academic worth changed during postsocialism has confused many of my Romanian colleagues. But the record of accomplishment of many reputed academics turned government officials had been rather modest. Even worse, several have been associated with

corruption and abuse of public office. The former president of *CNVM*, a Professor of International Relations at *ASE*, had been convicted for his involvement in the collapse of *FNI* and *FNA*, the two funds I decided to study. His replacement, also Faculty at *ASE*, had been tried for facilitating a massive inside trading scheme soon after she had been appointed.

The permanent hesitations and search for a professional identity of my colleagues were an excellent fertilizer for my dissertation research. Not only were people working at *CNVM* or at *ASE* involved in the creation of the domestic capital market, but several of them had taken part in the events described by this dissertation. Their quest for the most relevant forms of knowledge and regulation for mutual funds, as well as their incessant discussions over regimes of economic and social value engendered by capital markets, offered me rich learning opportunities. I have often found myself in similar situations and I shared their puzzlement over the relevance of personal experience, the most appropriate audience for one's discourse, as well as the insecurity of positions caught between competing forms of knowledge, social obligations, and evaluative principles. I have come to learn a lot through the successive collaborations with, departures, and return among my colleagues. I have learned not only the meanings of academic finance and its limitations in rapidly changing societies, but also how the relevant forms of knowledge are shifting as fast as the practices they are meant to reflect on. My colleagues have taught me not only ways to adapt to continuously changing university curricula and premises for academic worth, but also that being adaptable and successful every time, according to shifting criteria of success, often prevents the achievement of authentic progress or long-term results.

Working and trying to fit into such a changing environment also meant that I had to share the same strategies of knowledge and action as my colleagues and friends. Trying to come to terms with the shifting notions of money and value in postsocialism seemed to be aided by my

close study and imitation of the forms of knowledge and action of my colleagues. While documenting the cognitive and regulatory practices considered suitable for the mutual fund sector or criticized after the spectacular defaults of 2000, I also engaged in a form of methodological opportunism, shifting between research methods and conceptual frameworks proposed in anthropology and finance. I have tried to take advantage of both the legitimacy given by my Western education and the intimacy with the object of study given by my insider status into some of the circles of academics and specialists I have been working among. Both seemed to be invaluable resources.

## **1.2 RESEARCH QUESTIONS**

Although starting from a clearly outlined plan, my research had at least as much to gain from my imitation and naïve interrogation of my colleagues as it had from pre-fieldwork design. I tried to remain curious even in situations that seemed familiar, to always pay attention to the details, to follow people involved in disputes, drawing on any legitimate resource that seemed useful, and appropriating concepts from my informants whenever that seemed suitable for the purpose of inquiry. Some things were easier to understand than others. I had come from among the academics and regulators I was now studying and I was trying to further learn from them with any new opportunity. But this was also a liability as I was the object of the same climate of suspicion and mistrust that was so familiar to my collaborators. This was only heightened by my departure and return, and by my interest in one of the most sensitive events affecting Romanian politics, economy, and society.

Such a positioning was not unproblematic. At times, the epistemological and ethical entanglements of my research became hard to sort out. What is it that I really want to understand? What is my targeted audience and whom am I writing for? What is the added value my contribution will bring either to the anthropology of postsocialism or to the critical literature on neoliberal reforms all over the world? While many anthropologists of Eastern and Central Europe are Western academics employing Western social theory to explain Eastern social processes to a general (but mostly Western) audience, I am part of a growing group of Western educated Eastern European anthropologists trading on ethnographic intimacy with the area for Western-type social theory. Finding one's identity in between fieldwork and academia, a journey undertaken in the opposite direction from that of already consecrated scholars, trying to ground theory on the paths of academic voyages, and disentangling sources of knowledge and intended audiences is seldom easy.

My dissertation is an attempt to reconcile these contrasting experiences and to make sense of the historical and political changes witnessed as an anthropologist doing ethnography "at home." It is also a reflection on the possible yet uneasy communication between the diverse forms of knowledge I engaged in through my multiple roles, as well as about the difficult task of having to write for different audiences. I pursue a number of questions: why is it that so many of the politically and financially contentious issues in postsocialist Romania end up in litigation? What are the types of money whose value comes to be decided in court rather than by the state or some reserve valuable, and how do they facilitate the processes of social change? What form of anthropological knowledge is best suited to render intelligible the enduring skepticism and negative attitude towards things of my Romanian informants?

Such broad concerns linking money, values, and change take more concrete forms in successive chapters: what were the precursors of contemporary types of money and investment under socialism? How has the Romanian capital market facilitated postsocialist privatization and what was the predicament of the market? What and who were the actions and actants<sup>2</sup> that precipitated the collapse of the mutual funds I study, and that organized the efforts to compensate lay investors? What were the specific issues in dispute following these collapses? How have the ensuing arguments about money precipitated the renegotiation of social values and competing notions of worth? In trying to address these questions, I was continuously puzzled by an apparent paradox: people who were otherwise traditionalists when it came to religious or family values, and rather backward looking when adopting practical solutions that had worked in the past at the expense of new ideas, had come to assume great financial risks and even jeopardized the financial security of their families by investing in the mutual funds I studied. How can this unexpected blending of risk aversion and hazardous investments be explained? Was it well-crafted financial deception? Was it the scarcity of genuine opportunities to preserve the value of one's money that drove them towards risky ventures? Or was I witnessing a mutation in the values informing the emerging registers of economic and practical action?

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<sup>2</sup> Bruno Latour (1998; 2005b) uses the concept of “actant” as a more inclusive alternative to “actors,” “individuals,” “things” in order to signify the similar treatment of persons and things as well as the quasi-identical roles played by a diversity of entities – persons, ideas, things, devices, mechanisms, signs, etc. – in his sociology of associations.

### 1.3 LITERATURE REVIEW: MONEY, VALUES, AND THE LAW: MEDIATORS OF SOCIAL CHANGE IN POSTSOCIALIST ROMANIA<sup>3</sup>

This dissertation contributes to the literature on postsocialism in Eastern Europe, adding to the already consistent topical discussions on money, values, and change, and to the emergent problematization of the category of postsocialism. In that latter regard, relevant questions are about the positionality of an anthropologist doing ethnography at home while trying to master the conceptual language of Western social theory and bring a meaningful contribution to it. Closely related to the above is concern with the similarities between postsocialism and postcolonialism, with the possible transfer of concepts among the two areas, and with the conditions in which postsocialist studies could ground contributions to social theory.

The anthropology of Eastern Europe was from its beginning in a good position to ground simultaneous critiques of socialism and capitalism. Regarded initially in Western academia as an idiographic and mostly a-theoretical discipline appropriate for the study of the “Third World,” anthropology got more political relevance and higher status once the Cold War prompted a growing interest in Eastern Europe and the Soviet Union (Pletcher 1981). However, often tense international relations and the influence of the Cold War, not only a political confrontation, but “also [a] form of knowledge and a cognitive organization of the world” (Verdery 1996:4), meant that Western scholars doing research in the area generally did not enjoy full freedom of movement or of choosing one’s object of study (Verdery 2004). As Verdery points out, the Cold War was responsible for the almost obsessive interest in the socialist state and the political-

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<sup>3</sup> This section integrates and builds on several parts of the Introduction to the Special Issue of the *Anthropology of East Europe Review* that I edited in the fall of 2009. See Narcis Tulbure, “Introduction to Special Issue: Global Socialisms and Postsocialisms,” *Anthropology of East Europe Review* 23(Fall 2009), available at: <https://scholarworks.iu.edu/journals/index.php/aeer/article/view/165>.

economic processes constituting it, as well as for the diminished attention to social meanings, personal experiences, and values. This aspect was criticized and remedied by more recent evaluations of postsocialist ethnographic experiences (Dudwick and DeSoto 2000; Lampland 2000). The constant engagement with political-economic categories also set the ground for further critiques of capitalism (Verdery 1996: 9), conceptualized in relation to the socialist system.

After the end of socialism, many anthropologists conceived of Eastern Europe as a “laboratory” (Kubálková 1992; Kurti 1996, 2000) where epochal social and political changes associated with the “second great transformation” (Burawoy 2000) could be studied closely. Emerging as an analytic category and used by many anthropologists as an alternative to the teleological notion of transition, postsocialism has been transformed by the interaction between academic practice and fieldwork encounters, becoming itself an ethnographic object. Used initially adjectivally (“postsocialist”) or to denote a particular period of time, postsocialism later stood either for the diversity of social formations emerging after socialism or for a particular style of doing ethnographic work. This ethnographic style was more attentive to meanings, values and local experiences often in reaction to the political-economic approaches that had characterized previous scholarship on socialism. Thus, postsocialism incorporated all the ambiguity inherent in processes of social change and made room for “micro-level insights into particular processes of transformation” (Hann 2002: xii). Ethnographers of Eastern Europe had to negotiate and continually reflect on their relationships with informants and friends (Dudwick and De Soto 2000; Herzfeld 2000; Lampland 2000). Indeed, the focus of ethnography was not so much the nature of the state–subjects relations (Ries 2000) but mainly the understanding of transformations taking place in the personal and social lives of Eastern Europeans (Herzfeld

2000:220). Under such circumstances, the ethics and responsibilities of research came to the fore of ethnographers' concerns (Dudwick and De Soto 2000:6; Herzfeld 2000:228, 231).

The emphasis on experience and the reconfiguration of values (Roeder 1999:755; Fish 1999; Dudwick and De Soto 2000; Herzfeld 2000; Lampland 2000; Wolfe 2002; Burawoy and Verdery 1998) were totally opposite to earlier schematic representations of the fall of the socialist system. Even theoretically minded ethnographers known for their concern with politics or working through political economic models progressively drifted towards constitutions of local life-worlds and the filtering of macro-processes through everyday life interactions (Burawoy and Verdery 1998; Lampland 2000; Hann 2002; Hayden 2002b; Verdery 2002). Reflection on renewed research agendas, appropriate levels of analysis, and ethnographic positionality gave most scholars the opportunity to re-conceptualize knowledge and politics, revealing the mutually constitutive relations between the two (Verdery 2002; Wolfe 2000; Kurti 2000; Lampland 2000).

The new ethnographic style focused on conversation as a way of creating intimacy and increased awareness of the multiple responsibilities of the ethnographer towards informants. This was even truer in the case of local ethnographers (Herzfeld 2000:223); as somebody doing anthropology at home, I found such forms of intimacy to be unavoidable yet deeply troubling. In this dissertation I tried to fuse the legacies of socialist and postsocialist studies by maintaining a genuine concern both with general transformations in money, values, and institutions, and with the local meanings taken by emerging financial practices. Constantly shifting between levels from macro-historical processes such as the EU integration or the reinstitutionalization of the capital market to the variety of meanings with which the nitty-gritty details of monetary practices are imbued, (or, as Janine Wedel puts it, doing "ethnography across levels and processes" [1998:

205]), I analyze how macro-historical processes and societal transformations play into and are shaped by local disputes. Furthermore, I try to convey the local meanings of what are generally taken as macro-level categories (such as, the creation of a Western-type mutual fund sector or the regulatory harmonization with the European Union capital market), but which are objects of ongoing, local achievement.

### **1.3.1 Postsocialism and postcolonialism**

The critical evaluation of postsocialism has facilitated a profound reevaluation of the strategies of ethnographers of Eastern Europe. The fragmentation of knowledge that postsocialism stood for was reversed by the recent search for more systematic approaches. Critics of the concept of postsocialism have already argued that its usefulness has reached its limits (Sampson 2002), that it was used teleologically (Kenneth McGill in Chivens et al. 2005), or was never relevant for the entirety of Eastern Europe (Andrew Gilbert in Chivens et al. 2005). Critics have treated postsocialism as an ethnographic category (Elizabeth Dunn in Chivens et al. 2005) experienced and narrated by our informants (Thomas Chivens in Chivens et al. 2005) and used in strategically different ways by Western scholars and Eastern subjects (Michal Buchowski in Chivens et al. 2005).

Whereas socialism meant rational redistribution by the political center as the dominant logic of power (Verdery 1996), the diverging pathways out of socialism cry out for theoretical perspectives to make comparisons between them both possible and useful. The comparative potential of postsocialism used as a historical category is linked to two research strategies. Comparisons between the trajectories of various postsocialist countries can facilitate the understanding of “the heritage of actually existing socialism” (Humphrey 2002a:12) as well as of

the diverse ideologies and political imaginaries emerging in the region (e.g. Europeanism, Eurasianism). A comparison with the postcolonial condition, however, creates the premises for a more nuanced and profound understanding of the “practices of domination” in various historical and political regimes (Verdery 2002b:17). This can facilitate a rewarding inclusion of the postsocialist paradigm into “comparative studies of imperialism and colonialism, post-imperialism or political anthropology more generally” (Humphrey 2002a:12). Postsocialism is thus mutating into a generous theoretical category that creates numerous opportunities for comparison and calls for overcoming academic and regional parochialism.

The comparison with various postcolonial contexts and the forms of knowledge emergent there is not accidental (Guyer 2004). The postsocialism–postcolonialism parallel has been proposed as an explicit research strategy by numerous anthropologists and social scientists (Lampland 2000; Verdery 2002b; Hayden 2002a, 2002b; Hann 2002; Chari and Verdery 2009). The similarities between postsocialist and postcolonial studies are multiple: importance of history and historical anthropological approaches (Verdery 2002b; Hayden 2002a), pronounced interdisciplinarity and the transgression of national boundaries by academic communities (Verdery 2002b), and the preoccupation with giving “voice” to the natives (Verdery 2002b; Hayden 2002a:213). Ethnographers of Eastern Europe were further encouraged to pursue the comparative path to unmask the “practices of domination” (Verdery 2002b; Lampland 2000; Chari and Verdery 2009), to understand representations of the West and the forms of knowledge supporting them (Tishkov 1998; Verdery 2002b), to approach critically the unbalanced politics of knowledge production in East and West (Lampland 2000), or to understand the historicity of colonialism and the significance of postcolonial studies themselves (Hayden 2002a, 2002b).

The integration of postsocialist and postcolonial studies can illuminate the political constitution of “the West” itself. Such a comparison can illustrate “how not just the colonies but the existence of socialism itself affected the constitution and becoming of ‘the West,’ often simultaneously with processes involving the colonies, post-colonies, and neo-colonies” (Verdery 2002b:17). The ongoing legacy of the Cold War on our knowledge can render comparable the various colonial practices of domination in the multiple “Souths” and can reveal the various “Eastern,” socialist, and colonial representations of the “West.” To those goals, historical anthropology is able to uncover the situated notions of history, time, and space, and the multiple technologies producing the contemporary “varieties of modernity” (Verdery 2002b:19). An obvious area of study for anthropologists of Eastern Europe is the process of Europeanization happening to members, acceding, or just affiliated countries of the EU: the normative imposition of values and reforms from above as well as the ways local actors appropriate “European” processes are simply unavoidable themes for most anthropologists of the area.

### **1.3.2 Europeanization, EU conditionality, and external imposition of values**

The postcolonial turn in postsocialist studies sheds a different light on current projects of “return to Europe” by Eastern European countries. Steven Sampson’s argument about the “cultural boundary” between the West and the Balkans (2004), Matti Bunzl’s “neo-colonial subjectification” of the Easterners through mundane embodied practices of ordinary people (2000), or József Böröcz’s treatment of the “Eastern enlargement” of the EU in terms of “empire” and “colonialism” (2000; 2001) are good examples of the focus on Europeanization in anthropology. Europeanization had taken place in Eastern Europe even before (many times being a distinct process from) accession to the EU. Europe itself (for which the EU often stands

metonymically) had been an ideological object longed for in “the East.” Katherine Verdery argued that Europe had long been a “master symbol” of Romanian politics (1991) while Susan Gal showed how Europe functioned as a “symbolic counter of identity” in Hungary (1991). In fact, most of the symbolic geographies of the regions to the east of “Western” Europe are products of “Orientalist” discourses and practices, part of processes through which the West attempted to define itself by “inventing” or “imagining” an inferior other (Bakic-Hayden and Hayden 1992; Wolff 1994; Bakic-Hayden 1995; Todorova 1997). The Orientalist discourse is characterized by malleability and has metonymic properties, that is, it can stand for whole regions, countries or provinces being easily used and reproduced even by Eastern Europeans themselves towards areas and peoples to the East (that is, more “Oriental”) (see especially Bakic-Hayden 1995).

Robert Hayden shows that even in countries that have not joined the EU, the normative logic of the European project has produced momentous effects, even if not all beneficial ones. The efforts to impose democracy without having a demos, that is, not one in the sense of homogeneous peoples of most functioning democracies of Western Europe, has constantly undermined EU mandated projects in countries like Bosnia (2002c; 2005). Although Bosnia’s recent history can be described as poignant,<sup>4</sup> several other multi-ethnic enclaves in the former socialist world share the same predicament. They are just dramatic examples of similar processes playing out in all Eastern European countries finding their way towards capitalism and statehood under the guidance of the EU.

Local adaptations of and responses to EU-induced cultural-political processes are able to expose the ideologically dominant constructions of Europe. Michael Herzfeld has argued that the

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<sup>4</sup> As Robert Hayden put it when commenting on this chapter, the proper argument is that the recent history of Bosnia actually depends on the singularity of a lack of demos.

examination of the current European project sheds light on a second type of colonialism whose subjects are regions and countries within Europe itself, “a more insidious Western colonialism, one that is primarily engaged today in the international politics of cultural distinction” (Herzfeld 1997:714). Contributors to a roundtable on “Provocations of European Ethnography” have also argued that the study of processes of Europeanization taking place in Eastern Europe can create the premises for a critique of Europe’s fundamental identity categories and for a “culturally based critique of liberal capitalist democracy” (Verdery 1997:716).

Deconstructing categories such as “the West,” “liberal democracy” or “capitalism” offers a good basis for “questioning the nature of socialism, its representation, or its transformation” (Verdery 1997:717). The critical analysis of Europe and its strategies of power offers ethnographers the opportunity for self-reflection on the practices of anthropology that are many times complicit with colonial and national projects. As Michael Herzfeld put it, we can “take Europe as an object of comparison with anthropology,” that is, “use the highly accessible history of what is, after all, a historically European-driven cultural activity to flush out some of the assumptions it shares with nationalism and colonialism, both of which, if not quite as uniquely European as some commentators have argued, are engaged in extremely self-conscious processes of classification and control” (Herzfeld 1997:715).

### **1.3.3 Markets, moralities, and the ambivalent role of money**

The anthropology of money contributes one of the theoretical bridges facilitating the transfer of concepts from the former colonial world to newer areas of ethnographic interest like recent decades, some of the unavoidable references were contributed by ethnographers of Melanesia and Africa. Anthropological debates about the role of money in ceremonial exchange (A.

Strathern 1971; Gregory 1982; M. Strathern 1988) or in the economies of non-Western societies emerged in these areas in response to two distinct disciplinary traditions (Graeber 2001). The modernist sociological theories of Karl Marx (1971), Max Weber (1978), or Georg Simmel (2004) made the object of critical evaluations once the introduction of money in colonial societies was studied ethnographically (M Strathern 1992; Godelier 1999; Strathern and Stewart 1999, 2000b; Graeber 2001). As anthropologists argued, the reception of modern money and the displacement of earlier valuables have neither reduced local imaginaries to the calculative spirit of market economies nor completely dissolved previous forms of sociality. At the same time, recent approaches suggested ways to move beyond the substantivism – formalism debate in economic anthropology inherited from Polanyi (1944), Bohannan (1955; 1959), and Dalton (1965) but referencing the classical works of Malinowski (1922) and Mauss (1990 [1925]).

The shortcoming of substantivism was that, in outlining the myriad culturally specific ways in which economic life is organized around the world, it has “Occidentalized” (Carrier 1995) social formations such as “the market” or commodity exchange, equating these institutions with “the West.” A way to avoid simplifying association is to look for strategic behavior in non-Western parts of the world and to highlight the values and cultural logics permeating even the most abstract Western markets, something close to the programmatic dimensions of Marcel Mauss’ classic work on the gift (1925). Such a research strategy could also revalorize part of the research program formulated by Max Weber. Not only did Weber argue that the historical formation of capitalism in the West was premised on specific cultural factors (transformations in Calvinist theology and the practical outlook on the world they encouraged [Weber 1958]), but his understanding of money (the epitome of commoditization for substantivists) was premised on the simultaneous recognition of its formal and substantive value (Weber 1978).

Adopting a similarly comparative and culturalist approach, Clifford Geertz elaborated and nuanced Weber's ideas about the cultural premises of economic development in two disparate Indonesian communities (Geertz 1963), and showed how a specific cultural ethos combined with optimization of scarce information to produce "the bazaar economy" as an alternative to Western market economies (Geertz 1978). Other authors have challenged the Weberian thesis that the emergence of capitalism was premised on the individual pursuit of private gain. For instance, Albert O Hirschman argues that capitalism was made possible by the encouragement of material interests at the expense of individual passions (sexual, political, etc.), as the latter were deemed more dangerous for the modern political order (Hirschman 1977). In spite of their criticism, however, scholars like Hirschman have endorsed Weber's culturalist agenda.

A recent focus in anthropology is concerned with reconstituting the diverse ethnographic meanings of the market and its specific transactional practices in historical perspective (Carrier 1997). James Carrier challenges the previous conceptual contrast between "gifts" and "commodities" (comp. Gregory 1982) and shows that both these categories have overlapped in a multitude of exchanges (Carrier 1995). Although maybe useful as ideal-types, "gifts" and "commodities" should be put in perspective and analyzed together to recapture the diversity of historical exchange forms and transactions. Such approaches converge with the contemporary reevaluations of the equilibrium model of market exchange or of other central categories of economic theory, such as the notions of "price" and "higgling" (De Marchi and Morgan 1994; Gerschlager 2001, 2004; Gerschlager and Mokre 2002). While some underline the diverse social values and issues of power informing price-formation in the market, others show that deception is an integral part of economic transactions. Not only is deception often the result of transactions,

but various “deceptive strategies” (Henaff 2004) are employed to create imbalances and profit niches. This is an unavoidable insight from the perspective of this dissertation.

Newer anthropologies of Melanesia, Africa and Asia also try to move beyond the earlier divisions and propose integrative approaches to value. Annette Weiner (1980, 1992) suggests replacing “reciprocity” and “exchange” with “reproduction” as organizational category. Facilitating a more dynamic social theory, Weiner’s concept is adopted by Robert Foster (1990) who argues that one should not look for equivalent exchange (and commensuration by money) but for “replacements” of similar objects and persons facilitating social reproduction. Weiner also argued that value is not generated only by exchange (cf. Simmel 2004) but by explicitly delineating categories of objects (“inalienable possessions”) that are neither given nor sold.

Taking this argument further, Maurice Godelier (1999) attempts a new synthesis of the literature on “the gift” and shows how the category of the sacred, materialized by “inalienables,” circumscribes a sphere of things and persons kept from circulation even in societies with forms of ceremonial exchange. Attempting an even more general synthesis, the authors contributing to the collection edited by Jonathan Parry and Maurice Bloch (1989) elaborate on the points that money is neither an exclusively capitalist/modern category nor is it always a morally neutral “corrosive force” dismantling societies. Rather, money mediates both a short-term cycle of interested transactions and the long-term cycles of social reproduction that are intertwined in any society, and the numerous conversions of value between these social realms (ibid: 1-32).

#### **1.3.4 Money and social change: From Melanesia to Eastern Europe**

Escaping fixations on exchange, money as currency, and the substantive values dominating distinct spheres of society, some researchers approach money as both a byproduct and a mediator

of historical change. Anthropologists of Melanesia have long focused on meaning and the cultural mediation of transactions (Kapferer 1976; A. Strathern 1976) or on the continuous transformations of systems of ceremonial exchange (M. Strathern 1975; A. Strathern 1976). Andrew Strathern and Pamela Stewart have shown that *moka*, the prestigious form of ceremonial gift-exchange in the Highlands of Papua New Guinea, grounded an essentially dynamic model of social order based on a series of “alternating disequilibriums” that called for further exchanges and for incorporating external elements and thus more encompassing processes locally (1999, 2000, 2002). A good illustration of the way *moka* mediates social change is the process of “precursions,” that is, “the way in which an indigenous valuable such as pearl shells is itself reappropriated into a new nexus of relationships and, thereby, paves the way for a special sequel in the reception of money” (Strathern and Stewart 1999: 171). Such approaches called for a new synthesis on the historically contingent and culturally specific processes mediated by modern money. This goal was accomplished by David Akin and Joel Robbins (1999) and later by Stephane Breton (2002), who built on the previous contribution by Parry and Bloch (1989) to situate money in a wider “cultural matrix” (ibid.), to suggest an “enlarged concept of spheres” of exchange, to reject a negative moral evaluation of money, and to understand how the incorporation of state-issued money in spheres of ceremonial-exchange facilitates social reproduction rather than simply dismantling former social orders.

Drawing on the long colonial engagement and the pregnant hierarchical relations there, anthropologists of Africa generally worked from Keith Hart’s idea about the two sides of the coin, signifying both market value and state authority (Hart 1996; comp. Maurer 2006). Jane Guyer (1995, 1999) proposed an eclectic approach integrating critically Bohanan’s “spheres of exchange” model, the historical outlook of Parry and Bloch (1989), John Maynard Keynes’ idea

that money should be seen as a link between present and future (Keynes 1930), and Simmel's "general framework for thinking of the different temporalities of exchange as a continuum," (Guyer 1995: 19). She analyzed African "monetary instability" and argued that the analysis of short-term cycles and circuits of monetary exchange should not obscure the understanding of long-term financial cycles constituted through the "capital/credit nexus" (Guyer 1995: 20). Focusing on more contemporaneous processes, Jean and John Comaroff situate money in the context of emergent "occult economies" ("the deployment, real or imagined, of magical means for material ends" [Comaroff and Comaroff 1999: 279]) or of contemporary "millennial capitalism.... by which we mean *both* capitalism at the millennium and capitalism in its messianic, salvific, even magical manifestation" [Comaroff and Comaroff 2000: 293, original emphasis]) in postcolonial Africa. Andrew Apter has focused on the crises of representation in Nigerian politics and economy with the declining oil revenues that facilitated the emergence of a form of "rentier capitalism" (Apter 1999: 302) organized around fraud and dissimulation.

The postsocialist transformations in Eastern Europe gave anthropologists the chance to use money to describe the radical social transformations there. In search of perspectives and concepts, local ethnographers found earlier contributions on Melanesia or Africa both valuable and problematic. Dealing with the role of money in the circulation of commodities or in ceremonial exchange, ethnographers such as Woodruff (1999a, 1999b), Clarke (2000), Humphrey (2000); Seabright (2000), Chelcea (2002), Lățeș and Chelcea (2002, 2003), and Rogers (2005) have shown declining roles of currency, the spread of informal credit, and the growth of barter arrangements after the end of socialism. Their contributions challenge the utilitarian theory seeing money as emerging from barter or displacing previous valuables. Barter, far from being an archaic form of exchange, is one of the practical possibilities in contexts of

radical monetary uncertainty. Money, as currency or complex financial instruments, existed throughout the entire socialist period. Postsocialism meant not the advent of money but the reconfiguration of its role and the enrichment of its meanings; periods of monetary precariousness and consequent barterization or informal exchanges, have alternated with the ascent of money in all spheres of society.

Paralleling the Comaroffs' arguments about the role of magic and ritual imagination in postcolonial Africa (1999, 2000), Katherine Verdery (1995a, 1995b) and James Korovilas (2004) document similar phenomena with pyramid schemes emerging in Eastern Europe, fuelling discussions about the disorderliness associated with the postcolonial/postsocialist condition (Comaroff and Comaroff 2006). The more recent literature engages increasingly with forms of monetary circulation and accumulation premised on more sophisticated financial instruments and varieties of capital market practices adapted to peripheral regions of the global capitalist system. In general, money has been a more versatile conceptual tool in Eastern European anthropology, being taken to illustrate the production of knowledge and symbolic capital (Verdery 1995b, 1996; Cernat 2004), the reconfiguration of moral categories and notions of value (Verdery 1996; Ries 2002; Mandel and Humphrey 2002), the intensification of debates about national essence (Lemon 1998), and the negotiation of new identities in postsocialism (Verdery 1996; Berdahl 1999; Ries 1997). For the purposes of this dissertation, Katherine Verdery's essays about pyramid schemes in postsocialist Romania (1995a, 1995b) are particularly revealing. Drawing on the tools of political economy, historical interpretation, and cultural analysis, she shows how experiments with investment, accumulation, and temporality facilitated the emergence of new forms of knowledge essential for the adoption of capitalism.

### 1.3.5 Circulation, capital, and the production of value

Another approach is the focus on the circulation of money and the contemporary reproduction of capital. In talking about Arjun Appadurai's introduction to the edited *The Social Life of Things* (1986) or about David Harvey's influential *The Condition of Postmodernity* (1989), we have more holistic notions of value and circulation in contemporary capitalism. Based on eclectic theoretical references, the two contributions are excellent in reconciling economic analysis with cultural interpretation (cf. Ferguson 1988). Similarly, Jean and John Comaroff analyze the reproduction of capital in contemporary Africa. Whereas capital accumulation is interpreted as "millennial capitalism" (Comaroff and Comaroff 2000) or as generating "occult economies" (Comaroff and Comaroff 1999), the result is the fetishization of "civil society" as a category of neoliberal thought and the simultaneous delegitimation of alternative forms of resistance.

Starting from ethnographic episodes taking place mainly in Indonesia, Anna Tsing (2005) focuses on "frictions," that is, "the awkward, unequal, unstable, and creative qualities of interconnection across difference" (Tsing 2005: 4). This approach allows insight into the problematic aspects of monetary arrangements that constitute one form of contemporary global connections. Moving to Africa, one sees how the operation of militarized commercial networks and organized gang-based banditry facilitating the movement of goods and money call attention to the intelligibility of the exercise of fiscal authority by the state (Roitman 2004). As the Cameroonian state learns to use these channels, an "ethics of informality" emerges that resignifies illegal conduct as reasonable. In yet another part of the world, Janine Wedel unmask the ways the transfer of capital from the West to Russia and other Eastern European countries was preceded by the transfer of knowledge and institutional forms. Unfortunately, as private arrangements among transnational actors prevailed over public responsibility, the history of

capital transfers and economic reforms in the region has for long been a deceptive one (Wedel 1998). Staying in the same area, David Woodruff (1999a, 1999b) and Douglas Rogers (2005) illustrate the paradoxical “politics of liquidity” during the 1990s Russia when integration into the global circuits of capital led to illiquidity and the emergence of barter at the local level.

Focusing on forms of money appearing at the end of the century, anthropologists see the most sophisticated financial practices as vehicles for the circulation of value. Keith Hart (2000, 2001, 2002) reflects on the role of money and the emerging inequalities in contemporary capitalism. Treating money as “above all information [and] a measure of transactions” (2005: 12), and, less abstractly, as “means of collective memory [...] needed to keep track of proliferating relations with others” (ibid.15), Hart points out that the most impactful phenomenon in contemporary “virtual capitalism” is electronic money (2000, 2001, 2005). It creates new forms of inequality based primarily on access to knowledge that call for a renewal of the middle-class revolution that shaped modernity. Analyzing even more abstract monetary practices, Edward LiPuma and Benjamin Lee (2002, 2004) propose the concept of “cultures of circulation” understood as global processes “created and animated by the cultural forms that circulate through them, including – critically – the abstract nature of the forms that underwrite the process of circulation itself” (LiPuma and Lee 2002: 192). While paying attention to the particular forms of performativity involved by financial derivatives, they also call for the close study of the semiotic aspects and abstract forms of financial calculation that are constitutive ingredients of contemporary forms of money (comp. Maurer 2002, 2006)). As “a circulation-based capitalism harnesses technology for the extraction and manipulation of data that can then be converted into quantifiable measures of risk” (ibid.: 210), the anthropologist of money should be able to bring into the same representations the abstract forms of knowledge constituting financial derivatives

and the empathic interpretive analysis of the way effects of global strategies are experienced locally.

### **1.3.6 Financial practice as knowledge production**

Whereas most anthropologists agree that numbers and mathematical knowledge, from the almost unintelligible techniques of Physics PhDs on Wall Street (Maurer 2002; LiPuma and Lee 2004; Beunza and Stark 2004b) to the fascinating techniques of counting by Melanesian tribesmen (A Strathern 1973; Mimica 1988; M Strathern 1988) are essential ingredients of money, many of them argue that the related questions of measurability and equivalence aren't always the key features of money (M Strathern 1988; Maurer 2005a, 2005b). While some decry the differential access to technical knowledge as the organizing dimension of contemporary forms of social inequality (Comaroff and Comaroff 1999, 2000; Hart 2001, 2005), many other scholars focus on the emergent forms of knowledge that constitute one of the "infrastructures" of high finance.

Mary Poovey (1998), for instance, reconstitutes the history of the "modern fact," that is, the hybrids of numbers and interpretations that were foundational for the emergence of modern accounting. Following a different problematic, anthropologists have illustrated the role of information and knowledge for the constitution of "bazaar economies" (Geertz 1978, 1979), or for the reinsertion of capitalism in Eastern Europe (Wedel 1998). Yet the increased abstraction and mathematical precision of forms of measure did not vacate entirely the moral connotations of measuring practices. In terms of the abstractions of financial knowledge we have never been [completely] modern (Latour 1993, 2005a). Money and other semiotic technologies have mediated more "abstract" forms of knowledge and more "efficient" modes of accumulation in the West, but were not premised on the repudiation of subjectivity and moral values. By being

able to produce ever more simplified and portable inscriptions, i.e., “immutable mobiles,” scientists and economists were able to transfer meaning and create a more unified and accurate body of ideas than before that could be simultaneously read and criticized by entire scientific communities. Since modern money can also be taken as an “immutable mobile,” “the ‘abstraction’ of money can no longer be the object of a fetish cult” (ibid.: 58) and forms of accounting and calculation become more easily specific, yet not isolated, domains of social life.

Paralleling calls by Laura Nader (1974) to “study-up” or by Clifford Geertz (1982) to explore the academic cultures and communities formed around abstract forms of knowledge, most scholars interested in financial knowledge are also indebted to Actor-Network-Theory and the work of Bruno Latour (1990, 1993, 2005a, 2005b, 2006; Law and Hassard 1999) as well as to social studies of science. Given these theoretical premises, it comes as no surprise that even the anthropologists of high finance (Maurer 1999, 2002; Zaloom 2003, 2004, 2005; Miyazaki 2006) understand themselves as part of a community of scholars pursuing social studies of finance. Appropriating the ethnographic method from anthropology, as well as elements of ethnomethodology, sociology of science, or pragmatist philosophy, academics promoting the social study of finance have looked at forms of elite knowledge and personal engagement with “the market” (Knorr Cetina and Preda 2001, 2004) and have conceptualized the emerging “global microstructures” of finance as “global in scope but microsocial in character” (Knorr Cetina and Bruegger 2002a: 905). Their focus becomes forms of temporal coordination creating the simultaneity of financial microstructures, the “postsocial” form of relationality (2002c), and the lifeforms generated in the process (2002b). Although brilliant in capturing the experiential modes of financial markets, the phenomenological approach of Knorr-Cetina and Bruegger tend to miss issues of power and inequality engendered by contemporary capitalism.

Joining in the effervescent research of financial markets, anthropologists such as Caitlin Zaloom shows how financial practices adopted to manage risk are productive of a specific subject: the speculator (2004). Techniques of bodily discipline are primal in the success of speculators in financial futures (Zaloom 2005). Adapting ideas from an ethnography of Fiji (Miyazaki 2004) to the interpretation of practices of financial arbitrageurs in a Japanese investment bank, Hirokazu Miyazaki (2006) considers simultaneously the utopian and deceptive character of their imagination and suggests that hope is a potent form of knowledge. One of the leading anthropologists of money, Bill Maurer (2002), reflects on inconsistencies in the mathematical models underlying financial futures and challenges the myths of anteriority and referentiality surrounding them. Maurer argues that “derivatives can take on the indexical power they do in critical and neo-liberal accounts only if their operational, mathematical technique is left in the black box, shut away, bracketed or repressed” (2002: 19).

Other authors think, on the contrary, that paying attention to the conditions under which “calculative agencies” (Callon 1998) make use of abstract forms of knowledge to perform arbitrage strategies is essential for understanding contemporary forms of global inequality. Edward LiPuma and Benjamin Lee argue that anthropologists, usually shying away from mathematics and technology, should explore the performative abstractions (that is, “the contemporary objectification, calculation, and distribution of risk [...] all driven by the competition among mathematically sophisticated quantitative experts” [2002: 210]) that make financial derivatives into mediators of “circulation-based capitalism” (ibid.) at present. Actually engaging in such studies, although not pursuing a similarly critical agenda, Daniel Beunza and David Stark (2004a, 2004b, 2009) try to understand the knowledge practices underpinning arbitrage on the trading floor of an investment bank. Starting from the premise that “finance is

today mathematical, networked, computational, and knowledge intensive” (2004a: 3), Beunza and Stark focus on the informational economies and the processes of interpretation that allow traders to identify arbitrage opportunities. The role of traders is not simply that of recognizing opportunities (any other bank could do that), but to “re-cognize” (i.e., imagine) new strategies. These processes take place in non-hierarchical networks. As Beunza and Stark put it, “it is the interaction across this heterogeneity that generates innovation” (ibid. 5).

### **1.3.7 Law and the mediation of economic categories**

Classical approaches and recent accounts by legal anthropologists promise to illuminate the mediating role of law for contemporary finance. Laura Nader’s influential *The Life of the Law* (2002) presents a historically informed review of the field and argues for the centrality of legal categories in mediating social change. Of interest for the anthropology of financial practices is her interpretation of the diminishing power of the plaintiff with the spread of alternative dispute resolution arrangement in the US, a process she takes to reveal the contemporary dominance of large corporations and sophisticated investors over less powerful social actors. Sally Falk Moore also explains how legal processes mediate the relation between knowledge-intensive economic practices and the broader socio-cultural context in which they are embedded but from which they strive to stand apart (2005b). Moore refashions the concept of legal pluralism and considers it useful to define the assemblages of distinct legal norms and substantive notions of value permeating business practices on a global scale (2005b: 303-342). Legal procedures find their place among technical expertise and attention to context in ongoing development projects; Moore utilizes such projects to also delineate anthropological research as forms of ethnographic knowledge production about processes of social change (2005b).

The world of financial projects is also approached using the tools of legal anthropology that give their authors the occasion to reflect on the production of knowledge in the “laboratories” of high finance. Annelise Riles focuses on material practices and artifacts (2000c) to understand the modalities of knowledge about and regulation of the money market by the technocrats of Japan’s central bank (2000a, 2000b). Riles shows, in complete opposition to the dogmas of monetarist theory regarding the political “neutrality” of central banks, how arguments surrounding payment system regulations “are not ‘just’ arguments but the artifacts of particular interests, alliances, and disputes” (2000b: 5). Further, she explores the ambivalence produced by the intimacies between market regulators and market actors, simultaneously treated as corruption and used to conceive new forms of governmentality (2000a). Law emerges as a potent social technology in the writings of Riles.

Observing broader transformation in governmentality and personhood in the West from a legal perspective, Bill Maurer (1999) argues that the tendency towards increased securitization in financial markets has been made possible by the change from property to risk as elementary concepts in financial practice. Described as a shift from financial engineering to legal engineering as preferred practices of global investment banks (McBarnet 2010), this process has led to a changing view of the legal person from a bearer of rights to a risk profile subject, and to a shift of interest from property rights to risk and insurance. In a similarly engaging article, Maurer (1998) deconstructs a notion of “sovereignty” in light of the assumed impact of the development of internet supported markets, complicating the “simplistic” associations between sovereignty, state, market, and subject emerging in liberal theory.

Such contributions strongly suggest the blending of legal and financial forms of practice. Contemporary money premised on sophisticate financial instruments and creative forms of

property are constituted by the nexus of law and regulation, mathematical abstraction, and highly contagious collective behavior. They invite eclectic contributions from students of many disciplines, ethnographers who can shift easily between elite and lay forms of knowledge, between the abstractions of theory and the sensible observation of practice, between general moral principles and contingent meanings. Not surprisingly, some of the most appreciated contributions to the anthropology of money during the last two decades were by ethnographers who did not feel confined by the disciplinary boundaries between finance, law, and anthropology. In the case of Eastern Europe, this perspective is unavoidable. Dealing with a shifting historical context in which new forms of money and innovative (even if many times deceptive) financial practices are simultaneous with intense processes of regulatory reform, political integration into the EU, and reevaluation of values guiding economic action, anthropologists of Eastern Europe have to take issue with the nexus of law, finance, and morality.

### **1.3.8 Legal ideologies and the metapragmatics of disputes**

This dissertation draws on semiotic approaches to law and litigation as a way to analyze ongoing legal disputes over money happening in courts, in civic associations representing investors, or during public consultations over regulations regarding the capital market. As some of the most fruitful developments in legal anthropology, studies of the indexical and metapragmatic aspects of disputes integrate previous efforts in semiotic anthropology to put language in context and reveal the ideologies permeating language use. The semiotic trends in legal anthropology were meant to reveal the meanings of legal categories and processes in localized contexts as well as the broader legal epistemologies and ideologies manifest during court interactions.

Semiotic anthropology was initiated with the adoption of Charles Sanders Peirce's theory of the sign in linguistic anthropology after the 1970s. Although it connected to the school of symbolic anthropology as practiced at Chicago or Harvard, the contribution brought by the new school of semiotic linguistics really integrated the contributions of the Prague school of linguistics and of CS Peirce to emphasize the connections between meaning, context, and history, at the expense of the conventional or symbolic meanings of Saussurean linguistics (see review by Mertz 2007a). Although several anthropologists had an important role for the new field, the semiotic revolution is usually associated with the works of Michael Silverstein (1979, 1985, 1993, 2001). The focus on pragmatics and indexicality initiated by Silverstein (1976) later expanded into new directions of study such as the role of context in structuring language (Gumpertz 1982), language socialization (Ochs 1988), or the way politics and hegemony manifest through language (Woolard 2004, Gal 2005).

Of particular interest for my study are recent developments linking the metapragmatic structure of discourse and verbal performance with the creative constraints that context induces for both. Either discussing performance and audience (Duranti and Brenneis 1986, Bauman and Briggs 1990) or how speakers calibrate their interactions to comprehend each other thus generating metalinguistic activity (Silverstein 1993) with different degrees of awareness, the anthropologist can aim to reconstitute the linguistic ideologies of those she studies (Woolard 1989). I find it useful to draw on the conceptual resources created by specialized linguistic anthropologists when evaluating the verbal interactions and institutionalized communication among the litigants I studied. Although not always explicitly stating their beliefs, their interactions are deeply imbued with the values justifying their behavior and filled with metapragmatic comments about the practical possibilities of the actions.

In looking for ways to understand the rich meanings and overlapping layers of legal discourses and verbal interactions in judicial disputes, legal anthropologists have capitalized on the parallel development in linguistic anthropology. Suggesting alternative modes of analysis to processualism, the dominant paradigm at the time (comp. Mertz 1994), anthropologists such as Philips (1984), Hayden (1997), Conley & O’Barr (1998), and Matoesian (1993, 2001) have adopted methods from conversational analysis and ethnomethodology to shed light on the local organization of talk, turn-taking, and the way such verbal phenomena impact on the orderly functioning of courts. Using a different yet not entirely unrelated approach, Laura Nader has looked at both the local meanings and more general ideologies of litigation (1991).

Several other legal anthropologists, including Hirsch (1998), Matoesian (2001), and Philips (1998), have focused on the indexical aspects of court discourse that are both shaped by and revealing of larger social and political concerns (see Mertz 2007a: 343). This turn towards indexicality and pragmatics is directly relevant for my project. Concretely, analyses linking speech style, premised on either overusing intensifiers, hesitations, or intonation or being more neutral in that regard, and credibility in court (Conley et al 1978, O’Barr 1982), or rule-oriented versus relational-oriented speech styles offer invaluable interpretive clues for the phenomena I witnessed throughout my research.

At the same time, turning attention towards the role of ideology and metalanguage in the “linguistic regimentation and sedimentation of legal institutions,” as advocated by Elizabeth Metz (1994: 447), proves to be a useful strategy of research even today because “we can best achieve a well-grounded understanding of the power of legal language ... through an analysis that systematically combines precise observation of the details of linguistic structure-in-use with consideration of the wider political and social forces at issue” (ibid. 448). Not only are judicial

doctrines and forms of reason shaped by linguistic ideologies and practices (Mertz 1994, Parmentier 1997), but all such semiotic resources are crafted in the process of use and in the contexts of social interaction (Hill and Irvine 1993, Lucy 1993, Mertz 2007b, Silverstein 1979, Woolard 1998). In disputes over money, where the deployment of financial and legal discourses is joined by institutional interactions and material forms of justification, semiotic analysis can be extended to all forms of interaction carried through verbal and other material media.

### **1.3.9 Money as an object for semiotic anthropology**

This blending of legal and semiotic anthropology is parallel to efforts to make semiotic methods useful in the analysis of daily monetary practices and elite financial forms of knowledge. The two directions of study in semiotic anthropology, of money and law, converge in the works of anthropologists such as Annelise Riles, Bill Maurer, or Gustav Pebbles. Drawing on Robert Foster's interpretation of Melanesian currency (1999), Bill Maurer (2006) argues that money is always "representationally flawed" and that an anthropology of money should pursue the relative "failures" that make money "work;" that is, anthropologists should pay attention to the "gaps between representation and reality and sign and substance" (2006: 30). Maurer repeatedly argues in favor of a reorientation of the anthropology of money from symbolic dimensions and meaning to repertoires, pragmatics, and indexicality (ibid. 16, 30). Maurer's calls make sense if one pays attention to the appropriation of semiotic theories in anthropology, the most valuable of which argue for "placing signs in society" (Parmentier 1994) and for paying attention to the wider contexts of semiotic practice (Peirce 1998; Mertz and Parmentier 1985; Keane 2001, 2003).

Recent approaches to money and finance (Maurer 2002, 2005a, 2005b; Zaloom 2003; Riles 200a, 2000b, 2000c) have already moved in the direction pointed by Maurer. Such studies

often make good use of the processualist approach to semeioses first outlined by Peirce (1998) and show how it is possible to transcend some of the conundrums of the more static Saussurean version of semiotics. For them, the issue is no longer money's ability or failure to represent value (Maurer 2006), but that of the continuous transformations in meaning facilitated by the successive acts of representation, forming semiotic chains. The semiotic process is rendered explicit by Webb Kean's concept of "bundling" (2003), by which he describes the excess of properties existing in any material embodiment of the sign, out of which only a part constitutes its instantaneous meaning. As things circulate in diverse realms of value, some of the latent properties become manifest while others recede into the background, and changes in the selection of the properties relevant in distinct interpretive context produce mutations in the meanings of things.

While talk of indexicality is fashionable, a synthesis of semiotic theories of Peircean and Saussurean "descent" indicates the non-exclusive character of the indexical and referential functions served by the same sign. As Richard Parmentier excellently puts it, "A unique feature of human semiotic activity is its capability of, and in fact reliance on, using signs to index (that is, contextually signal), refer to (that is, semantically denote), and objectify (that is, treat as reified entities) sign tokens, sign types, semiotic events, and even entire semiotic systems" (1985: 375). For the analysis of the three dimensions of sign existence outlined above, the concepts of "representational economies" and "semiotic ideologies" become indispensable tools (Keane 2003). Webb Keane uses the concept of "representational economies ... to draw attention to the dynamic interconnections among different modes of signification at play within a particular historical and social formation" (410). When introducing the second concept he writes:

“expanding the concept of ‘language ideologies’ ... we might then essay an account of the ‘semiotic ideologies’ that interpret and rationalize this representational economy” (411).

This theoretical baggage can be useful for the understanding of performative repertoires based on money (Guyer 1995; Keane 2001; LiPuma and Lee 2002, 2004; Roitman 2005; Parmentier 2002; Maurer 2006). In spite of the conventionality of form, even the simplest types of money are the object of antagonist processes, on the one hand accumulating histories, prestige, and currency (“moneyness” [Ingham 2002]), on the other suffering frequent mutations of meaning and value. The symbolic “depreciations” of money are due either to the vicissitudes of its materiality (Keane 2001) or to its “multiplex” character that makes it function much like the signs on a road concurrency than as strictly denotational inscriptions.

### **1.3.10 Property, risk, and financial securitization**

Discussions about the change of money regimes, that is, of the particular configurations of money, morality, and social relations, in Eastern Europe shift attention from exchange and practices involving cash that dominated classical anthropologies of money, towards discussions about new financial instruments, practices of securitization, and innovative property arrangements brought about by the postsocialist institutional change. Given this shift of interest, specific contributions to the anthropology of property can enrich and give depth to discussions about new forms of money and their political premises. For many of the people among whom I conducted research, property constituted equally a vision, an understanding, and a form of argument about the criteria of political participation and the bases of financial accumulation. In this regard, approaches to the anthropology of property by Sally Falk Moore, John Comaroff and Simon Roberts, and by Laura Nader contribute valuable sources of insight for my own analysis.

Sally Falk Moore's *Social Facts and Fabrications* (1986) is a broad historical ethnography based on a processualist approach. Property is present throughout the book simultaneously as social category and theoretical concept; the examination of social rules, situations and disputes involving property allows the anthropologist to understand historical transformations over a period of a century as well as the integration of local contexts and problems into broader frames of power. Throughout the book, Moore makes use of various conceptions of property: from those emphasizing rights, to those focusing on social relations, and, finally, to those integrating the study of property within the larger politic-economic context. Her analysis is framed to combine the understanding of broad historical transformations with the detailed analysis of specific episodes ("events") considered simultaneously in their local and large scale contexts. The processualism proposed by Moore, the way she combined historical perspective, fine grained analysis and large-scale politic-economic analyses prove highly valuable for anthropologists engaging the questions of broad societal transformations in postcolonial or postsocialist milieus.

Equally valuable for understanding the fluidities and apparent inconsistencies of social action, especially in changing environments, is the influential book written by John L. Comaroff and Simon Roberts, *Rules and processes: The cultural logic of dispute in an African context* (1981). In the narrowest sense an anthropology of law, the book is set "to determine how normative systems and social action affect each other," and, more specifically, "how normative systems are used and how they change through use" (Hayden 1984: 469). Property is a social arena and a specific form of social relation in which the general logic of disputes can be more easily grasped. The two scholars focus on disputes over the devolution of property that were part of a social process generally connected to the developmental cycle of the family (176). The analysis of devolution and of the of the ideology and values experienced in the process allows

the authors to elucidate the conundrum around which the entire book is organized: “what explains the dualism in the Tswana conception of their world, according to which social life is described as rule-governed yet highly negotiable, normatively regulated yet pragmatically individualistic?” They show how, although Tswana have a repertoire of normative rules similar to Western laws that govern social action, the various conflicting rules in this repertoire do not block social action. This is possible in practice by the elevation of one rule at a greater level of generality. The specific value of almost all norms is derived only situationally and in relation to contingent and oppositional rules (Hayden 1984: 473). Furthermore, both the social context itself and the relevant normative repertoire are changed in the process and by the resolution of disputes.

*Rules and processes* illustrates well the virtues of processualist approaches to law and property. Perhaps easier to follow than Sally Falk Moore’s historical ethnography due to the more intense focus on a clearly delineated set of disputes, the work of Comaroff and Roberts leaves some questions still to be addressed before transferring their method to different socio-historic milieus. How are we to approach situations of broad and deep social transformations in which the normative repertoire itself is quickly changing and in which the known arenas of dispute themselves can no longer be taken for granted? More specifically, in the disputes involving money, values, and property that I study, everything is open for renegotiation: the resolution of disputes, the contrasting legal rules and moral assumptions used as repertoires of justification, as well as the emerging social order integrating dissonant evaluative principles.

Laura Nader contributed to the shift of paradigm in legal anthropology moving interest from the analysis of processes to that of legal ideologies and local meanings. *Harmony Ideology: Justice and Control in a Zapotec Mountain Village* (1990) is concerned with the relationship

between the legal system and its socioeconomic setting. The key premise and conclusion is that that “the context gives disputes their meaning” (Nader 1990: 246). Harmony, the overarching concept of the book, is both a sort of compromise approach to dispute resolution as opposed to adversarial models of litigation, and an overarching value, an ideology shared widely in society, equally by colonial rulers or state administrators and by the colonized groups. Her analysis of disputes over property is an excellent opportunity to observe practices informed by harmony ideology and local meanings of harmony. Property functions as an idiom of social relations among her informants, and disagreements over it illuminate fundamental values in society (247). At the same time, Nader warns us, harmony always comes at a price. In the case of the villagers she collaborated with, the ideology can easily turn into coercive harmony by “silencing for the sake of civility” (French: 960) and affect democracy by trying to inhibit the appeal to litigation. By focusing on ideology and widely shared values, the social analyst can easily gloss over ruptures, inconsistencies or alternative meanings of formally similar processes. Analyses such as Nader’s seem to assume homogeneity of values among apparently distinct spheres of social life and to disregard distinct formal and substantive rationalities prevalent in various social arenas.

But what happens when law becomes an instrument of calculated disorder, when it ceases to facilitate the legibility of social relations and has the effect of obscuring social practice? James Holston (1991) addresses specifically these questions by illustrating the long history of the usurpation of land rights through law in Brazil. According to Holston, the irresolution of the claims to land rights, a historical problem for the South American state, is not only allowed but produced by the intricacies of Brazilian law, illustrating the inherent ambiguity in Brazilian social life for the last centuries. Holston argues for looking at the dark side of law in opposition to “the utopian factors of justice, harmony, and resistance it retains” (697). He advocates a focus

on the ways illegality of land titles makes it available to many who otherwise could not afford the higher prices of legal residence. Such illegal and quasi-legal processes are made possible by the complications of law cunningly manipulated by land swindlers. As Holston argues, “drawing inspiration from the intricate formalities of the legal code itself and its bureaucracy of signatures, seals, stamps, and notarized copies, they model their deceptions on the very laws they violate” (7011). The conclusion reached by the author is that, although “legal confusion” has been a strategy of dominance in Brazil, people developed a strategy of legal confusion with greater brilliance in order to advance their rights.

In a completely different register, Katherine Verdery (1998; 2006) shows that democratization, the reconfiguration of citizenship, and the reconstitution of private property rights have been the result of transnationally enforced processes during the postsocialist period. The three determined categories in Verdery’s model are interconnected as property over land constitutes the basis of political inclusion and, this way, one of the premises of successful democratization in postsocialist societies. Sketching a socio-cultural history of land ownership in Eastern Europe and reconsidering the postsocialist privatization policies, Verdery argues (1998) that landholding should be seen simultaneously as an “insurance policy and pension plan” for many of the disenfranchised of the transition, as a premise for meaningful social and personal existence, and a spatial realization of personhood (in the sense that “persons are propertied, and land is part of persons” [300]) on which inclusion into “the nation” is premised.

Works such as the above suggest ways to analyze the mutually constitutive relations between contemporary forms of property, money, and knowledge. Earlier ethnographies already captured the impact of money on local economies with the advent of modernization in various parts of the world. What needs to be better understood is the way links between money, property,

and knowledge form the nexus that ground many contemporary forms of social action, from the commercial valorization of inventions and discoveries to forms of retributive justice through financial markets. Such arrangements are a privileged locus for national and transnational forms of governance characterizing contemporary capitalism.

I focus on the paradigms of argument and juridical rhetoric that, in spite of being deployed in courts, were often crafted during the weekly meetings of the associations of investors where I conducted research. Although starting from puzzlement with the scale of financial risks assumed by persons showing a prudent attitude in other contexts, I soon realized that in order to address this paradox, I had to get beyond individual choices and look at forms of collective behavior, emotional contagion, and the social relations in which such actions are situated. Property emerged as a practical conceptual language for discussions about values, relations, and rights. Global discourses on alternative forms of organization for mutual funds were appropriated, instrumentalized, and manipulated in local disputes, becoming imbued with local meanings and reshaped by the very disputes they were called upon to decide. Models of mutuality adopted from the US have blended with local forms of collectivism and are further reified by the judicial discourse deployed in disputes over losses, compensation, or the rights of mutual fund investors.

#### **1.4 CASES AND DISPUTES**

Returning to Romania over the summer of 2005 in search of ethnographic cases, I was drawn again into the story of *FNI* and *FNA*, whose reverberations had so deeply marked my experiences as an employee of the Romanian securities commission. Although the acute political scandal

triggered by the collapse of the funds had passed, the judicial disputes over responsibilities and compensations were at their peak. Few of the judicial actions initiated in the early 2000s had been completed, and the most significant ones had just begun by the time I went back to Bucharest. Disillusioned with the reaction of the authorities, lay investors had increasingly joined civic associations that were created to represent their interests. Such civic associations became vibrant fora where the emergent notions of money, moral values, and forms of public action were articulated.

Money had come in different forms after the end of socialism. New types of financial instruments, transactions, and institutions mushroomed with the de-etatization of the economy. While any of them could illustrate the rich meanings and diverse values brought by the new monetary practices, I found the disputes following the *FNI/FNA* scandal to be particularly suited for ethnographic study. These disputes had not only been going on for over ten years, but they had stirred numerous political scandals, affected a very large number of people number of people, and generated a vast array of court sentences, audit reports, parliamentary and police investigation reports, all offering an incredibly rich sources for interpretation.

Although the values referenced in such disputes are those permeating everyday financial practices, the disintegration of the funds and the disputes thereafter have rendered implicit meanings and habitual forms of action open to comment, analysis, and litigation. They have turned mundane practices of justification into objects of public debate and incessant moral evaluation. The object of my study has not been “overarching” values “determining” financial practice, but notions of value emergent in the process of accounting for financial decisions and their implications; not particular values, but an ethos informing practices; not nominal values,

but the ongoing and inherently situated forms of evaluation; not a static register of values (ends), but dynamic forms of valuation facilitating the unfolding of social action (means).

The headquarters of the several civic associations representing defrauded investors are the locales where I conducted a significant part of my research. They were the main fora where the judicial actions initiated by the investors were crafted. Starting from very intimate accounts and forms of justification drawing on personal documents (account statements, clippings from newspapers, letters and “personal memos” to public authorities, or evidence of illness), investors guided by the leaders of associations turned individual initiatives into collective action, personal accounts into a common vision, they planned their judicial actions and reflected on the previous steps. They evaluated the successes and failures of other litigants and turned such retrospective accounts into better future strategies. Having done hundreds of hours of observation and interviews at their weekly meetings, I witnessed how the “files” for legal action were constituted through successive operations of selection, simplification, ordering, inscribing, and bundling the documents of each investor. Such manipulations of the material artifacts supporting claims to money facilitated the conversion of personal motives into collective forms of action and reason.

The courts where the cases related to the funds were tried were also key research locales. Although there disputes appeared most ritualized, the formalism of legal procedures was accomplished through local yet interconnected actions performed in numerous places such as headquarters of civic associations, law firms, or police offices. Courthouses were also fora where the diversity of legal, financial, or moral discourses and of contrasting conceptions of value were most acutely expressed. Beyond the formal interactions, the constant effort of lay investors to understand what was taking place in courts and to position themselves in disputes was interesting. In this regard, the discussions in the hallways of courthouses throughout the breaks

of court sessions and after they ended were important. Direct litigants and attendants of the court sessions engaged in passionate discussions to find out what each party argued, the implications of particular interventions, and the meaning of those stated in front of the judge, as well as to get copies of court decisions and to learn how to formulate appeals and petitions to the court.

People often left together after court sessions or met at different times and walked through the city, incessantly talking about the trials and obsessively remembering the events of May 2000 when the funds had suspended the redemption of shares. Such discussions inevitably shifted towards recent political events and their implications for the main actors in the scandal. I assisted at several such encounters and later came to meet many informants this way: elderly people reluctant to receive me at home felt more comfortable meeting me in public spaces – as receiving foreigners at home can be either a discomfort, because of the lack of trust, or a burden, because of the normative performance of hospitality, for most retired Romanians, and to discuss with me their personal histories and their experiences related to the funds.

Mass media accounts of the *FNI/FNA* events grew in importance during my research. Local TV stations and newspapers often featured news, financial investigations, talk shows and debates that, even if not directly about the funds, were discussing the fate of the key actors and their political affiliates. Furthermore, with the digitization of newspapers, each publication kept a forum and articles were followed by comments posted by readers. These sections became one of the most important means for the crafting of public opinion in recent years, being limited only by computer literacy and the rate of access to the Internet. Although subject to important limitations due to age or social and economic class, those whose opinions I read in newspaper forums represent a different sample of society than I was able to meet otherwise, and thus complement nicely my interviews and informal discussions. An increasing number of people post comments

and take part in discussions hosted by newspapers. Such forums constitute one of the laboratories where politics is made and visions about society are crafted. Major political parties in Romania acknowledge publicly that they employ teams of people to post messages on each important issue in the media. Such “*postaci*” (a Romanian neologism generated by adding the rather pejorative suffix *-aci* to the English verb “to post,” pronounced *p o s t u h c h*) created genuine “meaning factories” reinterpreting political and social events according to the political vision of their employers. Such media practices were an invaluable resource for my dissertation.

Last but not least, I tried to document the forms of elite knowledge deployed in the disputes over money. Teaching at the Academy of Economic Studies and doing interviews with representatives of the Romanian securities commission, of the European Committee of Securities Regulators, and members of Parliament gave me access into fascinatingly complex forms of knowledge involved in political and financial reforms. Similarly, as judges, prosecutors, and even the secret services were trying to be more transparent as part of Romania’s integration into the EU, many of the indictments and investigation reports appeared in the media or on the web. Such documents were public, being part of the case dossiers and thus available to litigants, but they were not usually accessible to the wider public. The publication of such documents, forbidden by law but not often prosecuted, was increasingly used by supporters of judicial reforms who were trying to gain legitimacy for their actions. Such practices facilitated understanding of complicated financial transactions and interweaving of economic and political interests as well as the mode of operation of investigation authorities by much wider categories in society. As an ethnographer of financial and legal practices, I was particularly interested in understanding what investigators and judges look at, how facts were constructed and later challenged, and how accusations were formulated on the basis of these facts, including how

indictments were put together and their trajectory before going to court, and, more generally, the interpretations of events produced in the laboratories of financial and legal institutions.

## 1.5 AN OVERVIEW OF ARGUMENTS AND CHAPTERS

I organize this dissertation around the case histories of *FNI* and *FNA*, two mutual funds that collapsed in 2000 stirring numerous social, political, and judicial disputes. While paying attention to the disputes ensuing after the mutual fund bankruptcies, I try to situate such contentious interactions within successive episodes of political-economic change. Thus, I look at the regime of money under socialism as well as at the transforming role of money with postsocialism in Chapter Two. I then present at length the creation of a domestic capital market during the mid-1990s in Romania, in Chapter Three. After a brief contextualization of the successive market collapses leading to the default of the mutual funds I studied, in Chapter Four I focus on the two main characters of my dissertation, in an attempt to elucidate their preferred forms of reasoning and the premises of their agency. Chapter Five analyzes the judicial disputes following the collapse of the mutual funds and sheds light on the indexical and performative functions of the monetary instruments involved in the process. Chapter Six shifts focus on the administrative and judicial disputes occasioned by the regulatory reform affecting the capital market with Romania's integration to the European Union, in order to illustrate the concomitant disputes over compensation, rights, and values for mutual fund investors. The final chapter presents my concluding remarks on the judicialization of finance in postsocialist Romania, the ethos demonstrated by my informants, and what kinds of changes anthropologists might expect to take place in such historically unstable environments.

Chapter Two is a reflection on the role of money in contemporary Romanian history. I start by analyzing the discourse of ideologues of the Bolshevik Revolution and other Marxist thinkers on the role of money, but contrast their writings to the ways money functioned in practice in the state sector and in the domestic economy. I show that financial practices widespread under socialism, such as the deposits at the state savings bank; financial institutions growing at the time, such as the rotating credit schemes; or forms of economic association such as the manufacturing and credit cooperatives, shaped the mutual fund sector emerging in Romania during the 1990s. As money has grown both more important and more conspicuous after the end of socialism, I argue that it functions as a window into the social changes brought by postsocialism.

Chapter Three presents a detailed account of the creation of the capital market during the 1990s, with support from USAID. The chapter starts with the contrasting perspectives of the Romanian academics turned capital market executives or government officials, and those of the USAID experts who first implemented and then assessed the market-building project. The second part of the chapter changes the perspective, presenting the view of those who lived through and had to adapt to what is commonly described as the Romanian experiment in market building. The chapter illustrates the inert portfolio of shares, the fictitious securities, and the practices of portfolio consolidation engendered by the Romanian capital market. I use this failed experiment in market building as an opportunity to reflect critically on the scientification of governance with the advent of neoliberalism in Eastern Europe.

Chapter Four introduces the central characters of my dissertation. Using my personal relation to and numerous discussions with one of the characters, but relying also on the wide media coverage and generous interviews given to the press by the second character, I look at

their fundamental similarities in spite of the numerous contrasts between the two. One was the mastermind of the financial sham that ended with the collapse of the mutual funds, and the other the leader of the most important civic associations representing retail investors in their pursuit of compensation. Both are seen by the public as well as by their close collaborators as repellent mediators. They emerge as resourceful characters, good to work with for pragmatic purposes, but hard to trust or to befriend. Both illustrate opportunistic forms of reason as well as the unique ability to move resources between distinct domains of practical action and to mediate between contrasting forms of knowledge.

Chapter Five presents in detail some of the judicial disputes following the collapse of *FNI* and *FNA*. It focuses on legal epistemologies, illustrated by arguments about the value of money, its legitimate forms of circulation and accumulation, or the entitlements to compensation of those who lost it. Since money does not take a single form (such as cash or a specific currency) but is materialized into a collection of artifacts, contractual forms, and competing forms of knowledge, its indexical and performative functions become emphasized. Judicial procedures have a prominent role in determining the contingent value taken on by forms of money premised on the capital market. Law functions as a metapragmatic frame for financial, political, and moral arguments about the value of money.

Chapter Six shows how arguments about the compensation due after the collapse of the mutual funds turn into discussions about the rights of investors, and subsequently into political debates over the virtues of a mutualist in contrast to a corporate organizational form for investment funds. Such political and judicial disputes were at the most general level illustrating diverse notions of value and competing forms of worth brought by the postsocialist transition and later by the process of integration to the European Union. Disputes engendering changes were

thus multilayered: over compensation and responsibilities, over the rights of investors in mutual funds, over the organizational forms and regulatory frameworks for mutual funds, as well as over the values justifying alternative regulatory regimes.

The Conclusion problematizes the judicialization of finance in postsocialist Romania. As many who dispute the value of and entitlement to money and other financial instruments turn to the judiciary, the chapter views such actions as symptoms within the zone of liminality that societies shifting between macro-political projects find themselves in. An ethos of chary opportunism among my informants, illustrated by ethnographic examples throughout the dissertation, facilitated the neoliberal transformation of the Romanian economy even as my informants struggled to avoid the predicaments of this transformation. Change happened as people were trying to stick to the old routines, practices that worked in the past but that, in shifting economic circumstances, engendered new social, political, and moral configurations.

## **2.0 CHAPTER 2: FACETS OF MUTUALITY: MONEY AND FINANCIAL PRACTICES UNDER SOCIALISM AND AFTER ITS END**

With us, it's the other way round

(I.V. Stalin, cited in Peebles [1991:9])

To somebody interested in the comparative study of socialism and capitalism, few of the objects of ideological intervention were treated as contrastingly as money. Whereas it was considered essential for market success of businesses, the social reproduction of households and the viability of the states to the west of the Iron Curtain, money was treated throughout the socialist world as the epitome of the capitalist economy. Ideologues of East European communism, from Lenin to Bukharin and Preobrazhensky, envisioned an economy coordinated by political decision (rather than market principles) and planned for the progressive elimination of money from the socialist economies. While both kinds of economies had in practice a more ambivalent relation with money (note the zones of bureaucratic allocation and government intervention in capitalist economies as well as areas of intense monetization in communist countries), experiences involving money constituted some of the most distinctive features of everyday life in socialism and capitalism. It comes as no surprise for those having lived through the postsocialist changes in Eastern Europe that some of the most striking novelties of the new regime were the experiences and practices involving money. From new forms and ideas of money to a new emphasis on hard

monetary constraints within the new political economy, all filtered through conflicting moral evaluations of market practices, everything seemed to be different than the practices of social reproduction under socialism.

This chapter presents the transformation of money and the way it mediated the historical change from socialism to capitalism in Romania. The role of money was rather limited under socialism. While the political authorities tried to reduce it to a mere accounting measure of value, fearing the potentially disruptive effects of its circulation on the strictures of central planning, people during the socialist period had enough money but few possibilities to spend it. Key for the procurement of goods was the inclusion in networks of reciprocity, forms of mutual support, and the access to scarce commodities acting as money substitutes (alcohol, cigarettes, and cosmetics) [Wedel 1986; Mars and Altman 1987; Sampson 1987; Reed and Crowley 2010; Neuburger and Bren 2012].

As my older informants remember, common at the time was a contradictory attitude: eagerly trying to pursue new friendships and social relations without which information about the procurement of goods in the second economy was almost impossible; yet always being wary of informers who worked for the *Miliția* or the *Securitate* or afraid of being deceived by fake suppliers of goods. Paradoxically, such an attitude became more acute with the accelerating social changes of the 1990s, proving to be a resilient ethos, a rigid approach to each new practice, a mechanism giving change in values the aspect of mutations induced by context rather than pursued intentionally.

The post-socialist changes brought about not only the scarcity of money whose value and specific forms varied more and more, but also the use of money and specific financial institutions (the stock exchange, banks, or mutual funds) to drive economic, political, and social life. Created

to facilitate the privatization of state companies and the financial speculation by lay people, investment funds illustrate well the dilemmas of inclusion within the new political order, the contentious forms of citizenship growing “fractally” across Eastern Europe, as well as the inadequacy of our conceptual languages in accounting for the varieties of political-economic configurations emerging in the postsocialist world.

The chapter presents several case studies – the histories of different investment funds that constitute a factual referent for the entire thesis. The cases considered are those of voucher-privatization funds and of mutual funds initiated by private entrepreneurs. All cases illustrate specific forms of contention, acute tensions between the political goals of their initiators and the belated laments of those who lost money in them. They also show the narrowness of economic theory, which is unable to accommodate the political dimensions of financial arrangements and the forms of valuation they engender.

I draw on classical works of ideologues of communism, on books and articles describing the role of money under socialism, on archival sources about the use of money under socialism, on works outlining the goals and means of the economic transition out of socialism, on newspaper articles and secondary literature, as well as occasional interviews with people connected to the capital market.

## **2.1 IDEOLOGIES OF MONEY UNDER SOCIALISM**

The ideologues of the Bolshevik Revolution all argued for the elimination of money from communist economies. Some argued for a rapid and complete elimination of money (Bukharin and Preobrazhensky 1969) while others proposed a more gradualist elimination of capitalist

elements from the socialist economies (Lenin cited in Nove and Nutti 1972, 11; Stalin apud. Arnold 1937, 524), but all of them considered money to be the epitome of capitalism and the most direct instrument of capitalist exploitation. As Arthur Arnold (1937) showed, one of the first measures of the revolutionary government was to nationalize the banking system. The plan was to progressively eliminate all monetary transactions and to make money itself an empty idea. Lenin was critical of the role of money in creating bondage relations between *kulaks* and landless peasants in pre-Revolutionary Russia (Lenin 2008), as well as, following Rudolf Hilferding (1981), of the role of money (as bank capital) in facilitating the concentration of wealth in a few rich countries, the power of bank cartels over nations and the transformation of capitalism into imperialism (Lenin 1963). He advocated a moneyless communist society.

The most articulate and strongest arguments for the elimination of money were those of Bukharin and Preobrazhensky (1969). They argued that “society will be transformed into a huge working organization of cooperative production” (70) with no classes, no anarchy of production and no money to facilitate distribution. Whereas in the first stages of socialist planning state regulations and central allocation will substitute markets, the realization of the communist utopia means that everybody will have access to everything needed without competition and without the need for hoarding. The state will be altogether replaced by “various kinds of book-keeping offices and statistical bureaus” (73). The state bank (a “Unified People’s Bank” was proposed) will only keep accounting functions, will abolish all other operations specific of bourgeois banks, and will assist the state in planning and allocating resources. Furthermore,

...inasmuch as, from childhood onwards, all will have been accustomed to social labor, and since all will understand that this work is necessary and that life goes easier when everything is done according to a prearranged plan and when the social order is like a well-oiled machine, all will work in accordance with the indication of these statistical

bureaus. [...] Just as in an orchestra all the performers watch the conductor's baton and act accordingly, so here all will consult the statistical reports and will direct their work accordingly. (Bukharin and Preobrazhensky 1969, 74)

However, the practicalities of socialist rule made it impossible to remove money and banking institutions all at once. Lenin had realized much earlier that markets, prices and money could not be abolished, at least as far as basic products went, and argued for keeping the market mechanism of allocation for some time (see Nove and Nutti 1972, 11; Peebles 1991, 20). One of the direct consequences of this measure was the progressive monetization of even the large areas of the moneyless "natural economy" surviving in Imperial Russia (Nurske 1939, 83).

The following decades witnessed various financial arrangements and politics involving money. The confiscatory monetary reform implemented by Lenin, the monopolization of all banking activities into a single state bank (the *Gosbank*), the tolerance of only a few special purpose banks owned by the state and the forbidding of all forms of private money, credit and money substitutes resulted in an economic system in which heavy industry and the state sector were run according to plan and on cashless transfers of scriptural money through the state bank while the domestic sector (mainly consumption, as small scale production was mostly eliminated) was premised on the widespread use of cash (Garvy 1972).

Although the economic activity of the state sector was driven by the economic plan, money being conceived as *numeraire*, an accounting common denominator, state enterprises found ways to hoard and hide cash resources as well as to get into relations of credit and indebtedness with their economic partners beyond the decision and control of the state apparatus. The financial plan was, at least in theory, only the inanimate image of physical production; the cash budget, drafted and used as tool for the state bank to manage the cash resources and the issuing of new currency was allocated overwhelmingly (four fifths of the total cash resources)

for the payment of wages (Garvy 1972, 304). However, company managers arbitrated between the bank accounts (used for cashless payments among enterprises) and cash accounts (used for wages) increasing their autonomy from the state. The utopian “planned automatism” envisioned by the communist leaders (Gregory 2004, 223) failed not only due to the information jams into which *Gosbank* quickly entered, but also due to the incentives embedded in the socialist organization of production.

Premised on an unrealistic idea of plan discipline, this mechanism of coordination failed in practice due to the soft budgetary constraints faced by socialist companies, because *Gosbank* was always tempted to bail out underperforming companies, and because bankruptcy and dismantling of existing facilities would have been costlier than continued subsidizing of inefficient production. Vouchers, commercial credit, and money substitutes were more resilient than expected and always escaped state control (ibid, 233). As a result, Stalin argued that “we shall continue to have money for a long time, until we have achieved the first stage of communism” or until Soviet authorities create “an ideally organized system of Soviet trade, something which we are far from having and which we shall not have very soon.”<sup>5</sup> A more ambivalent relation to money was always maintained in practice by Soviet authorities. The situation was generalized to most of the Soviet satellite countries in Eastern Europe after the Second World War.

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<sup>5</sup> Arthur Z. Arnold (1937, 524) reports on Stalin’s discourse at the XVII Party Congress from which the excerpt on money was taken.

## 2.2 MONEY AND THE ECONOMIC PRACTICES OF STATE ENTERPRISES

In spite of the rather straightforward reforms outlined by the leaders of the Bolshevik Revolution and of the export of the Soviet model to the Eastern block after the Second World War, the practical functioning of the socialist economies of the region diverged consistently from the theoretical model. One of the most coherent theoretical models for (then) actually existing socialism is that of Katherine Verdery (1991, 1996). The model is an eclectic combination of theories and concepts, most of them produced by Eastern European dissident intellectuals (Pavel Câmpeanu, Janos Kornai, George Konrad and Ivan Szelenyi, or Istvan Rev), while some of them were created by Marxist critics of capitalism in Western academia (Immanuel Wallerstein and David Harvey). Verdery successfully combined Kornai's concept of "economies of shortage" (1980) with the focus on the politics of "rational redistribution" (which she renamed "rational allocation") theorized by Kornai and Szelenyi (1979) in order to shed light on socialism's "laws of motion" (Verdery 1991: 420). According to Verdery, socialist economies were economies of shortage with all the implications regarding the frequent bottlenecks, the soft budget constraints faced by socialist firms, and the power of producers and socialist administrators over consumers outlined by Janos Kornai. Furthermore, the principle of "rational redistribution" was legitimating the appropriation of surplus by socialist leaders. Verdery illustrates quite well the contrasting logic of capitalist and socialist companies:

In capitalism, those who run lemonade stands endeavor to serve thirsty customers in ways that make a profit and outcompete other lemonade stand owners. In socialism, the point was not profit, but the relationship between thirsty persons and the one with the lemonade – the Party center, which appropriated from producers the various ingredients (lemons, sugar, water) and then mixed the lemonade to reward them with, as it saw fit. Whether someone made a profit was irrelevant: the transaction underscored the center's

paternalistic superiority over its citizens that is, its capacity to decide who got more lemonade and who got less. (Katherine Verdery 1996, 25)

Furthermore, the ultimate goal of socialist economies was not the maximization of the total amount of *resources available for allocation*, as George Konrad and Ivan Szelenyi had thought; rather, the rationality of socialist systems was the maximization of *resources under the apparatus's control* and that was realized by privileging “resource producing resources” over resources (and goods) destined for consumption, even if the overall effect was the decrease of the stock of social resources (Feher et al.: 1983). Power in socialism was therefore the power to allocate scarce resources (Verdery 1991: 422-426). And whereas socialist bureaucracy served some allocation functions beyond its mainly administrative ones, most of the power to allocate (and thus the ownership functions present in socialist systems) was monopolized by the party elite.

The collapse of the socialist system was inevitable and due, according to Verdery, to a combination of factors: the properties of its internal organization, those of its external environment, and the short-term event history. The wider context refers to the high degree of indebtedness to the West to finance the growth or consumption of socialist economies, as well as to the competitive rigors imposed by the regime of flexible accumulation to which Western market economies shifted after the 1970s. Socialism could not keep up with the acceleration of time and the rigors of “time-space compression” brought by the reorganization of capitalism (35) and its collapse is an indication of the “capitalists’ monopoly on the definition of social reality” (37).

Although a sophisticated theoretical representation of economic life under socialism, Verdery’s model pays a tribute to the ideological focus on production and the etatization of

resources by the communist authorities. One of its main weaknesses is the diminished attention given to money. Not only is the socialist economic praxis thought to have downplayed the role of money but, following David Harvey, Verdery argues that the collapse of socialism was speeded up by the inability of Eastern regimes to accommodate capitalist regimes of value premised on high-velocity money and the temporality they engender. However, money continued to be used all over the socialist world. Its distinct accumulation and circulation modalities, mediating diverse spheres of social life, are rather telling of the constitution of value during the socialist regime.

In a very useful overview of the roles and functioning of money in several socialist countries of Asia and Eastern Europe, Gavin Peebles (1991) emphasizes the contrasting notions of money in capitalism and socialism. Thus, whereas in capitalism money continued to be the key informational and value token coordinating economic life at the macro and micro levels, Soviet authorities planned to eliminate money altogether (Bukharin and Preobrazhensky 1969) or to diminish its importance through confiscatory monetary regimes (Lenin cited in Nove and Nutti 1972, 11; Peebles 1991, 20). The fathers of Soviet socialism endorsed Marx's rejection of money as the instrument of capitalist exploitation of the workers and were planning to implement his proposal of replacing money with labor-tokens or state-tokens of value. They tried to demote the role of money as coordinator of economic activity by implementing soft budgetary constraints and using money only as an accounting instrument in central planning. Money became an accounting yardstick of value but was no longer used as an instrument through which the laws of scarcity and demand would manifest in the decisions of economic actors (Peebles: 23). As a consequence, there seemed to be always an excess of cash in socialist economies as opposed to capitalist ones that have often seen cash shortages. Furthermore, the diminishing

informational role of money, added to the secretization and even manipulation of statistics (ibid.: 7-14, 63-65) made most of the concepts (e.g., “inflation,” “output,” “marginal propensity to save”), theoretical models, and econometric techniques developed for Western economies ill-suited for the analysis of socialist economies.

Similar phenomena manifested in the domestic economy. Although there was a lot of protest to the confiscatory monetary reforms implemented in the USSR in 1947 and later emulated in the rest of socialist Eastern Europe (Peebles: 15-20), the money surplus and forced “monetary overhang” were resilient phenomena affecting the domestic sector throughout the entire socialist period. In Romania, as in the rest of the socialist states, the monetary reform (in January 1952)<sup>6</sup> was meant to confiscate the excess capital held in cash by factory owners, shopkeepers and *chiaburi* (rich Romanian peasants). People were generally afraid the new money would lose its value, prices would grow and the state would confiscate peoples’ savings. Those with more money would try to overcome the state-imposed limits to money conversions by faking records or redistributing money to poor acquaintances to be change for them.

In spite of the attempts to induce ever-newer bureaucratic criteria for the allocation (“rationing”) of consumption goods through rationing cards, standing in line, or the rigid exchange of domestic produce for industrial goods, money became more important in the domestic sector than in the state sector. It is true that, when compared to the capitalist economies in the West, households had an excess of cash that could not be spent and was thus more or less forcefully saved. However, in comparison to the official sector of the economy, domestic money

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<sup>6</sup> See “Note informative cu privire la situația preschimbării banilor” (Informative notes regarding the on the ground situation of the monetary reforms), *Archives of the Central Committee of the Romanian Communist Party, Economic Section*, File no. 54 (1952), National Archives of Romania, Bucharest, as well as Folder on “Living standards,” *Archives of the Central Committee of the Romanian Communist Party, Economic Section*, File no. 98 (1977), National Archives of Romania, Bucharest.

possessed most of its classical economic functions, had a more direct relation to value, and kept its character of scarcity. That meant that money continued to be paid for the retribution work, be exchanged for valuable things and be lent for interest rather than being distributed at no cost and without any counter-prestation.

The state sector and the domestic economy constituted part-autonomous, part-overlapping spheres of production and exchange in which money took on different forms, functions and modalities of circulation. The monetary conversions between the two spheres were multiple, took distinct forms and were subject to diverse moral evaluations: when salaries were paid, when purchases were made from the state stores, when households deposited money at the bank, when the state paid for mandatory agricultural contracts, or when different state benefits and forms of financial stimulus were paid by the state. As Peebles convincingly illustrates (1991: 23), money became progressively more important during the last decades of socialism, especially in the most reform-minded regimes with the gradual introduction of market criteria, the financial stimuli for pro-nativity policies, or the consumption and mortgage credit for youth moving to the cities. At the same time, the Romanian regime turned progressively towards autarchy, further demoting the role of the national currency, but simultaneously increasing the role and value of hard currency in the second economy. The sphere of informal transactions had become progressively the only viable substitute to the official sector.

### **2.3 MONEY AND MUTUAL ORGANIZATIONS (COOPERATIVES)**

Cooperatives and other mutual organizations complicated the political effort towards monetary control during the entire socialist period. Consisting of cooperatives of traders and retail

commerce, cooperatives of manufacture and household production, agricultural cooperatives as well as a diversity of mutual credit organizations for laborers and retired people, this sector was a hybrid of central planning and economic benefit-driven principles.

Romanian cooperation existed well before the advent of socialism but was reformed and incorporated into the socialist system of production and distribution being subsumed by the “principle of democratic centralism.”<sup>7</sup> Appearing during the mid-nineteenth century when it took the form of mortgage and loans associations, the system grew during the interwar period encouraged by laws adopted successively in 1887, 1918, 1924, 1928, and 1935 (MLFSP 2010, 73-74). At the time, various mutual organizations and cooperatives spread towards sectors such as rural credit associations, manufacturing cooperatives, agricultural collectives, popular banks (copying the Raiffeisen model), or mutual help organizations. The striking peculiarity of Romanian cooperation was that, unlike its Western European counterpart, it did not emerge from the associative initiatives of peasants and workers. It did facilitate the economic insertion of these wide social categories but it was mostly created and always supported by the state (ibid. 74-75). Forms of support span from the promotion of special laws and models of association, fiscal incentives and state guarantees, to low interest loans from the state budget. The active promotion of the social economy during the interwar period was associated with a pressing nation building process and the social promotion of the Romanian ethnic majority residing mostly in the countryside.

Romanian mutuality emulated the cooperative sector in the first wave of industrial countries in Western Europe. There it grew spectacularly with the twin processes of industrialization-urbanization during the 18<sup>th</sup> and 19<sup>th</sup> centuries (Arpinte et al. 2005, 11-14). A

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<sup>7</sup> See Decree no 133 of April 2, 1949 regarding the Organization of the Cooperation, issued by the Council of Ministers of Romania, page 2, available at: <http://www.legex.ro/Decret-133-02.04.1949-177.aspx>.

predominantly urban phenomenon for British working classes, the social sector consisted of cooperative organizations and credit unions in the German countryside, and took the form of worker production cooperatives in France. During the second half of the nineteenth century, such organizational forms were rapidly emulated by Latin American and Eastern European countries where capitalism was replacing older forms of socio-economic organization. Earlier ideologues of the cooperative movement – Robert Owen, William King, Ludwig Gall, Friedrich Wilhelm Raiffeisen, and Claude-Henri de Saint-Simon, most of whom were leftist thinkers, gave way to liberal thinkers like J.S. Mill and Leon Walras who made the social economy not only a legitimate concern for economics but a domain of practice “inspired by the values of democratic associationism, mutualism and cooperativism” (ibid., 14).

Romanian socialist authorities quickly incorporated the earlier forms of the social economy into the emerging command economy. Decree no 133 of 1949 (MLFSP 2010, 74) for the reorganization of cooperation created the conditions for the transformation of most organizations of the social economy into forms tolerated by the socialist state: manufacturing, trading, and agricultural cooperatives. The aim of this sector was to facilitate the transfer of industrial goods and agricultural produce among the rural and urban areas of the country while eliminating most of the intermediaries, getting rid of the bourgeois groups that dominated the previous trade with agricultural produce, and facilitating the insertion of socialist forms of organization among the wider population.<sup>8</sup> In retrospect, however, cooperation was not the epitome of the communist organization of work but rather a hybrid institutional form full of contradictions and ambiguities. Such contradictions are well captured by the political form of

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<sup>8</sup> See “Propuneri pentru reorganizarea cooperăției” (Proposals for the reorganization of the Cooperation), *Archives of the Central Committee of the Romanian Communist Party, Economic Section*, Folder “The Cooperative in Socialism,” File no. 59 (1949), pp. 1-5, National Archives of Romania, Bucharest.

governance envisioned by socialist authorities for the cooperative: the “principle of democratic centralism.”<sup>9</sup> Although formed at the initiative of their working members, re-organization and compliance to the new socialist laws was mandated and attentively guided by the communist leaders. Furthermore, although being incorporated into the general state plan at the time, cooperatives were run for the benefit of the members, up to 25 percent of the net benefit at the end of the year plus a consistent bonus fund being distributed to them.<sup>10</sup> As cooperatives had a lot of leeway for acquiring produce from villagers and other agricultural cooperatives as well as in organizing the process of distribution for industrially produced goods all over the countryside, they were also responsible for the price variations across the country.

Although the reorganization of the interwar cooperatist sector was a pretext for the marginalization and even imprisonment of numerous well-off villagers and manufacturers, leaders of the new cooperatives were continuously tempted to manifest initiative and to let themselves be driven by benefit instead of communist principles. The strategic position of the cooperatives and the practices of their leaders made them ideal breeding grounds for the second economy under socialism. Trade cooperatives manipulated a diversity of goods produced in towns and sold throughout the countryside. Village stores and taverns – channels for the distribution of much desired and scarce consumption goods – were now monopolized by the local Cooperative. Store clerks and internal audit committees of the Cooperative were in charge of implementing the criteria according to which rationed goods were distributed among villagers. This gave them considerable power locally and placed them in commanding positions for the

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<sup>9</sup> See Decree no 133 of April 2, 1949 regarding the Organization of the Cooperation, issued by the Council of Ministers of Romania, page 2, available at: <http://www.lexex.ro/Decret-133-02.04.1949-177.aspx>.

<sup>10</sup> See “Statutul model al cooperativelor de consum” (Model statute for consumption cooperatives), p.9, and “Statutul cooperativelor de producție meșteșugărească și casnică”(Statute of manufacturing and domestic production cooperatives), p.10, *Archives of the Central Committee of the Romanian Communist Party, Economic Section*, Folder “The Cooperative in Socialism,” File no. 59 (1949), National Archives of Romania, Bucharest.

growing second economy during the last decades of socialism. This sector of informality was where a considerable share of the cash in circulation during socialism was mediating transactions, as well as the domain where diverse money substitutes – alcohol, cigarettes, Western made consumption items, and even ration cards and coupons issued by the state – acquired value and facilitated transactions.

## **2.4 MONEY AND ITS SUBSTITUTES UNDER SOCIALISM<sup>11</sup>**

The role of money was considerably more important for the household sector than in the state sector executing the plan-coordinated production during the entire socialist period. As Peebles (1991) and Garvy (1972) show, wages by state-owned enterprises and the administrative sector were paid in cash; no cards, bank accounts, or checks were used for that purpose at the time. All of the purchases of consumption goods, house appliances or furniture, and even of luxury items were made in cash. Although many of the items available were rationed, the ration cards and special approval documents (from the state factory or agency where one was employed, for instance) would facilitate the use of money in exchange rather than replace it. Money was also saved in special accounts with the state savings bank until more significant purchases (of automobiles, furniture, or apartments) were possible, due to special approval, queuing for several years, or winning a lottery, against other potential buyers. Furthermore, money was extensively used in religious rituals and forms of traditional exchange facilitating social reproduction -

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<sup>11</sup> This section integrates but also subsumes to a broader perspective arguments about the socialist second economy organized around social drinking and the widespread circulation of alcohol. Such arguments were already made in Narcis Tulbure, 2012, “The Socialist Clearinghouse: Alcohol, Reputation, and Gender in Romania’s Second Economy,” in *Communism Unwrapped: Consumption in Cold War Eastern Europe*, Mary Neuburger and Paulina Bren, eds., pp. 255-276, Oxford: Oxford University Press.

wedding ceremonies, commemoration of the dead, or baptisms were all opportunities for monetary gifts.

The circulation of money in the domestic sector became both more important and constantly avoided during the last decades of socialism. Whereas economists were describing money as “passive” (Peebles 1991) in the state sector, where it was only reflecting the circulation of raw materials commanded by the plan, socialist money had most of its classical functions in the domestic sector. Money was used to purchase goods and services, to repay debts, to save and plan for future purchases, as well as to assess the value of economic and social obligations. However, money was seldom an end in itself or the favorite store of value, as it is stereotypically presented in capitalist societies. It was rather an unavoidable means for storing value as most of the expensive items a person could buy were available in limited supply: trips abroad were available to only a few who could get travel visas; cars and furniture could be bought only after queuing for a few years; apartments and houses could be bought only in certain parts of the country (the rest of the people being tenants of the state); buying multiple apartments could trigger an investigation from the *Miliția* and the public criticism of the Communist Party. Therefore, most of the affluent persons living under socialism had to deposit their money in the state bank and maybe invest some in jewelry and art objects bought on the black market. Forms of social storing and resource redistribution in networks, in exchange for obligations of support in the future, were more important for the organization of social and economic life under socialism.

There were few savings and investment instruments available at the time. The most common were simple savings accounts with the state savings bank. More appealing options were the savings accounts towards the purchase of cars and apartments. Such financial instruments

were, in practice, queuing devices limiting popular access to scarce state produced goods. One had to save a high proportion of the value of the desired good (from 75 to 90 percent) before participating in a lottery organized by the state bank administering the savings account. Those whose names were drawn in lottery were given the right to purchase the car or apartment and were lent the rest of the sum needed to buy it at low interest rates. Finally, the state offered people government bonds with coupon rates higher than those of the savings banks. These vehicles were meant to squeeze even more of the national product for state-made investments as well as prevent inflation (due to excess money) through the appropriation of the excess cash resources in the domestic sector.

Not everybody had enough monetary resources for the planned purchases, however. The most important purchases could be made on credit extended by the producing factories or the state-owned retailers. Money could also be borrowed from the state bank or from the mutual credit associations (*case de ajutor reciproc [CAR]* in Romanian) organized by the labor unions for active workers and retired people.<sup>12</sup> Even more important because of their frequency and ease of access were rotating credit schemes organized informally by work mates and named “Gypsy CARs” as well as loans from acquaintances, relatives, and friends. These informal practices of indebtedness and mutual help proved a fecund ground for the articulation of the second economy at the time. They formed the context in which scarce yet prestigious commodities came to

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<sup>12</sup> The mutual credit associations for workers (*case de ajutor reciproc [CAR]*) and for the retired people (*case de ajutor reciproc a pensionarilor [CARP]*) were institutional innovations brought about by the reform of 1949. Their genuine success and appeal among the public made necessary a special law regulating their activity: Decree no. 204 of 1951 (MLFSP 2010, 75). Mutual credit associations subsisted well into the post-socialist period in spite of the numerous reforms of the social economy during the last twenty years and their diminishing importance with the growth of banks and other micro-credit institutions. See Decree no. 358 of 1949 regarding the organization of mutual credit associations by the labor union, issued by the Ministry of Labor of Romania, available at: <http://www.legex.ro/Decret-Nr.358-din-20.08.1949-191.aspx>; as well as Decree no. 204 of 1951 regarding the organization of mutual credit associations for the retired, adopted by the Great National Assembly, available at: [http://legestart.ro/Decretul-204-1951-organizarea-Caselor-ajutor-reciproc-ale-pensionarilor-\(NzI00TM-.\).htm](http://legestart.ro/Decretul-204-1951-organizarea-Caselor-ajutor-reciproc-ale-pensionarilor-(NzI00TM-.).htm).

circulate and mediate exchanges of the informal sector, playing the role of money substitutes. Western-made goods such as cigarettes, fine spirits, cosmetics, or clothing items (blue jeans, leather jackets), in limited supply due to the restrictions on imports imposed by the socialist authorities, were craved and as gifts could facilitate many otherwise hardly accessible services: a medical examination, a housing allocation, extra fuel for one's car, a better job placement decision by the political authorities, better treatment for schoolchildren by their teachers, etc.

The socialist second economy grew especially during the last two decades of communist rule, when the disproportionate investments in heavy industry and real estate works, on the one hand, and the accelerated repayment of foreign currency loans from international banks, on the other hand, drained most resources of the economy by re-allocating them away from the sector normally producing final goods destined for consumption. With the autarchic turn in Romania, Western commodities were resignified as decadent and their circulation was restricted due to their subversive quality. Romanian-produced commodities or those imported from the other socialist trading partners (China, Cuba, and the GDR) were the ones being distributed through state commerce. Scarce Western commodities available in special foreign currency stores or those open for Party and *Securitate* cadres and the most prestigious products (Kent cigarettes, Fa soap, American whisky, French cognac, blue jeans, etc.) became local money substitutes in transactions of the second economy. The sphere of informal transactions constituted, in many ways, a zone of confusion and ambiguity where commodities were in continuous movement, facilitating the manipulation of resources and social relations for the creation of value. In late socialist Romania this was the case of the second economy, a zone of communication between East and West through the commodities that circulated there in spite of, and even because of the ideological divide between the two blocs.

One of the key commodities of the second economy and a local money substitute with much social currency was alcohol. Informal and even illegal transactions were associated with the intense circulation of alcoholic beverages, the multiple conversions between diverse commodities, favors, and valuables, as well as performative drinking in ritualized social settings. Drinking in taverns situated in villages and working-class neighborhoods of towns was constitutive of a sphere of material and symbolic exchange of goods and services appropriated from state enterprises and circulating in the sphere of the second economy in what became a critical arena for the display of reciprocity. Village taverns (*MAT*)<sup>13</sup> administered by the socialist cooperation functioned as clearinghouses for the circulation of information and things escaping the control of the state as well as the settlement of debts accumulated in informal transactions.

The ever stricter state control of consumption, doubled by an expanding second economy in which alcohol was a key commodity, during a period when other countries within the bloc liberalized their economies to some extent, particularized the Romanian socialist regime during the 1980s. Such measures could be rationalized as a possible response to changes in the global economy. As David Harvey (1990) has compellingly argued, the turn to free-floating exchange rates and fluctuating interest rates after the 1970s produced significant changes in contemporary capitalism, giving birth to a regime of flexible accumulation characterized, among other things, by the cultural and economic importance given to consumption and the continuous generation of needs by the politics of fashion. During the same period, Romanian communist leaders turned towards autarchy and implemented a rigid control of consumption, based on the rational satisfaction of needs, in order to make possible the accumulation of economic surpluses needed to repay debts to Western banks that were charging increasing interest. Although totally opposed

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<sup>13</sup> The acronym stood for the state Monopoly on Alcohol and Tobacco (*Monopolul Alcoolului și Tutunului*).

to the Western stimulation of consumption, the Romanian choice was similarly based on the excessive ideologization of consumption and the central role given to it within economic policies. Consumption gained a more prominent role among the spheres of economic life being either the engine of growth that needed to be constantly stimulated by advertising and loans (as in the West) or a waste of resources when left to the desire of consumers that needed to be administered rationally and inhibited in order to release resources for production and foreign loans repayment (as in socialist Romania). While shopping malls were growing all over the capitalist world (production facilities of modernist industry being turned into cinemas and malls as part of the urban renewal process), social canteens and centers for rational collective consumption were built in all the working neighborhoods of Bucharest during the late 1980s. Ironically, all of these canteens (nicknamed “the hunger circus”) were turned into shopping malls after 2000 with the prospective integration into the European Union.<sup>14</sup>

In addition to being a channel of information flows, *MAT* was also the key entrance point for money into the circuits of the second economy, where it mediated a diversity of transactions easily recognizable by those intimate to the tavern world but hardly visible to outsiders. The traces of such transactions were acts of commensality during which a bargain would be struck and cemented because treating one with drinks could be used as a payment-in-kind for services. Moreover, getting drinks on credit from the tavern keeper meant that not only was one reliable but that one would not report the tavern keeper (liable for “speculation” – a crime related to the black market in alcohol and other valuable items of consumption sold informally at inflated prices, double accounting, and the alteration of the tavern books). Shortages and extensive

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<sup>14</sup> A description of the initial plans and subsequent histories of these projects (unfortunately, mostly in Romanian) is presented at the following link: [http://en.wikipedia.org/wiki/Hunger\\_circus](http://en.wikipedia.org/wiki/Hunger_circus). A journalistic rendition of the subject is available at <http://www.jurnalul.ro/special/circurile-foamei-52499.htm>. A further analysis of the process is available at: <http://www.jurnalul.ro/jurnalul-national/de-la-fabrica-de-mancare-la-circul-foamei-319162.htm>.

surveillance under late socialism in Romania gave *MAT* a crucial role for the creation and enforcement of informal transactions. As information was scarce and tightly controlled by the state, the flow of alcohol made the transfer of information more fluid as well.

Because Romania was struggling with comprehensive scarcity in the attempt to repay all foreign debt during the 1980s, acts of petty theft were classified as speculation (penalized by the communist penal code) and even sabotage, in the case of key commodities, and could be severely sanctioned. Indeed, “tables and chairs could have ears”; many among the villagers turned out to be informers for the *Miliția* or for the local organizations belonging to the Communist Party.<sup>15</sup> Reserved and coded speech was some of the strategies used at the *MAT*, just as at other public venues in that period. An apprehensive attitude was common among most of those engaged in the practices of the second economy. Finding sources of goods as well as potential transaction partners was unavoidable during a period when people were deprived of even basic food staples. At the same time, most of those I talked to remember not being able to fully trust anybody. Even close friends and relatives might turn somebody in to the *Miliția*; as subjects of detailed surveillance by the *Securitate* undercover agents and facing constant blackmail by party secretaries and other informants, many did not have any choice but to report on their transacting partners. An ethos of prudent skepticism and impatience to seize of any opportunity developed throughout the 1980 and persisted well into the years of postsocialist transition. This ethos proved to have important consequences for the ways in which the political-economic reforms of the postsocialist period were adopted by lay people - those whom they impacted most in social and economic terms.

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<sup>15</sup> The *Miliția*'s use of informants among the consumers in taverns to find about thefts from state factories was widespread in all Romanian towns and villages during the entire socialist period. See “Department Stores, Specialty Shops, Service Stores: Bureaucracy Prevents Improvement,” in *Radio Free Europe / Radio Liberty Research Reports* (Budapest: Open Society Archives, 1962).

## 2.5 SHIFT IN MONEY PRACTICES AFTER SOCIALISM

The end of socialism has, in many respects, led to a wide reconfiguration of everyday life for ordinary Romanians. Looking back at the last two decades, informants realize that maybe none of the changes have been as spectacular as those involving money. From a relatively widespread currency with a limited degree of *moneyness* due to limited opportunities for spending or investing, Romanian money and the harder currencies of the West (mainly the US Dollar and the Deutsche Mark) turned into scarce and valuable commodities without which things became more and more difficult to procure.

Private savings in *Lei* (the Romanian currency) continued to be significant for a few years after socialism. However, their nominal amount and real value started to erode as unofficial inflation and exchange rates against hard currency were on the rise. Not only were increasingly diverse commodities and household appliances flowing into the domestic market from Western Europe and Turkey being sold for cash and, often, for hard currency, but the preservation and growth of money became a problem under inflationary conditions. To be sure, the Romanian state tried to preserve the value of the national currency in order to maintain macroeconomic balances and domestic living standards. The specific measures taken for that consisted of the administrative control of many prices (especially those of energy, healthcare, and transportation), massive subsidies awarded to the overwhelming state sector, fiscal and technical barriers limiting the amount of expensive imports, and the limited convertibility of the national currency.

These administrative measures, many of them inspired by the former technocrats of the command economy, were effective for only a few years. The mounting social pressures for salary increases, social assistance, and the subsidy of all sectors characterized by over-employment (mining, industry, administration, or healthcare and education), many of them

resulting in violent social protest, led fearful politicians to loosen “stabilization” efforts in favor of unsustainable government expenses covered by rapidly decreasing foreign exchange reserves<sup>16</sup> and the artificial increase of the money supply (basically, the printing of money by the central bank).

From the perspective of those living through that period, such macroeconomic and political measures were adopted in response to situations and choices made on the ground which were themselves generated by previous reform measures. State policies and private economic strategies were interacting and generating a spiral of economic decrease and price inflation. Household appliances (automatic washing machines, color TV sets, and stereos), Western-style garments (blue jeans, Adidas shoes, or fashionable women’s underwear), as well as the much savored coffee, cigarettes and spirits turned from items of prestige and quasi-currency under socialism to goods one could have access to if one had the money. While the state was trying to limit these imports, containers of such products were sold literally before being unpacked by those having enough political connections to get an import approved. The unintended yet not illogical effect of the state-imposed limitations on imports of consumption goods was that their market price grew continuously<sup>17</sup> making more and more people eager to get hold of something “valuable” as the money was depreciating anyway. The apparent paradox is that as people were

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<sup>16</sup> People nostalgic about Ceaușescu’s Romania take pride in the fact that the former communist leader managed to repay all foreign debt ahead of schedule during the 1980s leaving the country with trade surpluses and several billion dollars in currency reserves. Such people were always less inclined to acknowledge the great shortages and frustrations endured by lay people as a price for economic and political autarchy. Although the current financial crisis in the peripheries of Europe makes us question the alternative model of economic development based on massive social and political indebtedness, the chronic shortages experienced during the last decade of socialism has imprinted a resilient memory of suffering on many others among those living in socialism. A more balanced way of living, avoiding both the temptation of uncontrolled borrowing and the frustration of chronic shortages is not that hard to imagine.

<sup>17</sup> Proverbially by now, most of the newly rich former *Securitate* officers or Communist Party members in contemporary Romania pretend to have made their “first million” in the speculative and chaotic commerce (*bișniță*) of the early post-socialist period.

buying more and more goods whose prices were going up, money was losing its purchasing power as it was becoming ever more important as a means of payment, and inflation was increasing as the state was trying to prevent it.

While many people still had some savings from the socialist period, others had not been so cautious or were saving for purchases of more significant value. The practical question was where to take the money from and what form of indebtedness to engage in. The choices were rather limited. Close family, friends, and work mates continued to be a source of short-term, no-interest, unsecured loans as under socialism; however, these became less available in time as everybody was making plans and the value of money at repayment was always smaller due to inflation. The rotating credit schemes, loan cooperatives organized by labor unions, or the mutual help associations of retired people, subsisting throughout the socialist period, supplied a significant number of loans especially in the case of small amounts – anywhere from three to twenty times one's monthly wages. Added to these were the loans extended by managers of state companies to their employees, transferring a large amount of the state subsidies towards social and political ends. Controlled by the state and affected by the bureaucratic procedures in the newly established financial institutions, bank loans were available to only a few people with the right connections during the early post-socialist period.

Even more challenging tasks during the early postsocialist years were those of preserving the value of money or trying to grow it. Some people had significant savings destined for the acquisition of TV sets, furniture, or automobiles – all scarce during socialism and allocated administratively to the prospective buyers. With post-socialist inflation those savings rapidly lost almost all their value. The newly established banks took advantage of people's lack of knowledge and placed their savings in checking accounts rather than savings accounts or

deposits. Whereas under socialism the difference between the two was not important as inflation was almost nonexistent and interest rates paid by the state savings bank were rather low, after socialism inflation eroded the value of money at a fast pace. Furthermore, new opportunities – houses, foreign-made cars and jewelry, as well as the increasing costs of healthcare (difficult surgery, more expensive medications) - required more significant amounts of money that people were desperately trying to obtain. New commercial banks and credit organizations, speculation in privatization vouchers, real estate speculation, pyramidal schemes or “savage” commerce were all premised on people’s incessant attempts to make money in a very new environment whose rules no one knew.

Burgeoning financial practices produced several financial companies that grew to respectability during the post-socialist period, but also led to more than a few deceitful schemes. Forgery, theft, extortion, or Ponzi schemes were part of a diverse repertoire of unlawful and sometimes unregulated money-making practices. The latter grew from circles of indebtedness among acquaintances and friends into large pyramid schemes that collapsed spectacularly throughout Eastern Europe – the Russian *MMM* (Borenstein 1999), the Albanian *Sudja*, *Xhafjerri*, and *Gjallica* (Korovilas 1999), as well as the Romanian *Caritas* (Verdery 1995a, 1995b) are some of the best known among them. The introduction of new money and the wider circulation of foreign currency in cash (reminiscent of the socialist period as much as a result of the poor banking services) gave many people numerous opportunities to produce counterfeit money or to practice schemes of miscounting and manipulating money when making payments.<sup>18</sup> The trafficking of passports (often by youth stealing them from their parents) that would be used by

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<sup>18</sup> The “*Maradona method*” (named after the skill of the famous Argentinean soccer player) or “*\$men*” (pronounced like *shmaen*) consists in deceiving your transaction partner by taking back some of the banknotes you counted in the process of making a payment. The following YouTube video provides an illustration of the method: <http://www.youtube.com/watch?v=GUWls2fiZxY>.

well-connected intermediaries to buy foreign currency at the official rate (limited to 500 USD per person per year) that would be immediately sold on the black market was another widespread form of petty illegal transactions. Last but not least, pledging as collateral things without value (the banks had few competent real estate assessors) or fake income statements proved to be an easy way of getting the money and then defaulting on the loan without significant consequences. All such small-scale fraudulent practices involving money are evocative of a period characterized by cognitive, moral, and institutional ambiguity and make it easier to understand the grounds for much ampler financial scandals.

## **2.6 THE POLITICS OF STABILIZATION, MARKETIZATION, AND PRIVATIZATION**

The political counterparts of the more or less chaotic transformations in everyday money practices were the state measures towards stabilization, marketization, and privatization. These were conceived as a mix of policies meant to transform the planned economy inherited from socialism into a “functioning market economy” and a political regime of “market democracy.”<sup>19</sup> More specifically, these policies consisted of a set of interdependent and at times contradictory measures. Economists of transition have described postsocialist reforms as a web of interconnections, a range of simultaneous and interdependent measures towards price liberalization, privatization, and macroeconomic stabilization (Lipton 1993: 3). Although the

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<sup>19</sup> While the concept emphasizes the solid link between democracy and market economy, some critics decry the dilution of democratic principles with the growth of market practices involved in the coordination of more and more spheres of social life, including those previously premised on political arrangements such as pensions, social benefits, education or healthcare.

Western advisors of early democratic governments in Eastern Europe (Kornai 1990; Lipton and Sachs 1990; Feige 1990; Kowalik 1991; Demekas and Khan 1991) had a clear roadmap in mind recommended to every country in transition, the later retrospectives on Eastern European reforms were more nuanced. Such accounts published after the first decade of reforms (Transition Economies 2000; Mitra 2002; Myant and Drahokoupil 2010) are more attentive to the different timing and initial conditions of the transition countries, to the diverse privatization methods and strategies of macroeconomic stabilization, as well as to the institutional and cultural factors mediating the outcomes of reforms in each country.

Concretely, policies of economic liberalization had two goals. One was to democratize economic life allowing anybody to produce and consume all goods. The second was to increase efficiency by eliminating administrative constraints and allowing for the rational (i.e., economic) pricing of goods, rather than administratively set prices for consumer goods. Furthermore, liberalization meant the increased role of markets in the allocation of goods and productive factors according to freely-set prices rather than the central plan.

Simultaneously, policies aimed at macroeconomic stabilization were fundamental for the success of liberalization. Whereas price liberalization measures were meant to eliminate the excess money in the economy produced by the socialist forced saving policies, quick measures for the control of inflation were made necessary by the initial increase in prices. The stabilization measures were intended to recreate some sort of macroeconomic equilibrium through the assurance of fiscal and monetary discipline and the control of the trade deficit. In practice, however, the control of the public deficit through the limitation of public expenses and subsidies, as well as that of the monetary expansion through the control of the money mass, were difficult

to implement, given the immense social pressures generated by increasing prices, diminishing real wages, and increasing unemployment.

Finally, neither liberalization nor stabilization efforts could produce lasting effects, economists and politicians believed, if the right economic incentives were not in place. These incentives towards economic behavior were thought to be generated by private property rights. Simultaneously, the state should be released from the burden of administering collective ownership entities, a constant opportunity for abuse and cause of macroeconomic disequilibrium. Therefore, all former socialist countries embarked on massive privatization efforts. Some started even before 1989 (Hungarian small privatization) and some tried to delay the process as much as possible (Romania initially only restituted nationalized land). Privatization methods differed as well. From small-scale privatization and associations between state enterprises and private firms (Hungary), to direct negotiation and offering of shares (Czech Republic, Hungary), to voucher privatization (Czech Republic, Romania, Russia) and employees' stock ownership (Poland, Romania), transitioning countries tried everything.

Although the U-shape evolution of the economy during the early transition years was inevitable (Blanchard 1997), some countries were more successful than others in re-creating an economic order. Romania was rather late in adopting reforms (the former communists still in power considered a third way between communism and capitalism for a few years), and later quite ambivalent about the measures taken, oscillating between privatization methods, policies towards liberalization and disguised forms of social protection, attempts at macroeconomic stabilization and the printing of money to cover social demands. While the outline of politics was rather straightforward and the assessment of their impact was based on the evaluation of synthetic economic indicators, the accounts of economists (cited above) fail to illustrate and

explain how the reforms adopted unfolded in everyday life and how the state-initiated measures were implemented in practice. Dealing with practices usually treated by economists such as money, its value, and its manipulation, this thesis tries to reconstitute some of the specificities of Romania's economic shift from socialism to capitalism and the increased role of money in the new political-economic order.

## **2.7 THE CONUNDRUMS OF VARIOUS PRIVATIZATION METHODS**

The recreation of private property rights and the privatization of state enterprises were implemented rather late and without enthusiasm, and were soon misappropriated by those with good political connections from either the communist technical elite or the emerging newly rich classes. Land restitution began early in 1991<sup>20</sup> and resulted in the creation of a very large number of smallholders. Adopted in response to mounting political pressure, the dismantling of collective farms and the restitution of land placed the new class of owners in a precarious situation, without the previous forms for the organization of work, knowledge of agricultural engineering, or access to capital in the form of finance and technology (Verdery 2003). At the same time, laws were drafted that allowed for the incorporation of private firms and meant to facilitate the emergence of a new class of small entrepreneurs dealing in commerce, transportation and petty production.<sup>21</sup>

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<sup>20</sup> See Law no 18 of 1991 regarding the restitution of land, Romanian Parliament, the Official Bulletin of Romania no. 1 from January 5, 1998, available at: [http://www.dreptonline.ro/legislatie/legea\\_fondului\\_funciar.php](http://www.dreptonline.ro/legislatie/legea_fondului_funciar.php).

<sup>21</sup> See Law no. 31 of 1990 regarding companies, Adopted by the Romanian Parliament, Republished in the Official Bulletin of Romania no. 33 from January 29, 1998, available at: <http://www.onrc.ro/documente/presa/sistemul.pdf>.

The privatization of state factories proved, in all respects, a challenging enterprise. The early postsocialist authorities were caught in between pressures to privatize made by international financial organizations and the example of their peer Eastern European countries, the demands for social assistance by state employees, calls for protectionism by the state managers and the technocratic elite, resistance to privatization from the nationalistic groups involved in politics, as well as their own preference for a system in which the state plays a controlling role. The first privatization attempts were based on the MEBO (management and employee buyout) method (Ellerman 1993). The procedure gave managers and workers (directly or represented by the labor unions) the chance to subscribe to some of the shares of the company in which they worked. Although an excellent theoretical idea that would give workers the chance to become owners and would close the gap between principals and agents, the MEBO method of privatization proved in practice an instrument for the appropriation of value by the older managerial elite. Not only were managers to get the larger share of the capital to be privatized but they were also able to control the allocation of shares subscribed by the workers. As there were no independent registries for shareholders at the time and the task was much beyond the means of the ministries and state agencies to which state companies were subordinated, the subscription of capital was administered by the directors and the labor union leaders, many of them controlled politically and through *Securitate* files by the politicians of the day. Many of the workers were only nominal owners as their voting rights were regularly exercised by the managers that got their mandate. Others were even forced to give away their subscription rights or sell their shares at very low prices to the directors under the threat of being laid off.

Romanian authorities were soon forced by their international partners to put in practice a more comprehensive privatization process. Faced with financial disequilibria, Romania had to

give in to the pressures of international financial organizations and implement a voucher privatization process following the model in the Czech Republic and the Russian Federation. Former socialist state enterprises were incorporated and their shares were allocated among a State Property Fund (70% of capital) designated to administer the privatization process, and five regional Private Property Funds. Adults over 18 years old were initially distributed privatization coupons<sup>22</sup> with a set nominal value that could be subscribed either directly for the shares of specific companies or to one of the five Private Property funds organized as closed-end funds.

In the absence of any familiarity of the public with financial instruments and markets or of any serious public information campaign, the first wave of the privatization process proved a fiasco. In spite of the nominal value each coupon had, the rapid inflations and the impossibility to evaluate the companies undergoing privatization made it a challenge to determine the value of privatization vouchers in any formal way. Privatization vouchers were traded informally in the streets of all cities and towns (usually next to farmers' markets) or were given away to relatives and political patrons. Wide networks of Gypsies usually dealing in the underground market for foreign currency were also buying privatization vouchers for former *Securitate* officers and state officials taking advantage of the privatization program to subscribe to large packages of shares and take control of the most promising state companies. The ubiquity of privatization coupons dealers and the bewilderment of simple people having to cope with elusive opportunities of getting a piece of the former state economy are still very much present in the memory of those lived through that period and who are currently trying to rationalize social deprivation.

Among those who did subscribe their coupons, few did it based on a "rational" calculus in the economic understanding of the term. Many were driven by affective criteria and the

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<sup>22</sup> See Law no 58 of 1991 regarding the privatization of companies, the Romanian Parliament, the Official Bulletin no. 169 from August 16, 1991, available at: [http://www.cdep.ro/pls/legis/legis\\_pck.htm?act?ida=1330](http://www.cdep.ro/pls/legis/legis_pck.htm?act?ida=1330).

notoriety of local companies. Having the chance to invest in a local industrial complex or other production facility that has historically employed a lot of people was an opportunity not to be missed in spite of the gloomy economic prospects of those companies. Even more people used their coupons and those of their family to invest in the company where they worked replicating thus the MEBO strategy.<sup>23</sup> Either through de facto control of voting rights, through purchase of shares at ridiculous prices, or through outright appropriation, many of the directors of former state companies managed to concentrate large chunks of their capital offering in exchange for political connections that secured subsidies for the companies and the promise not to lay off their subordinates. Most of these local forms of barter (giving up ownership control in exchange of job security) proved futile as many of the state loss making state companies were shut down and sold as scrap iron during the structural adjustment programs at the end of the 1990s.

The privatization program was given a new impetus in 1995 when a new series of vouchers were distributed to adult Romanian citizens and a new set of state companies were listed for privatization. Although the MEBO method of privatization continued under the pressure of powerful directors of state companies, the government had to take measures in response to the losses in the state sector and the conditions imposed by the World Bank. However, informal dealing in privatization vouchers registered a new height, this time driven by the quick profits that could be made on the recently opened Bucharest stock exchange.

This was the dawn of an easy money era. Taking advantage of the regular errors of independent registries servicing the stock exchange, of the complications due to oversubscription of shares and of the large mass of uninformed (if not financially illiterate), old and even dead investors, huge numbers of shares were sold fraudulently by financial intermediaries that made

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<sup>23</sup> This was, however, a distinct privatization strategy as outsiders were allowed as well to subscribe the shares of the respective companies.

fortunes banking on authorities' unwillingness or inability to enforce the law. A large part of the "capitalists" in the Romanian version of Fortune's top 100 also pretend to have made their "first million dollars" in the muddy financial markets of the 1990s. Among them are some of the actors figuring prominently in this dissertation.

Many of the weaknesses of the Romanian capital markets were structural, being induced by the faulty design and the untimely institutionalization of market authorities. Others can be assigned to the informal power of the former technocratic elite and of the communist secret services that were able to manipulate the privatization process. Equally important, the culturally situated forms of knowledge and action through which new financial practices were filtered by the large part of the uninformed public also generated particular configurations and dynamics of the privatization process. Scholars of the Romanian capital market (Vosganian 1999; Markiewicz 2007) or professionals contemporary with the events generally consider that the creation of the first market institutions and investment funds before a supervisory agency (an independent securities commission) was in place was an institutional mistake that invited fraudulent practices. By the time the Romanian National Securities Commission (CNVM) and the Bucharest Stock Exchange (BSE) were created in 1995 (based on the Securities Law adopted a year before) Private Property Funds created by the state and independently initiated mutual funds had been operating for several years. Similarly, the distribution of privatization vouchers and the issuing of shares prior to the development of an exchange for the quoting of transferable securities complicated very much the process of valuation and stimulated speculative transactions that made some rich and ruined others.

## 2.8 THE GROWTH AND FALL OF THE NEW COLLECTIVES

Investment funds constituted one of the most promising areas of the financial sector during the postsocialist period, both from the perspective of institutional creativity and from that of the return on investments. Constituting an altogether new repertoire of practice, distinct from the few investment opportunities under communism, these funds were ambiguously situated, perceived by the public as in between the stock exchange, the emerging commercial banks (themselves something different from the sole state savings bank in communism to which lay investors had access), and the Ponzi schemes proliferating throughout Romania during the 1990s. While public perceptions of the funds departed considerably from the institutional varieties adopted in Romania as well as from the Western models considered in the process, the promise of enrichment through financial speculation was built in the sector from the beginning. Investment funds, coming both in the “close-end” varieties and as mutual funds,<sup>24</sup> were meant, at least by the Romanian architects of the economic reform (Vosgianian 1999; Anghelache 2000), to support the creation and growth of the capital market, to channel savings into investments for newly privatized companies, and to give an opportunity to retail investors to diversify their portfolios.

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<sup>24</sup> Mutual funds (a.k.a., open-end funds) are basically collective investment entities in which investors buy shares. Theoretically, they have several advantages over alternative investment vehicles and especially over close-end funds (a.k.a., risk funds): 1. they allow people to pool resources and make more efficient and less risky investments with the help of skillful administrators; 2. they allow the purchasing and redeeming of shares (i.e., entry and exit) on an ongoing basis. Administrators are supposed to implement the investments strategies and to calculate and declare publicly the current values of the shares (value of all investments less financial obligations divided by number of shares in circulation). Money and other financial assets of the funds are kept by depositary banks which also keep a separate record certifying or not the public values of the shares declared by administrators. Regulators (in Romania the National Securities Commission - *CNVM*) supervise the activity of administrators and depositaries and issues new regulations regarding the activity of these funds. Whereas in most of the Western countries mutual funds would be considered relatively safe financial ventures with a passive portfolio administration strategy, in Romania they became the epitome of financial hazards after several notorious collapses that washed away the life-savings of hundreds of thousands of lay investors. For a classification of European types of investment funds see the web site of the European Fund and Asset Management Association (EFAMA) at [www.efama.org](http://www.efama.org); for the American varieties and their regulation see the website of the Investment Company Institute (ICI) at [www.ici.org](http://www.ici.org).

Although they took off rapidly, capitalizing on the newly created opportunities in the economy, mutual funds were subject to some of the most notorious collapses in postsocialist Romania due to a combination of poor regulation, weak rule enforcement, and fraudulent behavior of fund managers. Mutual funds were created in 1993 when a special government ordinance was passed to regulate the domain. Romanian authorities chose a Western organizational form for mutual funds that had been fading during the last decades with the growth of securitization and the offensive of investment banking at the expense of savings-and-loans organizations in the US. However, mutual organizations (unlike corporations) promised to reproduce some of the principles and experiences of collective organizations under socialism regardless of the radical novelty of the financial investments and portfolio management strategies of funds. This was, according to witnesses of that period, a way of encouraging the localized, community based, cooperative-minded version of capitalism at the expense of its more speculative institutions.

As the creation of the stock exchange and the other institutions of the capital market was delayed for at least a couple of years (such institutional plans were subsumed by the imperatives of the privatization process), the funds created initially invested most of their portfolio in letters of trade, commercial bills, and loans granted to companies connected with the initiators of the asset management companies. Furthermore, the fund administrators used a formula that added to the current value of financial assets the present value of discounted cash flows (not a sound evaluation method in an inflationary transition economy, some claim) thus inflating the reported net asset values.

The regulatory intervention by the recently established securities commission that enforced a new method for the calculation of net asset value in 1996 determined the dramatic

reduction in the value of the funds' shares, by more than half in some cases. Massive requests to redeem the shares followed by long suspensions of the redeeming process determined the near-collapse of several of the funds in operation. The most notorious collapse at the time, Businessmen's Mutual Fund, did not only end in significant loss of money by most of the shareholders, but the fund was transformed several times and stripped of its most valuable assets by dubious administrators, before being turned into a close-end fund that operated under special provisions by the securities regulator and has been listed on the over-the-counter market (*RASDAQ*) and traded for more than a decade by now. The management of the whole situation by the securities regulator determined the reaction of many retail investors protesting against the manipulation by the asset managers and the infringement of their rights of exit granted by the securities law. The whole event triggered by the regulatory intervention of 1996 is significant for the dramatic decline in the number of investors and value of net assets at the time and is one of the notorious financial scandals constantly given as an example by my informants among the retail investors and used to explain the lack of trust in investment funds and asset managers.

While the investment fund industry took off again at the end of the 1990s, capitalizing on the growth of the stock exchange and the more numerous financial instruments available, a new scandal hit the market in 2000. The National Investment Fund (*FNI*), a mutual fund that reached a record number of investors, reported net asset values, and share of the market for mutual funds, collapsed right before the general elections washing away the life savings and retirement benefits of several hundred thousand investors. *FNI* had managed to grow spectacularly during just a few years due to initiator's shrewd strategy. On the one hand, *Centrocoop*, one of the widest and richest trade and manufacturing cooperatives created under socialism was persuaded to buy a large part of *FNI*'s asset management company (*SOV Invest*) and, in exchange facilitated access

to office space and personnel all over Romania for the selling of fund shares.<sup>25</sup> On the other hand, a vast network of “retired” *Securitate* and *Miliția* officers were put in charge of administering the territorial network of distribution of fund shares being responsible for the recruitment of prospective investors and for the relationship with local authorities.

The reaction of the supervisory agency (*CNVM*) was typically slow, unwise and did more harm than good to retail investors. While some of the trials related to the collapse of 2000 are not over yet and the numerous audit reports by court appointed experts have been at best superficial, enough elements were disclosed to show that the fund had functioned without a depository for most of its life, that the caps on the proportion of the portfolio that could be legally invested in unlisted securities and other risky financial instruments were constantly broken, and that members of the Council of Trustees were bribed to ignore the illegal transactions of the asset managers. Reported net asset values were purposefully inflated, asset managers for the fund were changed repeatedly to obscure responsibility for mismanagement, and the securities commission chose to take only last minute measures in spite of being aware of the situation the whole time. The 1996 episode was reenacted in 2000 generating massive requests to redeem shares by retail investors; their attempts, however, were blocked by the repeated suspension of fund operations ordered by *CNVM*. Reevaluating the situation, most retail investors and financial analysts I interviewed tend to agree that proper regulations were in place (as they had been before the 1996 scandal) but they were constantly ignored by the asset managers and not properly enforced by the securities commission.

Soon after that, the *FNI* collapse precipitated the collapse of the National Accumulation Fund (*FNA*), the twin fund of *FNI*, generating massive requests to redeem shares by retail

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<sup>25</sup> *FNI* and *FNA* shares would later be sold at the branches of the state savings bank (*CEC Bank*) after a dubious contract was signed between the bank and the asset management company.

investors; their attempts, however, were again blocked by the repeated suspension of operations of the two mutual funds ordered by *CNVM*. Public nervousness at the time determined the redeeming of shares in the rest of the mutual funds by many retail investors, the drastic reduction of the overall number of investment fund shareholders (from over 400,000 to less than 40,000 in a year if we count *FNI* investors as well), and the spread of the confidence crisis to the banking sector (rumors led to massive withdrawals from the Romanian Commercial Bank [*BCR*] – the largest state bank in the system, which almost led to the sudden collapse of the bank in the fall of 2000).<sup>26</sup>

Acting to recuperate the money lost and for the conviction of those responsible, many of those affected by the collapse of the investment funds have gathered in civic associations that militate for the protection of retail investors and the rights of minority shareholders. Numerous trials have been initiated by the investors and the Public Prosecutor against the asset managers of the funds, the Council of Trustees, and various state officials thought to be responsible for the collapse of the funds. Challenging questions about the value of the fund shares and its accumulations, about the inappropriate investment policy pursued by the asset manager, about the management of the funds and the role of auditors, about the functioning of such collective investment undertakings and the ownership rights in mutual organizations, or about the regime of value engendered by the capital market – many of which had never been addressed explicitly during the process of privatization (economic transition), were raised in court or at investor meetings. They generated deep discussions about socio-political change, economic institutions and overarching social values, topics this dissertation is also concerned with.

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<sup>26</sup> The archival collection of the most important daily and weekly newspapers of the time (such as, *Evenimentul zilei*, *Adevărul*, *Curentul*, *Capital*, *Bursa*) accurately describe both the series of events that lead to the near collapse of the bank and the panic of the investors.

## 2.9 CONCLUSION

The chapter has tried to recount the diversity of practices involving money during socialism and after its collapse. Whereas money has been the central element of economic reproduction in capitalist societies, it had a different role in the socialist countries of Asia and Eastern Europe. Reduced to a mere accounting measure of the value of transactions in the state sector, money played a more important part both in the domestic sphere and in transactions of the socialist second economy. Not only is a proper assessment of money under socialism complicated by the dualism of money (“passive” vs. “active”) in the state versus the domestic sectors but the monetary practices of the cooperative sector (a third sector of sorts facilitating the growth of the second economy) challenged both the principles of central planning and the individualistic engagement of money stereotypically used to characterize capitalist economies.

A further complication is due to the ambivalent nature of many products circulating in the second economy. Alcohol, cigarettes, coffee, cosmetics or garment items – most Western made – were simultaneously items of consumption and valuable money substitutes. It is true that in Western capitalist economies various financial instruments with different degrees of moneyness (cash, credit cards, bonds, futures contracts, etc.) can be considered money and play the role of *numeraire* in facilitating financial calculus. However, the diversity of objects that could play the role of money substitutes as well as that of the situations they mediated breaks the structure of any simple definition of socialist money. Furthermore, social relations were an indispensable network of social capillaries through which money could circulate during the socialist period. Pursued opportunistically yet with a lot of restraint and wariness due to surveillance, such forms of social connectedness were perpetuated well into the postsocialist period. Providing a repertoire of social interactions, such networks facilitated the transformation of money and

financial practices after socialism. Faced with changing notions of money and knowledge about its reproduction, social relations provided a context of familiarity that made possible the social engagement with risk and forms of action under conditions of radical uncertainty.

This dissertation argues that money continued to be a significant part of social reality under socialism and gained renewed importance during the postsocialist period. A lot is to be gained by realizing that money was differently understood, made, and put into circulation under socialism (in even more diverse ways than in capitalism) and constitutes, thus, a legitimate and important object of reflection. The focus on more elusive social artifacts like money – simultaneously object, sign of social relations, and quant of value – can facilitate our understanding of the interstitial levels of social life as well as of the processes that brought about historical change after the end of socialism.

### 3.0 CHAPTER 3: COMPETING STORIES OF SUCCESS AND FAILURE: CAPITAL MARKETS AS EXPERIMENT

A young man doing mandatory military service in socialist Romania is given permission to visit home. After returning from his village, his mates are questioning him:

“How was your trip?”

“Boring...”

“Why so?”

“All the youngsters are gone and there are only old people left in the village.”

“And what did you do all day?”

“I wandered the village with hands in my pockets.”

“Did you see anything remarkable in there?”

“There was something. One day I saw a new car in the courtyard of the collective farm. And there were many villagers looking at it. And I asked them: ‘Whose car is this?’ ‘Ours’ ‘Whose exactly?’ ‘It’s the collective’s car, it belongs to all of us.’ ‘And who is driving it?’ ‘Well, of course, comrade president of the collective is driving it.’”

Anecdote about the nature of socialist property narrated to me by the chief editor of *Bursa*, the most important Romanian financial newspaper.

The “great transformation”<sup>27</sup> from socialism to capitalism in Eastern Europe involved a momentous change in the regime of property. As many anthropologists and social theorists have shown (Stark 1996, Verdery 2003, Verdery and Humphrey 2004, Hann 2005), this process has been at least as convoluted as the progressive replacement of private property by state property

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<sup>27</sup> This is how Michael Burawoy (2000) frames the transition to capitalism in the former socialist world in Eastern Europe and the conceptual difficulties generated by this process for the social sciences. Although referencing Karl Polanyi’s classic work (2001[1944]), Burawoy actually draws parallels between the challenges faced by present-day sociologists and those of Marx, Durkheim and Weber when trying to imagine the implications of the emergence of socialism from within the capitalist world.

during the advent of socialism. The results of this transformation have proven difficult to predict and are rather ambiguous when compared to the stated goals of the entire process of reform.

The reconstitution of private property was seen as the fundamental premise of capitalism and the indispensable element for people's innate inclination toward economic behavior and market participation.<sup>28</sup> Meant to endow private persons with the resources necessary for economic action and political inclusion, the process took diverse forms. The most obvious although not the easiest to accomplish was the restitution of collectivized land and houses nationalized by the Communist Party. At the same time with the restitution of property nationalized with the advent of socialism was the distribution of state property accumulated during the socialist period. A mass privatization program through which shares in the former state companies were distributed to all adult citizens was initiated in 1991 and then given a new impetus in 1995. As shown in the previous chapter, Romanian mass privatization programs consisted mainly of the successive distribution of vouchers and privatization certificates that people were converting into shares in companies to be privatized or closed-end funds initiated by the state. A less significant method was the management-employee buy-outs tried especially in the first years of transition. Last but not of least importance were the legal measures allowing and even encouraging the ownership of real estate property and the initiation of partnerships, limited liability firms, and share companies by private persons. Some of these forms of property existed even under socialism. Classified by Verdery as "personal" and "private" property (2003: 40-76), they were limited by the state and clearly dominated by "state" and "collective" types of ownership in the hierarchy of socialist property forms. Although most such measures are usually

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<sup>28</sup> Refashioned liberal ideas such as Adam Smith's "disposition to truck, barter and exchange" (Smith 2007[1776]: Book 1, Chapter 2, 10-11) were advocated by the promoters of shock therapy in CEE such as Jeffrey Sachs (1994) or Leszek Balcerowicz (1995).

described by economists using conspicuously economic jargon, their political and cultural dimensions cannot be ignored.

The creation of private property rights involved, among other key institutional aspects,<sup>29</sup> mechanisms for the transfer of rights over specific objects of property, modalities of fair valuation of property claims and, inherently related to the first two, ways to monetize specific forms of property. The capital market – referring to the stock exchange and other organizational forms involved in securities trading and investment - was seen by all not only as the perfect solution to all the issues involving valuation and/or monetization, but also as a driver of economic growth. Standing metonymically for the type of finance capitalism that had grown in the USA throughout the twentieth century, the capital market has been transferred to former socialist states in Eastern Europe, where it was described as a panacea for the economic problems brought about by the transition.

The convoluted history of postsocialist capital market creation has occasioned many histories of enrichment, speculation, and bankruptcy. Numerous situated narratives of the actors involved with the market create contrasting images of success and failure for the effort to create a functioning capital market in Romania. Politicians responsible for the process of reform, regulators appointed to oversee the functioning of the market, portfolio investors and brokers finding their vocation in the newly created stock exchange, or journalists passionate about the

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<sup>29</sup> As Verdery has shown (2003) the regime of property under socialism was articulated by forms of appropriation and control, by a gradation of administrative rights possessed by the ministers, state functionaries, directors of state companies, secretaries of the Communist Party overseeing local administration, and even union leaders. Such administrative rights were, in practice, more effective than the formal rights of property over the diverse property forms (state, collective, private, or personal). Verdery adapted Max Gluckman's analysis of property relations among the Lozi in Central Africa to a socialist context (Gluckman 1959). This allowed her, following the South African anthropologist, to get beyond the legalistic analysis of property in terms of its objects or of the bundle of rights and obligations towards the practices constituting property. Arguably, the rights of administration and the centralized redistribution characterizing the socialist regime of property were replaced by modalities premised on the monetization, market valuation, and decentralized circulation of property in postsocialism.

capital market and academics self-fashioned from the economics of central planning into specialists in finance and market economics, all have diverging evaluations of the functionality of the capital market and its ability to stimulate value creation and economic growth. Such accounts create a complex image of the market and are able to reveal the substantive involvement of its differently situated actors.

This chapter introduces several perspectives on the creation and operation of the Romanian capital market, drawing on situated accounts of interactions with the institutions of the capital market. Some of the most articulate reports among those encountered during the dissertation research constitute neat theoretical representations of what a market is supposed to be. As such, they provide valuable counter-narratives to text-book definitions of the stock exchange articulating both the hopes and disappointments of the capital market enthusiasts in postsocialist Romania. The accounts introduced below illustrate specific forms of contention, acute tensions between the political goals of their initiators and the belated laments of those who lost money in them, as well as the narrowness of economic theory, unable to accommodate the political dimensions of financial arrangements and the forms of valuation they engender.

I draw on articles and reports describing the USAID experiments of setting up new capital markets in five developing countries across the world, newspaper articles and secondary literature about the creation of capital markets in Eastern Europe, as well as extended interviews and discussions during a focus-group with the chief editor and owner of *Bursa*, the most important financial newspaper in Romania. All actors mentioned in this chapter have been involved in the most important events in Romanian postsocialist financial history. As the following sections illustrate, such actors combine an inclination to theorize on the role of capital

markets in transition economies with histories of personal involvement and failed experiences in connection to the market.

### **3.1 THE “NAÏVE” VIEWS OF LOCAL ECONOMISTS: HOW THE CAPITAL MARKET WAS CREATED**

Romanian academics constituted, in many ways, the key actors of the process of capital market building in postsocialist Romania. Belatedly on the road to industrialization and economic development and lacking a solid middle class that emerged in the west from the autonomous bourgeoisie,<sup>30</sup> the modern Romanian nation state had to embark on policies towards the simultaneous creation of academic and administrative elites since the end of the 19th century. The two categories overlapped throughout modern Romanian history contributing not only to the functioning of the newly created nation state but also to the growth of some of the radical political movements of the twentieth century. In many ways, the postsocialist period makes no exception to the previous processes of accelerated modernization in Romania. As specialists in stock exchanges were completely absent in socialism and there were very few people knowledgeable of the workings of international financial markets<sup>31</sup> at the time, Romanian academic economists had to undergo a double professional reconversion after 1989. They had to

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<sup>30</sup> Creatively appropriating the theoretical contributions of Gerschenkron (1962) and Greenfeld (1993) on industrialization and nationalism in Eastern Europe as forms of economic and political modernization, Irina Livezeanu (1995) contributed the best analysis of the creation of an academic and administrative elite during the interwar period as well as of the configuration its political involvement gave to the Romania political regime at the time.

<sup>31</sup> The exceptions were the “specialists” administering Romania’s foreign debt and international trade, most of which were covered agents of the communist secret services. See Alexandru Solomon’s excellent documentary *Kapitalism* (2010, Hi Film [Romania]/ Seppia [France]/ Neon Rouge [Belgium]) for the postsocialist trajectory of some of the most notorious “specialists” in finance trained under socialism. The film has a dedicated website: [www.kapitalism.ro](http://www.kapitalism.ro).

shift from Marxist theory and the economics of central planning to market economics and financial theory. Research trips spanning from a few weeks to a few months to Western European universities, and the translation of Western textbooks – in ways that were, at best, uncritical and, at worst, straightforward plagiarism - constituted the widest exposure to Western academia that most of these people were able to get. Throughout the 1990s, many Romanian university professors (scholars of finance included) used students to translate chapters from foreign (especially Western) textbooks that they later published in Romanian under their own name. These rather brute practices of plagiarism were called “translations” (*traduceri*). The practice of *traduceri*, widespread in the Romanian academic system, is, as Emanuela Grama (2004) argues, illustrative of profound transformations in politics, the regime of intellectual property, the reproduction of intellectual elites, and the bases of academic and political authority happening in postsocialism. Many of the newly fashioned financial economists were appointed to lead or at least found employment with the newly established financial institutions: the central bank, the ministry of finance, the securities commission, the insurance commission, etc.

Two books written by academics turned politicians or high government officials provide good illustrations of the way their complicated positions influenced their evaluation of the capital market throughout the first decade of transition. The first was published by Gabriela Anghelache, professor of finance at the Bucharest Academy of Economic Studies and president of the Romanian National Securities Commission after 2001. The book, entitled *Bursa și piața extrabursieră [The Stock Exchange and the OTC Market (2000)]*, is an awkward combination of an introductory textbook on the basic instruments of investing, a history of Romanian capital market creation, and brief description of the main regulations regarding securities transactions. The historical sections, of most interest to this dissertation, create the image of the capital market

as an organically growing even if incomplete system of institutions and practices. The reader is informed that the “seeds” of capital market institutions were planted early on during the transition process within the Romanian central bank and the ministry of finance. While the Center for Projection and Implementation of Capital Markets set up within the National Bank of Romania in 1992 later morphed into the Bucharest Stock Exchange, the National Agency for Securities created within the Ministry of Finance the same year later transformed into the Agency for Securities and further into the National Securities Commission (Anghelache 2000: 24-25). Other vital institutions such as the over-the-counter market (RASAQ), the National Association of Securities Dealers [ANSVM] (later transformed into the Brokers’ Association), the National Securities Clearing, Settlement, and Depository Company [SNCDD], and Romanian Shareholders Registry [RRA] (that later became the Central Depository) were created in the mid-nineties and provided, at least on paper, a complete capital market mechanism.

Anghelache’s book acknowledges the poor performance of the stock exchange and its meager role in Romania’s economic recovery, but blames the general macroeconomic conditions, the poor financial policies of the government, as well as the deficient Romanian “mentality” (2000: 9) that inhibits investment and speculative behavior associated with the capital market. The subsequent institutional developments mentioned above were all, according to the author, the natural response to pressures generated within the economy and gave a legitimate aspect to informal transactions with vouchers, privatization certificates, and other securities that mushroomed in the most innovative sectors of society. Nothing is said about the defective creation of market organizations that allowed speculative and/or fraudulent practices for several years before a proper securities exchange and the corresponding regulatory agency were institutionalized. Nor is anything said about the strong conditionality exercised by

international financial institutions, about the role of Western donor organizations and consultants (USAID, British Know How Fund, PHARE, PricewaterhouseCoopers, Ernst & Young, Deloitte & Touche, etc.) in the creation of the market. The author obscures the means and ends of the reforms, the interests involved and the numerous failures of reforms. She presents the capital market as a domestic accomplishment, an internal response to emergent needs for capitalization and investment, the competent solution to many of the inadequacies of the real economy.

Varujan Vosganian wrote another instructive book on the *Financial Markets Reform in Romania* (1999). Although both more analytical about the functioning of various entities of the market and more critical of the poor design of financial institutions than Angelache, Vosganian still pays insufficient attention to the networks of specialists (the main actors of the institutional engineering in the field of finance) and forms of knowledge that constituted the Romanian capital market. He also seems to disregard the social and cultural predispositions of the crowds of retail investors that generated both exuberant dynamics and spectacular collapses of the newly created markets. Thus, Vosganian acknowledges in passing the role of international organizations such as the British Know How Fund that acted as a consultant/donor for the creation of the Bucharest Stock Exchange (1999: 42) and of USAID providing money and know-how for the creation of RASDAQ, the Romanian over the counter market (ibid.: 53, 220). At the same time, he seems to practice a local form of legal fetishism when arguing not only that most of the market institutions and investors stem from particular laws adopted by the Romanian government, but also that the malfunctioning of the market was due, to a large extent, to the poor design or bad timing of the legal infrastructures of the market. As Vosganian argues, a law of 1993 was “the basis on which the first Romanian mutual funds were created” (ibid: 42). Such mutual funds functioned like quasi-banks as the stock exchange had not yet been created and the

net asset values of existing mutual funds were significantly larger than the total market capitalization until well after the creation of the exchange. While asset managers invested in some commercial credit notes and instruments of the monetary market (offering liquidity but rather insignificant returns), most of the cash collected from investors was placed in unlisted shares of companies controlled by their business partners, or in loans to firms controlled by them.

Later, it was through legal intervention again that the Bucharest Stock Exchange and the National Securities Commission were created, Vosgianian thinks. The harm had already been done, according to this Romanian economist, as mutual funds were involved in practices of dubious investing and were inflating the value of their net assets through false reporting. As most funds did not have depositary banks to safeguard their assets and calculating net asset values, fraudulent activities were quite widespread in the sector. When the newly created securities commission took measures to enforce the new law and implement uniform rules for the calculation of net asset values (basically, emphasizing cash-flows over potential profits discounted from the future), the largest mutual funds (SAFI, Certinvest) collapsed in 1996 under the massive redemptions by retail investors.

Vosgianian seems to believe that it was the law that facilitated the creation of mutual funds and it was also law that triggered their collapse. He says nothing is said about the involvement of international donors and the pressure they exercised on national authorities to regulate informal financial practices associated with securities transactions, and especially with the mutual funds sector. Having invested serious financial and institutional resources in the creation of the over-the-counter market (RASDAQ) and the mass privatization program (through which state companies were listed on RASDAQ in order to be privatized), international

organizations (especially USAID) persuaded the Romanian government to channel the investments made by emerging mutual funds towards listed companies whose securities were both easier to value and to transact. Mutual funds, having previously tried to speculate the few opportunities for profit in the transitioning Romanian economy, had to choose between complying (with serious losses in asset values and investors) and being outside the law. More details about the convoluted changes in the regulatory and institutional frameworks of the Romanian capital market during the mid-1990s will be provided in the interviews cited in the second half of the chapter.

The only international financial institutions to whom Vosgianian assigns any direct responsibility in the reform of the financial markets are the IMF and the World Bank (1999: 39, 105, 110, and 179). The IMF memoranda and the World Bank's structural adjustment programs led to the implementation of simplistic anti-inflationary policies, mistakenly applied in a context where inflation was produced not by the overheating of demand but rather by the rapid contraction of supply, Vosgianian thinks. According to him, "in contexts where the general increase in prices is due to the contraction of supply rather than that of demand, the politics of monetary austerity is not an adequate solution" (Vosgianian 1999: 155). As the anti-inflation policies adopted after the change of political regime in 1996 inhibited both consumption and investment, Vosgianian expected them to have a negative impact on the growth of mutual funds and the capital market (156).

What this Romanian MP and later Minister of Finance ignores, however, is the way in which restrictive policies in the banking sector pushed people into inflationary mutual funds. Interest rates for loans available to the population and small business were spectacularly high while interest paid by banks on deposits did not keep up with inflation. According to Vosgianian,

the average interest rates paid by banks throughout 1998 was 46.6% while overnight rates on the monetary market reached values as high as 543.5% (ibid.: 125). Under such circumstances, many opted for riskier financial practices: newly created mutual funds investing in unlisted securities, informal credit associations that mimicked banking practices without offering the same institutional safeguards, or straight-out Ponzi schemes. These arrangements promised to be the only arrangements making possible household reproduction strategies or life-affecting choices: sending one's children to college, undergoing necessary surgery, purchasing a larger apartment, or raising the money necessary to open a small business. Retail investors crowded towards the newly created mutual funds – ignoring risks due to lack of alternatives rather than pursuing risk for its own sake – and generated speculative bubbles. Desperate acts caused by the deprivations of economic transition, rather than forms of “irrational exuberance” witnessed on the Western financial markets, and stimulated by the lenient attitude of the national securities regulator, the crowding of investments in mutual funds occasioned impressive growths of asset values and equally spectacular collapses.

### **3.2 USAID IN ROMANIA: STORIES ABOUT THE EASTERN INVOLVEMENT OF WESTERN DONORS**

A much more nuanced perspective on the re-institutionalization of capital markets in the former socialist countries of Central and Eastern Europe, as well as of the involvement of international financial institutions and Western donors in the process of reform, is provided by Janine Wedel. Having written an insightful ethnography of the Polish informal economy under socialism (Wedel 1986) in which she focused on the emerging private transactions during the 1980s and on

the workings of the informal connections on the ground, Wedel later tried to elucidate the interaction between local elites and Western advisors during the process of postsocialist reform. Thus, in her much acclaimed *Collision and Collusion* (1998), Wedel focused on the transfer of experts, money, and ideas from Western developed countries (mainly the USA and Great Britain, but also The Netherlands, France and Germany) to countries of the former Soviet bloc after the collapse of socialism in 1989. As Eastern countries in Europe wanted the affluence of their Western counterparts but did not exactly know how to achieve that condition, Western consultants and representatives of the governments of developed countries were happy to provide the forms of (quasi-ideological) economic knowledge, blueprints for institutional reform, and even the funds to cover the costs of consultancy. Unfortunately, as private interests and arrangements among transnational actors prevailed over public responsibility, the history of capital transfers to and economic reforms in Poland, Hungary, the Czech Republic, or in Russia and Ukraine has been, in many regards, a deceptive one (Wedel 1998).

More precisely, while CEE countries were waiting for a new Marshall Plan for the postsocialist world, what Western countries were able to deliver was a post-World War II development framework tailored to Third World countries and uncritically transferred to the countries of the Second World (Wedel 1998: 15-18). Possessing technical knowledge and skills appropriate to their previous Third World involvement, “the Marriot Brigade,” that is, the consultants hired by the IMF, the World Bank, the European Union, the USAID, and the British Know How Fund, proved to have no social skills or cultural knowledge to help them deal with the CEE experience. The “econolobbyists,” as Wedel calls them, advocated the urgent stabilization of the former socialist economies and the rapid privatization of former state enterprises. However, local concerns about the evaluation of former state assets, the performance

of the newly privatized companies, the social effects of economic restructuring, and the conflicts of interests in which consultants found themselves (as advisors of postsocialist governments but also employees of the Western corporate sector) soon undermined the legitimacy of the entire process.

As Wedel reveals based on her “ethnography of levels and processes” (1998: 8), the initial “triumphalism” of both consultants and local officials soon turned into “disillusionment.” Despite lacking precise knowledge of the workings of a capitalist market economy, local government officials had a detailed knowledge of the local economy and could foresee the failures generated by many of the ready-made recipes of reform drafted in the West. Although unable to question the legitimacy of Western donors, local officials could nevertheless criticize the solutions recommended by them as well as the interestedness of Western consultants. In time, however, a form of mutual “adjustment” emerged. Local officials, many of whom have belonged to the communist technocratic elite, learned to use the dealing skills acquired in the informal economy under socialism to manipulate the situation in their favor and get into mutually beneficial alliances with Western donors. An example is the alliance made by “the Chubais Clan” that managed the Russian economy and the privatization process between 1992 and 1997 with “the Harvard boys” lead by Jeffrey Sachs. Controlling political decisions, ideological claims, monetary resources, and consultants’ recommendations, the Chubais-Harvard group managed to turn the capital market-based privatization process in their favor and to grab assets owned by former state companies. Such “collusion” made possible the emergence of “transidentity capabilities” of transnational actors mixing identities, resources, and forms of legitimacy in their favor.

Rumors about inside deals, dubious privatizations, and misappropriation of funds during the creation of the capital market similar to the ones reported by Janine Wedel circulated widely among people familiar with the capital market in Romania. Although such allegations have not been proven, many actors in the local capital market are able to outline, based on illustrative examples, the unintended consequences of USAID's involvement in the Romanian privatization processes. The direct involvement of the American agency in the creation of Romanian capital market became effective in 1995. As the previous sections of this chapter have shown, Romania's experience with the market had been rather poor in the first years of transition. Although the Bucharest Stock Exchange (BSE) had been created with support from the Canadian government, its listing criteria were too sophisticated for most of the newly created or privatized Romanian companies; capital to be invested through BSE was practically unavailable to such companies. Furthermore, mutual funds (premised, institutionally, on models of the cooperative sector and the social economy) had been created but were usually engaged in risky investment practices due to the scarcity of adequate financial instruments. Functioning as channels for savings into capital market investments in developed economies, Romanian mutual funds operated in practice like dubious savings and loans associations that collected the savings of many financially unsophisticated persons and extended hazardous loans to business partners of the asset managers. Last but not of least importance, the recently created securities commission possessed neither the legal instruments, nor the technical expertise, nor the reputation necessary for effectively supervising the market.

As international financial institutions managed to persuade Romanian authorities to embark on a genuine privatization effort, the issue of a functioning capital market became

pressing. The initial privatization strategy (based on Privatization Law 58/1991)<sup>32</sup> consisted of the allocation of the shares of former state companies to the State Ownership Fund [SOF] (70% of shares) and the five Private Ownership Funds [POF] (30% of shares) as well as of the distribution of certificates of ownership (COOs) to all adult citizens (USAID 2001). Lacking basic notions about financial investments, shares, or the capital market, most of those receiving COOs subscribed them to POFs or sold them on the informal market, a practice on the verge of illegality. The SOF was supposed to privatize state-owned companies by selling the majority shares packages to either strategic investors or to managers and employees. However, the nationalism of the government formed of ex-communist cadres<sup>33</sup> and the interests of second echelon bureaucrats working for the authorities responsible for privatization led to the failure of this attempt.

The government initiated a new privatization effort (see Mass Privatization Law 55/1995).<sup>34</sup> Vouchers [*carte de privatizare*] were again distributed to all adult citizens. This time, however, the authorities were determined to facilitate the conversion of vouchers into shares of companies, not only those of POFs. For this, however, they needed a robust capital market infrastructure including a network of brokers and dealers to mediate transactions, an inclusive exchange to support transactions and value financial assets, as well as independent shares registries to insure the well-ordered transfer of ownership and the clearing of transactions. None of these institutions was available at the time.

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<sup>32</sup> Legea nr. 58 din 14 august 1991 (Legea 58/1991) a privatizării societăților comerciale, Monitorul Oficial nr. 169 din 16 august 1991 (M. Of. 169/1991) [Law 58 of 1991 on the privatization of state-owned companies / “Privatization Law,” Official Bulletin no. 169 of August 16, 1991].

<sup>33</sup> “Nu ne vindem țara!” [We won’t sell our country!] was the favorite slogan of politicians in power and their supporters throughout that period.

<sup>34</sup> Legea nr. 55 din 15 iunie 1995 (Legea 55/1995) privind accelerarea procesului de privatizare, Monitorul Oficial nr. 122 din 22 iunie 1995 [Law 55 of 1995 on speeding-up the privatization process / “New Privatization Law,” Official Bulletin no. 122 of June 22, 1995].

USAID stepped in with the aim of not only furnishing Romania with a complete set of capital market institutions but also of proving that the shift in the target of its programs towards building more sophisticated financial institutions in developing countries had been well justified. As written in an evaluation report in 1998, “the project was based on a completely turnkey approach covering all needed elements – technical advisors, training, equipment, software development, and the like”(Liebersen et al. 1998: 19). This approach, both the specific area of intervention and its scale, was something new for USAID. While it had traditionally focused on areas of finance directly impacting the lives of the poor, such as microcredit and microfinance, USAID shifted during the 1980s towards more mainstream areas of finance: investment corporations, the bond markets, the public debt of municipalities, and the capital market proper. USAID program managers, however, were convinced that the building of robust capital markets would have a significant, even if indirect, effect on the welfare of the poor.<sup>35</sup> The transmission mechanism from capital markets to life improvement for the poor was: creation of efficient capital market → efficient allocation of capital → economic development and growth → reduction in the degree of poverty (Fox 2000: 21-23). The experience of USAID program coordinators also confirmed that developed capital markets are usually associated with low levels of poverty, although the causality between the two factors was unclear, as well as with stimulation of productive employment, the cheapening of goods and services due to capital

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<sup>35</sup> Citing again from an assessment of the development strategy based on the creation of efficient capital markets: “Even if financial markets are important to development, there still remains the question whether it is an appropriate area of activity for USAID. Many aspects of finance would not appear to be a priority for the Agency, given its interest in poverty reduction. Perhaps financial markets are important, but it is not immediately obvious why this quintessential market based area should not be left entirely to the private sector. Thus, the argument that the poor will be helped if the wealthy are helped has been derided as ‘trickle-down economics.’ Nevertheless, some aspects of financial markets activities are directly relevant to alleviating poverty” (Fox 2000: 6). Furthermore, “an efficient capital market is an important ingredient of a successful development strategy. Though the effects of strengthening of capital markets on poorer strata of society are indirect and long term, they also have important consequences in generating increased investment and creating more productive employment” (ibid.: v).

investments, and, something perceived as commonsensical at the time, with milder effects of financial crises on the poorer strata of the population (ibid.: 6).

Although USAID had, by 1995, already been involved in Romania in other areas of the financial sector such as capital investing, the reform of the banking sector, or the emerging credit market (Conway and Purdy 1999; USAID 2001), the capital market building project took its local involvement to a whole new level. The project initiated in 1995 was part of a series of experiments to create functioning capital markets in developing economies such as those of India, Kenya, Morocco, and the Philippines (Fox 2000). Each of these national projects had specific aims and consisted of particular measures: in India the strengthening of the regulatory agency and the building of a screen-based trading system, in Kenya the creation of the Capital Markets Authority (CMA), in Morocco the improvement of the interbank market, the money market and the capital market, while in Philippines the institutional building of both the securities regulator and the umbrella associations of the private financial institutions (ibid.: 11-14). In Romania almost everything was to be created or radically reconfigured. As the following quasi-ethnographic description published in a USAID report reveals, the local image of the market and its authorities was as poor as one could imagine:

#### Box 2: Perks of Office

In Romania, no less than elsewhere, the trappings of office can convey a message of relative power. As a case in point, contrast the offices of the government-run State Ownership Fund with those of the National Securities Commission.

Arriving at the building that houses the State Ownership Fund, a visitor is imbued with a sense of turn-of-the-century opulence. Recently refurbished, the building is a neighborhood gem. The visitor enters through broad double doors that open onto a spacious, well-lit rotunda.

A guard points the way up a splendid winding marble staircase, its red carpeting new, plush, taut. The stairway opens onto a reception area similar in elegance to the one below. The walls are freshly painted a soothing off white. Friezes at the ceiling and above the floorboard have been carefully painted gold. The marble floor glistens immaculately.

A door opens onto the conference room. It is smaller, though similarly appointed. A sturdy dark wooden table, oval and polished to perfection, dominates the room. Introductions are made with two midlevel officials, and the conference begins.

In another quarter of town, a football-size rock holds open the front door of a '50s-era cement-block office building. The visitor squeezes into an elevator, too small for three, a compression chamber for four. He closes the folding wooden double doors (the left door has a cracked glass pane) and presses the "3" button.

Alighting on the third floor, the visitor follows a paper arrow marked "Secretariat" down a hall lit with a single light bulb. The hall is lined with coffee-colored filing cabinets and their overflow, stacks of fat three-ring binders. A threadbare maroon carpet absorbs footfalls—and any ambient light. Another sign, taped to the back side of a double door paned with green glass, confirms that this is the destination.

A secretary ushers the visitor into a small room off the hallway. It is a simple office; there is no conference room—instead, a hodgepodge of chairs. The visitor has arrived at the quarters of the National Securities Commission, office of the president.

(Lieberman et. al 1998: 7)

The new privatization program devised by the Romanian government in consultation with American advisors included a list of 5,600 state companies. These companies would be open to subscription by citizens holding vouchers and would be later listed on the newly created exchange (RASDAQ, emulating the American NASDAQ) to facilitate the transfer of ownership for the companies, the valuation of shares, and the improvement of corporate governance. These issues were rather urgent as the mass privatization program had led to over 17 million shareholders in Romania (USAID 2001: 6).<sup>36</sup> As many of these shareholders were not expected to be long-term investors, but rather to look for the liquidation of their holdings, the functioning of the market was of utmost importance. This was, however, not easy to accomplish. Many companies included in the program were listed by default, based on the administrative decision of the minister of the economy. The directors of privatized companies possessed limited knowledge of the institutional procedures and obligations involved by the listing on the exchange; most had even less interest in opening up their activity to the scrutiny of outsiders,

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<sup>36</sup> The shareholders from the first privatization wave in 1991-1992 are included in this figure.

something required by the exchange. As the following sections will show, many of the directors of companies include in the privatizations program had neglected to sign a contract with the Romanian Shareholders' Registry, a basic premise for the listing procedure on any exchange, years after their shares had started to be traded on RASDAQ.

The result of the privatization process, including the creation of the capital market, was, according to many local accounts, a failure. Some of the most frequent complaints regard the problematic access of people in rural areas of Romania to brokers, the theft of shares from uninformed investors by rapacious financial intermediaries, the fictitious transaction on RASDAQ of the shares of companies that had fulfilled delisting procedures, or the quasi-legal concentration of ownership facilitated by the market at the expense of retail investors whose holdings had drastically dropped in value. Although retrospectively admitting many such faults and going as far as suggesting the closure of RASDAQ (USAID 2001), USAID initially considered the Romanian experiment a success (Fox 2000: v). Having spent over 25 million dollars in Romania – the largest of the investments made in the five experiments with capital markets,<sup>37</sup> USAID emphasized the technical success of the local project. As U.S.AID experts wrote:

In less than two years, USAID built from scratch an equities market and a complete set of supporting institutions. The Agency did all the right things, and the market is performing at a high technical level. But the country's economic policy reforms and privatization efforts are weak, and economic growth has stalled; thus capital markets have been depressed. (Lieberman et. al. 1998:1)

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<sup>37</sup> The sums spent by USAID in this project were: \$20 million in India, \$1 million in Kenya, \$5 million in Morocco, \$13 million in the Philippines, and \$25 million in Romania (Fox 2000: 16). Money was spent on consultancy, acquisition of equipment and software, and the training of local specialists.

Other reports emphasized similar technical aspects and criticized the involvement of local actors in creating market momentum:

The Mass Privatization Program was a brave experiment. It has provided a 5 year opportunity for Romanians to decide how to deal with their patrimonial shares. Shareholders paid nothing for these shares. If they obtain little money for them now or in the future, it is not a loss, or a surprise. In order to transform trading on RASDAQ, however, it is now necessary to eliminate the distraction and risk that is represented by most RASDAQ companies that have no interest in public trading or financing via public markets. (USAID 2001: ii)

The emphasis on the formal aspects of reform (the technical transposition of market mechanisms) and the de-emphasis of its substantive efforts (the involvement and motivation of local actors, the impact of the capital market on economic development, or its possibility to perform in disconnect from its economic foundations) plays into a local tradition of critical debates on superficial modernization since the nineteenth century.<sup>38</sup> Such critical traditions reveal the precariousness of top-down reforms and rapid institutional building that generate forms without foundation (*forme fără fond*) and superficial modernization.

The assessment of the technicalities of capital market building is telling of the logic of social experiments illustrated by the neoliberal involvement around the world during recent decades. Giving up a strategy of radical modernization— one that dominated the agenda of development during the post-WWII decades,<sup>39</sup> neoliberal institutions promote targeted interventions, experimental insertions of Western-type institutions in developing countries, and

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<sup>38</sup> Initiated during the 19th century by conservative intellectuals such as Titu Maiorescu (1867[1868]) and reformulated in interwar Romania mainly by the literary critic Eugen Lovinescu (1972), the theory of “forms without foundation” is currently reconsidered as metaphor framing the ongoing debates about the impact and consequences of Western-type modernization in Romania and as an icon of Romanian cultural identity (Schifirneț 2007).

<sup>39</sup> The writings of Andre Gunder Frank (1966, 1975) remain a valuable reference for the criticism of the excesses of the early development strategies applied by Western countries in the postcolonial world.

the comparative evaluation of alternative strategies of reform experienced by postsocialist and postcolonial countries. Similarly, the comparison of successive modernizing strategies is taken as a valuable source of knowledge by international financial and development agencies.

In the case of USAID's capital market building project, Romania (and also India) was a particularly interesting case. The impact of the capital market on the performance of a transitioning economy was to be contrasted with the earlier experiment conducted in central economic planning by the socialist authorities (Fox 2000: 21-23). According to USAID experts,

the capital market is the medium through which investment is allocated among alternative uses in a market economy. In such an economy, the capital market is the investment planning office. It decides how many resources will be available for investment by firms throughout the economy; how much, and at what cost, will be available for infrastructure investment; which companies will be able to expand and which will not. (Fox 2000: 2)

The experiment with central planning had failed in spite of the initially spectacular performances of Soviet-type economies. The capital market was expected to perform in a decentralized and apparently chaotic manner the guiding functions for the investment of capital in the economy, a task that central planning had failed spectacularly. Romania represented an important case for the USAID on another reason, also. Not only was it known as the most highly centralized command economy of the socialist bloc (especially during the 1980s), but it was one of the countries that postponed the radical measures of reform adopted during the early '90s by the Visegrad countries. The subtext of the bureaucratic language in USAID reports and the impression of many market actors interviewed for this dissertation was that Romania was for the American agency a country that had failed on its own but could be turned into a success story though Western technical and financial assistance.

Many actors on the Romanian market retrospectively think that the Romanian capital market experiment is a failed one. In spite of the considerable sums of money and huge hopes invested in the project, the local market has failed to become efficient in either the technical (Dragotă, Căruntu, and Stoian 2006) or the lay meanings of the term (USAID 2001). Such an assessment underlines the fetishism of the market with which supporters of the stock exchange often operate. Neoliberal supporters of the export of capital markets to all corners of the world seem to believe that once the institutions of the market are in place, a sort of “invisible hand” starts operating and the efficient allocation of capital happens automatically, its correlative being the natural inclination of people to transact once bureaucratic barriers are removed. This credo, contradicted in practice again and again during the postsocialist reforms,<sup>40</sup> animated the actions of Western consultants and donors throughout the 1999s. Whereas the technical aspects of the market have been transposed successfully, even USAID experts seem to agree that the substantive impact of the project is doubtful:

The basic conclusion in this area is that there is no easy way to monitor the progress of an ongoing capital markets project. The key judgments of progress seem to be qualitative rather than quantitative; they require people with substantial experience in this area to make them. USAID to date has not developed qualitative indicators for capital markets development. (Fox 2000: 20)

As the later sections of this chapter and dissertation indicate, the reform was substantively a failed experiment in market building. While many of my informants tend to agree in that regard, there are still questions about the lessons that can be learned even from failures.

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<sup>40</sup> Karl Polanyi's *The Great Transformation* (2001[1944]) remains, to date, the most eloquent critique of the naturalness of market behavior.

### 3.3 NEOLIBERALISM AND THE WASHINGTON CONSENSUS: SITUATING THE ROMANIAN MARKET POLICIES<sup>41</sup>

The sustained involvement of the United States and other Western countries in the creation of encompassing capital markets in Central and Eastern Europe belonged to a set of development policies known under the name of the Washington Consensus (Williamson 1989, 2004; Gore 2000). Articulated during the last decades of the twentieth century as a strategy of economic recovery and growth for the countries of Latin America, the Washington Consensus has been the object of criticism by left wing academics and political activists ever since. To blame were not necessarily the specific policies and measures included in the consensus. As many would agree today - among them John Williamson, the one who coined the term - the key factors responsible for the aversion generated by the Washington Consensus were its name, its association with the international financial institutions headquartered in Washington, as well as its secondary meaning as macroeconomic agenda of neoliberalism.

Analyzed in context, most measures gathered under the heading the Washington Consensus were actually imagined and proposed by the leaders of the reforming countries in Latin America. They were meant to stimulate economic recovery and growth and included redistributive measures and budget expenses meant to favor the poor. While eliminating the policies of import-substitution and the discretionary measures of national governments in the sphere of capital circulation and in this way opening their countries to international markets, reform policies adopted during the 1980s in Latin America were also meant to eliminate

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<sup>41</sup> This section integrates arguments already made in Narcis Tulbure, 2012, "Crisis, Ritual and Cultural Change: The Problematization of Credit-Based Affluence in Contemporary Romania," in *Governance Failure and Reform Attempts after the Global Economic Crisis of 2008/09. Case Studies from Central and Eastern Europe*, Leonid Kosals and Heiko Pleines, eds., Changing Europe book series, vol. 9, pp. 115-142, Stuttgart: Ibidem Publishers.

discretionary spending, to increase investments in healthcare and education, and to condition subsidies for parents on school attendance by children. Concretely, the policies pursued by most countries adopting the Washington Consensus regarded fiscal discipline, the reordering of public expenditure priorities, the reform of the tax system, the liberalization of trade, interest rates, exchange rates, and foreign direct investments, privatization, deregulation, and the reform of property rights.<sup>42</sup> The rhetoric against the consensus was stirred periodically by electoral campaigns. However, in spite of their pre-elections statements, even left-wing governments like those of the Brazilian president Luiz Inácio Lula da Silva continued to implement many of the measures recommended by the Washington Consensus.<sup>43</sup>

The collapsing socialist economies of Eastern Europe offered international financial institutions a chance to adapt the strategy of reform tested initially in Latin America to a new context. The same key policies of the consensus were recommended and, almost without exception, applied by the transforming states in the former socialist world. As shown in the previous chapter, policies of macroeconomic stabilization, market liberalization, and privatization were considered to be basic premises for the second transformation to capitalism. In addition, the building of robust financial markets was one of the most important pieces of the new institutional architecture. Capital markets, epitomizing the capitalist financial markets, were meant to facilitate the privatization of state assets, the valuation of the new capitalist businesses, and the flow of investment capital to and from the region.

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<sup>42</sup> See Williamson (2004: 3) for a concise list of the original reforms recommended by the Washington Consensus.

<sup>43</sup> See Flores-Macias (2012: 47-48) and Grugel and Riggirozzi (2009: 67, 195-215).

Although experimenting briefly with an alternative strategy of reform – a Swedish inspired third way between socialism and capitalism<sup>44</sup> – Romania ended up seeking the advice of the Washington-based international financial organizations towards the mid-1990s, due to poor macroeconomic performance, deteriorating living conditions, and the looming threat of social unrest. Besides the IMF stand-by agreement and the structural adjustment programs signed with the World Bank, Romania received the assistance of (mainly) USAID in an effort to create a functioning capital market and effective regulatory institutions.

The forms of institutional engineering the foreign donors and consultants in Romania experimented with went beyond the initial provisions of the Washington Consensus and moved their interventions closer to what is generally described as a neoliberal agenda. While the measures of macroeconomic stabilization, the privatization of state companies, and the building of market infrastructures were common to both conceptualizations of the Washington Consensus, the institutional fetishism and market fundamentalism shown by Western donors, the simultaneous stigmatization of local forms of knowledge and informal market arrangements that sprang up in the first years of postsocialism, as well as the drastic reduction of social assistance expenses or the investment in healthcare and education illustrate a much-criticized neoliberal pattern of reforms. Added to the above, the insistence on the experimental transfer of Western-type market infrastructures to a transitioning economy also illustrate the neoliberal forms of

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<sup>44</sup> President Ion Iliescu, a former communist leader marginalized by Nicolae Ceaușescu during the last decades of socialism, articulated this alternative vision in numerous public statements arguing for the implementation for a Swedish version of socialism in Romania, one in which the state would be able to intervene in the economy to tame the socially disruptive forces of the market. Such positions were articulated both during his first two terms in office at the beginning of the 1990 and during the 2000s when evaluating retrospectively the results of Romania's transition to a market economy.

intervention by Western states into the developing economies in the postcolonial/post-totalitarian/postsocialist<sup>45</sup> countries at the end of the twentieth century.

A tag name for a multitude of governance strategies, political economic configurations, and forms of international intervention, neoliberalism is understood by some social theorists as a new form of capitalist accumulation emerging in the West and implemented all over the world after the 1960s (Harvey 1990, 2005; Duménil and Lévy 2004; Brenner 2006; Klein 2008; Ortner 2011). The crisis of accumulation that triggered the neoliberal reorganization of capitalism is explained differently by various scholars offering alternative justifications for the decline in profitability for Western corporations during the 1960s. Thus, Marxist economists Gérard Duménil and Dominique Lévy show that the decline of the profit rates of capital after the 1960s was caused by uneven technological progress. While companies overinvested in capital, the productivity of labor did not keep up with technology (Duménil and Lévy 2004, 2007, 2011). Robert Brenner, on the other hand, explains the decline in returns for capitalist companies through the excess capacity of production in the West since the 1960s (Brenner 2006). Wages and demand did not keep up with the increasing supply of goods and services. Although underlining different causes, all the above authors conclude that changes were made necessary by the deep crisis of capitalist accumulation (Harvey 2005).

Reflecting on the flexible nature of neoliberalism, diverse social thinkers agree that the stimulation of credit-based consumption, the creation of Anglo-Saxon-type financial systems around the world (including a viable stock exchange and an active mutual fund sector), the elimination of fiscal and technical barriers to trade, and the use of fashion to perpetually renew culturally driven demand were the most important strategies of business executives and political

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<sup>45</sup> The three concepts function like equally descriptive terms and as tropes of the ideological discourse justifying Western interventions across the globe.

leaders to stimulate growth. By contrast, critics of the new strategies for growth argue that the application of dogmatic neoliberal reforms has failed to work in many places across the world (Birch and Mykhnenko 2009). Counter-cyclical policies meant to get economies out of crises have actually created the conditions for further crises. For instance, economists specializing in the history of financial speculation (Ferguson 2008; Berlatsky 2010; Jarsulic 2010), financial risk management (Dewatripont, Rochet, and Tirole 2010; Saunders and Allen 2010), or international macroeconomics (Krugman 2009; Griffith-Jones, Ocampo, and Stiglitz 2010) tend to agree that the politics of cheap money implemented by Alan Greenspan after the crash of the technology sector in 2000 fueled the real estate bubble whose bursting generated the 2008 financial crisis. The increased importance of the financial sector during the last decades, the politics of deregulation and the incentives towards financial innovation have all created the conditions for the uncontrolled pursuit of risk and the subsequent collapse.

Furthermore, the intense process of securitization has made possible the growth of consumption and mortgage credit to subprime customers, as well as the leveraged investment on the capital market by retail investors. As David Harvey has convincingly argued (1990; 2005), the regime of flexible accumulation characterizing neoliberalism has been premised on measures towards the stimulation of consumption and of personal forms of investment. If consumption has been stimulated financially by the extension of credit towards wider social categories (including those with no collateral, job security, or solid credit histories), commercially by niche marketing, and culturally by the fast fashion turnover as well as the valorization of individualized forms of consumption, important transformations also took place in patterns of personal savings and investing. Practices such as personal investment accounts facilitating speculation on the capital market, widespread participation in the mutual fund sector, the privatization of pensions and life

insurance – no longer assumed by governments but premised on forms of financial investment and risk diversification made possible by the markets for bonds, stocks, and financial derivatives, as well the indexing of entire forms of remuneration by performance based indicators belonging to financial markets have completely reconfigures the financial environment of economies pursuing the neoliberal model. Such financial transformations have also facilitated the reconfiguration of politics - states externalizing diverse areas of policy-making to the financial markets (see, for instance, the privatization of pensions, healthcare, education, or social assistance) – as well as the basic modalities for the articulation of personhood under neoliberalism (Rose 1990; Lemke 2001; Miller and Rose 2008; Mitchell 2010).

While many social critics see in the recent financial crisis and its adverse social consequences the failure of the neoliberal project (Moss 2005; Hudson 2010; Mottas2011; Karamessini 2011); others consider crises as the *modus operandi* of the neoliberal regime. Supporting the latter view, David Harvey argues that one of the prevailing strategies under neoliberal capitalism is “accumulation by dispossession” (2005: 116). The political and economic architecture of states become inherently unstable when financial markets take on many of the allocative functions previously performed by governments. Episodes of instability and financial distress become more frequent and are speculated by the owners of capital. Financial capitalists appropriate value from those indebted and from unsophisticated investors through the imposition of increased interest rates, the acceptance of equity losses, and austerity measures to recover macroeconomic balances. Along the same lines, Naomi Klein (2008) and Sherry Ortner (2011) argue that successive economic crises and natural disasters after the 1970s have been opportunities for neoliberalism to expand around the world. According to Ortner, although crises are not purposefully generated by capital, “accumulation by dispossession” is accomplished post-

factum, through the policies adopted in response to crises: privatization and commodification, financialization of ever more aspects of everyday life, the socialization of losses, and the redistribution of the fiscal effort from the top to the bottom of society (Harvey 2005: 159-164).

Criticism of the neoliberal transformation of the world has extended to the reforms thought to fit under the Washington Consensus. This extension can be explained both by the progressive shift in meaning of the consensus – from a specific set of policies intended to stimulate economic growth to the neoliberal strategies of reform recommended to emerging market economies - and by the results of the policy prescriptions made by the Washington based international financial institutions. As the promising initial results of the 1980s have turned into disappointment during the 1990s for many of the countries of Latin America, Eastern Europe, and Asia, economists from the Western world and governments of BRIC countries have started looking for alternative development strategies (Gore 2000). The Beijing Consensus (Ramo 2004; Dirlik 2006) has emerged as an attractive alternative to the Anglo-Saxon variety of capitalism. The Chinese model was based on a combination of well-articulated industrial policies, state involvement in the economy, and the aggressive pursuit of innovation that have been implemented, often, at the expense of growing social inequality, pollution, and corruption. The global financial crisis started in 2008 has given new impetus to the critics of Western type financial markets and has revealed the need for rethinking models of growth (Birdsall and Fukuyama 2011). Such criticism sheds new light on Romania's neoliberal experiments with financial markets after the end of socialism. It encourages ethnographies of financial markets to reveal situated perspectives, local sensibilities, and forms of knowledge situated in context, all of which can facilitate ones understanding of the ambiguities of political-economic change.

### **3.4 MARKET AS EXPERIMENT: NEOLIBERAL TRANSFORMATIONS IN POSTSOCIALIST ROMANIA**

The building of the Romanian capital market by USAID illustrates one of the paradoxes of neoliberalism in Eastern Europe: the increasing importance of the rhetoric of science, experiment and empirical evidence for governance, coincided with the strategic silencing of key arguments of economic discourse. Thus, the selective consideration of key empirical evidence about the problematic export of American capital markets to the postsocialist world reveals some of the modalities in which arguments about governance are framed, glossed over, or selectively emphasized under diverse neoliberal regimes. A conspicuous process during the last decades, the scientification of business, government, and individual conduct is accompanied by the evacuation of competing claims to knowledge formulated outside neoclassical economics, by the multiplication of covert forms of ideological intervention, as well as by the neoliberal insistence on the separation of politics and science. Cases such as that of the Romanian capital market call attention to the problematic adaptation of neoliberal politics to diverse socio-cultural contexts. They suggest the need for critical reflection on the contemporary replacement of classical forms of political governance with science-based evidence and discourses and for the reevaluation of the teleology of the neoliberal transformation of the postsocialist world.

The logic of experimentation seems to have shaped many of the reforms mandated by the international financial institutions in Central and Eastern Europe. Used increasingly as a research strategy or as an overarching metaphor in diverse social sciences during the last decades of the twentieth century, experimentation migrated subtly towards fields such as international policy making and the global expansion of Western economic models. Experiments became prevalent in the field of international economic policies, both as a strategy for knowledge production about

areas of the world that were exiting authoritarian political regimes and closed (command) economies and as a preferred form of neoliberal intervention. That extended “naturally” to CEE with the exit from socialism where the concept of experiment can be purposefully used to describe a range of processes - from the transfer of knowledge and policy recipes to the treatment of the regional reform as a unique macro-historical experiment.

References to specific experiments or experimentation as a reliable research strategy became frequent in the social sciences in “the West” after the 1960s. Thus, behavioral economics (integrating fields as diverse as psychological economics and finance [Thaler 2005; Baker and R. Nofsinger 2010], experimental economics [Smith 1991, 2000], the simulation of asset markets, or the examination of the role of reflexivity in economic decision making [Sandri 2009]) used brilliantly framed laboratory experiments to test, broaden, and very often challenge the results of main-stream economics dominated by the paradigms of rational choice and utility maximization (Guala 2005; dos Santos 2010). By that time, psychology and the cognitive neurosciences were relying on well-established experimental methods adapted from knowledge production strategies of the natural sciences with some of which they were overlapping (Wexler 2006).

Scholars of social studies of science paid attention to the experiments conducted by exponents of the natural sciences – be they routine laboratory experiments or the experimental combination of diverse techniques and fields of research – in their attempt to contribute a new perspective on knowledge production in science. Both the scholars generally associated with the creation of the field (Knorr-Cetina 1981; Latour 1988) and philosophers of the social sciences interested in the emergence of science and technology studies (Fuller 2006) emphasize the role of ethnographic methods and the adoption of anthropological perspectives in the science and technology studies. Rather than reflecting on the philosophy of science or on the social

infrastructures determining the dominant paradigms in science, creators of STS decided to approach the laboratory practices of scientists (including experiments, measurements, gathering of statistics, and the reporting in their results) with anthropological curiosity, observational methods, and ways of formulating questions. Such an approach has made possible fascinating analyses of nineteenth century experimental combination of sciences, technologies, and the art that led to the creation of wireless communication (Hong 2001) or of improved musical instruments (Jackson 2006).

Drawing inspiration from science and technology studies but moving towards distinct research interests, scholars of social studies of finance looked into the quasi-experiments of those working in high finance. Thus, while Beunza and Stark (2004a) looked at the ever-changing associations among traders on a floor of a New York investment bank in the search for profit opportunities, Lépinay (2011) presented in depth the social, technological, and institutional arrangements meant to give consistency to the financial derivatives created by a French investment bank. At the same time, contributors to a volume edited by MacKenzie, Muniesa, and Siu (2007) reflected on the way economic experiments or the experimental creation of asset markets and institutional mechanisms perform economics.

Re-appropriating the ethnographic tools adopted earlier in science and technology studies, anthropologists started looking into the research practices and ideological premises of scientists conducting experiments in biotechnology (Rabinow 1996), radiation induced cancer and clinical medicine (Petryna (2003) or the trial tests of global pharmaceutical companies (Petryna 2009). Similarly, anthropologists have looked at the economic and financial practices with an ethnographic eye contributing to the growing field of social studies of finance. An exercise in historical anthropology gave Mitchell (2002) the opportunity to characterize

nineteenth century Egypt as a laboratory for Western European economic arrangements. Zaloom (2006) has presented the daily experiments with technologies and the selection of traders in an investment bank making the shift from pit trading to online trading. More recently, Holmes (2009) experimented with ethnographic registers in trying to translate for the wider public a double experiment by central banks: the implementation of the regime of inflation targeting and the adoption of new communicative practices associated with it.

Douglas Holmes's approach emerged from an effort to systematically reevaluate the anthropological canon with regards to ethnographic research and writing. Inspired by Clifford Geertz's renewal of cultural anthropology (Geertz 2000[1973]), the critical interrogation of the textual practices of anthropologists (Clifford and Marcus 1986) became an important concern for the discipline throughout the postmodern decades of the 1980s and 1990s. This sort of self-reflection within the discipline was defined as an experimental moment by Marcus and Fischer (1996) when the theoretical categories and research strategies of classical anthropology joined textual practices as object of critique. More recently, epistemological experiments within anthropology have been extended to cover the visual representations used inside the profession (Grimshaw and Rawetz 2005) or the continued relevance of holism as an encompassing metaphor for the anthropological approach (Otto and Bubandt 2010).

The role of experiment as a tag name for less programmatic and potentially innovative approaches to economy and society is not limited to academia. Being used in historical accounts of Latin American at economic modernization and development (Musacchio 2009) or in critical analyses of the measures inspired by the Washington Consensus in the same part of the world (Cooney 2007; Fraile 2009), the notion of experiment suggests hesitation at the core of neoliberal interventions. Similarly, contemporary evaluations of some European countries'

responses to the recent financial crisis (Aleksova 2010; Hudson 2010) draw attention to the lack of effectiveness of many ready-made recipes of neoliberal reform. The experimental nature of many public policies and projects draws attention to a new regime of knowledge production associated with neoliberalism (Lave, Mirowski, and Randalls 2010; Campbell 2011; Haughton and McManus 2012), one in which knowledge is characterized by ambiguity, selectivity, and lack of permanence, is always in the making and open to reevaluation, and, more importantly, cannot be isolated from the interactions between public authorities, target populations, and other stakeholders during the implementation of projects. Such “neoliberal experiments” generate not only new forms of knowledge but also new forms of personhood and types of association between social actors (Moor 2011) confirming David Harvey’s initial intuition that neoliberal political economy was premised on the continuous production of consumers and fashions (Harvey 2005: 47).

The rich and diverse meanings of the notion of experiment as well as its centrality to many forms of academic and political knowledge characterize a period of rapid social, political, and infrastructural changes at the end of the twentieth century. Gaining identity in the 17th century as the objective method of knowledge production in the natural sciences, experiments migrated towards the social sciences during the 19th century. Notions such as experiment and experimentation became widespread during the neoliberal/postmodern period even in the “soft” or interpretive social sciences. The acute sense of change manifest in society, politics, and academia after the 1960s, combined with the lack of a clear direction (something for which modernist projects were increasingly criticized at the time), turned “experiment” into an encompassing metaphor and persistent strategy for knowledge production. The experimental approach came to articulate the pervasive sense of change as well as to provide a pathway

towards change for lack of a clearly assumed direction. The contingent shapes and results of the processes of change dominating all areas of society around the globe were to be determined through trial and error rather than programmatic strategies, through the (sometimes accidental) recombination of existent forms of knowledge rather than the invention of something radically new. Experimentation became, in many fields, a legitimizing device in a period when the modernist scientist and her grand societal projects were replaced by *bricoleurs* of knowledge and self-reflective agents of science.

The reflexivity engendered by the postmodern critiques of scientific projects migrated steadily towards the field of public policies. As various anthropologists of public policy, including Janine Wedel (1998), have shown, the implementation of neoliberal projects around the world is characterized by selectivity with regards to both the facets of external interventions to be promoted (for instance, the emphasis of the scientific-neutral dimensions of neoliberal economic knowledge at the expense of its underlying ideological dimensions) and the silencing of competing forms of knowledge (such as those coming from the local actors affected by the project, from the social sciences characterized by a holistic approach, or even from the growing number of heterodox economists) to neoclassical economics and monetarism. As Wedel (1998: 76-77) argued, the reform and development strategies imposed by Western donors to CEE countries were based on forms of knowledge that were not neutral ideologically in spite of the silencing of these dimensions by Western consultants. Quoting anthropologist Mark Hobart, Wedel shows that, “whatever its merits, scientific knowledge applied to development is not neutral, as it is often claimed, nor are the implications of its use.”<sup>46</sup>

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<sup>46</sup> See Mark Hobart, “Introduction: The Growth of Ignorance,” in *An Anthropological Critique of Development*, Mark Hobart, ed., London: Routledge, 1993, p. 6, quoted in Wedel (1998: 77).

Similarly, USAID consultants tried to make covert the ideological premises of neoliberal intervention in Romania by covering the capital market project into the wrapping of an international economic experiment. Foreign consultants have contributed to Romanian economic transition with ideas, projects, and advice about the institutional design of the capital market, as well as with technologies and financial resources, but have often managed to produce anachronistic institutions and dysfunctional arrangements that displaced the informal markets emerging at the beginning of the 1990s. In line with Janine Wedel's writings about the Visegrad countries, Romanian institutional reforms overseen by the USAID should be seen as part of a unique historical experiment undergone by the former socialist countries in CEE, a "second great transformation" from socialism to capitalism, one of whose premises was the building of Western type capital markets.

The East European experiment in market building was not *sui generis* but should be seen as one of the testing grounds for the profound transformations undergone by Western capitalism during the last four decades (a period associated with consumption-driven late capitalism, experiment-based neoliberalism, and development strategies guided by the Washington consensus). Cases like those I document in Romania, those documented in other CEE countries by Janine Wedel (1998), or those reported in Chile and China by David Harvey (2005: 7-9, 129-130) reveal that economic experiments performed in peripheral contexts are essential for the policies subsequently implemented in countries that used to be the core of the capitalist system. Such experiments (e.g., monetarist reforms applied in Latin America, inflation-targeting regimes implemented by central banks in New Zealand and Canada, or the free-trade enclaves set up by the Chinese government) are pursued programmatically and provide learning opportunities for decision-makers in the developed states in the West.

Regarded from a different perspective, the examination of the concrete ways in which such society-wide experiments are conducted reveals the *modus operandi* of an emergent transnational elite of consultants, financiers, politicians, media analysts and academics. Building on examples already presented in *Collision and Collusion* (such as that describing the actions of the Chubais clan) but also on new examples coming from U.S. foreign policy or the new practice of government outsourcing and deregulation, Wedel documented more recently the emergence of a transnational class of power brokers situated ambiguously (yet profitably) in between politics and business (Wedel 2009). The emergent “shadow elite” is able to operate by evading both the rules of political accountability and transparency, and the codes of conduct and competition promoted by the corporate sector thus illustrating new flexible modalities of power. These new practices of power were made possible by the changing configurations of states and economies during the last decades. Factors such as deregulation, privatization, the decreasing role of the state, the growth of information technologies, and the multiple roles served by those working for the government (politicians, government employees, academics, consultants, journalists, lobbyists, etc.) have facilitated the growth of a regime of power dominated by “flexians.” The examples from Central and Eastern Europe are part of the reorganization of power and of political practice with the growth of neoliberalism. Tried initially in the less developed parts of the world (such as the countries of Latin America or the former socialist states in Central and Eastern Europe), these tactics of power are now reconfiguring the workings of the American government and of those of many other mature democracies in the West.

### 3.5 A LOCAL THEORY OF THE MARKET IS CONFRONTED BY JOSEPH STIGLITZ

I don't agree with what you're saying. Yours is a wild theory of the market and I'm always going to fight it. But your theory is 'round' and self-consistent. In this sense, you could argue for it.<sup>47</sup>

This was the conclusion of Joseph Stiglitz in the interview he had given to M., the chief editor and owner Romania's first postsocialist financial daily *Bursa* (the Stock Exchange). The American economist was in Bucharest in December 1999 to receive the title of *Doctor Honoris Causa* by the Bucharest Academy of Economic Studies, the university where most of the financial elite of the country was being trained or employed. He was also trying to convey his critical evaluation of the Western-style development promoted by the Washington-headquartered international financial institutions. In Bucharest, Stiglitz was to meet a charismatic journalist that managed to be both a fierce critic of the neoliberal solutions promoted by USAID and an enthusiastic supporter of economic libertarianism.

An unlikely interlocutor for Joseph Stiglitz, M. had been a witness of and actor in the Romanian capital market created in the 1990s. That was the year when he first published *Bursa* – “the businessmen's daily,” as the first page of the newspaper proudly states.<sup>48</sup> A charming interlocutor during interviews and an energetic debater during public meetings, M. is proud to

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<sup>47</sup> The conversation was reproduced from memory by M. during an interview I made with him in July 2008. He tried to remember what Joseph Stiglitz had to say about his theory of the capital market almost nine years before. M.'s interview with Stiglitz was in English. My interview with M. was in Romanian. Although the words of the Nobel laureate are likely to have had a great impact on his interlocutor, the words attributed to Joseph Stiglitz are, rather, M.'s recollection, thus selective, perhaps inaccurate, and reconstituted. Furthermore, given the double translation from English to Romanian to English by non-native speakers of English of utterances more than a decade ago, it is very likely that things and meanings have been both lost and added to the initial dialogue.

<sup>48</sup> The online edition of the newspaper can be read at <http://www.bursa.ro/>. The English section is available at: <http://www.bursa.ro/english-section/>.

have witnessed all the key episodes of the Romanian capital market and to know personally all the main actors of the Romanian financial system. He is also proud to have managed to keep his financial newspaper independent of any political affiliation and to have always exerted a major important influence on the local financial community. As M. explained to me during a long discussion, *Bursa* was important not only for the accurate news it published about the market, but also for facilitating the existence of the initial quasi-informal market in certificates of privatization at the beginning of the 1990 by publishing the quotations of transactions reported by phone all over the country. In theoretical jargon, *Bursa's* role was not only reflective but actually constitutive of the capital market. The financial newspaper was not an accessory publication of the market but an integral part of the initial capital market in Romania.

At the time, before the involvement of USAID in Romania, the only securities that could be traded were the certificates of privatization distributed initially, the paper-issued shares of five companies part of a trial public subscription process, and the subscription rights sold by the newly constituted *Țiriac Bank*<sup>49</sup> before being listed. M. excluded on purpose from the enumeration the few large companies being traded on the Bucharest Stock Exchange as it was opened rather late, was too sophisticated for the small investors, and too selective for the average Romanian company. On the other hand, the three types of securities enumerated above occasioned a “street corner” market, as M. explains, a quasi-informal market operated mostly by Gipsy<sup>50</sup> “brokers” buying and selling certificates all over Romania. Although such “securities” were further aggregated by former officers of the former *Securitate* and well-connected

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<sup>49</sup> The bank was created by the famous Romanian tennis player Ion Țiriac having returned to his native country after a successful business career in the West. His businesses (in banking, insurance, retail, real estate, and bakery products) were welcomed and regarded with great hope for the prospects of the emerging private sector.

<sup>50</sup> M. used the term Gipsy (*tigani*) rather than Roma (*romi*) although the latter is available in Romanian. The first term is currently criticized in Romanian academia and civil society for its prejudicial overtones. However, I will use it in this section in order not to obscure the polyphonic discourse practiced by my sophisticated interlocutor.

politicians to be converted into significant participations in the newly created Private Ownership Funds or the companies being privatized, the “retail” segment of certificates of property was monopolized by Gypsies who used their “talent” for business to facilitate the emergence of an incipient capital market:

they were people of great talent who, during the Revolution [of 1989], after the heroes [word emphasized with sarcasm] died, came to the University Square [the place where the Army first opened fire on the protestors] and made a lot of money by selling candles! [he laughs copiously]. These are the people that seize up any opportunity. They want to make a profit... and they want it with greed and primitiveness...

As I tried to argue over his presentation of what I saw as negative moral traits, he protested: “you can blame them from a Bolshevik, from a communist perspective and treat them as speculators (*speculanți*)<sup>51</sup> but these are the qualities that the market rewards.”

Certificates of property were circulating and transacted all over the country being aggregated by persons with good political connections who were later able to bend the rules of privatization and accumulate significant (even if not always legal) stakes in the former state companies. Announcements about available packages of certificates were published in the press and especially in *Bursa*. Lists of quotations were eagerly read by those looking to buy them or trying to sell them. What did these quotations signify? Hard to tell! The numbers of subscription rights written on the face of certificates were often taken as “points” that were in practice interpreted as *Lei* (the Romanian currency) and later used as a basis for the quotation of the certificates of property. The “points” functioned very much like the nominal value on the face of stocks and bonds anchoring practical acts of cognition performed during transactions.

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<sup>51</sup> The notion of speculator (*speculant*), referring to a legitimate profession connected to Western capital markets, has a rather negative connotation due both to the general moral condemnation of people that live off speculative practices and to the fact that “*specula*” was a crime according to the communist Penal Code.

Certificates of property like the one displayed below were used during the initial process of privatization at the beginning of the 1990s. The various numbers printed on the certificate anchored diverse evaluative practices during the transaction of certificates in the “street-corner market.”



Figure 1: Certificates of property distributed during the early 1990s.<sup>52</sup>

But what was the real basis of value and the “substance” these securities were indexing? This was also difficult to say. Certificates of property were not linked to any company (that would

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<sup>52</sup> The certificate comes from the personal collection of one of the ANPI investors who had not used it for shares at the time when privatization was undertaken. He lent it to me to copy it for inclusion in my dissertation. I subsequently returned the certificate to the owner.

itself be valued) but alluded to the potential conversions of value that could take place during the process of subscription. The situation was further complicated by the fact that it was not clear which companies would be privatized (the list of companies was compiled by Mircea Coșea, the Minister of the Economy in 1995) or how shares in these companies would be allocated (the problems caused by oversubscriptions would surface only later). As M. puts it:

What were they paying for when buying those papers? Actually, it was a quotation of the trust in the political reforms being announced. They were putting a price on politics. Politicians would say “we are going to privatize this and that” and the market quotation would indicate “we believe / we don’t believe that” [he bursts out laughter]. What else could they be pricing? Nothing but politics, really...

The enthusiasm for the market went hand in hand with enthusiasm for political reforms. Certificates of property circulating incessantly at the time indexed both the inclination towards transactions and the hopes and expectations of people emerging from socialism. Unfortunately, according to M., USAID did not seem to appreciate these qualities and the practices of the informal market. After signing a memorandum with Romanian Prime Minister Nicolae Văcăroiu<sup>53</sup> during the fall of 1995, the American agency announced its intention to build a complete capital market in Romania intended to become the most significant in the Balkans.

USAID consultants visited M.’s office and he was happy to inform them of the incipient capital market and to advise them on the ways the market could be consolidated and further developed. He only later realized that “the Americans” did not trust the actors of this informal market and that they were trying to replace it with a much thoroughly regulated one. Nor did they trust him. M. was subsequently visited by the police and the prosecutors and accused of

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<sup>53</sup> M. ironically noted that Nicolae Văcăroiu, the partner of USAID in building a state of the art capital market, had been a communist technocrat specialized in the financial planning of the socialist economy before 1989.

illegal activities associated with informal transactions in certificates of property. He managed to evade legal responsibility by invoking laws regulating the freedom of the press but others were not so fortunate and were convicted for dealing in certificates of property whose transaction outside regulated markets (nonexistent in postsocialist Romania before 1995) in spite of the fact that the law did not strictly forbid this. M. remembers the story of one such person:

N.L., our collaborator at the newspaper, was convicted and imprisoned for over a year for dealing in certificates of property and this in spite of the fact that transactions with such instruments were legal! He spent another seven years in international courts to fight the injustice and was finally rehabilitated. But the personal damage had already been done and the message to the market – that you are only allowed to transact securities through authorized intermediaries – had been transmitted.

The imposition of strict regulations of the market had the effect, M. thinks, of inhibiting the initial enthusiasm of market actors. The speedy emergence of transactions associated with the informal capital market in the early nineties proved that the culturalist assumptions of international advisors – that Romanians displayed a “mentality gap,” that they were unprepared for capitalism, and that they had to be guided during the transition – were invalid. It was too much guidance from both international actors and the Romanian government that “killed” the domestic capital market.

Even worse, the market built by USAID had serious problems of legality. In spite of the ideology of legalism, the government managed to insert the germ of illegality at the very core of the market. The realization of this fact, happening by chance but later confirmed by one of the commissioners of the Romanian Securities Commission, led M. to print on the first page of one of his 1997 editions: “The Market is Quasi-Legal.” Concretely, many of the shares being traded on RASDAQ were fictitious recordings of the subscription process rather than actual shares of

companies. A list of companies to be listed on the new exchange was compiled under the direct supervision of the Minister of the Economy at the time, Mircea Coșea. Although the public was informed of 5.600 companies made available for subscription and trading once the new privatization vouchers were distributed to the adult population, few Romanians were aware of the numerous transformations the list underwent. From the functionaries compiling the initial version of the list, to the Minister himself, his secretary re-typing the list into the computer, other lower profile bureaucrats in the Ministry of the Economy, and those administering the Official Bulletin of Romania [*Monitorul Oficial*] where the list was finally published, all were able to take off and include companies on the list in response to political command and illegal influences.

Furthermore, after the subscription process effectuated through the post-offices all over the country ended, the Institute for Management and Informatics (a department within the Ministry of the Economy) centralized the lists of subscribers for each company and sent them directly to RASDAQ. Although each company was supposed to hold a meeting of shareholders to consolidate ownership, that is, to register all the new shareholders and correct any erroneous data appeared at subscription, most of the companies did not have that chance. Furthermore, although each of the companies was supposed to sign a contract with a market registry (such as the Romanian Shareholders Registry created by the USAID) for keeping evidence of its shares and shareholders, the majority of privatized companies did not do that for a variety of reasons: not being informed they will be listed, ignoring the legal provisions, or purposefully undermining the privatization efforts of the central government.

The quasi-legal procedures implemented in the name of legalism by the USAID advised Romanian government created the conditions for numerous subsequent frauds and are

responsible, as far as M. and other market actors interviewed during my research are concerned, for the lack of legitimacy of the Romanian capital market in the eyes of the investors and for the avoidance of capital market solutions for raising money by domestic companies. A striking example of illegality at the heart of the market is that of the shares of *Petrotrans* - a state company that was initially on the list of those to be privatized through public subscription but was later included, along 42 other state companies, in a mammoth oil company *Petrom*.<sup>54</sup> As directors of *Petrotrans* were not aware their company was listed on RASDAQ and the stock market managers were not aware that the company did not exist as a legal person any more, for over three months investors, brokers, and the Romanian Shareholders' Registry were manipulating fictitious securities, "subscriptions" from the privatization process and not actual company shares. M. printed another shocking headline on the first page of his January 6, 1997 edition: "RASDAQ is trading in phantom shares."<sup>55</sup> Market authorities subsequently treated the matter in an ambiguous way, blaming the directors of the company for not informing them of the merger. It is still unclear to M. how all the transactions effectuated in the meantime were canceled or how investors were compensated for the fictitious purchase the market had facilitated. As ongoing scandals surfacing in the press indicate, many of the unaware investors have simply not been reimbursed.<sup>56</sup>

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<sup>54</sup> *Petrom* was finally privatized in late 2004 through the direct sale to a key investor - the Austrian state company OMV. This is often treated with irony by Romanian capital market actors: one of the most successful privatizations in postsocialism was done with a Western state company.

<sup>55</sup> The Romanian over the counter market was opened for public trading at the end of September 1996.

<sup>56</sup> For more information about the Petrotrans-RASDAQ scandal see also Andreea Negru, 2005, "Rasdaq s-a sinucis! Trăiască bursa! [Rasdaq committed suicide! Long live the exchange!], *Bursa*, December 1, 2005, available at: <http://www.hotnews.ro/stiri-arhiva-1198522-rasdaq-sinucis-traiasca-bursa.htm>, accessed: August 15, 2012; and MAKE, 2012, "On the Death of a Market, Three Words in One: Lies, Stupidity, and Blackmail – Rasdaq," *Bursa*, April 19, 2012, available at: [http://www.bursa.ro/on-the-death-of-a-market-three-words-in-one-lies-stupidity-and-blackmail-rasdaq-165170&s=english\\_section&articol=165170&editie\\_precedenta=2012-05-02.html](http://www.bursa.ro/on-the-death-of-a-market-three-words-in-one-lies-stupidity-and-blackmail-rasdaq-165170&s=english_section&articol=165170&editie_precedenta=2012-05-02.html), accessed: Aug. 15 2012.

Another scandal illustrating the hybrid nature of the market, the fusion of legality and illegality incorporated by the exchange, had appeared sometime during 1999. One of the brokers (a securities company) authorized to trade on RASDAQ was reported to have transacted large numbers of the shares of POFs belonging to unaware shareholders. The investigation revealed that the practice had been going on for months if not years. However, the boldness of those involved in the scheme – they tried to sell over 13 million shares of a very large financial institution – made the company and later the market authorities and the securities commission wary of the situation. The arrangement had been rather simple: shrewd investors managed to purchase informally copies of the shares registries of diverse companies from some of the Registries authorized to operate on the market. Such a black market for registries has grown at the very core of the formal market infrastructure indicating a symbiotic relation of formality and informality.

Basic interrogations of the databases using the personal identification numbers allowed them to identify dead persons, the elderly and those situated in rural areas who were very unlikely to keep track of their securities' account balance. Added to the above were the numerous people who oversubscribed and owned fractions of company shares – a peculiarity of the Romanian capital market criticized severely by M. Such very small holdings, accumulated through oversubscription or inheritance and further devaluated by the market decline of 1997 and 1998, constituted practically non-transactables of the capital market as the fees and transaction costs for any individual holder were higher than the value of the principal. They were securities

taken out of circulation because of the institutional rules associating them with the “wrong” persons in unintended ways.<sup>57</sup>

The investors manipulating the registries also purchased a securities company but did not notify the securities commission of the change of ownership. They used the accounts of previous traders to transact based on fake selling orders, cash in the money, and disappear. As the rules of the market allowed transfer of ownership by the market Registries based on orders among securities firms, such transactions were enforced and money were transferred to the fraudsters. Furthermore, as the transfer of property over the securities firm was registered by a public notary, previous owners and brokers associated with the firm were no longer liable. The incomplete transfer of property created a liminal legal space, a zone of informality in between legal statuses but at the very heart of the market infrastructure that facilitated the illegal transfer of securities. The illegal markets in registries was blooming on the “stipule” of the market, illustrating a fractal growth of legality and illegality much like the inflorescence of a cauliflower is made up of fine alternation of meristem and empty spaces, or like the sea-shore is an endless succession of low cliffs, bays and ravines, each component getting its shape and identity in opposition to the other.

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<sup>57</sup> Information about the ways of stealing securities owned by retail investors with the help of market registries for shares are common knowledge among the professionals, regulators, investors, analysts, and financial journalists on Romanian capital market. While I became aware of such practices during my brief employment with the Romanian Securities Commission in 2001-2002, similar stories have been presented to me by M. in a recorded interview he gave me on July 19, 2008, as well as by N., the leader of the main association of retail investors I worked with during our numerous discussions taking place throughout the entire period of fieldwork. Accounts of such fraudulent practices have also been published by the press: Dan Zavoianu, 2006, “Furturi mici dar cu mii de victime” [Petty thefts making thousands of victims], *Capital*, republished by [forumbursier.ro](http://forumbursier.ro), September 6, 2006, available at: <http://www.forumbursier.ro/index.php/topic.837.msg2224.html#msg2224>, accessed: August 15, 2012; Raluca Bara, 2006, “Mii de cuponari furați de brokeri nu au primit niciun leu despăgubire în 7 ani” [Thousands of voucher holders prejudiced by their brokers have not received any penny after 7 years of litigation], *Adevărul*, December 14, 2006, available at: [http://www.adevarul.ro/financiar/Mii-cuponari-brokeri-niciun-despagubire\\_0\\_44996019.html](http://www.adevarul.ro/financiar/Mii-cuponari-brokeri-niciun-despagubire_0_44996019.html); accessed: August 15, 2012; and Mihai Bacalu, 2010, “Dosar record de furt de acțiuni: 500 de păgubiți și 8 ani de procese” [Trial involving a record theft of shares: 500 prejudiced investors and 8 years of litigation], *Adevărul*, February 24, 2010, available at: [http://www.adevarul.ro/locale/cluj-napoca/Dosar\\_record\\_de\\_furt\\_de\\_actiuni-500\\_de\\_pagubiti\\_si\\_8\\_ani\\_de\\_procese\\_0\\_214179010.html](http://www.adevarul.ro/locale/cluj-napoca/Dosar_record_de_furt_de_actiuni-500_de_pagubiti_si_8_ani_de_procese_0_214179010.html); accessed: August 15, 2012.

Although the intentions stated by USAID experts was to create an equalitarian market and a universal privatization process meant to facilitate access to the newly privatized companies to all Romanian citizens irrespective of age, location, education, or social status, the practical results were, in many ways, quite the opposite of the intended principles. Many of those who received certificates and vouchers during the privatization process were unable to convert them into shares. Even if they managed to do so, they found it impractical to transact those shares or to transmit them to their inheritors due to distance from authorized intermediaries, lack of information, or the level of commissions and fees. Furthermore, in spite of the habitual image of the stock exchange as a sphere of financial liquidity premised on the incessant circulation of securities, in Romania, many of the segments of the market were virtually immobile. Not only were institutions like short selling or the use of securities as financial collateral unavailable in Romania, but a significant part of the individual portfolios were too small or too “remote” (given the necessary interaction of shareholder and authorized broker) to be practically traded.<sup>58</sup>

All the above rigidities of the formal capital market made necessary the implementation of special procedures: discrimination of shareholders based on age and residence, selection of shares, reassembling of portfolios, and their repackaging in a fictitious selling order – in a word, a series of recombinant (property) practices (Stark 1996), to mobilize the inactive segments of the market. The aggregate effect of such practices contributed to the concentration of ownership happening progressively at the end of the 1990. While such an effect is not necessarily negative, it raises serious issues of morality and legality given the many people that were ignored, abused, or swindled in the process. This calls into question the equality on which the market was

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<sup>58</sup> This is the main line of argumentation of supporters of paper shares and the free transaction of securities outside organized markets (M. being one of the most vocal among them) as premises for the development of capital markets. The liquidity of the unrestricted transactions happening at “street corner markets” is often contrasted with the inertia of the formal market created by the USAID.

supposedly premised and hints at the failure of the USAID experiment in market building, a conclusion towards which M. was heading in his exposition.

M. protested energetically to my interpretation of these fraudulent practices as calls for better regulations and a more determined intervention of the securities commission – both key objectives of the USAID program in Romania:

It isn't about trusting the market; it is all about trusting yourself. On the contrary, there is a complete distrust of the market. Nobody can assure you of anything. You should be able to take care of your investment as you take care of the money in your wallet. You could be robbed of it. Anybody could trick you on the market: you want to buy something and they run away with your money. You can't trust the market because nobody can help you: neither the police, nor the securities commission, nor anybody else.

He enumerates several situations when the Romanian securities commission did not have the authority to enforce existing regulations or when the sanctions it applied were rather inefficient in correcting the behavior of market actors. M. is generally against coercive measures trying to impose a normative logic of the market; he argues strongly for regulatory elements to be induced along the “natural” growth of the market. Such “naturally growing” regulations are those affecting the interest of those transacting on the market and thus more likely to be obeyed.

To illustrate his theory of “natural regulations,” M. remembers a moment of crisis for the informal market in which *Bursa* was involved. Back then, before the USAID involvement, when the “street corner market” was gaining momentum, *Bursa* decided to publish the “quotations” and “transaction prices” of the securities in circulation (certificates of privatization, shares of the few companies already privatized, or the subscription rights of *Țiriac Bank*), as well as announcements about future transactions (similar to real estate announcements). *Bursa* ordered the quotations similarly to the auction logic of major stock exchanges: sell announcements in the

ascending order of prices and buy announcements in the descending order of prices. Everything seemed to work fine and information circulated at speed as “a transaction of 5.000 certificates in Iași would be known in less than 30 minutes in Cluj.”<sup>59</sup> This until *gulgute*<sup>60</sup> appeared. An argotic term with strong ethnic (Roma) connotations, often associated with the language learned in prison and used by criminals during hits, *gulguta* refers to either a doughnut or dumpling, or, figuratively, to a lie, a con job, or a more complex scam.

In the context of the informal market “hosted” by M., *gulgute* referred to the inclusion of fake information in the announcements placed in *Bursa*. In time, “traders” would announce the wrong security being sold (easy to understand, they could easily argue that the security announced has sold off but there are others being transacted); they could announce a very attractive price (and argue the market has moved before the phone call); or they could provide the wrong phone number. Puzzled by such a choice, M. decided to investigate it. He found out that traders were placing very attractive announcements in the name of their competitors. When the market was accelerating, having one’s competitor’s phone blocked by incoming calls as a great advantage. At that moment he realized he was managing a market that was becoming increasingly sophisticated and decided he was responsible for it. Therefore, he published an editorial titled “*Gulgute* are forbidden!” in which he explained that such practices risk undermining the market and that he will no longer host the announcements of those engaging in such practices. He also decided to implement a more thorough control procedure through which announcements placed with *Bursa* were verified before going to print. He was pleasantly

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<sup>59</sup> Iasi and Cluj are the two biggest Romanian cities after Bucharest being situated in opposite sides of the country and in culturally and historically different regions.

<sup>60</sup> In Romanian, *gulguta* is the singular and *gulgute* the plural of this argotic term.

surprised to find out his “naturally implemented” regulation was effective and the practice of placing *gulgute* stopped right away.

In contrast to the naturalness of the informal market, the one created with USAID support failed to fulfill its three key functions in the economy that, according to M., are: to facilitate business entry-exit mechanisms, to facilitate the coagulation of investment capital for expanding companies, and to facilitate macroeconomic policies (through the informational signals given by the exchange). The inadequacies of the market have to do with the top-down approach that was meant to eliminate all previous market forms that emerged at the beginning of the 1990s (including the one hosted by *Bursa*) and, even more importantly, with the ambiguities displayed by the authorities. According to M., the creators of the market should have focused on a simple functional definition of the market: “the stock exchange produces transactions.” Treating the stock exchange as a “factory for making transactions” and advertising it as “the place where one finds transactions” would have helped market administrators focus on the essential services they provide. Every transaction on any market implies moments of suspense between prestation and counter-prestation, a moment right after the object of exchange has been offered and just before the payment is received when all the risks associated with the transaction are concentrated (as discussed in Chapter 1). Eliminated in the past by the experience, social skills, and intercultural knowledge of merchants, such risks are currently routinized and progressively eliminated by the exchanges that standardize everything but the price of the transactables and takes measures to eliminate the uncertainty with the transfer of securities for money.

The strategy of building a more sophisticated market, one that M. would appreciate in spite of his earlier criticism, would be to build on the “naturally” emerging market forms (such as the one he “administered” in the early ‘90s) and persuade market actors of the advantages of

more abstract mechanisms for settling transactions. Given the declining role of the capital market created by the USAID in Romania, M. advises a comeback to the initial forms of securities (paper-issued stocks) as a way to return to the fundamentals of market behavior. Although the dematerialization of stock practiced nowadays is justified on developed markets to facilitate clearing and settlement, in Romania it is advisable “to let people touch and feel their possession.” The dematerialization of shares has left Romanians with the impression that the market is re-instating a socialist form of ownership. As the anecdote cited at the beginning of the chapter was meant to convey, after the socialist experience, Romanians were suspicious of any form of property in which they would not keep possession or which they would not be practically able to use. Going back to the transaction of paper shares (securities that function like quasi-money as they have liquidity, can be kept “under the mattress,” can be used at any hour and not only when the market is open) without the intermediation of a broker could be a way towards rebuilding capital market foundations. Paper shares could be the market fetish symbolizing the possibilities of financial gains, facilitating the circulation of value, and advertising the companies being traded.<sup>61</sup>

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<sup>61</sup> The information in the section above comes from a recorded interview with M. on July 19, 2008, and from two other occasional discussions with him during the summer of 2008. Subsequently, M. published some of his critical evaluations of the USAID involvement with Romanian capital market in a long article in the newspaper he edits. See MAKE, 2012, “On the Death of a Market, Three Words in One: Lies, Stupidity, and Blackmail – Rasdaq,” *Bursa*, April 19, 2012, available at: [http://www.bursa.ro/on-the-death-of-a-market-three-words-in-one-lies-stupidity-and-blackmail-rasdaq-165170&s=english\\_section&articol=165170&editie\\_precedenta=2012-05-02.html](http://www.bursa.ro/on-the-death-of-a-market-three-words-in-one-lies-stupidity-and-blackmail-rasdaq-165170&s=english_section&articol=165170&editie_precedenta=2012-05-02.html), accessed: Aug. 15, 2012.

### 3.6 CONCLUSION

This chapter has focused on the recreation of the capital market in postsocialist Romania. Seen as the epitome of the free market economy to be built after socialism, the stock exchange and the corresponding institutional infrastructure – regulations, supervisory agencies, investment funds and independent registries, were built with know-how and financial support provided by USAID. The reform was part of the broader USAID endeavor to build capital markets in postsocialist and postcolonial countries. That program included, besides Romania, countries such as India, Kenya, Morocco and the Philippines. The Romanian project generated ambivalent results: the successful transposition of sound regulations and the privatization of state companies on the exchange alternated with successive stock market collapses and the frequent default of investment funds.

I treat this institutional process as an international experiment in market building. Although describing it in similar terms, promoters of the market such as U. S. AID and Romanian authorities generally overlook its ambiguities and failures, characterizing it as a successful experiment and an example of foreign-induced economic reform. This chapter complements this triumphalist perspective with critical accounts of some of those who witnessed and/or took part in the process. The situated accounts of market witnesses were included to help the reader make sense of the problematic adaptation of neoliberal politics to various cultural contexts, to reflect critically on the contemporary replacement of classical forms of political governance with science-based evidence and discourses, as well as to reevaluate the teleology of the neoliberal transformation of the postsocialist world.

The metaphor of experiment offers a good insight into the USAID involvement in Romania, especially given the contrast between the expectations regarding the creation of a local capital market and the results of the institutional reforms. The stock exchange was regarded as an

ideal-typical free market (an ideological construct), as an American import (a symbol of the West), as an alternative mechanism of decision making to the socialist central planning (a more de-centered form of knowledge), as well as an arena for the emergence of new types of persons and social relations (a reconfigured form of sociality). Such promises can be easily contrasted with the actual accomplishments of the market: the failure of the project (according to informants such as M.) or, at best, the insignificance of the market in proportion to the growth of Romanian economy (according to USAID evaluators or to Romanian authorities).

This experimental process should draw attention to the several dimensions of the process: institutional and technological transfers do not happen “naturally” but are joined by a consistent ideological baggage and are mediated by situated practices, experiences, and expectations. At the same time, neoliberal reform recipes that guide experiments like those of USAID silence alternative forms of knowledge that, although maybe less “scientific” than neoclassical economics, are nevertheless better equipped to make sense of local processes and sensibilities. Last but not least, the ideological consensus mimicked by local authorities, Western donors, and appointed consultants entertain the illusion of an unproblematic neoliberal transformation of the postsocialist world. Such a bracketing of ongoing disputes over ideas and values constitutes one the covert forms of neoliberal interventions and neglect both the difficulty of institutional reforms and the complexity of social change.

The illuminating discussions with M. have revealed the existence of two types of persons active on the successive capital market during the 1990s. Thus, M. has tried to sharpen the contrast between the rather passive “investors” created by the privatization program envisioned by USAID (the dead, the elderly, the inheritors of insignificant portfolios and their inactive

securities holdings) and the “speculators of talent”<sup>62</sup> of property certificates active on the “street-corner market” at the beginning of the 1990s. The contrasting forms of personhood are illustrative of the differences of the two types of market emphasized by M. One was emerging “naturally” as soon as tradable instruments appeared in a context where transactions were unrestricted; the other was constructed artificially and “crippled” by the institutional inhibitors of transactions. M.’s opposition between the two types of persons populating each type of market is illustrative of two contrasting modalities of economic change taking place in Romania during the 1990s.

While the modern stock exchange appeared in nineteenth century America where it facilitated the growth of industrial capitalism represented by the increasing industrial complexes, the exploitation of natural resources, and huge infrastructure projects – all of which necessitated large pools of capital and financial leverage, the rise of neoliberalism transformed capital markets into arenas of speculation, socio-technological assemblages where risk is produced with the purpose of being better administered (Lee and LiPuma 2002; LiPuma and Lee 2004). In peripheral countries exiting from socialism, like Romania, the capital market was an aggregator of ownership rather than a mechanism for the funding of economic growth and the hedging of financial risks. In the process of market building, a form of *inert property* had been generated. This inert property constituted an amorphous component of the market that overturned the egalitarian ethos of the privatization process. Such property did not generate relations or transactions straining the limits of intelligibility of postsocialist property.

Operations of selection and portfolio aggregation were used to “mobilize” the inert securities and put them into circulation. The effect was the dispossession of many of the unaware

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<sup>62</sup> Here “talent” was used by M. to refer to a set of cognitive and social skills valuable within the context of the informal capital market rather than just particular personal qualities of the speculators.

investors (the dead, the elderly, the ignorant, and the fractional shareholders) and the redistribution towards the top of society of the inert property through a process of ownership concentration on the capital market. Seen retrospectively in the context of the current financial crisis, the practices of property recombination (Stark 1996) and the mobilization of inert securities happening in a peripheral capital market disclose a mode of operation on neoliberal financial markets. As phenomena of market periphery and immobile property can be found on any market, the side effects of experiments like those performed by USAID gather new meanings. The securitization of subprime mortgages and other types of credit happening on developed capital markets before the recent financial crisis can be seen as similar practices of property recombination and capital mobilization indicating a more general praxis of capital under neoliberalism. The future chapters will focus on a new zone of Romanian capital market: the mutual funds sector. They will illustrate a new dimension of the same process: the mobilization of inert savings of the population (“the money kept under the mattress”) threatened by the rampant inflation of the 1990s and the dispossession of retail investors after the collapse of some notorious mutual funds. They will try to make sense of the types of practices, forms of personhood, emerging collectivities, and values in use characterizing the ongoing process of change after socialism.

#### **4.0 CHAPTER 4: REASON, GOSSIP, AND THE REPELLENT MEDIATORS**

The capital market designed for Romania by the USAID started operations in a turbulent economic climate. While the poor economic performance and macroeconomic disequilibria during the mandate of the socialist regime of 1992-1996 were used by the international financial institutions to force the Romanian government to re-embark on structural adjustment reforms and a new program of privatization (whose institutional vehicle the USAID capital market was supposed to be), the economic conditions proved to have different kinds of implications for the market in the longer term. These conditions forced the right wing coalition of parties, running on a reformist and pro-Western platform and brought to power at the end of 1996, to adopt harsh measures of macroeconomic stabilization, price liberalization, and industrial restructuring. The necessary readjustment of the economy came at the cost of a harsh economic contraction throughout the period of 1997-1999.

The effects of the macroeconomic contraction were rather depressing for the capital market. While the newly open exchange (RADAQ) had a rally for over a year which also involved the previously created Bucharest Stock Exchange, the signs of decline in the market began to appear towards the end of 1997. Further down the chain of financial intermediation, the effect of the capital market decline on the emergent mutual industry was devastating. While most mutual funds decided to withdraw from the capital market towards the safety of bank deposits and instruments of the monetary market, there were some whose managers decided to be

“creative” in the context of the economic crisis. Such was the case with the National Investment Fund [*FNI*] and the National Accumulation Fund [*FNA*] whose asset managers began making dubious investments in unlisted securities, engaging in creative accounting and the inflation of asset values, as well as reporting fictitious growths of net asset values. Such practices brought the two funds into a position to dominate the mutual fund sector with regard to the number of investors and the reported asset values through the end of the 1990s, but also created the condition for spectacular defaults.

Unfortunately but unavoidably, *FNI* collapsed in May 2000, just half a year before the general elections, pulling *FNA* down with it. From the collapse of the two funds to a crisis of the mutual fund sector was just a short way. The effects were spectacular: huge losses (at least when compared to the last stated net asset values), over 300,000 retail investors deprived of their savings, social unrest, considerable political implications, and a long-term effort for the recuperation of losses and the reimbursement of defrauded investors. Obsessive questions seemed to haunt everybody’s mind: who was behind the two funds? Who had designed the fraudulent scheme? Who was involved in the collapse of the funds? Who was to take responsibility for their acts? Who was going to resolve the crisis? Who was going to bring compensations to the investors?

This chapter introduces two of the most frequently mentioned names in the public debates about *FNI* and *FNA*, who are also the actors with the most considerable presence in my dissertation research. The first was my key informant and closest friend among all the mutual fund investors–turned litigants I have collaborated with. His portrait is based on our sustained interactions and numerous interviews I conducted during my fieldwork in Romania. He proved to be an invaluable collaborator throughout my fieldwork, although his image among the other

investors (he was the leader of the second-largest civic association representing *FNI* investors) was often that of a repellent character, good to collaborate with for pragmatic purposes but to be avoided otherwise.

The second is the person generally considered to have masterminded the pyramid scheme that led to the collapse of the mutual funds I studied – afterwards a media owner with good connections among the highest level politicians and the secret services. I draw his portrait based mainly on the few interviews he gave to journalists over the years, on innumerable articles about him in Romanian newspapers and online media, on the information that surfaced from his file as an informant of the socialist secret services (*Securitate*), as well as his image created through gossip by the lay investors that I interacted with during fieldwork.

Both characters illustrate key ways of understanding the value of money, the moral and social values on which its multiplication and redistribution should be based, or the role of the state in fostering notions of risk and gain. Their reasoning provides some of the most articulate visions of capitalism and ideals of political organization circulating in Romania. However, reason is not the only ingredient giving currency to their visions. Gossip, either by the central figures in this chapter against their competitors and in articulating worldviews, or by all their followers about such informal leaders and social mediators, proves to be a fundamental form of knowledge. Such knowledge could be seen as the *verso* of more formal types of rationality, yet at least as influential in facilitating social action and the opportunistic affiliation of lay investors to leaders, civic associations, or specific forms of litigation.

The various notions of value are illustrated with the interventions of such differently positioned actors. Concomitant with the analysis of financial repertoires pertaining to value, one should illustrate, I argue, the renegotiation of social and moral registers understood as values-in-

use situated in context. This chapter is a presentation of the opportunistic shift between registers of values and of the redefinition of capitalist morality by some of the key actors of my ethnography. Such opportunistic endorsement of (even contradictory) values is the correlative of the ambivalent relation between lay investors and their leaders. Described usually as repellent and self-interested figures, civic associations leaders find transient followers just because they are considered able to mediate between diverging domains of social life: the legal, the social, the political, the economic, and the moral.

#### 4.1 HANGING IN IN SPITE OF PERPETUAL LOSSES

A country road. A tree.

Evening.

Estragon, sitting on a low mound, is trying to take off his boot.

He pulls at it with both hands, panting. He gives up, exhausted, rests, tries again.

As before.

Enter Vladimir.

ESTRAGON:

(giving up again).

“Nothing to be done.”

VLADIMIR:

(advancing with short, stiff strides, legs wide apart).

“I’m beginning to come round to that opinion. All my life I’ve tried to put it from me, saying Vladimir, be reasonable, you haven’t yet tried everything. And I resumed the struggle. (He broods, musing on the struggle. Turning to Estragon.) So there you are again.”

(Samuel Beckett, *Waiting for Godot*, Act 1, page 1)

I met N. in the summer of 2005. Prospecting for potential case studies and informants ahead of my dissertation proposals, I came across the website of the National Association for the

Protection of Investors (*Asociația Națională pentru Protecția Investitorilor [ANPI]*). The website of the association indicated that it was not only involved in the penal/civil trial occasioned by the collapse of the National Investment Fund (*Fondul Național de Investiții [FNI]*) – a large mutual fund whose collapse in 2000 stirred wide political disputes and social protests – but it was representing a wide pool of small/“retail” investors in several other legal actions triggered by financial scandals. Although it had a minimalist design (an indication of the limited resources of the association), the website was up to date with regards to the news and actions in which *ANPI* was involved. As I later came to learn, the website was one of the main media of communication between N., the leader of the association, and the investors he represented.<sup>63</sup>

I stopped at the Bucharest headquarters of the association to set up an appointment. The weekly meetings of *ANPI* were held in a room made available by the owner of *Bursa* whose lasting involvement with and critical reflections on the Romanian capital market were presented in the previous chapter. The friendship between M., the owner of *Bursa*, and the few leaders of *ANPI* dated from the early 1990s when all were involved in the informal market of certificates of privatization. M. decided to host the association being persuaded by the personal relation with its leaders, by the belief in their mission, and by the increasing numbers of retail investors looking for representation by *ANPI* after the scandals affecting the mutual fund sector in 1996 and 2000.

The editorial offices of the financial newspaper were located in a recently refurbished nineteenth century villa situated in the vicinity of *Piața Matache*. A renowned market for vegetables, meat, and dairy products, *Piața Matache* was also a site of many types of informal transactions, including currency exchange and lending by loan sharks. Everything was part of

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<sup>63</sup> The website of the association (in Romanian) is available at: <http://www.investitor.com/anpi/>.

what used to be a posh area during the interwar period, now mostly decaying due to the lack of public or private investment. Most of the inhabitants of the neighborhood were the descendants of former workers brought to Bucharest to support industrialization under socialism and large families of Roma who were given apartments there by the socialist state after the nationalization of housing during the 1950s.<sup>64</sup> As the state-owned buildings were neither restituted to their interwar owners nor sold to the current tenants, nobody really had an interest in investing. The neighborhood constituted a nest for informal rural to urban migration, and was an area known for the delinquency rate and illegal economic practices.

The receptionist informed me of the weekly meeting schedule of the association (usually on Friday evenings and Saturday mornings) and suggested I call N. at home - something all the members of the association do during the week - to set up an appointment. I called him on a Thursday afternoon. An intimidating voice responded and urged me to introduce myself and tell him the reason I was calling. As I was later to find out, an unfavorable decision taken by the Bucharest Tribunal in the morning had made N. particularly irritated that day. I told him I was a student of anthropology doing research on the collapse of *FNI*. “Is there anybody still interested in what happened to *FNI*?” he asked, as if displeased, “I don’t think anybody is interested in *FNI* anymore...” Unprepared for such a reaction, I tried to explain succinctly about my studies in the USA, about my interest in money, values, and the capital market after the end of socialism, and about how *FNI* seems to be the ideal case study for my dissertation. “And is there anybody in America really interested in *FNI*? How could they be when they have such a well-developed capital market and enough financial analysis firms to offer detailed information about the

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<sup>64</sup> Katherine Verdery (2003) and Liviu Chelcea (2003) have shown how the diverse forms of property characterizing the socialist period were constituted after the nationalization and collectivization policies of the late 1940s and the 1950s in Romania.

market?” I insisted on the role of money in the postsocialist change in Romania and on the things failed projects are able to reveal about the emergent economic order and he finally agreed to see me.

I visited him on the Saturday after the initial phone call, arriving towards the end of the program (as he suggested) at his “office” at *Bursa*.<sup>65</sup> The location was actually a small, 10 by 15 foot room off the reception desk of the newspaper building. The room was furnished with a rectangular table and about 8-10 chairs that occupied almost the entire space. In addition, there was a glass cabinet with all the medals and diplomas earned by *Bursa* since its beginning; the “office” was a *Bursa* meeting room allocated to *ANPI* on Friday and Saturday. Investors and petitioners visiting *ANPI* would normally fill all the vacant chairs and witness the discussions among N. and individual persons. N. encouraged this process as a way to spread information more easily without repeating his explanations but also as a way of educating his association members. Conversations among members were generally discouraged during such meetings and only N. ever led discussions.

Surprisingly, given my preconceptions about the meaning of associations and the collective behaviors facilitated by such organizations, the weekly meetings were not about people assuming initiatives and contributing new ideas with regards to the actions of the association. Most of the time, N. informed the association members about his actions in the several trials in which *ANPI* was involved, about the petitions he sent to Romanian or European

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<sup>65</sup> My first meeting with N. was on June 25, 2005 during my pre-dissertation research. I have, throughout the following years, met him over one hundred times, at the *ANPI* headquarters or at the Bucharest Tribunal, the Bucharest Court of Appeals, and at the Supreme Court of Justice. During these meetings, N. gave me copies of documents used in support of his legal actions as well as materials prepared by *ANPI* or *FNI*. He allowed me to observe his interactions with the groups of investors seeking his advice and, sometimes, to get involved in such discussions or ask for details. We engaged in informal discussions and more formal interviews guided by my research interests. Due to his initial reaction and conversation style, I decided not to record any of our interviews. Most of the information comes from the hand-written notes I took during interviews, from the more in-depth reports I prepared sometimes after our meetings, or from the occasional notes I made in my fieldwork journal.

authorities, about his actual or intended applications to the European Court of Human Rights, (mostly critically) about the actions of other associations representing investors, or about the implications of various political decisions on the outcome of the legal actions initiated by *ANPI*. He used to respond to questions about the particular situations of individual investors who he often used as examples for the other members witnessing the discussion. Quite frequently, he scolded members of *ANPI* for not “keeping close to the association,” that is, for not filling out on time the various forms he prepared for litigation and, most importantly, for not paying their yearly contribution.

Paying membership dues was something he could only compel the *ANPI* members to do when initiating action in a new trial related to the collapse of the funds, or when a new phase of the litigation process (an appeal, a retrial, or the movement of the case to a new court of appeals) required a new application of *ANPI* on the part of its members. The difficulties in managing membership in the association were also due to the fact that this was an elusive concept. Beyond the few founding members who created the association in 1996, N. had a roster of about 15,000 people, with names, personal identification numbers, addresses, and phone numbers, who had filled out application forms and been represented in one trial or another.<sup>66</sup> However, new members applied almost every week, while even more decided to affiliate with other associations of investors (without informing him or filing to leave *ANPI*), or chose to be represented individually by lawyers and slipped from among the active members of the association. N. did not have the resources to call everyone to renew their membership and, as I later understood,

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<sup>66</sup> Although I have never been allowed to consult this document, I witnessed several instances when he checked the identity, address, and status of investors calling or returning to the *ANPI* “office” after a long absence. N. insisted on the total of over 15,000 members as a basis for the legitimacy of his association in front of the courts, securities market regulators, and political authorities.

neither wanted to offend them by requiring yearly contributions – something most of the small investors, in their poor financial condition, would be likely to resent.

Investors also sat in the hallways of *Bursa* when the crowd was too large for the small room. Discussions there were usually more informal, took the tone of gossip, and were likely to be critical of the actions undertaken by N. Witnessing and even taking part in such discussions in the hallway, I realized that these were at least as important as the individual interactions with N. for understanding what was happening with the *FNI* case or with *ANPI* in general. *ANPI* members, most of whom were old and financially illiterate, generally found N. to have a repellent behavior: he always silenced his collaborators, and, often explained his actions in abstract legalistic jargon. Although this contributed to N.'s mystique and authority among his followers – many would address him as “*Domnu’ avocat*” (“Mr. Attorney, Sir”) - people attending the weekly meetings always found it useful to come as early as possible and even stick around the hallway after their discussion with N. in the meeting room was over in the hope of finding somebody more knowledgeable about the recent events, or somebody able to “translate” into common language and mundane forms of reasoning those communicated by N.

An economist by training, N. had worked for one of the mammoths of socialist industry in Bucharest until the factory was closed down during the implementation of the World Bank structural adjustment programs in the mid-1990s. He does not pretend to be an attorney and does not usually pay for professional legal advice. He types his profession on the business cards he distributes to *ANPI* members and includes it in his signature in the rare articles he publishes in *Bursa*. He admits all his knowledge about jurisprudence and litigation procedures comes from the arduous reading of laws, textbooks, and legal journals, as well as from his continued involvement with the corrupt Romanian court system. This interaction provides practical yet

debilitating knowledge. As he admits, N. now knows how the system works from the inside; he is aware of all the machinations, the briberies, and the political influence exercised on the judges. Yet he cannot use this information to attain his goals, since he considers himself a man of principle, he does not have the financial or personal resources implied by bribery, and, more generally, “the system” tends to work in favor of the powerful as, among two potential sources of influence, judges are more likely to be “sensible” to the most powerful. In spite of the full disclosure of his professional identity, *ANPI* members and even journalists continue to take him for an attorney, an image associated as much with an emergent figure of “the fixer” in legal procedures as with the necessary professional competence assumed for a trial as important as that following the collapse of *FNI*.

Although our initial discussions took place in an atmosphere of suspicion and often prompted what I perceived as an irritated tone in N., the president of *ANPI* proved, with the passage of time, an excellent interlocutor and even a friend. Our sustained collaboration gave me the chance to understand many facets of the scandal generated by the collapse of mutual funds. Either because I became increasingly familiar with his conversational style or because he also became more relaxed in my presence, I learned to look beyond his rough manners. Retrospectively, this appeared as a protective mechanism of a person whose identity was premised on a discourse of morality in the absence of large financial resources or political leverage, an attitude masking the numerous disappointments experienced in relation to bureaucracy, state authorities, and even fellow investors.

N. admitted that sometimes he had adopted a rough style in his interactions with investors and potential members of *ANPI*. He blamed it on the continuous frustrations that the numerous failed experiences with financial investments caused him as well as on the inhibited style of

many of his associates. His energetic interventions were meant, as he confessed often, to get them out of the lethargy provoked by the moral judgments they have been subjected to by the state and by public opinion. The idea that *FNI* investors were “greedy” and willing to get “unearned money” was propagated with the purpose of demotivating people, and prevented them from pursuing the recuperation of money and the conviction of those responsible, N. thinks. Surprisingly, given their official statements of support for the capital market, both the representatives of state institutions and financial companies perpetuate such a false notion of morality. As in many other non-Western societies, the association between virtue and financial investment/speculation is problematic and reflection over such issues has been growing even in the most advanced capitalist countries with the recent financial crisis. In a country where Marxism had been the political dogma for over forty years and where, maybe paradoxically, religious percepts continue to inform the social imaginary, work continued to be seen as the only legitimate source of money well into the postsocialist period.<sup>67</sup>

N.’s rather irritating argumentative style extended into the courtroom. There, his interventions consisted often of emotional bursts rather than structured discourses, and of reactions to things stated by the opposing parties rather than well-crafted litigation strategies. His requests consisted mainly of procedural interventions: objections to rulings, exceptions to decisions made by the court, petitions for additional financial audits or for eliminating the sequester set by the prosecutor on the documents and financial assets of *FNI*, as well as the filing in of applications of representation in the trial in the name of additional *ANPI* members. Such interventions seemed justified by his understanding of litigation pragmatics but did not ultimately have any practical consequences on the resolution of the trial. N.’s style was made

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<sup>67</sup> Anthropologists of Eastern Europe such as Verdery (1995a, 1995b) Humphrey 2000, or Mandel and Humphrey (2002) have mentioned repeatedly the relation between work and money.

more conspicuous by the repeated rejection of his requests by many of the judges, as well as by their rather condescending treatment of N. His casual dress and constant lack of professional legal assistance translated into rough and undeserved moral evaluations by judges, court clerks, and the lawyers of other parties involved in the trial.<sup>68</sup>

N. is aware of all this and deeply frustrated because he is subjected to such a hostile treatment, but pretends it is not caused by his lack of professional knowledge. After all, many of those successful in litigation are not necessarily competent in legal matters, or have interventions in front of the judge sometimes even more exotic than his own. What explains differential success, according to N., is access to a “lane” [*culoar*]. Defined as an ad-hoc and continuously constituting succession of relations among actors with access to the litigation process (police officers, lawyers, prosecutors, judges at different courts, court clerks and other state officials), such “lanes” are instrumental for the passing of bribery from litigants to judges and other decision makers as well as for communication in both directions with regards to the actions, arguments, and evidence that could bring the litigants the most favorable verdict. Based on previously tested relations among the actors involved, such “lanes” are reconfiguring and are articulated in connection to each new case. While the Romanian press has published numerous materials about the practices associated with “lanes” and the role of kinship networks in facilitating their emergence at various courts,<sup>69</sup> N. feels that not enough is known about their role

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<sup>68</sup> See “Procesul privind prăbușirea FNA, încheiat după 12 ore de dezbateri” [The trial regarding FNA is finally over after over 12 hours of hearings and litigation], *Mediafax*, May 12, 2008, available at: <http://www.mediafax.ro/justitie/procesul-privind-prabusirea-fna-incheiat-dupa-12-ore-de-dezbateri-2630331>, accessed: September 1, 2012, for an excellent description of a frequent ending of the verbal interactions between N. and the court. In this case, N. is evicted from the courtroom by the judge at the final session of the *FNA* trial at the Supreme Court of Justice when the sentence was announced.

<sup>69</sup> See Attila Biro, 2010, “Rețeaua, metodele și clienții lui Cătălin Voicu. Ce discută oamenii de afaceri cu politicienii și judecătorii când vor să îngroape dosare” [The network, methods, and clients of Cătălin Voicu. The things businessmen discuss with politicians and judges in order to burry investigations], *Hotnews*, Thursday, March 18, 2010, available at: <http://www.hotnews.ro/stiri-esential-7046536-reteaua-metodele-clientii-lui-catalin-voicu->

in cases of financial corruption such as the ones his association is involved in. His repeated failures are not primarily due to his lack of professional advice (something he acknowledges) but rather to his inability and unwillingness to access the relevant “lanes.” While he is critical of the endemic corruption pertaining to the lanes, he also admits not having the resources to, at least, push for a fair trial in his case. The ones he litigates with, on the other hand, have the financial resources, political affiliation, and underground connections that facilitate the articulation of “lanes” and the practical attainment of favorable sentences.

Although to an outsider the activity of *ANPI* may seem substantial given the resources they possess, N. is rather unhappy with it. He claims that, given the amount of work he has to put into preparing the legal actions related to financial scandals, he and his few colleagues can no longer perform the main function of the association: informing and educating retail (“small”) investors and lay people about the institutions and practices of the capital market. When asked if the other associations representing investors face the same problems, he protests: “there is no ‘other’ association of investors!” The other entities so called are, according to N., simply organized groups using personal connections, political relations, and corrupt practices to achieve

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[discuta-oamenii-afaceri-politicienii-judecatorii-cand-vor-ingroape-dosare.htm](http://www.gandul.info/news/stenogramele-dna-cum-se-construieste-of-retea-mafiot%C3%A2-:Senatorul-C%C3%A2t%C3%AAlin-Voicu-vroia-s%C3%A1-devina-ministru-de-interne-s%C3%A1-l-aresteze-pe-On%C5%9Canu-%C5%A7i-s%C3%A1-i-fac%C3%A1-dosare-lui-Oprea), accessed: September 1, 2012; “Stenogramele DNA: Cum se construiește of „rețea mafiota”: Senatorul Cătălin Voicu vroia să devina ministru de interne, să-l aresteze pe Onțanu și să-i facă dosare lui Oprea” [National Anticorruption Directorate Transcripts: How to build a “Mafia network”: Senator Cătălin Voicu aimed to be Minister of Domestic Affairs, to arrest Onțanu, and to indict Oprea], *Gândul*, Thursday, March 18, 2010, available at: <http://www.gandul.info/news/stenogramele-dna-cum-se-construieste-o-retea-mafiot%C3%A2-senatorul-catalin-voicu-vroia-sa-devina-ministru-de-interne-sa-l-aresteze-pe-on%C5%9Canu-si-sa-i-faca-dosare-lui-oprea-5757466>, accessed September 1, 2012; and Virgil Burlă, and Ionel Stoica, 2012, “CARACATIȚA CORUPȚIEI. USL a activat rețeaua din justiție a lui Cătălin Voicu” [The Octopus of Corruption: USL activated Cătălin Voicu’s network to control justice], *Evenimentul zilei*, Thursday, July 12, 2012, article available at: <http://www.evz.ro/detalii/stiri/usl-a-activat-reteaua-din-justitie-a-lui-catalin-voicu-991592.html>, accessed: September 1, 2012; as well as Țepeș, Vlad [pseudonym], 2010, “Profesia de magistrat s-a transformat într-o asociație familială” [The magistrate profession has turned into a family business], *Vreau dreptate*, undated, the is article available at: <http://www.vreaudreptate.ro/pagina-principala/7-pagini-principale/17212-profesia-de-magistrat-s-a-transformat-intr-o-asociaie-familial.html>, accessed: September 1, 2012; and “Lista cu rudele judecătorilor de la ICCJ angajate în sistemul judiciar român” [The list of relatives of judges from the High Court of Cassation and Justice hired in the Romanian judiciary system], *Lumeajustitiei.ro*, July 29, 2010, available at: <http://www.infolegal.ro/lista-cu-rudele-judecatorilor-de-la-iccj-angajati-in-sistemul-judiciar-roman/2010/07/29/>, accessed Sept. 1, 2012.

their goals: getting compensated after the collapse of *FNI* at the expense of the rest of the investors. As state resources are rather limited and the general reimbursement of investors seems unlikely, most associations manipulate the dispute in favor of small groups and against the collective interests of the large mass of investors. N.'s frustration is further deepened by what he sees as a biased and non-professional attitude of the financial press. Investigative reporters write ample stories about those considered responsible for the collapse of the funds. Financial analysts publish detailed interviews with representatives of the Romanian securities commission or of the asset management industry. At the same time, the financial press seems less interested in recovering the voice of retail investors or the stories of those that lost everything in the market collapse. Interviews with N. are published late, in fragments, and they generally alter the views the *ANPI* leader intended to convey to the public.

Every time he has the chance, N. contrasts the egoistic pursuits of other association leaders to his own personal involvement in the *FNI* and *FNA* cases.<sup>70</sup> Having invested in *FNI* in the first years the fund was operating and gone through the previous episode when the mutual fund market collapsed in 1996, N. felt it was only natural to organize retail investors in order to take back the fund from the fraudulent asset manager, appoint a new council of trustees, investigate the involvement of various state institutions in the functioning of *FNI*, and seek compensations from those responsible for the collapse of the fund. He also considered that *ANPI*, the association he created in 1996 to educate the wider public about financial investing after he, like many others, lost money because of the collapse of *SAFI* (a grossly overvalued mutual fund

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<sup>70</sup> *FNA*, the National Accumulation Fund, was the twin mutual fund of *FNI*. Created and administered by the same asset manager as *FNI*, *SOV Invest*, all activities related to *FNA* were suspended by the Romanian Securities Commission in May 2000 to prevent a situation similar to that of *FNI*. Generating a whole series of protests and institutional transformations, the *FNA* situation occasioned a civil trial and several penal sentences against its administrators. Even more importantly, as chapter six will show, the *FNA* case generated a substantive debate about the regulatory reforms affecting the mutual fund sector with Romania's accession into the European Union.

forced to recalculate its net asset value by changing regulations), was a perfect vehicle for the activism of defrauded investors. Unfortunately, the previous interactions with the Romanian securities commission in discussing the regulations to be put in place after the market collapse of 1996 were not of help.<sup>71</sup> The commission decided to suspend the fund and not to allow the investors to elect a new council of trustees or to contract another asset manager for the fund.<sup>72</sup>

N.'s numerous other failed financial experiences did not seem to help much either. Thus, he remembers with contempt the numerous financial ventures initiated by postsocialist “businessmen” [the self-designated *oameni de afaceri*]: *Banca Țiriac*, *SAFI*, *FNI*, *FNA*, *Petrotrans*, etc. Although he considers himself to be literate in financial matters to a fair degree and, as a consequence, to have purposefully avoided all sorts of financial scams, Ponzi schemes, or dubious credit cooperatives, he or the friends he counseled ended up losing money in all of the above-named financial ventures.<sup>73</sup> He has subsequently been involved in forms of public protest,

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<sup>71</sup> See the following materials on N.s continued efforts to determine the securities commission to include special provisions for the protection of retail investors in the newly drafted regulations regarding mutual funds Dan: Străuț, 2005, “Găurile negre din legislația fondurilor mutuale, în dezbatere publică” [The “black holes” in regulations regarding mutual funds are open for public debate], *Adevărul*, June 17, 2012, available at: [http://www.adevarul.ro/financiar/Gaurile-legislatia-fondurilor-dezbatere-publica\\_0\\_61194781.html#](http://www.adevarul.ro/financiar/Gaurile-legislatia-fondurilor-dezbatere-publica_0_61194781.html#), accessed: September 1, 2012; Zamora, Gabi, 2005, “Micii investitori au căzut la pace cu CNVM” [Retail investors have reached an agreement with the securities commission], *Avea*, Saturday, June 18, 2005, available at: <http://www.hotnews.ro/stiri-arhiva-1223455-micii-investitori-cazut-pace-cnvm.htm>, accessed: September 1, 2012; Vlada, Anca, 2006, “Scandal pe piața de Capital” [A scandal on the capital market], *Curierul Național*, February 9, 2006, available at: <http://www.curierulnational.ro/print/70213>, accessed: September 1, 2012; Dan Străuț, 2006, « Povara fiscală a TVA va fi aruncată în căra investitorilor » [The fiscal burden of the value added tax is thrown at the mutual fund investors], *Adevărul*, December 4, 2006, available at: <http://www.9am.ro/stiri-revista-presei/2006-12-04/povara-fiscal-a-tva-va-fi-aruncata-in-carca-investitorilor.html>, accessed: September 1, 2012.

<sup>72</sup> See Andrei Mihai, 2000, « ANPI dorește să îi reprezinte pe investitorii FNI și FNA » [ANPI offers to represent investors in *FNI* and *FNA*], *Bună ziua Iași*, Friday, November 17, 2000, available at: <http://www.bzi.ro/anpi-doreste-sa-ii-reprezinte-pe-investitorii-fni-si-fna-17522>, accessed September 1, 2012. The article describes N.'s initial efforts to organize investors and claim the control of the two mutual funds based on the legal provisions at the time. His efforts were blocked by the Romanian Securities Commission which, for the purpose of financial stability, decided to « freeze » the assets of the two mutual funds and to place them under special judicial administration.

<sup>73</sup> Numerous articles present in detail N.'s efforts to represent retail investors in disputes with the financial institutions mentioned above or in front of the securities commission that was in the process of re-regulating the mutual fund sector. See, for instance, “Micii acționari atacă în instanță fuziunea Unicredit-HVB Țiriac” [Minority shareholders initiated legal action against the merger between Unicredit and HVB-Tiriac Bank], *Capital*, Wednesday, June 13, 2007, available at: <http://www.capital.ro/detalii-articole/stiri/micii-acx163ionari-atacx103-icircn-istanx163x103-fuziunea-unicredit-hvb-x162iriac.html>, accessed: September 1, 2012; Nicolaevici, Mihai,

negotiations with capital market authorities, and numerous civil trials trying to get compensation for himself and his associates, and to get a fairer treatment of retail investors by financial managers and institutions. He persists in his undertakings in spite of the repeated lack of success. His attitude seems to puzzle many: members of his association, cynical journalists aware of his disputes with the more potent financial industry, or state authorities where he constantly sends memoranda, proposals for the improvement of regulations, or legal requests for access to public information regarding the supervisory actions of the Romanian securities commission.

In both the *FNI* and *FNA* cases he chose to pursue the path of civil trials initiated by the state. Not having enough money to pursue the path of commercial litigation and sue the asset manager or other institutions involved in the operations of the mutual funds (such as the commercial banks that acted as depositaries for the fund assets, or the state savings bank that offered financial insurance for the investments made by the *FNI* asset managers), N. decided to become part of the legal actions instituted by the public prosecutor. Members of the association who decided to follow him were happy they did not have to make a front payment (the legal tax paid for the initiators of commercial litigation) and considered they would be best served by the actions of the prosecutors.

Others decided to switch associations, pay the tax, and become members of organizations such as *ANI – FNI* [*Asociația Națională a Investitorilor – FNI*] that initiated a separate commercial action against the state savings bank (*CEC*) and later the Authority for State Assets Recovery (that substituted *CEC* in its liabilities towards *FNI* investors). Such associations made

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2007, 11 ani de "administrare" suplimentară SAFI" [Eleven years of additional "administration" at *SAFI*], *Bursa*, May 7, 2007, available at: [http://www.bursa.ro/piata-de-capital/11-ani-de-administrare-suplimentara-safi-9693&articol=9693&editie\\_precedenta=2007-05-9.html](http://www.bursa.ro/piata-de-capital/11-ani-de-administrare-suplimentara-safi-9693&articol=9693&editie_precedenta=2007-05-9.html), accessed September 1, 2012; Mihail Paris Nicolaevici, 2009, COMUNICAT DE PRESĂ AL ANPI Cu privire la elaborarea noilor coduri [ANPI press release regarding the adoption of the new judicial codes by the Romanian government], the *National Association for the Protection of Investors*, published on the website of the Association on March 20, 2009, available at: <http://www.investitor.com/anpi/2009/comunicat%20cod%20penal%20mar2009.htm>, accessed September 1, 2012.

use of the guarantee contract signed by SOV Invest (the asset manager of *FNI*) and *CEC* (the state owned savings bank), through which the latter institution insured the investments made by the asset manager and the last stated value of the fund shares in case the fund collapsed. A potential source of liability of huge proportions for a state-owned financial institution, the guarantee contract was contested by the Ministry of Finance, but was eventually declared valid by the court.<sup>74</sup> It served as the basis of several commercial litigations and court decisions through which small but significant numbers of investors were reimbursed the last stated value of the *FNI* net asset values.

N. and many of his associates are vehemently critical of such judicial tactics. They consider, not unlike state representatives, that financial speculation cannot be insured. Financial speculation is about the pursuit or risks and rewards and nobody can eliminate such risks through a one-off insurance contract. This was a fraudulent arrangement between the asset manager and the president of *CEC* as the private financial company was exonerated of all responsibility for risky investments while the state-owned bank was left with the liabilities after the mismanagement of the fund. State authorities are responsible for the improper supervision of the capital market actors (as *ANPI* hopes civil litigation will show) but not commercially (as the insurance contract suggests).

Although initially they pointed their fingers at Sorin Ovidiu Vîntu (SOV), the mastermind of the entire *FNI* scheme, and even denounced him to the police, N. and the other leaders of the investors soon learned that SOV was out of their reach. The financial swindler was

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<sup>74</sup> See Guarantee contract no. 2205 of December 6, 2012 signed by *FNI*, *SOV Invest* and *CEC*. Also, see Sentence no. 4516 of July 25, 2000 through which the Commercial Section of the Bucharest Tribunal ruled against the petition by *CEC* to nullify the guarantee contract signed by the state bank and *FNI* asset managers, as well as Sentence no. 3887 of May 11, 2001 through which the Commercial Section of the Bucharest Tribunal ruled again that the guarantee contract is valid.

prosecuted at first and stood trial together with the rest of those who ended up in jail, but his political connections eventually paid off. In 2003 the SOV trial was separated from that of *FNI* and the accused was later acquitted of all charges. Prosecutors tried to get him involved again in the *FNA* trial in 2008 but he declined to appear on the witness stand.<sup>75</sup> Public opinion was irritated that the judge did not use all the legal instruments available to bring SOV before the court, but eventually everybody understood that the political stakes were too high for him to be tried. SOV used several medical excuses to postpone his hearing. The court fined him several times with ridiculously small amounts given his wealth, and the story eventually died out after a few months.

N. realized from the very beginning that his best strategy was to emphasize the responsibility of state institutions that had not properly supervised the mutual fund sector, and to ask for compensation for the investors from the state budget. Given SOV's notorious political connections and relations with the secret services, N. realized he would have no chance of getting the money from him in spite of the allegations, hard to prove without access to the *FNI* archive, that SOV had siphoned off money from the fund:

I do not want to make any comments about Sorin Ovidiu Vîntu because we [ANPI] are too small: once you open your mouth, they grab you, they can do whatever they want, nothing will happen to them. Morally, I do not like what is going on, but there is nothing we can do. Our concern is to get our money back.<sup>76</sup>

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<sup>75</sup> See Ofelia Herghelegiu, 2008, "Cercetarea penală nu a adus la dosar niciun alt inculpat, de la care să sechestreze averi" [The investigation did not lead to any other accused person from which to confiscate money], April 14-16, 2008, available at: <http://www.timpolis.ro/articol-cercetarea-penala-nu-a-adus-la-dosar-niciun-alt-inculpat-de-la-car-e-sa-sechestreze-averi-10293.html>, accessed: September 1, 2012.

<sup>76</sup> See Dan Tapalagă, 2010, "Vantule, dormi linistit! Aproape toata presa lucreaza pentru tine" [Sleep tight, Vîntu, almost all the mass-media is working for you], Hotnews, Thursday, September 9, 2010, available at: <http://www.hotnews.ro/stiri-opinii-7775056-vantule-dormi-linistit-aproape-toata-presa-lucreaza-pentru-tine.htm>, accessed: September 1, 2012, and the related post on the blog of Realitatea TV [News station owned by Sorin Ovidiu Vîntu], available at: <http://forum.realitatea.net/archive/index.php/t-48947-p-9.html>, accessed: September 1, 2012.

Later on, when SOV was finally being prosecuted for multiple accusations of fraud (including the ones related to *FNI*), N acknowledged to the press that investors are satisfied because “the mentor and instigator of the fraud” was being held responsible but, from his point of view, the *FNI* trial was over and little could be done by the domestic courts; the only hope left was with the European Court of Human Rights.<sup>77</sup>

For *ANPI* leaders, as for most of public opinion, the insurance contract and the practices of associations involved in commercial litigation are egoistic gestures meant to insure compensation for small groups of investors at the expense of the rest of the investors and the state budget. Morally, it sets a dangerous precedent as an illegality (mismanagement of funds) is solved through an immorality (a problematic contract with doubtful economic rationality). That is, although financial insurance contracts can be rational and legal in spite of questions regarding the morality of insuring financial risks, in the specific case of the *FNI – CEC* contract, investors claim that the illegalities of the contract (*CEC* president manipulated the board of directors of the bank into approving the contract based on false audit reports) added to the illegalities of *FNI* operations (overvalued assets, investments in non-listed securities, false statements regarding the number of investors, etc.) resulting in immoral financial practices that left either investors or the public budget liable for the crimes instigated by Vîntu. Associations that have successfully pursued the path of commercial litigation are often described as “gangs” of well-connected investors, among which former agents of the secret services, policemen, prosecutors, or judges

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<sup>77</sup> See “Reprezentant investitori FNA: Arestarea lui SOV nu e politică, justiția își face în sfârșit datoria” [Representative of *FNA* investors: The arrest of SOV is not a political act; the judiciary is finally doing its job], *România Liberă*, September 10, 2010, available at: <http://www.romanalibera.ro/actualitate/justitie/reprezentant-investitori-fna-arestarea-lui-sov-nu-e-politica-justitia-isi-face-in-sfarsit-datoria-199117.html>, accessed: September 1, 2012, as well as A.V., 2003, “Cazul *FNI* face valuri la Strasbourg și *FMI*” [The *FNI* case makes waves in Strasbourg], *Evenimentul de Moldova*, August 1, 2003, available at: <http://www.evenimentul.ro/articol/cazul-fni-face-valuri.html>, accessed: September 1, 2012.

are overrepresented, that used available “lanes” to the courts to secure favorable sentences and to be granted full reimbursement of not only the initial investment but of the artificially inflated net asset values before the fund collapsed.

While the judicial tax necessary for commercial litigation constituted a barrier to entry for many of the retail investors without financial resources, the “success fees”<sup>78</sup> collected by the association leaders are seen by many as a source of funds covering not only the legal fees of some of the best commercial litigation lawyers in the country but also the bribes that “must” have been paid to judges for a favorable sentence. While Robert Hayden (letter to author, December 13, 2012) is right to point to the striking similarities of the “success fees” mentioned above and the contingency fees driving civil litigation in the USA, the frustration of Romanian lay investors comes from the fact that such fees have not been agreed (or even mentioned) from the beginning but were “imposed” by leaders of the civic associations representing investors once they foresaw the chances of a favorable decision and significant compensations for their followers. Furthermore, the moral antagonism between lay investors and their leaders is associated with the rapid historical change and the lack of familiarity of the general public with the implications of financial speculation and of contingency fees. Most of the lay investors I interviewed were hoping for reparatory justice and their understanding of justice came into

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<sup>78</sup> See “Cluj: Clujeanul îmbogățit de FNI” [Cluj dweller enriched by *FNI*], *Adevărul*, June 21, 2009, available at: [http://adevarul.ro/locale/cluj-napoca/cluj-clujeanul-imbogatit-fni-1\\_50bd451f7c42d5a663c99ab1/index.html](http://adevarul.ro/locale/cluj-napoca/cluj-clujeanul-imbogatit-fni-1_50bd451f7c42d5a663c99ab1/index.html), accessed: September 1, 2012, and “AVAS cere instantei sa precizeze cum sa plateasca pagubitiile FNI, individual sau ca asociatie” [AVAS petitions the courts to decide on the modalities in which *FNI* compensations are paid: to individual investors or to the associations representing them], *Realitatea românească*, undated, the article is available at: [http://www.realitatearomaneasca.ro/content.php?c=articole&id\\_categorie=5&articol\\_id=7876&p=22](http://www.realitatearomaneasca.ro/content.php?c=articole&id_categorie=5&articol_id=7876&p=22), accessed: September 1, 2012. Such articles report on the contentions generated by the intention of *ANI-FNI* leaders to charge a “success fee” of 3% of the compensations received by any investor affiliated with the association. The largest organization representing *FNI* investors and the most successful given the amount of compensations granted by the court to its members, *ANI-FNI* was dissolved soon after the “successful fee” scandal erupted.

conflict with demands by their leaders (people like them, after all) to gain from a situation where the issue was reparation rather than speculation.

At the same time, most of the investors who decided to stay alongside N. exhibit an ambivalent attitude: they criticize the judicial tax and condemn the collection of the “success fee,” yet they are appreciative of the diligence of the other association leaders who managed to get “their investors” compensated. Furthermore, N. does not escape their criticism. They do not understand why N. has to collect the incomparably smaller yet still significant membership fees; nor does N. try too hard to account for the use of funds gathered by the association. Talking in the hallways and gossiping whenever they have the chance, *ANPI* members are puzzled as the money is neither used to pay for specialized legal advice nor is it bringing any comparable “results” (a subtle reference to the payment of bribery) in compensating *ANPI* affiliated investors.

Conversations about morality or about the means appropriate to bring about the ends envisioned by all investor could shift easily to more personal registers. For many *ANPI* affiliated investors, questions about the use of the membership fee charged by N. (2% of the last stated value of the shared owned by each investor), or how the 2% figure was determined, provided an opportunity to lament the personal hardships faced after the collapse of the fund. Conversations about personal stories and distinct notions of morality other than those circulated by N. easily turned into criticism of the greediness of those who defrauded the funds and even of the association leaders who now try to get money back for the investors. Lay motives and situated forms of reason used by not very sophisticated investors in hallway conversations contrast with the discourse about strategies and resources put forward by N. As usual, in situations where moral conversation is acute and gossip is ubiquitous, accusations of greed extend to everyone

looking to recuperate their money. Many felt their affiliation with *ANPI* and the pursuit of actions recommended by the association leaders had to be justified in front of their peers. Such forms of personalistic justification were reproduced in front of N. and, quite often, in front of the courts, only to be quickly dismissed on the basis of judicial, political, and financial rationalities or in the name of a “more general morality.”

N.’s role within this diverse repertoire of justifications and often conflicting interests is frequently unclear. To many, N. seems to be a perfect mediator of distinct discourses, perspectives, forms of knowledge, and realms of social action. He is appreciated by his followers for the energy with which he follows the trials, informs them about the latest news, and tries to convey the measures imposed by courts into the common language of median *ANPI* investors. However, N.’s mediation is not a translation in the proper sense of the term, a one-to-one conversion from professional jargon to everyday speak. It is rather a transposition of arguments from one case to another, of knowledge from one field of practice to another, and of resources of one kind into another. A collective of investors (*ANPI*) substantiate his position in front of the courts and the securities regulator; financial resources gathered in the name of *ANPI* translate into time for attending trials and preparing litigation strategies; experience with civil litigation was used to take the securities commission in front of the administrative litigation court; the initial involvement with the *Țiriac* Bank and *SAFI* proved useful practical knowledge for his subsequent instrumentalization of the *FNI* and *FNA* cases, knowledge of which was in turn used to reinterpret the situation at *Țiriac* Bank;<sup>79</sup> the ongoing relation with *Bursa* was an invaluable

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<sup>79</sup> In a very expressive interview, N. argued that the case of *Țiriac* Bank in which he had been involved since 1990 resembles strongly that of *FNI*. As the author of the article, quoting N., puts it, “Sleep tight! [the slogan of one *FNI* add incessantly broadcasted on TV in the months before the collapse of the fund] *Țiriac* is working for you! Unicredit *Țiriac* Bank is a new swindle hidden in the drawers of the central bank [that fails its banking supervision function], minority shareholders of the bank say. They [N.] claim that the bank was created as a ‘new *FNI*’ and

experience for managing the association; while the involvement with all the trials and public protests gives N. continued legitimacy with his fellow association members.

N.'s actions illustrated a form of reasoning that is not exactly situated but rather to be found in between domains; it is a form of contextually shifting and opportunistic reason, functioning to transpose knowledge and action in between proximate but distinct domains. As most actions are rather pragmatic failures (his litigation strategies seem to apply only to case-study situations; his legal actions are usually rejected; his demands for specific regulations are mostly rejected by the securities commission), the criteria for evaluating his success are not those of means to ends rationality. In spite of his repeated losses, N. finds the strength to hang in, to stay in the game of litigation and protest, to always find new followers, financial resources, and trials to get engaged in, and, eventually, to get some compensations for himself and his *ANPI* associates by parasitizing the litigation initiated by the state.<sup>80</sup> With dim hopes of getting back some of the money invested in the funds and having to adapt continuously to shifting forms of dispute and reconfiguring modes of reason, N. practices a form of persistent hanging in. To the uninvolved observer but also to many of his followers, N.'s actions are not about achieving

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allows its owner, the great tennis player Ion Țiriac, to pocket the money from the rest of the investors. Sided by his „lieutenants,” Țiriac has “cut” dividends and shares at his own will.” See “Țeapa lui Țiriac” [Țiriac’s swindle], Promo Media Press, Thursday, February 5, 2009, available at: <http://promopress.depindedenoi.ro/stiri/diverse/we-are-volunteers.html>, accessed: September 1, 2012.

<sup>80</sup> As two of the last materials posted on the *ANPI* website indicate, N. has come to accept that, in spite of the favorable sentence giving back *ANPI* investors the sums invested at *FNI* from the funds gathered by the Romanian securities commission and by the Authority for State Assets Recovery (*AVAS*), a subsequent government ordinance has conditioned such payments on the inclusion of a special chapter in the budget of those institutions making the reimbursement of investors very unlikely. N. is currently gathering new investors that were not aware of the *ANPI* litigation or were not included on the sentence for various bureaucratic reasons. He collects their documents and will include them in a new trial initiated at Romanian courts as well as in the new applications he will submit to the European Court of Human Rights once the motivation of the sentence is published by the court. See Mihail Paris Nicolaevici, Ec., 2011, Dosar penal FNI 2011 [Penal trial *FNI* 2011], *ANPI*, December 13, 2011, the article is available at: [http://www.investitor.com/anpi/2011/penal\\_FNI\\_2011.htm](http://www.investitor.com/anpi/2011/penal_FNI_2011.htm), accessed September 1, 2012, and Mihail Paris Nicolaevici, Ec., 2012, Dosar penal FNI 2012 [Penal trial *FNI* 2012], *ANPI*, August 2, 2012, available at: [http://www.investitor.com/anpi/2012/penal\\_FNI\\_2012.htm](http://www.investitor.com/anpi/2012/penal_FNI_2012.htm), accessed September 1, 2012.

practical ends but rather about managing to find meaning in the persistent disputes with the Romanian legal system and the continued involvement with its capital market.

#### 4.2 THE "GREAT COMBINER": A ROMANIAN OSTAP BENDER?

Breathing heavily, Ippolit Matveyevich nodded his assent. Ostap Bender then began stating his terms.

"In the event of acquisition of the treasure, as a direct partner in the concession and as technical advisor, I receive sixty per cent. You needn't pay my national health; I don't care about that."

Ippolit Matveyevich turned grey. "That's daylight robbery! And how much did you intend offering me?"

"Well . . . er . . . five percent, or maybe even ten percent. You realize, don't you, that's fifteen thousand rubles!"

"And that's all?"

"Yes"

"Maybe you'd like me to work for nothing and also give you the key of the apartment where the money is? In that case, I'm sorry," said Vorobyeninov through his nose. "I have every reason to believe I can manage the business by myself."

"Aha! In that case, I'm sorry," retorted the splendid Ostap. "I have just as much reason to believe, as Andy Tucker used to say, that I can also manage your business by myself."

...

"You're a rather nasty man," retorted Bender. "You're too fond of money."

"And I suppose you aren't?" squeaked Ippolit Matveyevich in a flutelike voice.

"No, I'm not."

"Then why do you want sixty thousand?"

"On principle!"

Ippolit Matveyevich took a deep breath.

"Well, are things moving?" pressed Ostap.

Vorobyeninov breathed heavily and said humbly: "Yes, things are moving."

(Ilf and Petrov, *Twelve Chairs*, Chapter Six: A Diamond Haze)

In the evening of December 3, 2009, most Romanians were sitting in front of their televisions watching the final confrontation between the two presidential candidates running in the second round of the elections. The campaign had been very tense, with lots of attacks, sensational stories

about the opposing candidates, and the uncovering of long forgotten episodes in their biographies that led to a radical polarization of both the political actors and Romanian society behind the two candidates. In most opinion polls, the acting President of Romania at the time, seen, by many as a supporter of Romania's Western integration and an advocate of anti-corruption policies, was lagging behind the candidate of a broad coalition of left-wing, liberal, and ethnic parties. Although he was a former Romanian ambassador to the United States of America and a prototype of the new technocrats emerging at the end of the socialist period, the left-wing candidate was seen as suspiciously close to Moscow (a constant object of fear in the Romanian political imaginary) and as too tolerant towards the cases of corruption in his own Social Democratic Party. All things considered, everybody knew that the acting president had to pull something big if he were to reverse the trends registered by the opinion polls. Then, three nights before election day, well into the televised debate, when the candidates had the chance to address questions to each other, the questions of the acting president struck his opponent one after another: "Why did he lie in the past debates about the several meetings he had with Sorin Ovidiu Vîntu (SOV)?," "Was it true that he visited SOV the night before?," "What was so urgent that a President of the Senate and would-be President of Romania visits the home of a controversial businessman in the middle of the night just a few days before the elections?," "Was SOV afraid after Nicolae Popa, the pawn he had used to siphon money from *FNI*, already condemned by Romanian courts to 15 years in prison, had been caught in Jakarta and was about to be extradited to Romania?," "Did SOV ask for protection from justice and has the politician made any promises?," "Was the constant support he received from SOV's media empire throughout the campaign part of this arrangement?"<sup>81</sup>

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<sup>81</sup> The specific fragment of the TV debate between the two presidential candidates is available at the following

That moment in the debate is said to have had a huge impact on the result of the elections. Contrary to all expectations, the trend in the voting options had changed and, three days later, the acting president had won a second mandate by only a very narrow margin. SOV's interventions on his own TV station (*Realitatea TV*)<sup>82</sup> that night as well as the interviews he gave to the newspapers during the following days were not able to provide an acceptable explanation for the visit.<sup>83</sup> While the wrong step of the presidential candidate did not take many by surprise, given his record of political mistakes, many people were surprised to see SOV take such a public stance and get involved publicly in a political dispute. Was he really so desperate as to step out of his reserved attitude? Did he really lose so much money that despair made him lose the phantomatic aura he had worked so hard to create over the years? Or, on the contrary, did he feel so powerful at the time and so sure of his candidate's victory that he did not think it was necessary to mask his actions anymore? Did he really think he could out-talk everybody and manipulate public opinion, as he had done so brilliantly in the past, and this made him assume an unprecedented risk?

In spite of the apparent contradictions, one is actually able to accept affirmative responses to all the above questions. While his businesses were not going so great, SOV, as many in his camp of spectacularly rich people who were "made in postsocialism" through financial swindles and inflated contracts with the state, believed the candidate he was supporting

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address: <http://www.youtube.com/watch?v=wCziKfNj7-o>.

<sup>82</sup> *RealitateaTV* (<http://www.realitatea.net/>) has been for several years the most important news station in Romania based on the TV ratings. The media trust owns also The Money Channel (<http://www.money.ro/emisiuni.html>), a station dedicated to financial news and analyses.

<sup>83</sup> According to SOV, "I [SOV] have been friends with Mircea Geoană [the candidate] for over four years; I liked him very much as a Foreign Minister. It is a genuine friendship that I had the delicacy not to disclose. [...]. He came to me to relax, we are friends, we chatted a lot." See "Vîntu: Geoană mi-e prieten, a venit la mine să se relaxeze" [Vîntu: Geoană is my friend, he came to me to relax], *Ziare.com*, Friday, December 4, 2009, available at: <http://www.ziare.com/basescu/mircea-geoana/vintu-geoana-mi-e-prieten-a-venit-la-mine-sa-se-relaxeze-966280>, accessed: September 1, 2012.

had no chance of losing the elections. He also must have believed that he would be in a good position to exert a strong influence on the decisions of the new president in exchange for the personal advice and media support given during the campaign. In this context, appearing in public before the vote and having his support noticed even before the official result was known would prove crucial in the competition for political favors among Romanian businessmen in financial distress. Moreover, SOV must have thought he would be once more in a position to outwit everybody and have the public play his game.

SOV has been described by some of the insightful analysts of recent Romanian history and politics as a local Ostap Bender,<sup>84</sup> the main character of Ilf and Petrov's novel the *Twelve Chairs*.<sup>85</sup> Sabina Fati, one of the best investigative journalists in Romania, finds many similarities between the main character of the novel and Vîntu: a mustached sympathetic crook, the local financier proved able to manipulate the messy bureaucratic system and to pander to the greed, opportunism, and gullibility of innocent people.<sup>86</sup> In time, however, SOV felt the role of a brilliant yet powerless swindler to be limiting; he progressively assumed the role of "great combiner," something Ilf and Petrov's character always pretended to be. Possessing the same wit, personal charisma, persuasiveness, and ability to exploit every situation to his advantage as his imaginary Russian equivalent, SOV is said to have charmed many people. Close

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<sup>84</sup> See Sabina Fati, 2011, "Ce-i va spune Vîntu lui Popa la întîlnirea de 10 ani?" [What will Vîntu tell Popa at their 10 years anniversary meeting?], *România liberă*, April 11, 2011, available at: <http://www.romanalibera.ro/opinii/editorial/ce-i-va-spune-vintu-lui-popa-la-intalnirea-de-10-ani-223123.html>; accessed: September 1, 2012.

<sup>85</sup> Written by Ilf and Petrov, two authors originally from Odessa, the novel describes the journey of a member of the former Russian nobility and a street-smart wanderer in pursuit of the family jewels hidden by the mother-in-law of the first character in one of the twelve chairs they had in the dining room. As the communists have confiscated the furniture and distributed the chairs to various state institutions, the two associates travel throughout post-revolutionary Soviet Union and when they finally get to the twelfth chair they find out that the jewels had been already found and used to pay for a club for railroad workers. The novel is an excellent illustration of the historical change brought by the Bolshevik Revolution, the inadaptability of former elites, egoism, individualism, gullibility and the unbounded imagination of con-men.

<sup>86</sup> See Sabina Fati, 2010, "Cine este Vîntu și ce vrea el" [Who is Vîntu and what he wants], *România liberă*, September 16, 2010, available at: <http://www.romanalibera.ro/opinii/editorial/cine-este-vintu-si-ce-vrea-el-199684.html>, accessed: September 1, 2012.

collaborators and former employees, prominent public intellectuals and journalists, public functionaries and politicians, all that have come to know and work with him were caught in the web of meanings and actions meticulously spun by Vîntu. One by one, great figures of the Romanian intellectual establishment came to be entertained by SOV and funded through generous cultural prizes he set up.<sup>87</sup> Quality publications such as the cultural weekly *Idei în dialog* or the political satire weekly *Academia Cațavencu* were funded or bought by Vîntu well after the *FNI* scandal. To the surprise of Sabina Fati, none of those funded by SOV seemed to wonder where the money came from or to have second thoughts about their relations to a controversial figure.

Other journalists, such as Ioana Lupea,<sup>88</sup> are convinced that all those respectable intellectuals and journalists were made into the best possible PR agency working for Vîntu. All of them accepted inclusion in a collection of figures sponsored by the swindler in exchange for prestige and legitimacy. Many of the intellectuals and journalists who reported on their collaborations with SOV projected the image of a complex personality with numerous qualities: a brilliant financial speculator with a genius of business, endowed with great literary taste and sensibility, a lover of domestic animals, protector of the arts, media mogul, and visionary counselor for leading politicians. The journalist admits SOV's strategic intelligence as taking advantage of investors' gullibility and greed, and after having worked through naive frontmen that protected him from any legal liability, he also employed a large group of respectable public figures to project his favorable image, in addition to employing numerous retired *Securitate*

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<sup>87</sup> The names mentioned by Sabina Fati – Alexandru Paleologu or Nicolae Manolescu, more than respectable for anyone familiar with Romanian high culture, add to a list of numerous other prominent figures who received funding or prizes for their remarkable careers.

<sup>88</sup> See Ioana Lupea, 2010, "Ce se află în valiza lui Vîntu" [What's in Vîntu's suitcase], *Evenimentul zilei*, September 16, 2010, available at: <http://www.evz.ro/detalii/stiri/editorialul-evz-ce-se-afla-in-valiza-lui-vintu-906073.html>; accessed: September 1, 2012.

officers to open doors and offer protection to his businesses. His cynicism in elaborating and using this strategy is evoked by one of his interlocutors, reproducing Vîntu's words: "people who have a lot of money collect stamps or famous paintings; I collect famous people. I'll stay in Romania until every last citizen of this country is proud to have been my contemporary."<sup>89</sup>

In spite of the reasons one could find behind Vîntu's public involvement in the presidential campaign of 2009, his frequent public positions in recent years appear as a change of style if not as a surprising shift of strategy. Over the years, SOV managed to entertain the image of a mysterious and powerful character on the local financial and political scene, somebody who knows everything and everyone, makes decisive and brilliant decisions, using intricate strategies, and almost never appears in public. In the late 1990s, Vîntu's mystique grew as spectacularly as his wealth. Almost everybody was aware of the presence of the potent owner of *Curentul* (a prime, quality daily newspaper) and of the group of financial companies centralized under the name of *Gelsor*. However, his strategies or the beliefs that drove him remained, for most people, an impenetrable secret.

According to rumors, Vîntu has started making money in his native town of Roman (near Iași, in the province of Moldova) with a few boutique stores opened after 1989, and through a local newspaper published there in the first years of the postsocialist period.<sup>90</sup> Others believed that SOV's first spectacular profits were made through speculation in the certificates of

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<sup>89</sup> See Cristian Sima, 2010, "SOV și Junimiștii" [SOV and the Junimists], *Hotnews*, Monday, September 13, 2010, available at: <http://www.hotnews.ro/stiri-esential-7783840-sov-junimistii.htm>, accessed: September 1, 2012.

<sup>90</sup> In an interview in the business weekly, SOV reminisced about *Românul Liber*, the newspaper he published in the first days of the revolution of 1989, as well as about the boutiques he kept in Moldova during the first postsocialist years. See "Lumea lui Sorin Ovidiu Vîntu" [Sorin Ovidiu Vîntu's World], *Capital*, November 8, 2001, available at: <http://www.capital.ro/detalii-articole/stiri/lumea-lui-sorin-ovidiu-vintu-5370.html>, accessed: September 1, 2012.

property distributed in the privatization program at the beginning of the 1990s.<sup>91</sup> That rumor is confirmed by recent articles reporting on Vîntu's early postsocialist history. In fact, together with Gelu (Gheorghe) Teodorescu, a professor of sociology at Alexandru Ioan Cuza University in Iași, Sorin Ovidiu Vîntu incorporated *SC Bursa Gelsor SA* (the name of the company is formed from the initial letters in the names of the two associates).<sup>92</sup> The company was the institutional vehicle through which certificates of property were collected in the “street corner market” with the help of Roma “brokers” and then resold at a huge profit.<sup>93</sup> As the certificates were not legally securities (they were classified as potential subscription rights in the companies to be privatized), their trading was not clearly regulated by law. While some people were actually imprisoned for dealing in certificates – actually, for a variety of small crimes having to do with notions of speculation inherited from the communist penal code, with unregistered commercial activities, and with tax evasion, Vîntu was luckier: he was only fined by the fiscal authorities and later made a fortune. His aim, in many ways similar to that of M. described in the previous chapter, was that of creating a capital market in Romania. *Bursa Gelsor* was the vehicle he envisioned for that. Like M., Vîntu was also frustrated to see his efforts wasted by USAID's construction of a market that was (better) regulated from the top.

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<sup>91</sup> M., whose view on Romanian capital market was presented in the previous chapter, confirmed during our interview that Vîntu was a close acquaintance of his, that they knew each other from the early '90s, and that he was one of the biggest aggregators of certificates of property distributed during the mass privatization program.

<sup>92</sup> See Octavian Dan, 2012, “Sorin Ovidiu Vîntu, urmărit penal sub toate guvernările” [Sorin Ovidiu Vîntu, investigated under all political regimes], *Bursa*, May 2, 2012, available at: [http://www.bursa.ro/sorin-ovidiu-vintu-urmarit-penal-sub-toate-guvernările-170054&s=print&sr=articol&id\\_articol=170054.html](http://www.bursa.ro/sorin-ovidiu-vintu-urmarit-penal-sub-toate-guvernările-170054&s=print&sr=articol&id_articol=170054.html), accessed: September 1, 2012.

<sup>93</sup> Recent articles in obscure regional newspapers (common venues for information slipped from the secret services) report that Vîntu was relying on „mafia țigănească a bulibașilor” [Gypsy headmen mafia] who gathered certificates of property all over the country and sold them to him. He is proud that the government eventually changed the law to incriminate the intermediation of certificates of property in response to the control over the subscription rights issued by the government that was exercised by Vîntu and a handful of other people. See Adreea Popescu, “Cazul Vântu (III): Imperiul Gelsor” [Vîntu Case (III): Gelsor Empire], *Atac de Constanța*, June 17, 2011, available at: <http://www.atacdeconstanta.ro/articole/3362-cazul-vantu-iii-imperiul-gelsor.html>, accessed: September 1, 2012.

Speculation in certificates of property was good training for SOV and his collaborators. Later on, when the Bucharest Stock Exchange and the USAID market were in place, Vîntu used another company from the *Gelsor* group to mediate transactions on the regulated markets. His ambition was, again, that of controlling the market and of being more than a competitor in a game designed and arbitrated by others: "we were the first market makers. We created the Bucharest Stock Exchange. Not me alone. There were others that worked for the creation of the exchange, but we were among the first."<sup>94</sup> *Gelsor* was expanding spectacularly. The mirage of an important institutional development as well as the incredibly high salaries attracted some the best specialists in finance in Romania during the 1990s. The vice-governor of the central bank, the chief economist of the central bank, a director in the Ministry of Privatization, and even a former prime minister came to work for SOV in the second part of the 1990s.

Whatever he had done in the first years after 1989, Vîntu really became notorious for the creation and (initially) successful administration of *FNI* and *FNA* and for having built *Gelsor* - a company portrayed by SOV himself as the most successful broker operating on the Romanian capital market. Until the fund collapsed, people were gossiping about the role of numerous former *Securitate* officers now occupying leading positions in Vîntu's firms, including ones as directors of 43 out of the 46 county branches of *FNI*.<sup>95</sup> He came to admit that in one of the rare TV interviews he gave, to journalist Marius Tucă in 2002, but retired intelligence officers are

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<sup>94</sup> See "Lumea lui Sorin Ovidiu Vîntu" [Sorin Ovidiu Vîntu's World], *Capital*, November 8, 2001, available at: <http://www.capital.ro/detalii-articole/stiri/lumea-lui-sorin-ovidiu-vintu-5370.html>, accessed: September 1, 2012.

<sup>95</sup> For a confirmation of these rumors, see the statement of the officer of the Police that was initially in charge of investigating the collapse of *FNI* in "Dezvăluiri spectaculoase ale ofițerului care a anchetat cazul FNI" [Spectacular revelations made by the police officer that first investigated the collapse of *FNI*], *Ziare.com*, available at: <http://www.ziare.com/sorin-ovidiu-vantu/fni/dosarul-vintu-dezvaluiri-spectaculoase-ale-ofițerului-care-a-anchetat-cazul-fni-1041979>, accessed September 1, 2012, as well as "Sorin Ovidiu Vîntu și privatizarea Securității" [Sorin Ovidiu Vîntu and the privatization of *Securitate*], *Athenian-Legacy.com*, August 11, 2010, available at: <http://www.athenian-legacy.com/2010/08/sorin-ovidiu-vantu-si-privatizarea-securitatii/>, accessed: September 1, 2012.

used by all major financial companies as an internal protection service.<sup>96</sup> However, knowing how former *Securitate* agents have come to dominate important niches of the Romanian private sector after the postsocialist privatization, few people really believed the mission of such agents was merely defensive. Such people could indeed be used to protect the organization, but they were also masters of blackmail, extortion, and the use of classified information for their own profit. Other people were talking about his high political connections and rumored that every major politician in every significant political party in Romania was on Vîntu's payroll. The businessman also came to acknowledge as much in the TV interview of 2002 but confessed to having invested mostly in right-wing political movements that were closer to his own ideological beliefs.<sup>97</sup>

During the same period, SOV sold some companies, such as SOV Invest, the asset management company that administered *FNI*, in what many saw as an essential move towards the default of the fund and his escape from legal responsibility, and opened up some new businesses, including the *Banca Română de Scont* [Romanian Discount Bank] and *Banca de Investiții și Dezvoltare* [Bank for Investments and Development], where most of the money he siphoned of *FNI* was eventually invested.<sup>98</sup> In both cases, Vîntu worked through well-chosen intermediaries that served his interests well and severed his ties to any form of legal responsibility.

SOV Invest changed ownership several times but ended up in the property of CENTROCOOP, the largest cooperative of craft smiths and shopkeepers under socialism that

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<sup>96</sup> See live interview taken by Marius Tucă to Sorin Ovidiu Vîntu, *Marius Tucă Show, Antena1*, January 7, 2002, min. 00:37:00, available online at: <http://www.youtube.com/watch?v=ZabxsZP8CMY&feature=related>, accessed: September 1, 2012.

<sup>97</sup> *Ibid*, min. 00:09:30.

<sup>98</sup> Vîntu admitted to having done that in the same interview with Marius Tucă, min. 00:34:00. The transfer of money, intermediated by SOV's representative left at the management of SOV Invest, Nicolae Popa, was seen by the Romanian central bank as a form of domestic credit and an illegal source of capital for a newly created bank.

became, by the end of the 1990s, a cash cow with huge real estate assets all over the country and a naive leadership; CEC, the state savings bank, and Banca Agricola, a relatively large state-owned bank focusing on the agricultural sector. The manager appointed by Vîntu, Ioana Maria Vlas, bought SOV Invest from her boss and later sold her participation to the state banks. This continuous change in ownership is seen now as part of the process through which Vîntu escaped legal responsibility, sold a decaying business at an unrealistic price, and various other state officials/organizations became the target of accusations and demands for compensation instead.<sup>99</sup>

Ioana Maria Vlas, the former employee of Vîntu who became the president of SOV Invest, took all the controversial measures during the period that ended up with the collapse of the fund. She fled to Israel, but was brought back to justice and eventually sentenced to several years in prison in each of the *FNI* and *FNA* cases. A teacher of French at a high school in Cluj-Napoca, Vlas had come to Bucharest in search of a better fortune. She gained some reputation because of her intelligent remarks made during the USAID-organized seminars for the training of brokers for the capital market. Speculating during several moments of crisis on the market for mutual funds, including the collapse of SAFI Invest in 1996, and circulating a false biography according to which she had been in charge of investment companies in the USA or of pension funds in Chile, Ioana Maria Vlas was appointed to the top of several asset management companies and even as president of *Uniunea Națională a Organismelor de Plasament Colectiv [UNOPC]* – now the Romanian Association of Asset Managers.<sup>100</sup> Her professional relation with Vîntu came as recognition of her promising finance career and as an opportunity to prove herself.

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<sup>99</sup> See Andreea Popescu, 2011, “CAZUL VÂNTU V: Fondul Național de Investiții a fost o CONSPIRAȚIE” [Vîntu Case (V): The National Investment Fund was a conspiracy], *Atac de Constanța*, July 22, 2011, available at: <http://www.atacdeconstanta.ro/articole/3376-cazul-vantu-v-fondul-national-de-investitii-a-fost-o-conspiratie.html>, accessed: September 1, 2012.

<sup>100</sup> *Ibid.*

Unfortunately, she ended up just another pawn on SOV's chess board, a game he plays obsessively every day.<sup>101</sup>

For *Banca de Investiții și Dezvoltare* [BID], Vîntu chose Nicolae Văcăroiu, former top ranking bureaucrat in the Ministry of Finance under communism, prime minister of Romania when the USAID capital market and new privatization scheme were designed, and after 2001 President of the Romanian Senate, to build a truly professional bank.<sup>102</sup> This was a great move given that Văcăroiu's party won the general elections in the fall of 2000. No wonder, then, that Vîntu escaped any charges related to the BID case<sup>103</sup> when his crimes reached extinctive prescription.<sup>104</sup> Operations at *Banca Română de Scont* [BRS] were then conducted by Teodor Nicolăescu. A director in the Romanian Ministry of Privatization, Nicolăescu was recruited by Vîntu and worked for Gelsor before becoming a shareholder and president of BRS. To Vîntu's benefit and, as he later confessed, at Vîntu's command, Nicolăescu appropriated funds from the bank customers and deposited them in his employer's account. In typical fashion, he fled

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<sup>101</sup> After conviction, she spent several years at a women's penitentiary, got involved in the education of several younger inmates, and wrote poetry and a book about her experiences in prison. She currently lives in a former German village next to the charming city of Sibiu, in the house of a family friend, reading, feeding the chickens, and fishing every day. See Flavia Cristian, 2011, "Mama FNI," Ioana Maria Vlas, crește găini și dă la pește" ["Mother of FNI" Ioana Maria Vlas raises chickens and goes fishing], *Adevărul*, October 13, 2011, available at: [http://www.adevarul.ro/locale/brasov/brasov\\_-Mama\\_FNI-Ioana\\_Maria\\_Vlas-creste\\_gaini\\_si\\_da\\_la\\_peste\\_0\\_571742909.html](http://www.adevarul.ro/locale/brasov/brasov_-Mama_FNI-Ioana_Maria_Vlas-creste_gaini_si_da_la_peste_0_571742909.html), accessed: September 1, 2012.

<sup>102</sup> See "Sorin Ovidiu Vîntu deține 99% din acțiunile Băncii de Investiții și Dezvoltare" [Sorin Ovidiu Vîntu own 99% of the capital of the Bank for Investments and Development], *Ziarul de Iași*, October 16, 2000, available at: <http://www.ziaruldeiasi.ro/economic/sorin-ovidiu-vintu-detine-99-din-actiunile-bancii-de-investitii-si-dezvoltare~ni1iqs>, accessed: September 1, 2012, as well as "Nicolae Văcăroiu se autosuspendă de la Banca de Investiții și Dezvoltare"[Nicolae Văcăroiu suspends his contract with the Bank for Investments and Development for his term as President of the Senate], *Ziarul de Iași*, February 7, 2001, available at: <http://www.ziaruldeiasi.ro/national-extern/nicolae-vacaroiu-se-autosuspenda-de-la-banca-de-investitii-si-dezvoltare~ni1pfl>, accessed: September 1, 2012.

<sup>103</sup> See "Sorin Ovidiu Vîntu a scăpat în dosarul BID" [Sorin Ovidiu Vîntu escapes the accusations in the BID trial], *Ziare.com*, October 20, 2009, available at: <http://www.ziare.com/stiri/frauda/sorin-ovidiu-vantu-a-scapat-in-dosarul-bid-925899>, accessed: September 1, 2012.

<sup>104</sup> Extinctive prescription, or the negative prescription for crimes and misdemeanors, referring either to sentences or to indictments, is an import into Romanian law from French public law. It can be considered a functional equivalent to the statute of limitation in American law. See [http://fr.wikipedia.org/wiki/Prescription\\_en\\_droit\\_fran%C3%A7ais](http://fr.wikipedia.org/wiki/Prescription_en_droit_fran%C3%A7ais), as well as <http://doctorate.ulbsibiu.ro/obj/documents/rez-eng-buganu.pdf> for more information about prescription in France and Romania.

Romania when the bank collapsed but later surrendered to the authorities, was incarcerated for a year and a half and only sent to trial in 2010.<sup>105</sup> Vîntu is yet to face trial for his involvement in the BID affair.

SOV's association with people associated with the Romanian government and/or agents working for the intelligence community seemed to pay off. Recent reports explain in detail some of his spectacularly successful investments made during the mid-1990s, such as his purchase of *Sanevit*, a bankrupt state producer of medical supplies in 1995, just months before the company was recapitalized with state loans and later received the exclusive right to sell disposable syringes to Romanian hospitals. Gelsor later sold the company at a huge profit to one of the private investment funds just a few days before the Romanian competition council decided to break Sanevit's monopoly over the supplies for the domestic hospitals.<sup>106</sup> Later on, the flow of money towards the National Investment Fund (*FNI*) was amplified by a government ordinance (No. 98 of 1999) granting the immediate payment of compensation to workers laid off as part of the structural readjustment programs implemented by the Romanian government if the funds were invested on the capital market or in domestic mutual funds.<sup>107</sup> As *FNI* was attracting more than three quarters of all sums invested in mutual funds in Romania, many have alleged that the

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<sup>105</sup> See "De la Răzvan Temeșan la Claudiu Cercel. Mica enciclopedie a șefilor de bănci care s-au intersectat cu Procuratura" [From Răzvan Temeșan to Claudiu Cercel: small encyclopedia of bank presidents being prosecuted], Hotnews, November 2, 2012, available at: [http://economie.hotnews.ro/stiri-finante\\_banci-13534302-razvan-temesan-claudiu-cercel-scurt-istori-sefilor-din-banci-care-fost-retinuti.htm](http://economie.hotnews.ro/stiri-finante_banci-13534302-razvan-temesan-claudiu-cercel-scurt-istori-sefilor-din-banci-care-fost-retinuti.htm), accessed: November 2, 2012.

<sup>106</sup> See the critical article published by Sergiu Toncea, 2006, "Vărsat de vânt pe obrazul justiției," *Săptămâna Financiară*, Monday, October 23, 2006, available at: <http://www.hotnews.ro/stiri-arhiva-1148208-varsat-vant-obrazul-justitiei.htm>, accessed: September 1, 2012.

<sup>107</sup> See article 34/1/b of Ordonanță de Urgență nr.98 din 24 iunie 1999 privind protecția socială a persoanelor ale căror contracte individuale de muncă vor fi desfăcute ca urmare a concedierilor colective [Government Ordinance no. 98 of June 24, 1999 regarding social protection measures for persons whose employment is finished during collective layoffs], Official Bulletin of Romania no. 303, of June 29, 1999, available at: [http://www.cdep.ro/pls/legis/legis\\_pck.act\\_text?id=20102](http://www.cdep.ro/pls/legis/legis_pck.act_text?id=20102), accessed: September 1, 2012.

ordinance was meant to facilitate the further growth of the pyramid scheme at a time when its development resources were starting to shrink.

The "great combiner" continued to do business after the elections of 2000. In spite of his past sympathies and support for right-wing political parties, the recruitment of Nicolae Văcăroiu – soon to be appointed President of the Senate by the Social Democratic Party – and friendship with Radu Timofte – the director of the Romanian Intelligence Service (*SRI*) from 2001 to 2006 – assured him of good treatment from the new regime.<sup>108</sup> His relations to the secret services have known ups and downs: from pragmatic collaboration with the first head of *SRI* under postsocialism, Virgil Măgureanu, who supplied him with retired and even active information officers for his financial companies,<sup>109</sup> to his alleged threats to assassinate the head of the Foreign Intelligence Service in 2000,<sup>110</sup> back to a friendly relationship with the head of *SRI* after 2001. The image of a ruthless player was amplified by later rumors about the assassination of Luminița Segă, the prosecutor investigating Vîntu's crimes in the *FNI* case. Forensic examination found her to be a victim of aluminum poisoning, but the investigation

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<sup>108</sup> See Ovidiu Zara, 2005, "Timofte și Ardelean au pus SRI și UM 0962 în slujba inculpaților din dosarul FNI" [Timofte and Ardelean had put the Romanian Intelligence Service and the Intelligence Service of the Romanian Police in the service of FNI instigators], *Cotidianul*, February 3, 2005, available at: <http://www.hotnews.ro/stiri-arhiva-1242187-timofte-ardelean-pus-sri-0962-slujba-inculpatilor-din-dosarul-fni.htm>, accessed: September 1, 2012, and George Roncea, 2010, "Vîntu - un borfaș cu intenții criminale, protejatul cadrelor corupte din SRI" [Vîntu – a crook with criminal intentions, protected by corrupt SRI agents], *Curentul*, September 15, 2010, available at: <http://www.curentul.ro/2010/index.php/2010091548840/Actualitate/Vintu-un-borfas-cu-intentii-criminale-protejatul-cadrelor-corupte-din-SRI.html>, accessed: September 1, 2012, for the alleged relations between SOV and the heads of Romanian secret services.

<sup>109</sup> See the detailed analysis published by Adreea Popescu, "Cazul Vîntu (III): Imperiul Gelsor" [Vîntu Case (III): Gelsor Empire], *Atac de Constanța*, June 17, 2011, available at: <http://www.atacdeconstanta.ro/articole/3362-cazul-vantu-iii-imperiul-gelsor.html>, accessed: September 1, 2012.

<sup>110</sup> George Roncea, 2010, "Vîntu - un borfaș cu intenții criminale, protejatul cadrelor corupte din SRI" [Vîntu – a crook with criminal intentions, protected by corrupt SRI agents], *Curentul*, September 15, 2010, available at: <http://www.curentul.ro/2010/index.php/2010091548840/Actualitate/Vintu-un-borfas-cu-intentii-criminale-protejatul-cadrelor-corupte-din-SRI.html>, accessed: September 1, 2012, presents the accusations made recently by Cătălin Harnagea, the head of the Foreign Intelligence Service in 2000. Vîntu rejected such accusations as ridiculous in an interview with Marius Tucă in 2002 stressing that neither is he a killer, nor is the alleged target worth a bullet.

stalled and the case is still surrounded by mystery.<sup>111</sup> Although it is hard to believe that things could have gone so far without the state institutions to intervene, Vîntu definitely enjoyed his mask, as his threats to a younger business partner a few years ago seems to indicate: “Let’s have a man-to-man discussion, a discussion from an old scamp to a younger one. [...] Your friend Măgureanu can tell you how he gave me approval to shoot racketeers on Romanian territory [...] and I killed hundreds of them, not only tens.”<sup>112</sup> Little, if anything, should be added to such a “confession.”

He continued to invest in many domains but expanded progressively towards mass-media, a choice determined by his reaction to the “vicious” press campaign initiated against him after the *FNI* scandal and facilitated, according to his confession, by the low standards of morality among Romanian journalists that almost ask to be bought by those financially potent.<sup>113</sup>

In the first years after 2000, he had a rather untroubled relation with the judiciary as he was

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<sup>111</sup> See Ionel Dancu, 2007, “Lumiņa Sega, procurorul care a anchetat cazul FNI, a fost asasinatã” [Lumiņa Sega, the prosecutor investigating the FNI case, died of poisoning], *Curentul*, Thursday, March 1, 2007, available at: <http://www.hotnews.ro/stiri-arhiva-1110765-luminita-sega-procurorul-care-anchetat-cazul-fni-fost-asasinata.htm>, accessed: September 1, 2012.

<sup>112</sup> See Sabina Fatı, 2011, “Ce-i va spune Vîntu lui Popa la întãlnirea de 10 ani?” [What will Vîntu tell Popa at their 10 years anniversary meeting?], *România liberã*, April 11, 2011, available at: <http://www.romanalibera.ro/opinii/editorial/ce-i-va-spune-vintu-lui-popa-la-intalnirea-de-10-ani-223123.html>; accessed: September 1, 2012. Recordings of the dispute among the two businessmen were published by the most important news stations and newspapers soon after Vîntu was briefly arrested and soon after sent to trial by the prosecutors in 2010. According to the investigators, Sebastian Ghiță, a prosperous businessman who accumulated a considerable fortune by providing various state institutions with software applications, had complained to the authorities that Vîntu, whose news station (Realitatea TV) Ghiță was administering and financing at the time, was blackmailing him to make additional payments related to their contract. Ghiță agreed to wear a recording device and was able to capture the conversation during which Vîntu was threatening him. Subsequently, during the trial sessions that led to his incarceration, Vîntu accused Ghiță of being himself a pawn of the secret services (omul serviciilor) and their new tool in the fight with him. See „Vîntu: SRI și-a făcut partid, a vrut să-și facă televiziune” [Vîntu: SRI {The Romanian Intelligence Service} created its own political party; they also wanted to have their own television station], *Ziare.com*, October 28, 2011, available at: <http://www.ziare.com/sorin-ovidiu-vantu/stiri-sorin-ovidiu-vantu/vintu-sri-si-a-facut-partid-a-vrut-sa-si-faca-televiziune-1130295>, accessed: September 1, 2012.

<sup>113</sup> See live interview taken by Marius Tucă to Sorin Ovidiu Vîntu, *Marius Tucă Show, Antena1*, January 7, 2002, min. 00:43:00, the article is available at: <http://www.youtube.com/watch?v=ZabxsZP8CMY&feature=related>, accessed: September 1, 2012. Other businessmen familiar with Vîntu’s machinations describe specific situations when SOV managed to „buy”/subsidize some of the most reputed investigative journalists by providing them with funds through respectable intermediaries, such as the dissident poet Mircea Dinescu. See Sima, Cristian, 2010, “SOV și Junimiștii” [SOV and the Junimists], *Hotnews*, Monday, September 13, 2010, available at: <http://www.hotnews.ro/stiri-esential-7783840-sov-junimistii.htm>, accessed: September 1, 2012.

either acquitted or not effectively prosecuted in any of the cases in which he was investigated. While his friendship with the head of the Romanian Intelligence Service was notorious,<sup>114</sup> the politicians in power in Romania until 2004 were in a paradoxical situation: either they called him innocent and then had to face criticism from the public, or they called him as responsible for the collapse of *FNI* and other financial scandals and then had to explain the association with SOV of various prominent figures of the political regime.<sup>115</sup> Vîntu had a few media appearances and gave some well scripted interviews to carefully chosen journalists, but was prudent enough to decline appearance in satirical cinematic productions such as Alexandru Solomon's masterfully crafted documentary on the most controversial figures among the postsocialist newly rich.<sup>116</sup>

Fate turned against SOV after his public involvement in the campaign for the presidential elections of 2009. Both journalists and the public commented on the imprudence committed by someone who had built his postsocialist career as a very discrete mastermind of finance and politics. Soon after the capture and extradition from Indonesia of Nicolae Popa (SOV's "right hand" at *FNI*) in the fall of 2009, Vîntu was faced with renewed penal charges regarding the collapse of *FNI* and *FNA* as well as the bankruptcies of the various banks connected to the *FNI* affair.<sup>117</sup> He had been already convicted to six month in prison for blackmailing and threatening to kill one of his business partners, and to two years in prison for

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<sup>114</sup> Ibid.

<sup>115</sup> Ibid., min. 00:42:20.

<sup>116</sup> See Alexandru Solomon, 2010, *Kapitalism*, produced by Hi Film [Romania]/ Seppia [France]/ Neon Rouge [Belgium]).

<sup>117</sup> See Octavian Dan, 2012, "Sorin Ovidiu Vîntu, urmărit penal sub toate guvernările" [Sorin Ovidiu Vîntu, investigated under all political regimes], *Bursa*, May 2, 2012, available at: [http://www.bursa.ro/sorin-ovidiu-vintu-urmarit-penal-sub-toate-guvernările-170054&s=print&sr=articol&id\\_articol=170054.html](http://www.bursa.ro/sorin-ovidiu-vintu-urmarit-penal-sub-toate-guvernările-170054&s=print&sr=articol&id_articol=170054.html), accessed: September 1, 2012, as well as Stoica, Ionel, and [Virgil Burlă](#), 2012, "Sorin Ovidiu Vîntu a fost trimis în judecată în dosarul prăbușirii FNI. Acuzații: spălare de bani și instigare la delapidare" [Sorin Ovidiu Vîntu has been sent to trial in the case involving the collapse of *FNI*. The charges are: money laundering and instigation to embezzlement], *Monaday*, September 24, 2012, available at: <http://www.evz.ro/detalii/stiri/Sorin-Ovidiu-Vntu-a-fost-trimis-n-jduecat-n-dosarul-prbușirii-FNI-1002223.html>, accessed: September 24, 2012.

helping Nicolae Popa, the person thus far responsible in the *FNI* case, to evade conviction and up to 15 years in prison.<sup>118</sup> Gone were the days when the warrants issued by Romanian courts to bring Vîntu to the witness stand could not be enforced or when the Parliamentary Commission for the analysis of the collapse of *FNI* could not interview him, as the members of the commission were simply afraid of Vîntu and his potential revelations.<sup>119</sup>

This twist of fate led many to reconsider Vîntu's role and trajectory after the 1990s, portraying him as a tool of the secret services that used him to accumulate money and control privatized companies during the 1990s but that got rid of him as soon as he became inconvenient and useless. Such interpretations are reinforced by the similarly powerful blow to Vîntu's self-esteem delivered through the release of transcripts from his file as an informant of *Securitate*.<sup>120</sup> Detailed accounts based on this file, but also on interviews with his neighbors and retired *Securitate* officers in his native town, reveal that SOV was imprisoned for over two years (from 1983 to 1985) for having forged bills and accounts at the tobacco store he administered. While in prison, he was recruited as an informant under the pseudonym *Nuș* (pronounced *noosh*) from

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<sup>118</sup> "SORIN OVIDIU VÎNTU, condamnat la șase luni de ÎNCHISOARE CU EXECUTARE" [Sorin Ovidiu Vîntu, convicted to two years in prison], *Realitatea.NET*, Friday, February 3, 2012, available at: [http://www.realitatea.net/sorin-ovidiu-vintu-condamnat-la-sase-luni-de-inchisoare-cu-executare\\_910394.html](http://www.realitatea.net/sorin-ovidiu-vintu-condamnat-la-sase-luni-de-inchisoare-cu-executare_910394.html), accessed: September 1, 2012., Ondine Gherguț, 2012, "Vîntu, tot mai departe de libertate," *România liberă*, October 3, 2012, available at: <http://www.romanialibera.ro/actualitate/justitie/vintu-tot-mai-departe-de-libertate-279339.html>, accessed: October 3, 2012, as well as "Sorin Ovidiu Vîntu, CONDAMNAT la doi ani de închisoare CU EXECUTARE" [Sorin Ovidiu Vîntu, convicted to two years in prison], *Realitatea.NET*, Tuesday, October 2, 2012, available at: <http://www.antena3.ro/romania/sorin-ovidiu-vintu-condamnat-la-doi-ani-de-inchisoare-cu-executare-pentru-favorizarea-lui-nicolae-popa-186269.html>, accessed: October 2, 2012.

<sup>119</sup> This was confirmed to me by Varujan Pambuccian, a Romanian MP since 1996 representing the Armenian minority. A rather luminous figure among his colleagues and the author of numerous legislative projects and democratic initiatives, Pambuccian agreed to give me a recorded interview on August 25, 2005. His confession regarding their failure to interrogate Vîntu in spite of all the allegations describing him specifically as the mastermind of the *FNI* affair left me without retort.

<sup>120</sup> See Mirela Corlățan, 2010, "Vîntu, informator în pușcăria din Bacău" [Vîntu, Securitate informant since spending time in Bacău penitentiary], *Evenimentul zilei*, Monday, July 12, 2010, available at: <http://www.evz.ro/detalii/stiri/sorin-ovidiu-vintu-nume-de-cod-nus-900414.html>, accessed: September 1, 2012.

*Sorin – Sorinuș – Nuș* (the diminutive of his first name).<sup>121</sup> *Nuș* gave information on his fellow inmates and was later used to provide information on various other friends and acquaintances in *Roman*. Although a valued source of information while in prison, *Vîntu* was given up soon after his release because of his entourage and lifestyle: he was frequented mainly by bums and scalpers, was having difficulties getting a job because of his poliomyelitis, and was developing drinking problems.

One of the retired *Securitate* officers confirms that *Vîntu* made a lot of money during the first years after the fall of socialism but argues that it was always other people's money being circulated by him: he created a newspaper with the money of the archbishop in *Roman* and later invested former *Securitate* money (including money from Ioan Timofte, his acquaintance and later head of the Romanian Intelligence Service) in *Caritas*.<sup>122</sup> While such rumors are hard to verify, they circulate incessantly, rendering the image of a pawn of *Securitate*, recruited under socialism but later used throughout the postsocialist period by people still working for the domestic intelligence services or by privatized groups of former *Securitate* agents.

Journalists were also trying to convey a new image of *Vîntu*, one in contrast to the self-projected persona of a „great combiner” and ruthless speculator. Thus, bold statements such as “Romanian capitalism is being built by capitalists. [...] It is important that they respect the law. With regards to their morality, this is reflected by their business success. These are the yardsticks

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<sup>121</sup> The following account is based mainly on Dan Tăpălagă and Cătălin Prisacariu, 2010, “Trecutul ascuns al lui Sorin Ovidiu Vîntu. Povestea informatorului Nuș,” *Hotnews / Kamikaze*, Sunday, July 11, 2010, available at: <http://www.hotnews.ro/stiri-esential-7566833-trecutul-ascuns-lui-sorin-ovidiu-vntu-povestea-informatorului-nus.htm>, accessed: September 1, 2012, and Mirela Corlățan, 2010, “Vîntu, informator în pușcăria din Bacău” [Vîntu, Securitate informant since spending time in Bacău penitentiary], *Evenimentul zilei*, Monday, July 12, 2010, available at: <http://www.evz.ro/detalii/stiri/sorin-ovidiu-vintu-nume-de-cod-nus-900414.html>, accessed: September 1, 2012.

<sup>122</sup> See Verdery (1995a, 1995b) for an analysis of *Caritas* and some of the rumors and speculation in Romanian society at the time over the involvement of the communist secret services in the creation and collapse of the pyramid scheme.

of the business world;”<sup>123</sup> or “I’m not a small fish on the Romanian market. I used to be a piranha during the ‘90s. I am now a catfish,”<sup>124</sup> made in interviews during the period when he seemed untouchable, are blatantly contradicted by more recent confessions of his collaborators, neighbors, or friends rediscovered after the recent events. For instance, Vlad Soare, former vice-governor of the Romanian central bank and later his employee, argues that, “on a personal level, Sorin Vîntu is one of the most timid persons I have met. If you get him out of his world, he turns inside his shell. This generates a sort of fake aggressiveness that probably displeases him too.”<sup>125</sup> His neighbors in Roman remember him as a cunning person, involved in speculation with artisanal items (icons, carpets, silverware, etc.), or as a petty swindler cheating foreign tourists, but never as a high profile crook. His ego seems to have grown with his success in business, as one of his closest advisors came to confess that:

SOV has many problems coming mainly from his inability to adapt, from his constant feeling that the environment can be modeled according to him. [...] I once told him: “You constantly want to be a constant but you do not realize that your puppets will start walking without strings at some point.” I preferred walking away from SOV because I felt I was starting to look too much like him.<sup>126</sup>

Vîntu’s humble side became more and more apparent with the restructuring of the Romanian intelligence services after the country’s progressive integration into NATO and the

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<sup>123</sup> See “Interviu în exclusivitate cu "onorabilul" domn Vîntu” [Exclusive interview with the “honorable” gentlemen Vîntu], *Evenimentul zilei*, Wednesday, May 31, 2006, available at: <http://www.evz.ro/detalii/stiri/interviu-in-exclusivitate-cu-onorabilul-domn-vintu-715965.html>, accessed: September 1, 2012.

<sup>124</sup> See Dan Tăpălagă, 2009, “Sorin Ovidiu Vîntu: Eu sunt cel care poate să-l cumpere pe Dinu Patriciu, și nu invers. Eu nu sunt peștele mic în piața românească. Am fost piranha în anii '90. Acum sunt somn” [Sorin Ovidiu Vîntu: I’m the one capable of buying out Dinu Patriciu, not the other way round. I’m not the small fish on Romanian market. I used to be a piranha during the ‘90s. I am now a catfish], *Hotnews*, Tuesday, December 8, 2009, available at: <http://www.hotnews.ro/stiri-politic-6698869-audio-sorin-ovidiu-vantu-sunt-cel-care-poate-cumpere-dinu-patriciu-nu-in-vers-nu-sunt-pestele-mic-piata-romaneasca-fost-pirahna-anii-90-acum-sunt-somn.htm>, accessed: September 1, 2012.

<sup>125</sup> See “Lumea lui Sorin Ovidiu Vîntu” [Sorin Ovidiu Vîntu’s World], *Capital*, November 8, 2001, available at: <http://www.capital.ro/detalii-articole/stiri/lumea-lui-sorin-ovidiu-vintu-5370.html>, accessed: September 1, 2012.

<sup>126</sup> Ibid.

European Union. Radu Timofte, his life-long friend, was replaced as the head of the Romanian Intelligence Service. Many former agents and analysts were laid off from the intelligence services as part of the massive structural reforms in which they have been involved over the last decade. Paradoxically, organizations of former agents have become semi-autonomous from the intelligence community, creating a more fragmented and less stable landscape that generates many “arbitrage” opportunities among holders of informal power, but also areas of danger for those who have been previously involved with them. SOV seems to be one of those now settling his accounts with his former masters/allies.

In spite of or, maybe, just because of this twist of fate affecting Vîntu and of the abundance of information and confessions regarding him, one is left with numerous unanswered questions: what made all those bright people work for him and some even take the blame in his place, as if hypnotized? Were all of them naïve? Did he control them all somehow? Are his charisma and persuasiveness as great as many believe? Transcripts of recordings from his case files indicate a rather cynical and immoral character, dominated by a disproportionate ego and always trying to manipulate others for personal gains and the evasion of responsibility. At the same time, episodes revealed by his Securitate file can also be taken as the script of a pathetic personal history. Such details put in a different light his collaboration with power agents suggesting he might have been himself the pawn of secret services, a puppet used and later disposed of in favor of a more easily controllable “tool.”

Such contrasting interpretations of Vîntu’s personal history are illustrative of two distinct forms of understanding social change and agency. One situates Vîntu as well as all of those he has collaborated with within the control of powerful actors - politicians, government officials, or the secret services. Their story is then a case illustrative of the continuities and

patterns of elite reconversion between the socialist and postsocialist regimes. An example of the conspiracy theories circulating widely during the last two decades in Romania, such a perspective actually denies change as it affirms the perpetuation of the same agents of power between the two regimes, manipulated by hidden actors even when they seem to have accumulated impressive financial and political resources, as well as the powerlessness of simple people. *Securitate* and its inheritors are, according to this informal theory, the genuine „great combiners” of Romania recent history.

An alternative theory emphasizes Vîntu’s genius in working with money and people. His personal qualities and, even more so, the brilliance of his strategies, be they related to the investing of money, organization of companies, or instrumentalization of people, put him in a position to control so many and so much and to acquire the reputation of a “great combiner.” While supporters of the first theory argue that SOV’s image was carefully crafted, manipulated, and later destroyed by those for whom he worked, supporters of the second theory argue that Vîntu’s brilliant ideas carried him forward to an impressive level of notoriety and influence. Influential leaders and puppeteers behind the scenes of Romanian politics and finance felt threatened by his power and colluded to take him off the scene. Their strategy was that of creating for him the opposite image of an immoral crook, a swindler in the service of „the services,”<sup>127</sup> an egotistic character always ready to produce *gulgute*<sup>128</sup> in order to turn the situation in his favor.

Upon closer analysis, both of the quasi-theoretical representations produced above seem partially true; or, better said, neither of them seems sufficient as both are only partially

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<sup>127</sup> There is always ambiguity in gossip about the specific group within the domestic or foreign secret services allegedly controlling SOV.

<sup>128</sup> As already shown in chapter three *gulgute*, is an argotic term refers to either a doughnut or dumpling, or, figuratively, to a lie, a con job, or a more complex scam.

accurate descriptions of reality. The theory focusing on the bad genius and his ideas seems rather too simplistic given the multiplicity of persons, beliefs, institutions, and things intertwined in Vîntu's live trajectory and in the history of the web of financial institutions he kept spinning. The political determinism of the theory emphasizing the force of the more or less hidden structures of power do away with notions of individual agency, contingency and accident in the postsocialist period. One feels a more sophisticated analysis of social change is needed. As the profoundly insightful depiction of Napoleon's campaign in Russia realized by Leo Tolstoy (2008) reveals, what appear retrospectively as great events and moments of historical fracture are not caused by either great men or by determinist social/economic/political forces but are the result of the accidental and often uncoordinated accumulation of motives, perspectives, and actions of an infinity of actors. Or, to follow Bruno Latour's brilliant reworking of the Tolstoyan approach to describe „the Pasteurian revolution” during the XIXth century, one has to look at the diversity of „actants,” the alliances they constitute, and the networks emerging out of their interactions in order to make sense of such history-changing technoscientific achievements (Latour 1998).

The limiting focuses on either on SOV's manipulative genius or on the political structures playing him around the board miss the heterogeneity of „actants” making up his financial technologies, the numerous translations between actants, forms of knowledge, institutional domains, and arenas for the constitution of values, as well as the „trials of strength” meanings constituted in such processes of translation. Following Latour following Tolstoy, a more nuanced, decentered, and non-teleological perspective is made possible, to make sense of the shifting configurations of actors and values, of the dynamics of the events, of the opportunist actions of many of the actants and the ex-post reconstitutions of facts, as well as on the numerous contingencies affecting the processes under examination. In retrospect, Vîntu seems both a “great

combiner” of people and resources and a pathetic pawn of hidden structures of power; there were always ever more mediators associating to produce the financial schemes ending in scandal: translators of Western financial markets and practices such as those employed by Vîntu, opportunistic investors and state officials, or coward politicians – all of them and even more that aren’t usually mentioned made possible socio-technical arrangements such as *Gelsor – SOV Invest – FNI – Centrocoop - CEC – Banca Agricolă*.<sup>129</sup>

There was no master plan, but rather a succession of associations, adaptations to changing circumstances, opportunistic decisions taken under financial and temporal constraints, all growing into a self-writing script whose main writers did not anticipate an end result but kept toying with alternative possibilities. Vîntu’s roles and responsibly are hard to outline in such changing networks of actions and interests, but become literally impossible to grasp if analyzed separately or as a resultant of deterministic factors. This seems to be one of the premises of the prosecutors reopening the *FNI* case to assess SOV’s involvement and his eventual responsibility for the collapse of the fund. In a section of the indictment entitled “The neglect of temporal aspects” (*Ignorarea aspectelor temporale*),<sup>130</sup> the prosecutors claim that the disjunction of several files concerning Vîntu from the *FNI* case – a strategy of the prosecutors investigating him until 2008 – made it impossible to follow the temporal unfolding of the *FNI* scandal. This, in turn, made it impossible to document the role Vîntu played in creating associations that

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<sup>129</sup> These are just some of the main organizations associating in the *FNI* case. At the same time, although the similarities between actants such as Vîntu and what Janine Wedel (2000) has called *transactors* in the context of Western foreign aid to Russia, that is, ““players in a small, informal group who work together for mutual gain, while formally representing different parties” are many, one should also be aware that Wedel is emphasizing the conflicts of interests of Harvard economists whereas I am mainly interested in the creativity of local actors in appropriating technologies and political forms from foreign organizations to their own goals.

<sup>130</sup> See details from the indictment act presented in Ionel Stoica and Virgil Burlă, 2012, “Sorin Ovidiu Vîntu a fost trimis în judecată în dosarul prăbușirii FNI. Acuzatii: spălare de bani și instigare la delapidare” [Sorin Ovidiu Vîntu has been sent to trial in the case involving the collapse of *FNI*. The charges are: money laundering and instigation to embezzlement], Monday, September 24, 2012, available at: <http://www.evz.ro/detalii/stiri/Sorin-Ovidiu-Vntu-a-fost-trimis-n-judecat-n-dosarul-prbușirii-FNI-1002223.html>, accessed: September 24, 2012.

engendered action and to assess his role in the events. Taking the prosecutors' insight as a methodological promise, the following chapters will focus on some of human and institutional „actants” in the *FNI* case and their associations with actors such as Vîntu, in order to account for the networked actions and mutual allocation of responsibilities of those involved.

### 4.3 CONCLUSION

The chapter has introduced two of the ”actants” whose roles in the wider networks of persons, things, and actions became emphasized in many of the key moments of the *FNI* case. They became the two most significant, while sharply contrasting, characters in my research. While one seems a relatively powerless leader of a mostly unsuccessful civic association representing investors in relation to asset managers, capital market regulators, and courts, the other was played the role of a “great combiner” for most of the period under analysis. In spite of the genuine differences of financial resources, political connections, or public notoriety, the two constitute similar ”actants” generating multiple associations between distinct types of resources and contrasting domains of value creation. Their impressive work of “translation” among shifting situations, different types of action, and eclectic forms of knowledge constituted their agentivity and placed them in key positions of the processes I am studying. Starting from the attentive examination of their strategies of association and the particular identities they crafted for themselves that was provided in this chapter, the next two chapters will situate their actions within wider networks of documents, arguments, and opportunistic actions.

The current chapter has made the argument that specific forms of gossip and opportunistic reasoning were some of the preferred ingredients used by these two repellent figures, but also coagulating around their personae. Thus, N. illustrates well a form of cognitive opportunism, speculation on any chance to entangle asset managers and state institutions into his projections of moral and legal responsibility. Ineffective according to the criteria of bureaucratic rationality or even by the legalism projected by judiciary criteria on financial practices, N. found supporters (association members), resources, and motives to stay in the game of civic activism, and thus to extend his agentivity beyond the pragmatic horizons of litigation. At the same time, SOV illustrates well the strategy of using others while also allowing oneself to be used.<sup>131</sup> Described either as a brilliant mastermind of innumerable financial and political schemes or as a pathetic pawn controlled by obscure structures of power in postsocialist Romania, Vîntu can be better depicted as the nexus of a diversity of interests, forms of political and financial resourcefulness, and types of knowledge. His case illustrates well the dangers of reducing complex social processes to ex-post schematic explanations of events.

The prevalence of gossip and situated forms of reason demonstrated by the central characters of this chapter illustrate the relatedness of the two types of speculation: a form of trading characterized by high risk – high return (*specula*) and a form of conjectural thought (*speculativă*). While the common root of the two Romanian words (*specula* and *speculație*) carries with it reference to forms of similarly opportunistic associations of meanings and values, the set of concepts facilitate a better understanding of the pragmatics of financial action on Romanian capital markets. Thus, the histories of *FNI* and *FNA*, as well as the ongoing attempts

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<sup>131</sup> “I knew how to use people and to let myself be used by those I used.” This is the pragmatic compromise Vîntu admits to having made throughout his career to stay in the game and keep a minimum of autonomy. See “Lumea lui Sorin Ovidiu Vîntu” [Sorin Ovidiu Vîntu’s World], *Capital*, November 8, 2001, available at: <http://www.capital.ro/detalii-articole/stiri/lumea-lui-sorin-ovidiu-vintu-5370.html>, accessed: September 1, 2012.

to bring a resolution to the disputes they engendered, reveal the role of rumors, gossip, allegations, allusions, the use of partial information, one legged arguments and crippled knowledge, as well as of the widespread secrecy surrounding capital market activities in Romania. Such practical modes of action contradict both the model of perfect competition elaborated inside the neoclassical theory of markets (Samuelson 1947; Debreu 1959; Arrow and Hahn 1971) and the more recent theory of market efficiency in finance (Fama 1970, 1991) that postulate either the undifferentiated access to information of all market actors or the immediate incorporation of public and private information in the market prices of securities. Elaborated in Western academia and having a certain applicability to developed capital markets, characterized by a huge number of daily transactions, relatively robust market institutions, enforceable laws, responsible regulators, availability of real time information on market prices, the sanctioning of inside trading, and a diffuse ideology of the universal access to the market, such theoretical simplifications are at odds with practices on the Romanian capital market.

A closer examination of the modes of operation of Romanian capital market creators, regulators, and speculators reveals the role of secrecy and fragmented knowledge more attuned to the work of intelligence services than to theories of perfect competition on capital markets. While the role of social relations and unforeseen associations of persons, technologies, and ideas on advanced financial markets have already been documented (Zaloom 2005, 2006; Beunza and Stark 2004a, b, c, d), after the recent global financial crisis the voices of heterodox economists questioning the efficiency of markets and affirming the role of emotions in speculative dynamics ending in crises are heard more and more often.<sup>132</sup> Although timely and profound, such critical positions do not address directly the specifics of capital market processes in Romania. Here, an

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<sup>132</sup> See criticism of efficient capital markets in behavioral finance by economists such as Robert Shiller, Richard Thaler, Nassim Taleb, and Benoit Mandelbrot.

ethnographer is able to observe the overlap of distinct modalities of action: within the frameworks of a publicly regulated market, social practices premised on rumors, gossip and allusive communication intertwine with the logic of secrecy and partial information shrewdly manipulated by intelligence specialists or retired analysts/officers of the secret services. Similar to Western capital markets, information is the foundation of value creation. However, access to valuable information is not facilitated by arbitrage rooms ("financial laboratories," according to Beunza and Stark [2004a]) organized to produce new associations of ideas and trading models. In Romania, the stakes are access to privileged information whose scarcity is artificially produced. As Robert Hayden well observed (letter to author, December 13, 2012), this mode of operation closely resembles the creation of scarcity under socialism through central planning and rational redistribution as described by Katherine Verdery (1991, 1996). In fact, political redistribution of resources and information subsisted in postsocialist Romania well into the 1990s as state subsidies were distributed to controlled municipalities and state companies in exchange for votes in political elections and was brought to a certain control by the austerity measures imposed by the IMF/WB when the budget resources that could be redistributed became increasingly scarce. However, the emerging financial elite reconverted from the former communist elite and the lay investors continued to be guided by this logic with regards to information about the market. All seemed to rely more on privileged, gossiped, whispered or private information (seen as both scarcer and more reliable) than on publicly available information. Actually, many saw what was made public as worthless propaganda and fake reporting if not outright disinformation. Private registers of language and narrow channels for the transmission of information gave a specific configuration to finance and value generation

practices increasing the power of informal examples over publicly endorsed rationality and models of behavior.

Unlike the case of developed capital markets, Romania is not characterized by an abundance of news about companies but by the scarcity and non-inteligibility<sup>133</sup> of data, generating a distinct type of competition for scarce information. While the Romanian case, similar to developed capital markets, is characterized by redundant information, this part of knowledge is not constituted by the informational noise that is readily available and known by too many people to have any financial value, or that is rather banal and does not allow any possibility of arbitrage. In Romania, the informational noise is formed by the rumors and false information (*gulgute*) circulated by key market actors, of the irrelevant data slipped into the public sphere, of the intrigues plotted by retired intelligence officers, or of the numerous irrelevant claims to knowledge advanced by self-made market “experts.” Those who thrive in such an environment are often those practicing forms of cognitive and moral opportunism, better attuned to mutating arenas for value production than to the neat bureaucratic procedures taught in financial and legal textbooks.

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<sup>133</sup> Dubious accounting and audit practices, the emphasis of fiscal accounting and the evasion towards areas of informal economy by overtaxed companies, as well as the lack of a culture of transparency characterizing countries with high corporate governance standards.

**5.0 CHAPTER 5: ILLUSORY MONEY AND CONTINGENT CLAIMS TO VALUE:  
THE METAPRAGMATIC LANGUAGE OF DISPUTES**

[the belief effect] rests on the accord between the presuppositions (or, more precisely, the schemas of construction) that the narrator and the reader ... engage in the production and reception of the work. Because they are held in common, they serve to construct the world of common sense; the almost universal agreement on these structures, especially spatial and temporal ones, is the foundation of the fundamental *illusio*, the belief in the reality of the world. [...]

As is shown by comparative history and sociology, and notably the analysis of precapitalist societies - or the fields of cultural production of our societies- the particular form of the *illusio* presumed by the economic field, that is to say, economic interest in the sense of utilitarianism, and its form of economics, is merely a particular case among a world of forms of interest which are observed in reality.

(Bourdieu 1992: 228, 334)

On October 2, 2010, a moving truck was parked in front of the Bucharest Tribunal. This was a rather unusual image for the inhabitants of Bucharest, and it was not a scene from one of the numerous action movies being filmed in Romania at the time, as a few passersby thought. The truck was unloading over 3,000 folders of documents from the court proceedings in the National Investment Fund (*FNI*) trial. The High Court of Cassation and Justice (HCCJ) had accepted the appeal filed by numerous retail investors soon after *FNI* had collapsed, but the various instances where the *FNI* penal case was tried did not properly notify them. As these investors did not have

proper representation in court, HCCJ decided there should be a retrial and remanded all the documents making up the case file to the inferior court.<sup>134</sup>

The transportation of the mass of records and evidence was a challenge, and it became an even bigger one as time passed. In 2012, as the Romanian General Prosecutor decided to reopen the *FNI* case in order to assess Vîntu's penal responsibility, she realized that the *FNI* case file by then consisted of folders that, arranged on shelves, measured over 400 linear meters.<sup>135</sup> Although such graphic descriptions by the authorities are meant to be iconic of the overwhelming amount of evidence against those responsible for the collapse of the National Investment Funds and the National Accumulation Fund, this amount of evidence also symbolizes the increasing difficulty of the Romanian judiciary in turning an extremely complex case into a simple sentence. While this is to be expected in a democratic society where the judiciary learns to work based on sound evidence that usually generates large numbers of files, this development is taken by the most vocal of my informants as a sign of court inefficiency and of widespread corruption in the judiciary. The 400 linear meters could tell as much about the capillaries of power in Romania, where much of the evidence against Vîntu was hidden for a long time before being used for a genuine indictment act, as about the role he played in the creation and collapse of the two funds.

This chapter focuses on the disputes occasioned by the collapse of *SAFI*, *FNI*, and *FNA* - the most important mutual funds operating in Romania in successive periods of time and some of the most notorious financial scandals of the postsocialist period. Disputes arose over the assessment of losses, the assignment of responsibility, the compensation of defrauded investors,

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<sup>134</sup> See "'Arhiva" FNI, mutată la tribunal" [The *FNI* "Archive" was shipped to Bucharest Tribunal], *Cotidianul*, October 2, 2010, available at: [http://www.cotidianul.ro/Arhiva\\_FNI\\_mutata\\_la\\_tribunal-125519/](http://www.cotidianul.ro/Arhiva_FNI_mutata_la_tribunal-125519/), accessed: Dec. 10, 2012.

<sup>135</sup> See "Kovesi: Dosarul FNI va fi finalizat foarte curând. Avem 400 de metri liniari de bibliorafturi" [Kovesi: The *FNI* case will be soon finalized. We have amassed over 400 linear meters of folders with evidence], *Mediafax*, August 24, 2012, available at: <http://www.mediafax.ro/social/kovesi-dosarul-fni-va-fi-finalizat-foarte-curand-avem-400-de-metri-liniari-de-bibliorafturi-9978216>, accessed: December 10, 2012.

and the reorganization of the funds. They not only illustrated a set of common problems, such as the inflation of asset values, the illegal investments in unlisted securities, the siphoning of money from the funds through fictitious operations, or the complicity of depositary banks and the market supervision authorities; but they manifested forms of contagion, both during the collapse when investors rushed to redeem their shares, and during the litigation, since the results of one trial were then used as examples/precedents in subsequent ones. Whereas, as Robert Hayden points out, such “waves of cases” are rather unsurprising for Anglo-American common law tradition that is based on precedent, the way *FNI/FNA* investors actively use decisions in previous cases or judicial strategies used successfully in cases tried in parallel to argue their own case, and, especially striking, the way they tried to transfer legal arguments among cases tried in different branches of the law, seem both surprising and candid to somebody aware of the discretionary power of Romanian courts in adopting strikingly opposed decisions in similar cases as long as they provided justifications based on legal codes.

While the disputes in the *FNI* case became quite notorious due to the numbers of defrauded investors and the large sums of money lost in the default, similar if not more profound changes were engendered by the *FNA* case. Concretely, the collapse of *FNI* - the biggest mutual fund operating in postsocialist Romania measured by the number of investors, the sums subscribed, or the growth of net asset values – in May 2000 also caused the suspension of the second largest mutual fund, operated by SOV Invest. The National Accumulation Fund [*FNA*] was manifesting similar problems: artificial inflation of net asset values, improper relations with its depositary bank, as well as overinvestment in unlisted securities. The subsequent investigations and the case opened by the public prosecutor gave retail investors the chance to

dispute with the securities exchange commission the assessment of losses, the reorganization of the fund, and their role in the new institutional arrangement.

As the collapsed mutual funds were not dissolved but rather suspended from operations, some of them (such as *SAFI* and *FNA*) were brought back to life in the “European” form of organization by asset managers and securities regulators, trying to avoid accusations of fraud. Such organizational transmogrifications have affected the course of some of the trials I observed and have reframed the entire dispute over values. If these institutional “zombies” were allowed to exist, maybe there was no fraud to begin with - just bad management, no moral guilt – just risk taking, no compensation owed to lay investors – just writing off losses? The contentions occasioned by the institutional reorganization of the fund, in the form of several contentious administrative cases initiated by *ANPI* against the securities commission, mutated into a dispute over the nature of mutual funds, the types of relationships between investors and asset managers such funds are supposed to have, as well as the role of state and EU regulations in facilitating the generation of value on the capital markets.

After having had a rather marginal role in the centralized economy of socialist societies, money and the diverse financial practices blooming in Eastern Europe during the 1990s have become important objects of scholarly investigation. Ethnographers of Eastern Europe have studied everyday financial practices by focusing on the declining role of currency (Woodruff 1999a, 1999b; Humphrey 2000; Rogers 2005), the emergence of pyramid schemes (Verdery 1995a, 1995b), the production of knowledge and capital (Verdery 1995b, 1996), and the reconfiguration of moral categories (Lemon 1998; Ries 2002; Mandel and Humphrey 2002) in everyday transactions involving cash and barter. Although more attentive to the details and diversity of social situations than their colleagues working with the tools of economics or

political science, anthropologists of Eastern Europe have so far shied away from engaging with the practices of financial elites.

Few anthropologists, and almost none working in Eastern Europe, have focused on more abstract notions of money, on the social construction of financial schemes, or on regulatory interventions aimed to govern the processes of monetary accumulation. The notable exceptions are Bill Maurer (1998, 2005, 2006), Annelise Riles (2000a, 2000b, 2001), Hirokazu Miazaky (2006) and Caitlyn Zaloom (2003, 2004, 2005) who focus primarily on the speculative practices of financial traders and the activities of regulatory bodies in developed financial systems. I address specifically these kinds of processes, taking them as an ideal context for the study of the concomitant reorganization of monetary practices and social values in postsocialism. The distinctive aspect of my approach is the focus on a specific instance where the regulatory dimensions of capitalism are filtered through the local disputes over value, ownership, and the allocation of risk by those directly affected by the regulations. By trying to come to terms with a particular historical context – Romania’s capitalist transformation during postsocialism and its subsequent integration into the European Union – this chapter shifts focus from the production of knowledge in the heart of high finance (such as the investment banks of London and New York analyzed by many engaged in the social studies of finance) to the negotiation of institutional forms, regulations, and values taking place in a rather peripheral setting being incorporated into the early 21<sup>st</sup> century capitalist system. Not only is it in such settings that the most elementary ideas related to contemporary forms of money are continuously called into question, but, as the recent crisis of the subprime financial products in the U.S.A. showed, even the most abstract financial practices build on and directly impact the transactions making up everyday life: buying

a house, saving for retirement, or investing in forms of money that promise not to be affected by inflation.

This chapter is based on interviews with the representatives of retail investors involved in the *FNI* and *FNA* cases and with non-affiliated investors attending the trials, on the observation of court sessions, spontaneous gatherings of investors outside the courtrooms or the courthouse, regular meetings at the headquarters of the associations of investors, numerous newspaper articles and TV materials about the two cases, the court decisions and motivations of sentences, witness statements, audit reports about the funds, and the report of a parliamentary commission mandated in 2000 to investigate the circumstances that led to the collapse of the two funds.

## **5.1 THE INITIAL CREATION AND REGULATION OF ROMANIAN MUTUAL FUNDS**

Fraud does not take place before the eruption of financial scandals but *after* and even *during* such scandals. [...] Financial scandals are generated to facilitate fraud. It is not fraud that generates scandals, but the reverse.

(M., interviewed in July 2008)

Investment funds were one of the most promising areas of the financial sector during the initial postsocialist period, both from the perspective of institutional creativity and from that of the return on investments. Created both as mutual funds and as risk funds, they constituted an altogether new repertoire of practice, distinct from the few opportunities for investing money under socialism. They were being perceived ambiguously by the public as somewhere between the stock exchange, the newly created commercial banks (themselves something different from

the sole state savings bank in communism to which lay investors had access), and the Ponzi schemes proliferating throughout Romania during the 1990s.

Mutual (or open-end) funds, the variety to which ventures such as *SAFI*, *FNI*, or *FNA* belonged before their default, are, according to a very basic definition, collective investment entities in which investors buy shares. Theoretically, they have several advantages over alternative investment vehicles and especially over risk (or closed-end) funds: they allow people to pool resources and make more efficient and less risky investments with the help of professional administrators; and they allow the purchase and redemption of shares (i.e., entry and exit) on an ongoing basis. Asset managers were supposed to implement the investments strategies endorsed by the investors, specialized brokerage companies were in charge of distributing the shares of funds, while the depositary banks were responsible for calculating and endorsing the publicly reported values of the shares on an ongoing basis, calculated as the value of all investments less financial obligations divided by number of shares in circulation. Money and other financial assets of the funds were supposed to be kept by the depositaries in order to safeguard investments, check on the acts of the asset manager, and, generally speaking, warrant the separation of the functions as well as the alignment of rights and responsibilities. While regulators (in Romania, the National Securities Commission [*Comisia Națională a Valorilor Mobiliare* {*CNVM*}]) combine the supervision of administrators, depositaries, and distributors of funds, with the continuous enhancement of existing regulations, a key element of its supervisory mission is to make sure that the clear separation of functions is maintained.

Mutual funds contrast sharply with the closed-end varieties of funds, characterized by stricter entry/exit rules, higher risk profiles, and a higher sophistication of investors. Whereas in most Western countries mutual funds would be considered relatively safe financial ventures with

a passive portfolio administration strategy, in Romania they became the epitome of financial hazard after several notorious collapses that washed away the life-savings of hundreds of thousands of lay investors. While public perceptions of the funds departed considerably from the institutional varieties adopted in Romania as well as from the Western models considered in the process, the promise of enrichment through financial speculation was implicit in such financial practices from the beginning.

As in most of the former socialist countries of CEE, investment funds were meant, at least by the Romanian architects of the economic reform, to support the creation and growth of the capital market, to channel savings into investments for newly privatized companies, to give an opportunity to retail investors to diversify their portfolios, as well as to mediate access to a promising arena of value creation for those having only a vague knowledge of the stock exchange (Vosganian 1999; Anghelache 2000).<sup>136</sup> As the accounts from capital market actors reported in chapter three show, some of the weaknesses of the Romanian investment fund industry were structurally integrated in its initial architecture. Scholars familiar with the Romanian capital market (Vosganian 1999; Markiewicz 2007) or investment professionals keeping track of the events generally consider that the creation of the first mutual funds before a supervisory agency (an independent securities commission) was in place, and prior to the development of an exchange for the quoting of transferable securities, was an institutional mistake that invited fraudulent practices.

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<sup>136</sup> See interview with M., the owner/editor of *Bursa*, in July 2008 presented extensively in chapter three. Also see reports by USAID in the capital market reforms overseen by the American agency in Romania by Fox (2000) and Lieberson et al (1998).

While the history of the Private Property Funds<sup>137</sup> (currently reorganized as Societies of Financial Investments) and their role as institutional vehicles facilitating the process of privatization at the beginning of the 1990s has been briefly presented in chapter three, the convoluted history of mutual funds and privately initiated closed-end funds is even more illustrative specifically the continued dissonance between the values, ends, and means of the postsocialist capitalism built in Romania. Mutual funds were created after 1993 when a special government ordinance was passed to regulate the domain. As already shown in chapter three, the creation of the stock exchange and the other institutions of the capital market was delayed for at least a couple of years, such institutional plans being subsumed by the imperatives of the privatization process. The funds created initially invested most of their portfolio in letters of trade, commercial bills, warrants, and loans extended to companies connected with the initiators of the asset management companies, all of uncertain worth and circulating in an economic space that lacked basic valuation procedures. Furthermore, the administrators of the funds were using an evaluation formula that added to the current value of financial assets the present value of discounted cash flows. The inflation of net asset values facilitated by the technicalities of the net present value technique overlapped with and, some would argue, served as an alibi for fraudulent reporting and artificial inflation of net asset values, seeming to take the few mutual funds operating at the time to growth levels impossible to maintain in the long term.

The securities exchange commission that was created in 1995 decided to catch up with the development of the quasi-informal markets in securities and started by imposing stricter

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<sup>137</sup> These entities underwent several episodes of portfolio consolidation and restructuring and of institutional reorganization. They are currently classified as a particular type of closed-end fund regulated nationally under the category of “non-UCITS” [where UCITS stands for “undertakings for collective investment in transferable securities,” the EU coined name for well regulated investment funds] and not covered by the pan-European regulation, illustrating one of the areas of “creativity” for the Romanian securities regulator. See the presentation page for UCITS funds by the European Commission: [http://ec.europa.eu/internal\\_market/investment/index\\_en.htm](http://ec.europa.eu/internal_market/investment/index_en.htm), and of non-harmonized funds: [http://ec.europa.eu/internal\\_market/investment/non\\_harmonised\\_funds/index\\_en.htm](http://ec.europa.eu/internal_market/investment/non_harmonised_funds/index_en.htm).

regulations for the mutual funds. Pressed by the USAID experts that were advising the commission on different areas of securities registering, listing, transacting, transferring, and clearing,<sup>138</sup> *CNVM* adopted regulations regarding the stricter classification of the securities in which mutual funds were allowed to invest, and newly approved techniques for calculation of net asset values by depositaries/asset managers. Massive requests to redeem shares followed by long suspensions of the redemption process caused the near-collapse of several of the funds then in operation. The most notorious collapse at the time, Businessmen's Mutual Fund (*FMOA*), not only ended in significant loss of money by most of the shareholders but was transformed several times and stripped of its most valuable assets by dubious administrators, before being turned into a closed-end fund that operated under special provisions by the securities regulator, it was finally chartered as a non-UCITS fund and listed on the Bucharest Stock Exchange.<sup>139</sup>

The event is significant for the dramatic decline in the number of investors and in the value of net assets at the time, and is one of the notorious financial scandals constantly given as an example and used to explain the lack of trust in investment funds and asset managers. While many investors<sup>140</sup> and financial analysts criticize the way the Romanian securities commission managed the regulatory change and the implementation of the new rules by mutual funds, others believe the circle of responsibility was much larger. As M. remembers, the regulatory change offered an alibi and practical solution for most of the mutual funds that were confronted with the continued overvaluation of assets before 1996.<sup>141</sup> Asset managers of the most important mutual

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<sup>138</sup> See again the involvement of USAID in creating the Romanian capital market presented in chapter three and the critical comments made by M. about the main actors of the local market.

<sup>139</sup> A brief presentation of the fund, now called *Fondul Oamenilor de Afaceri [FOA]* (Businessmen's Fund) of its asset manager can be read at: <http://www.bvb.ro/ListedCompanies/SecurityDetail.aspx?s=XFOA>, as well as on its dedicated page: <http://www.foa.ro/>.

<sup>140</sup> N., the president of ANPI, whose actions were introduced in chapters four and five, has come back repeatedly to this episode and its consequences in the numerous interviews we did together during my field research.

<sup>141</sup> See recorded interview with M. in July 2008, already referenced in chapter three.

funds at the time (*FMOA*, *Certinvest*, and Romanian Investment Fund) were afraid they would have to adjust their net asset values anyway once the public became aware of their misdeeds. Their interests collided with those of the managers of recently created funds (among which was *FNI*, initiated in 1995) who wanted to even out the odds of the competition for public subscriptions with the older generation of funds. Thus, the professional association of asset managers (*Uniunea Națională a Organismelor de Plasament Colectiv [UNOPC]*) endorsed the initiative of the securities commission to adopt a new technique for the assessment of net asset values, in March 1996. *FMOA*, the largest mutual fund in operation concentrating over 80% of the assets under management by all mutual funds at the time, lost over 50% of net asset values in successive reductions of the stated values, and the other important funds lost between 30 to 40% of their value, but this affected the many retail investors rather than the asset managers. The latter took the opportunity to blame the decrease in value on *CNVM*'s regulations, being thus able to hide their fraudulent inflation of stated values. Taking advantage of the inadequate supervision of the market for mutual funds by the securities commission before the regulatory change, many asset managers had made dubious investments in worthless securities and had overstated the values of their fund shares. Regulatory intervention thus became a good alibi for the subsequent loss in value of their shares. Even more, M. argues, for many the regulatory readjustment was an opportunity to siphon off even more funds as they assumed a more severe readjustment of the net asset values than was the case. A lot of this talk about readjustments was based on rumors and speculation, but M. was well placed to have spotted some foul-play. As he confessed:

Fraud does not take place before the eruption of financial scandals but *after* and even *during* such scandals. *Believe me, this is genuine “know-how”!* Financial scandals are generated to facilitate fraud. It is not fraud that generates scandals, but the reverse.

The way the securities regulator had managed the scandal triggered the reaction of many retail investors who protested against the manipulation of the situation by the asset managers and the infringement of their rights of exit granted by the securities law. N., for instance, complained during many of our discussions that the institutional transformations of *FMOA*, where he had invested and subsequently lost money, changes that were overseen by the Romanian securities commission, had taken a lot of attention, effort, and expenses to monitor. However, the fund was suspended for rather long periods of time. The new asset manager was allowed to change the prospectus, the investment objectives, and procedures for the redeeming of shares by retail investors after manipulating a minority of vocal investors at the general meetings, blocking the involvement of better represented investors such as *ANPI* members in the organization and supervision of the general meetings, and finally allowing the successive transformation of *SAFI*, from a mutual fund to risk a fund to a non-UCITS fund, for which less than 20% of the active investors have expressed support.<sup>142</sup> While suspended for most of the period during which it was chartered as a mutual fund, *SAFI/FOA* was listed on the exchange only after being transformed into a closed-end fund. N. describes an experience of “entrapment” felt by many of the lay investors: they were not able to redeem their shares for a long period, and when finally able to

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<sup>142</sup> See Mihai Nicolaevici, 2005, “Elaborat de ANPI în sprijinul investitorilor FOA pentru Adunarea Generala a investitorilor FOA din 18.05.2005,” *The National Association for Investor Protection*, article available at: [http://www.investitor.com/anpi/2005/material\\_informativ\\_FOA\\_SAFI\\_18mai2005.htm](http://www.investitor.com/anpi/2005/material_informativ_FOA_SAFI_18mai2005.htm), accessed: December 10, 2012; Nicolaevici, Mihai, 2007, 11 ani de "administrare" suplimentară SAFI, Bursa, May 7, 2007, available at: [http://www.bursa.ro/piata-de-capital/11-ani-de-administrare-suplimentara-safi9693&articol=9693&editie\\_precedenta=2007-05-9.html](http://www.bursa.ro/piata-de-capital/11-ani-de-administrare-suplimentara-safi9693&articol=9693&editie_precedenta=2007-05-9.html), accessed September 1, 2012; and Neacșu, Neli, 2007, SAFI Invest precizează, May 10, 2007, available at: [http://www.bursa.ro/piata-de-capital/safi-invest-precizeaza-9888&articol=9888&editie\\_precedenta=2007-05-17.html](http://www.bursa.ro/piata-de-capital/safi-invest-precizeaza-9888&articol=9888&editie_precedenta=2007-05-17.html), accessed: September 1, 2012; for a history of the disputes over the institutional trajectory of *SAFI/FOA* among N. and *ANPI*, the Romanian securities commission, and the asset manager of the fund.

sell them, they were no longer able to recover their losses. Staying in the fund after its reorganization was taken by the regulator and the courts as a waiver of the right to demand compensation for the previous declines in value. *ANPI* continued its attempts to liquidate the fund, tried unsuccessfully to organize a general meeting of the investors, and brought to court both the Romanian securities commission (attempting to show their successive regulations and administrative acts have purposely favored the asset managers) and the manager of *SAFI/FOA* (trying to uncover the frauds and prove them responsible). All their efforts have been unsuccessful, at least up to early 2013. Retail investors have had to accept the idea that what they saw as fraud was market losses, and what they took as foul play was excessive risk-taking.

## **5.2 THE RENEWED “ILLUSION” OF THE CAPITAL MARKET**

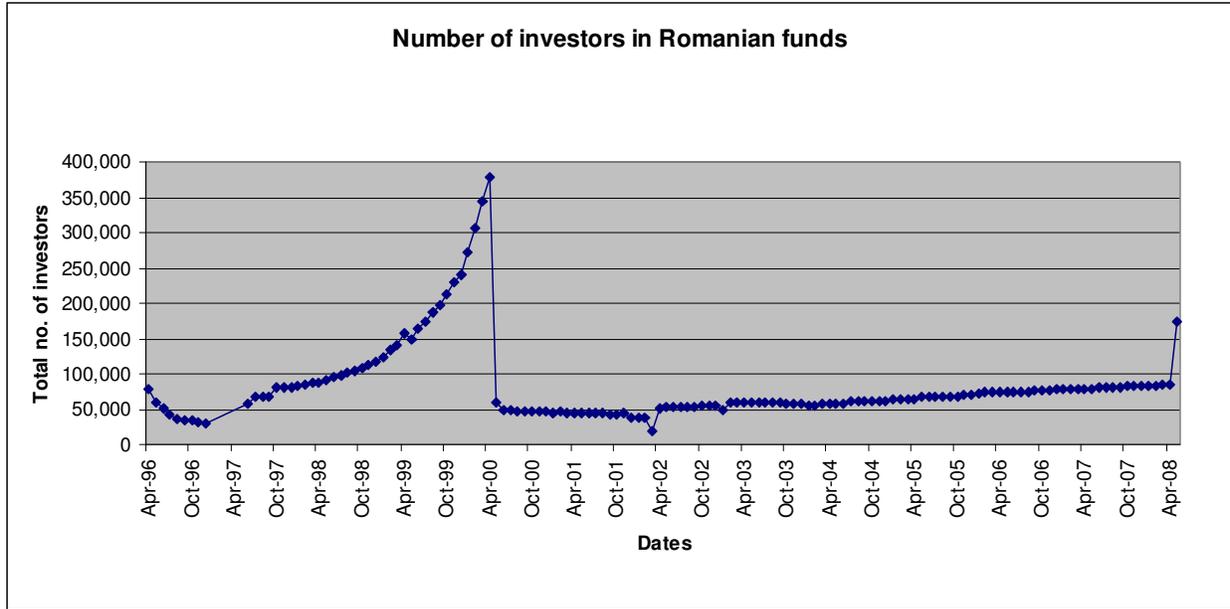
The change in political regime and the energetic intervention of USAID after 1996 gave a new impetus to the capital market. Although the stock exchange (*BVB*) and the over the counter market (*RASDAQ*) had some notable performances in the first years of transactions, the really spectacular growth rates were those of the mutual funds. Particularly successful seemed to be the National Investment Fund and the National Accumulation Fund – both initiated and administered by the same asset management company. While the growth rates displayed by the funds were impressive for several years, fuelling the dreams of many lay investors for financial affluence, mutual funds were subject to some of the most notorious collapses in postsocialist Romania, due to a combination of poor regulation, weak enforcement of rules, and fraudulent behavior of fund managers. The National Investment Fund collapsed right before the general elections of 2000, leaving over three hundred thousand investors without their life savings and retirement benefits.

The subsequent disputes between investors, the securities regulator, financial institutions involved in the scandal, politicians allegedly funded by money siphoned from the fund, and representatives of the judiciary trying to hold accountable those responsible for the collapse of *FNI* made headlines and triggered the interest of the public for years in a row, making the case of *FNA* exceptionally interesting for understanding the perspective of the substantive values permeating the disputes over accounts, responsibilities, and compensations.

The spectacular collapse of *FNI* and the public scandals that followed precipitated the fall of *FNA*, the second fund initiated by SOV Invest. The Romanian securities commission suspended the license of the asset manager, and thus the redemption of shares for both of the funds became impossible in spite of the massive requests by retail investors. Their attempts were further blocked by the repeated suspension of operations of the mutual funds ordered by the *CNVM* and, as *ANPI* leaders argue, by the inability or even unwillingness of the securities commission to allow the mass of investors to decide the fate of the funds in their general meetings. Public nervousness prompted the redeeming of shares in the rest of the mutual funds by many retail investors, the drastic reduction of the overall number of investment fund shareholders from over 400,000 to less than 40,000 in one year, and the spread of the crisis of confidence to the banking sector.<sup>143</sup>

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<sup>143</sup> Rumors led to massive withdrawals from the Romanian Commercial Bank (*BCR*), the largest state bank in the system, which almost led to the precipitate collapse of the bank in autumn 2000. The archival collection of the most important daily and weekly newspapers of the time (*Evenimentul zilei*, *Adevărul*, *Curentul*, *Capital*, *Bursa*) accurately describes both the series of events that led to the near collapse of the bank and the panic of the mass of lay investors.



**Figure 2: Number of investors in Romanian mutual funds between 1996 and 2008.**<sup>144</sup>

The situation of *FNA* generated increasing frustration among retail investors. What had been created as a long-term lower risk investment vehicle and had generally kept a lower profile than *FNI* was now dysfunctional without an asset manager, a depositary bank, or at least somebody able to safeguard the fund archive and to preserve the portfolio of the fund. What investors were not aware of was that *FNA* had been caught in the same web of fictitious transactions its masterminds had spun for *FNI* in order to give the transfer of money from lay people a more or less legitimate aspect.

As public prosecutors were able to reconstitute during the criminal investigation process, *FNA* was initiated in the last months of 1998 and began operations in January 1999.<sup>145</sup> Ioana

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<sup>144</sup> Data on the investment fund industry in Romania from 1996, the year when the Romanian National Securities Commission was created, to 2008, a year after Romania's accession to the European Union, was generously provided by the Romanian Association of Asset Managers (RAAM). The data illustrate the impact of the collapse of *FNI/FNA* on the local mutual fund industry in 2000, as well as its stagnation after that crash. I used only brief procedures on the raw data before producing the graphic in the figure above.

Maria Vlas, at least on paper, head of the asset manager for the fund, had attended a business conference dedicated to pension funds and came up with the idea of creating a mutual fund destined to facilitate the “accumulation” of money for retirement.<sup>146</sup> Since at the time there was no alternative to the grossly underfunded state pension system, the idea caught the public’s attention and *FNA* gathered almost fourteen thousand “long-term investors” in less than fifteen months of operations.

The fund activities were legitimate for the first four months, that is until SOV, the mastermind of the entire affair,<sup>147</sup> forced the executives of the asset management company to purchase shares of former socialist companies that were privatized but not yet listed on the exchange. The lack of an organized market made such securities extremely risky ventures for which the valuation techniques were rather unsound. Nobody was really surprised to find out that such shares had been purchased at inflated prices as a way to siphon money out of the mutual fund. The accounting experts appointed by the public prosecutors have documented several such dubious transactions: the acquisition of overvalued shares of different unlisted companies from real or fictitious investors, the successive overvaluation of such shares in order to artificially increase the net asset values, the sale of shares in the portfolio of the fund to fictitious private

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<sup>145</sup> See Ordinance no. 1452/C/2011 of August 3, 2011 issued by the General Prosecutor of Romania regarding the reopening of the investigation of Sorin Ovidiu Vintu and others regarding money laundering and complicity to connivance, available at: [http://zvj.ro/192512-ordonanta%201\\_.pdf](http://zvj.ro/192512-ordonanta%201_.pdf), as well as the Penal sentence no. 670 of June 6, 2008, Case file no. 4883/3/2007, The First Penal Section of Bucharest Tribunal.

<sup>146</sup> See Medin Robănescu, 2000, *Adevărul despre FNI: Povestea unei escrocherii sofisticate [My Truth about FNI: The Story of a Sophisticated Scam]*, Bucharest: RMX, 2000, ISBN: 973-99894-0-3, a book about the *FNI* and *FNA* frauds written by somebody who occupied an executive position within Gelsor before the scandal of 2000, for a better contextualization of the links between the two funds managed by SOV Invest and how *FNA* was used as „an additional cash-desk” for *FNI*.

<sup>147</sup> See Entry of appearance by Ioana Maria Vlas on March 5, 2008, Case file no. 4883/3/2007, First Penal Section, Bucharest Tribunal, as well as interview given by Ioana Maria Vlas soon after the verdict in the retrial of the *FNA* case was reached, published in Raluca Stepanov, 2008, „IOANA MARIA VLAS: „E frustrant să vezi că Vintu e mai presus de lege” [IOANA MARIA VLAS: It is frustrating to realize that Vintu is above the law], *Evenimentul zilei*, June 10, 2008, available at: <http://www.evz.ro/detalii/stiri/ioana-maria-vlas-e-frustrant-sa-vezi-ca-vintu-e-mai-presus-de-lege-807154.html>, accessed: December 10, 2012.

investors without cashing in the proceeds from the transaction, the signing of repo transactions between SOV Invest (the asset management company) and Gelsor (the main company owned by SOV) in the name of and at a loss for *FNA*, the unjustified transfer of funds from *FNA* to *FNI*, and the intentional deceit of investors by artificially increasing the level of net asset values reported weekly to the securities commission and the public. All these accusations were brought against Ioana Maria Vlas who was found guilty of all the charges and sentenced to eight years in prison.<sup>148</sup>

In fact, a more complicated scheme was used to move the money to the real or fictitious pawns of SOV. The trajectory of *Industrialexport* shares, one of the unlisted former state companies, in and out of the *FNA* portfolio is telling. Thus, SOV Invest, following Ioana Maria Vlas's disposition – given, as she confessed, after being pressed by Nicolae Popa (president of Gelsor, the front man Vîntu used in this case) and even by Vîntu himself – that *Industrialexport* shares were purchased at inflated values from a fictitious private investor. After having been successively overvalued, *Industrialexport* shares were finally sold to *Banca Agricolă*, a state bank at the time whose president SOV had been „persuaded” to make various investments in the *SOV Invest – FNI – FNA* scheme. However, these transactions did not generate any additional real value for *FNA* investors. Ioana Maria Vlas made a transfer of money from the accounts of *FNA* to those of *FNI*, an illegal action both because there was no real economic transaction to justify it and because such transfers were not allowed between mutual funds administered by the same asset manager. These funds were then used to pay for the *FNI* titles of participation redeemed by *Banca Agricolă*. The bank had previously subscribed to *FNI* titles of investment and had benefitted from the artificial increase in *FNI* net asset values made possible by the

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<sup>148</sup> See Penal sentence no. 670 of June 6, 2008, Case file no. 4883/3/2007, The First Penal Section of Bucharest Tribunal, pp. 21-23.

fraudulent reporting by SOV Invest and Ioana Maria Vlas, so that *FNA* funds were actually used by *Banca Agricolă* to pay for the overvalued shares purchased from *FNA*. In the end, money subscribed by lay investors and recycled through the accounts of *FNI – FNA - Banca Agricolă* ended up in the accounts of the funds, creating the illusion of spectacular growth when, in reality, there was always, at the most, only the money paid by simple people to take part in this grand pyramid scheme.<sup>149</sup> *Banca Agricolă* was left with a portfolio of grossly overvalued shares that ended up in the state portfolio of underperforming loans when it finally went bankrupt.

*Banca Agricolă* and *CEC* (the state savings bank) were used to further maintain the illusion. Using his negotiation skills and political connections in the Romanian government and the secret services, Vîntu had the presidents of the two banks invest in shares of SOV Invest (a worthless asset after SOV Invest went bankrupt), subscribe titles of investment in the *FNI* and *FNA* (only part of which were redeemed before the funds collapsed), and purchase worthless assets from the portfolio of the funds. Such money was subsequently siphoned from the mutual funds by intermediaries used by Vîntu, mainly during the period from December 1999 to March 2000 (two months before the funds collapsed), during which time Ioana Maria Vlas, on paper the person responsible for SOV Invest, took a medical leave outside the country. As she later confessed, she wanted to resign but she was persuaded by Vîntu not to do so as it would break the illusion and collapse the funds. Her gullibility or, maybe, her guilty complicity, allowed Vîntu and his pawns to defraud the funds and have her take all the blame after 2000.<sup>150</sup>

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<sup>149</sup> See Ordinance no. 1452/C/2011 of August 3, 2011 issued by the General Prosecutor of Romania regarding the reopening of the investigation of Sorin Ovidiu Vîntu and others regarding money laundering and complicity to connivance, available at: <http://zvj.ro/192512-ordonanta%201.pdf>, as well as the Indictment Act of September 24, 2012, issued by the Prosecutor's Office attached to the High Court of Cassation and Justice, <http://admin.ziarulring.com/images/file/rechizitoriu%20SOV-FNI%20pdf.pdf>.

<sup>150</sup> See Entry of appearance by Ioana Maria Vlas on March 5, 2008, Case file no. 4883/3/2007, First Penal Section, The Bucharest Tribunal.

The revelations made by the public prosecutor took many by surprise. *FNA* was created as a long term fund, with monthly subscriptions and more difficult redemption procedures. Although required by law to report to *CNVM* and publish in the media the weekly levels of the net asset values, and in spite of the use of the *CEC* logo alongside that of *FNA*<sup>151</sup> that may well have boosted public confidence in the funds, *FNA* was a rather low profile fund when contrasted with the lack of advertising compared with the aggressive TV and newspaper ads for *FNI*.<sup>152</sup>

Investors and the public eventually came to realize that the lower profile of *FNA* was a key ingredient in the fraudulent scheme devised by Vintu and his aids. By immobilizing resources in the long term, *FNA* was supposed to act as a cash pool for *FNI* and thus the illegal operations of its initiators. Having one mutual fund outside of the turmoil caused by the inevitable collapse of *FNI* would have been a great advantage, the asset manager thought, as it would serve as an alternative institutional vehicle and source of capital meant to cover the precipitous redemptions from the better known fund. Ioana Maria Vlas confessed in front of the court to having realized that *FNA* was progressively taken out of her hands and used to finance the fraudulent operations connected to *FNI* but said she was afraid any radical measure, such as unmasking the overvaluation *Industrialexport* shares that were also part of *FNI* asset portfolio, for fear of provoking the simultaneous collapse of *FNI* for which she was also officially

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<sup>151</sup> See the license contract signed by SOV Invest and CEC analyzed in the previous chapter according to which the asset manager could use the logo of *CEC Valori Mobiliare* - a brokerage company owned by *CEC* and used to distribute titles of investment in its two mutual funds, in public materials and advertizing about *FNI* and *FNA*.

<sup>152</sup> See the TV ad for *FNI* at: <http://www.youtube.com/watch?v=1Bt4aXhLi6k>. As described in the previous chapter, the text of the advertisement was “Dormi liniștit, FNI veghează pentru tine!” [Sleep tight, *FNI* is looking after your money]. Given *CEC*’s involvement in the *FNI* case and the numerous forms in which it entertained the illusion of the successful fund, the reference in *FNI*’s advertisement to one of the first TV commercials for *CEC* during the socialist period - “Ban economisit, somn liniștit!” [Saved money, tight sleep!], is both cunning and ironic. See the socialist TV ad for *CEC* at: <http://www.youtube.com/watch?v=4INFFbkgUaA>.

responsible.<sup>153</sup> Her hopes of redressing the situation in the long run imploded just two months after her return from sick leave, a collapse she associates with Vîntu and his aides who had already stripped the funds of most of their liquidities.

While most of the lay investors were probably in varying states of stupefaction after the funds collapsed, N. soon realized he had to get actively involved in the resolution of the situation. By that time, his experience as an “entrapped” investor at *SAFI/FOA*, unable to prove the fraud at that fund, to litigate, or to recoup what was left after the default of 1996 made him wary of the possible complicity between *CNVM* and the asset manager. The fact that the securities commission did not appoint a temporary administrator and did not have the investors organize a general meeting in which to decide the fate of the fund - the legitimate action according to his reading of mutual fund regulations in effect at that time – furthered his anxieties. He got *ANPI*<sup>154</sup> involved in an attempt to organize a general meeting of *FNA* investors<sup>155</sup> and petitioned the securities commission to facilitate a desired resolution to the situation.

While his attempts to organize the investors were not really making progress, N. found out that a recently created association – *Asociația Națională a Investitorilor – Fondul Național de Acumulare (ANI-FNA)* [National Association of Investors – National Accumulation Fund] – was claiming to represent all *FNA* investors and had started taking measures in their name. To his surprise, *ANI-FNA* was led by the former driver of the director of *CENTROCOOP*, the cooperative that owned the majority of *SOV Invest* shares at the time the funds defaulted and

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<sup>153</sup> See Entry of appearance by Ioana Maria Vlas on March 5, 2008, Case file no. 4883/3/2007, First Penal Section, The Bucharest Tribunal.

<sup>154</sup> As he confessed to me, N. had not invested himself in *FNA* but many of the *ANPI* members had done so and were now demanding that he represents their interests in a more direct way.

<sup>155</sup> See „*ANPI - De ce e necesară Adunarea generală a investitorilor la FNI și FNA*” [ANPI – The reasons why organizing the General Meeting of FNI and FNA investors is necessary], and “*ANPI - Comunicat în atenția investitorilor FNA*” [ANPI - Communique for the attention of FNA investors], documents published on November 2000 on the website of *ANPI* and saved on my personal computer in the summer of 2005.

whose representatives on the board of the asset manager had an interest in hiding any acts that would make them responsible in front of the law. Furthermore, *CNVM* seemed to collude with *ANI-FNA* and endorsed its measures, which included the organization of the general meeting of *FNA* investors as well as the contracting of an audit report on the fund from Arthur Andersen which was to be paid with residual money immobilized in *FNA/SOV* Invest accounts.<sup>156</sup> N. thought that *ANI-FNA*'s actions were illegal. As members of *FNA*'s Council of Trustees were suspended by the securities commission after May 2000 and a general meeting of investors had not been organized yet, *ANI-FNA* had no legal mandate to decide in the name of *FNA* investors.<sup>157</sup> In spite of his energetic protests and threats of denunciations made to *CNVM*, *ANI-FNA* continued to make bold claims about *FNA* investors and to be involved, with the tacit acceptance of the securities regulator and the courts, in all subsequent legal actions.

### **5.3 CONTRACTUAL FORM(S) AND METAPRAGMATIC FUNCTION/DISCOURSES IN THE FNI TRIALS**

The *FNI* case generated a number of overlapping disputes in commercial and criminal courts and drawing on different branches of law. The criminal/penal case was brought to court by the Prosecutor's Office within the High Court of Cassation and Justice and started in 2003. Over

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<sup>156</sup> N. filed a protest to the Romanian securities commission and sent a request for the audit report to Arthur Andersen claiming that all investors should be aware of the conclusions of the audit report all the more so as it has been paid by residual funds from *FNA* accounts. See "ANPI - Adresă către firma Arthur Andersen în legătură cu auditul FNI" [ANPI - Memo to Arthur Andersen regarding the audit report in the *FNI* case] and "ANPI - Către CNVM" [Memo to *CNVM*], documents published on November 2000 on the website of *ANPI* and saved on my personal computer in the summer of 2005.

<sup>157</sup> See "ANPI - Comunicat în atenția investitorilor *FNA*" [ANPI - Communique for the attention of *FNA* investors], document published on November 2000 on the website of *ANPI* and saved on my personal computer in the summer of 2005.

120,000 retail investors in the fund had filed claims to the police in May and June 2000, soon after *FNI* suspended its operations and *CNVM* canceled the license to its asset management company. Given the spectacularly high number of investors affected and presumed to be among the claimants in the case, the amount of financial stakes assessed by auditors appointed by the court, as well the allegations linking many politicians to *SOV*, the penal case received constant attention from the mass media and has, at times, even made the headlines of central newspapers. Going through a trial, two forms of appeal, a retrial, and another two appeals at superior courts before finally producing a supposedly final judgment,<sup>158</sup> the case is reportedly being reopened in 2013 in order to establish Vîntu's involvement in the scandal and bring him to trial for his alleged actions and responsibilities towards *FNI/FNA*.<sup>159</sup>

The criminal investigation brought by the prosecutors and then the investigations by the court-appointed accounting experts established that massive fraud had taken place and that the real value of the *FNI* shares remaining after May 2000 was slightly smaller than the 103,720 *lei* that had been the last reported level of the net asset values. These values had been artificially increased through the underreporting of the number of investors in *FNI* shares, through the overvaluation of the unlisted securities making up the most consistent part of the asset portfolio of the fund, and through the siphoning of funds by people acting at the command and in the name of Vîntu, especially during the final six months of operations. The absence of a genuine depository for the fund (*Banca Agricolă* had officially stopped serving in that capacity at the end of 1998 but had never actually performed its depository obligations) or the collusion of interests

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<sup>158</sup> See Penal sentence no. 423 of March 20, 2007, Case file no. 24632/3/2006, The Second Penal Section of The Bucharest Tribunal.

<sup>159</sup> See Ordinance no. 1452/C/2011 of August 3, 2011 issued by the General Prosecutor of Romania regarding the reopening of the investigation of Sorin Ovidiu Vîntu and others regarding money laundering and complicity to connivance, p. 47, available at: <http://zvj.ro/192512-ordonanta%201.pdf>.

with the distributor of funds (*Gelsor*, the distributor for the fund since 1997 had been founded and was operated by people similarly close to Vîntu) helped entertain the fictitious reporting and the illusory character of *FNI* money.

An example of the spiraling web of transactions that facilitated the siphoning of value from *FNI* was provided by the prosecutors in the case and accepted by the judges of the Bucharest Tribunal.<sup>160</sup> *SOV Invest* had opened a discretionary account for *FNI* with *Gelsor Securities* and had deposited in the account various assets including previously purchased *Industrialexport* shares. While *Gelsor* was allowed to trade discretionarily in the name of *FNI*, they actually sold the securities in their own name to *Banca Agricolă*, a bad business for the state owned bank as *Industrialexport* were grossly overvalued shares of an unlisted company, through another securities company operating on the local capital market. This was in practice an informal short selling strategy, done through another intermediary in order to disguise the character of the transaction. Proceedings from the sale were later used to buy titles of participation in *FNI* – with money that was legally due to *FNI* – and to redeem those titles through fictitious individuals at a spectacular profit. All this was made possible by the illegal inflation of *FNI* net asset values, a phenomenon that was itself made possible by the defective performance of the its fund distributor duties by *Gelsor*. Circular logic, practices based on institutional self-reference, and forms of negative performativity facilitated the fraudulent accumulation of money by the *Gelsor* initiators.

The inflation of values was also made possible by the “quick valuation of assets” practices of the *FNI* portfolio, tolerated by *CNVM* officials.<sup>161</sup> Purchased at inflated prices and in

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<sup>160</sup> See Penal sentence no. 423 of March 20, 2007, Case file no. 24632/3/2006, The Second Penal Section of Bucharest Tribunal, p. 13.

<sup>161</sup> *Ibid.*, p. 56.

great amounts from fictitious or affiliated individual investors, shares in unlisted companies such as *Industrialexport*, making up at times more than 70% of the asset portfolio of *FNI*, could only be revalued once traded. Dealing with unlisted securities without a regular market, SOV Invest officials would sell small packets of shares at inflated prices. Many of these were fictitious operations as the money was not really cashed in; then these high prices were used as evaluative “hooks” (Guyer 2004b). The entire portfolio of *FNI* was subsequently and periodically revalued, indexing such fictitious transactions that facilitated the creation of illusory value.

“Quick valuation” practices based on such overpriced transactions, and the planned or accidental redemption of shares during the months previous to the collapse of the fund, occasioned four categories of investors based on their investment history and account balance situation: those who invested but did not redeem any of their shares, those who redeemed some shares but got less than their total investment, those who partially redeemed shares but got back much more than they invested due to fictitious growth of asset values, and those who redeemed all their shares, and thus had impressive gains.<sup>162</sup> This classification generated a nuanced discussion (a sort of a metalinguistic discourse about money [Silverstein 1993]) about legitimate or illegitimate gains during the civil trials. There were many who argued that investors should be compensated only to the amount of the real values of the *FNI* shares as decided by the accounting experts commissioned by the court. Following such logic, those who had gotten illegitimate benefits due to the inflation of values should give back the money to compensate the wider collectivity of investors. This solution, however, was made impossible by the difficulties of administering such a decision, by the potential unrest of the many who would be affected by this measure, as well as by the constant demands of retail investors to be reimbursed to the last

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<sup>162</sup> Ibid., p. 8.

stated net asset value of the fund. The final decision of the court represented a compromise between state budget constraints and investor demands, which were eventually allocated only the invested sums less the redemptions made in the meantime, all indexed with the inflation rate for the period since the collapse of *FNI*.<sup>163</sup>

Even more important than the legal categorization of investors effectuated by the court were the numerous moral evaluations and identity assessments performed by the association leaders, the lawyers representing investors, or the crowds attending the meetings of civic associations. Hearing the particular stories of retail investors applying for *ANPI* membership or examining the graphic artifacts each of the claimants possessed, N. was able to evaluate their identity and condition. Thus, frequent purchases of shares and large total investments indexed not only the material affluence of the claimant but also a certain level of knowledge and professional achievement, since not quite everybody was capable of taking such large risks in Romania at that time. Complete or significant redemption of shares in the months just before the collapse were a sign of corruption and inside information given their proximity and likeness with Vîntu and his intermediaries. Those who had only redeemed insignificant amounts were often sarcastically characterized as having been greedy and dumb, since they did not exit the fund while they could. An investor who made subscriptions on multiple cards was often suspected of hiding from her spouse or the rest of the family. By contrast, a person who bought shares for several relatives was usually envied for having a good family life or for trying to assure the

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<sup>163</sup> Investors did not actually get the money as a Government Ordinance issued in 2011 protected the liable state institutions (*CNVM* and *AVAS*) from investor claims by making such payments of compensations contingent on the inclusion of specific chapters/resources in the state approved budget for such institutions. See Government Ordinance no. 4 / 2011 regarding the reorganization of the Authority for State Assets Recovery and the procedures of forced execution for public institutions subjects of writs of execution, the Official Bulletin of Romania no. 96, Part I, of February 4, 2011, available at: <http://www.euroavocatura.ro/print2.php?print2=lege&idItem=856>.

future of her kids. Account balance statements as the one reproduced below illustrate well the rich semiotic resources concentrated in such graphic artifacts.

Nr. crt	Data	Cod agent	Nr. unit. cumpărate	Nr. unit. răscumpărate	Valoarea la zi a Unității	Sold unit.	Nr. cerere depunere	Nr. cerere răscumpărare	Semnătura și ștampila agentului
1.	22.03.99	003	4	-	283.150	4	9783	-	F.N.I. 40*104
2.	20.04.99	003	6	-	296.300	10	10222	-	F.N.I. 40*104
3.	22.04.99	003	5	-	322.500	15	10367	-	F.N.I. 40*104
4.	20.05.99	003	5	-	328.800	20	10414	-	F.N.I. 40*104
5.	12.05.99	001	199	-	338.600	199	10804	-	F.N.I. 40*104
6.	21.05.99	003	1	-	347.650	200	11000	-	F.N.I. 40*104
7.	2.08.99	003	-	4	466.200	196	-	12677	F.N.I. 40*104
8.	10.09.99	002	10	-	517.400	206	13620	-	F.N.I. 40*00
9.	1.10.99	002	17	-	548.000	223	14196	-	F.N.I. 40*10
10.	20.10.99	002	2	-	579.800	225	14677	-	F.N.I. 40*00
<b>Splitare autorizată TNVM</b>									
<b>Decizia nr. 31367/14.07.98</b>					59.140	2250	25	10.1999	F.N.I. 40*00
11.	15.11.99	002	280	-	60.330	2530	15257	-	F.N.I. 40*00
12.	15.11.99	002	indep	600	62.700	1930	indep	15582	F.N.I. 40*00
12.	16.11.99	107	plata	600	62.700	1.930	-	15582	F.N.I. 40*10
13.	22.11.99	103	-	290	63.970	1640	-	15841	F.N.I. 40*10
14.	24.11.99	003	5	-	63.970	1645	15934	-	F.N.I. 40*10
15.	27.01.00	002	45	-	75.200	1690	-	-	1600.07.1.N.
16.	5.04.00	003	10	-	92480	1700	21409	-	F.N.I. 40*10
17.	22.05.00	002	indep.	1700	103700	0	-	21652	" " SA

Figure 3: Account balance statement with inscriptions of subscriptions, redemptions, unfulfilled requests, and residual values.<sup>164</sup>

Indexical of identity facilitated by the diverse materializations of mutual fund money occasioned continuous learning experiences and moral evaluations at the meetings of associations, in courts,

<sup>164</sup> The account balance statement belongs to A., one of my key informants, who has graciously agreed to lend it to me in order to reproduce it and use it in my dissertation. A. has been reimbursed the value of his FNI investment and that of moral compensations for the trauma induced by the collapse of the fund so the artifact reproduced in Figure 3 has no more than symbolic value for him.

or in informal meetings outside of the courthouse. Such indexical phenomena were often framed by metalinguistic comments and metapragmatic practices. Specific examples of metasemiotic discourses are the constant assessment of growths, redemptions, gains, losses, or requests for compensation and are calibrated by the practical deployment of categories such as “too much” or “too little” (see also Guyer 2004b for an African context). These metapragmatic categories could refer to the money invested, lost, or gotten back by the investors, as already indicated above, or to the weekly growth of net asset values reported by SOV Invest and tacitly accepted by *CNVM*. As M. remembered during our long discussion,<sup>165</sup> he once called Vîntu, with whom he had an amicable relationship, in 1998 or 1999 and told him: “I like your fund [*FNI*] quite a lot, it’s a *beautiful*<sup>166</sup> fund, but you’re lying to me. How come that for six weeks in a row the net asset value of your fund has increased by exactly 2%? Why was it not 1.8% or 2.1%? Is it realistic to say that you have a constant growth of 2% every week? Why was there no variation in the growth rate?” *Bursa*, the newspaper edited by M. was publishing the net asset values of all mutual funds in operation at the time. Not only were the net asset values and growth rates for *FNI* “much too large” in comparison to other funds, but such a flat, round growth rate was suspicious given that the value of mutual funds indexed that of the assets composing its portfolio.

Financial markets are characterized by volatility, M. thought, and steady growth rates are unlikely. The best explanation M. could come up with was that SOV had given (i.e., manufactured) the figure of 2% to one of his employees to communicate it as the net asset value growth rate. Vîntu must have forgotten to update it and the employee must have been too shy to ask him for an updated value. The metalanguage of “too much” / “too little” framed the context

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<sup>165</sup> See interview with M. in July 2008.

<sup>166</sup> He was using an aesthetic term in a context where a technical term was more appropriate to signal metapragmatically that he was not fooled by Vîntu’s well-crafted strategy for convincing investors to contribute their money to *FNI*.

in which constant assessments of value and the use of calculative techniques for characterizing mutual fund performances took place. They engendered popular epistemologies of finance and law, and made it possible for the ethnographer to get at the local ideologies of the rightful/proper/moral production of value and the corresponding forms of monetary accumulation.

At the same time, sheltered from similar media attention, numerous cases drawing on commercial law were brought in front of courts all over Romania. The most notorious such commercial case was initiated by *Asociația Națională a Investitorilor – Fondul Național de Investiții [ANI-FNI]*<sup>167</sup> against *CEC*, the state savings bank that had guaranteed the redemption value of *FNI* shares, and against the Authority for State Assets Recovery (*AVAS*), the institution that replaced *CEC* as a subject of liabilities in connection to *FNI*.<sup>168</sup> Besides investing in assets sold by *FNI* and *FNA*, purchasing shares in the two funds and becoming a shareholder of *SOV Invest* (the asset manager of *FNI* and *FNA*), *CEC* had signed a guarantee contract with the asset manager for the redemption value of the *FNI* shares, as well as a license contract giving the same company the right to use the logo of *CEC Valori Mobiliare* [“*CEC Securities*”] for the distribution of shares in the two funds. As the investigators in the Prosecutor’s office realized, the two contracts, signed late in the fall of 1999, just six months before the collapse of the two funds, and during a period when the initiators of the funds were spoliating them of all cash resources, had been a way to boost the credibility of the funds, to attract more subscriptions from retail investors during the last months of operations, and find a perfect scapegoat for the eventual collapse.

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<sup>167</sup> See Commercial sentence no. 1064 of March 4, 2005, Case file no. 13483/2004, The Sixth Commercial Section of Bucharest Tribunal.

<sup>168</sup> See Government Ordinance no. 4 / 2011 cited above.

The logo of *CEC Valori Mobiliare* had been used to create the impression that *FNI* was owned and operated entirely by the state savings bank.<sup>169</sup> The *CEC* logo and the *FNI* publicity using it had a performative role in the unfolding of the financial scheme centered on *FNI*. The logo did not simply reflect the contractual relations between SOV Invest and *CEC* but actually functioned as a prospective guarantee and proof of the solidity of the fund (or, at least, of those standing behind it), thus attracting increasing numbers of retail investors in the last months of its existence. Many of the retail investors I spoke with argued that the presence of the *CEC Valori Mobiliare* logo in *FNI* commercials, on posters displayed at points where fund shares were being sold, or on the information letters sent by SOV Invest to *FNI* shareholders had the effect of calming them down. As the fund allegedly belonged to *CEC*, the state bank where all deposits were integrally guaranteed by the state, they thought that guarantee naturally extended to the *FNI* and *FNA* shares as well.<sup>170</sup>

Arguably the most important graphic artifact involved in the *FNI* case was the guarantee contract signed by SOV Invest and *CEC*.<sup>171</sup> The contract had initially had a performative role by “cooling out” all the potential “marks” (Goffman 1952) who then thought they could invest money in *FNI* without worries as the share values would be covered by *CEC* in case of default. This suddenly turned into a form of counter-performativity (Callon 1998, MacKenzie 2007) when the crisis hit the fund. Based on a particular reading of the contractual terms, most investors were led to believe that the *CEC* guarantee was contingent upon the filing of

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<sup>169</sup> SOV Invest has also signed a contract for the distribution of *FNI* shares with *CEC Valori Mobiliare* in the fall of 1999. However, the securities firm owned by *CEC* has never effectively acted as a distributor for the fund. The only company acting in that capacity during 1999 and 2000 was *Gelsor*, Vintu’s most directly controlled company. As it will be shown further, the interconnections between SOV Invest and *Gelsor* facilitate equally the distribution of shares and the spoliation of fund assets.

<sup>170</sup> N. confirmed the “paralyzing” effect *FNI*’s association with *CEC* had on the critical abilities of the generally apprehensive simple people as well as the “devastating” this kind of “temporary blindness” had on their family budgets.

<sup>171</sup> See Guarantee contract no. 2205 of December 6, 2012 signed by *FNI*, *SOV Invest* and *CEC*.

redemption requests by individual investors, the ultimate beneficiaries of the insurance. This precipitated a wave of redemption requests that would have collapsed even the safest managed enterprise. The contract further justified the split among investors pursuing alternative litigation strategies: whereas the majority of the retail investors went with the penal trial initiated by the Romanian authorities and, through some of their vocal representatives such as *ANPI*, demanded to be reimbursed by the state institutions involved in the scandal (*CNVM*, *CEC*, *AVAS*) to the full redemption value of *FNI* shares at the date when payments were stopped, while a minority of a little over 10,000 investors decided to initiate a commercial trial against *CEC* and subsequently gave up their claims in the penal trial.<sup>172</sup> They were using the financial guarantee contract and arguing that *CEC* had acted as an insurer.<sup>173</sup>

As the fund had collapsed and the asset manager was unable to meet redemption requests, the state savings bank should be held liable for the redemption value of the shares which it insured according to the provisions of the guarantee contract. Article 1.1 of the contract, repeatedly referenced by many of my association-affiliated and non-affiliated interviewees, states that “the object of the contract is the guarantee of the redemption value of *FNI* shares on the day the redemption request was filed, contingent on the impossibility of meeting that payment due to the risks associated with open-ended funds.”<sup>174</sup> The text is (maybe purposefully) ambiguous as the risks are not well specified and could be taken to mean anything. This ambiguity proved to be a focal point of disputes among the retail investors of *FNI*. The members

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<sup>172</sup> See Commercial sentence no. 1064 of March 4, 2005, Case file no. 13483/2004, The Sixth Commercial Section of Bucharest Tribunal.

<sup>173</sup> The litigation strategy of ANI-FNI was presented to me in detail by G., the vice-president of the association during several meetings in 2006 and 2007. The list of laws, government ordinances, and court decisions relevant for the case initiated by ANI-FNI was hand-written for me by G. – a sort of graphic artifact condensing the key aspects of their litigation strategy. Unfortunately, G. passed away in a tragic car accident in 2008 and I could not discuss with him after ANI-FNI got a favorable decision in the case in 2009.

<sup>174</sup> See Guarantee contract no. 2205 of December 6, 2012 signed by FNI, SOV Invest and CEC, art. 1.1, page 1.

of *ANI-FNI* were arguing that administrator fraud was one of the risks they were facing and that they should not be subject to moral criticism since they chose to sue a financial corporation, even if a state-owned one, over a type of insurance contract. At the same time, *ANPI* followers and non-affiliated investors who decided to continue acting as claimants in the civil trial considered that *CEC* had been made to enter into this contract<sup>175</sup> through fraud, and that the state institutions that were supposed to oversee the activity of mutual funds should be liable: *CNVM*, or the financial institutions that should have acted as depositary (*Banca Agricolă*) and the distributor (*Gelsor*) for the fund that had supposedly ensured that the net asset values reported by *SOV Invest* were not fictitious. Even better, from a moral and a legal point of view, money should have been recouped from *Vîntu*, now a spectacularly rich financier and media mogul whom everybody knew as the mastermind of the entire affair but whom the Romanian authorities were not prosecuting.

People were also aware that *CEC* had notified *SOV Invest* about the annulment of the guarantee contract several times during the first months of 2000, since the asset management company was late with the payments for the contract and was spreading false information about the ownership of *FNI* by *CEC*. The bank considered these rumors to be prejudicial for its image and was making use of specific contract provisions that allowed it to cancel the guarantee. Unfortunately, the contingencies of this contractual relation were to determine the course of events, rather than the general rules of contractual/financial responsibility: the contract had been initially signed in 1999 after the former president of *CEC* forged the memo outlining the opportunity of the contract,<sup>176</sup> the annulment of the contract was not properly effectuated, the

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<sup>175</sup> See Penal sentence no. 423 of March 20, 2007, Case file no. 24632/3/2006, The Second Penal Section of Bucharest Tribunal, pp. 40-41.

<sup>176</sup> *Ibid.*

fund collapsed while the contract was still considered in force by the majority of retail investors, and, what proved even more consequential, two courts rejected the actions of *CEC* and of the Romanian Ministry of Finance to nullify the guarantee contract.<sup>177</sup>

Moral arguments or the deconstruction of the principles of financial insurance did not seem to matter, either. Most investors accused *ANI-FNI* members of taking advantage of an illegal contract to get their money from *CEC* (from the state budget, actually, after *AVAS* replaced *CEC* as subject of liabilities), at the expense of the rest of the population. “Would an insurer pay for a car that was stolen by the professional driver supposed to use it?” N. and other *ANPI* members kept asking. If not, why was the *CEC* now obliged to pay for the swindle organized by *SOV* and his pawns, if the criminal investigation confirmed that what happened was theft rather than risk affecting mutual funds? Even investors not affiliated with *ANI-FNI* were having doubts about the way all the investors represented by the association had been compensated, supposedly to the full value of the net asset values on the day of the default. Ignoring the fact that the net asset values had been illegally inflated, A., one of the most openly sarcastic and lucid characters I met during my research, argued that not all *ANI-FNI* members were entitled to compensation, as only some of them filed redemption requests with the asset manager before it shut down operations on May 24, 2000. Even if *SOV Invest* did not accept any more redemption requests after that date, retail investors had the technical responsibility and contractual obligation to file such requests via priority mail if they wanted any hope of being compensated later. Having himself been compensated by *AVAS* at the end of the commercial trial, A. perplexed his co-litigants with speeches made in the hallways of the High Court of Cassation of Justice, in which he was trying to persuade crowds of 10 to 30 investors that they

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<sup>177</sup> See Sentence no. 4516 of July 25, 2000 by the Commercial Section of the Bucharest Tribunal and Sentence no. 3887 of May 11, 2001 by the Commercial Section of the Bucharest Tribunal.

were morally and legally wrong to seek compensation if they did not meet all the contractual requirements.<sup>178</sup>

The advertising campaign, running incessantly on TV and as full-page ads in most important newspapers in 1999 and 2000, was also generating referential, pragmatic, and metapragmatic effects. The commercial for *FNI* was constantly referenced by my informants and was part of the ironic repertoire describing the shrewdness of financiers in conjunction with the gullibility of lay people.<sup>179</sup> Running incessantly on TV and ending with the catch line “sleep tight, when *FNI* works [*lucrează*] for you” the commercial is mostly remembered in a truncated and slightly modified version „sleep tight, *FNI* watches over you [*FNI veghează*].”<sup>180</sup> At the same time, the commercial for *Gelsor* is even more illustrative of the mode of operation enacted by Vîntu and his collaborators.<sup>181</sup> The commercial was shot in a small Italian piazza. A mechanic, strikingly resembling Vîntu in skin color and rich mustache, has come to fix the fountainhead but accidentally drops a coin in the water. As the waves create the illusion that there are numerous coins in the water, a naïve Japanese tourist (complete with camera hanging around his neck) misinterprets the situation and starts dropping more coins for good luck. The

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<sup>178</sup> I met A. during one of his speeches at the HCCJ. Being puzzled by his arguments and fearing he would be apprehensive about me, I was surprised to find in him a genuine conversation partner, an honest and modest man, almost obsessed with ideas of justice and public good. He filed numerous petitions to the most important institutions in Romania (the Presidency, the Parliament, the Government, the secret services) denouncing the poor performance of the judiciary but received only formal responses and was constantly sent back and forth between institutions. His persistent pursuit of the idea of justice and public responsibility turned him into a subject of jokes and irony by the rest of investors who considered him strange or even mentally disturbed a sort of local “Forrest Gump,” as some described him.

<sup>179</sup> The commercial is now available on YouTube at: <http://www.youtube.com/watch?v=1Bt4aXhLi6k>.

<sup>180</sup> Although the difference between the two versions might not be significant in English, the distinctions between the asset manager working for the investors (something assumed natural) and the modified version in which lay investors remembered the line “*FNI* watches,” actually taken to mean the exact opposite – that *FNI* was a sham meant to put investors’ vigilance to sleep, was both indexical and a metapragmatic reflection of the situation investors found themselves in.

<sup>181</sup> See commercial for *Gelsor* running on TV in 1999 and 2000, available at: <http://youtu.be/Ih1anu4DLes>.

“mechanic” is initially puzzled by the innocence of the Asian tourists but then becomes very happy with the situation and takes advantage of the unexpected source of money.

The denotative function of the message that *Gelsor* is a securities company is conveyed in textual form at the end of the commercial. However, the performative and metapragmatic implications of the ad also came to generate implicit or explicit knowledge about what money is, how it can be invested, how it multiplies, and of the moral ambiguities of action when it comes to making money (Silverstein 1993, Keane 2001). Thus, the metasemiotic message that “well invested, money brings more money [*bine plasați, banii aduc alți bani*]“ appeared both as a textual metasemantic addition towards the end of the commercial, and was conveyed as a metaphoric meaning of the entire story. These added to other non-referential semiotic layers. The commercial was performing a vision of financial investment and drawing lay people to the funds intermediated by *Gelsor*, thus both enriching and complicating the metapragmatic-pragmatic dynamics of this communicative practice.

The contingencies affecting the various contracts in dispute in the *FNI* cases described above justify a functioning of money as both an indexical and a performative device. Following CS Peirce, Michael Silverstein has contributed a theory of indexicality to linguistic anthropology (1979). This approach allowed him to move beyond a study of the denotative and referential aspects of language towards linguistic pragmatics, discursive practices, and the contingent aspects of linguistic interactions that come to complement the meaning of enunciations. Anthropologists interested in the semiotic aspects of money (Keane 2001, Lemon 1998, Maurer 2006) have already looked at its indexical functions, which are premised on its materiality.

Most of these anthropologists have looked at cash and the potential slips of meaning caused by the bundling of material traits possessed by it (especially Keane 2003, 2006, and

Lemon 1998). Although indebted to the above approaches, this chapter takes issue with the elusiveness of monetary forms premised on the capital market. In the case of mutual funds, money is not materialized in a single object (characterized or not by a bundle of properties), but is incorporated by a collective of actants (subjects and objects, persons and things), each one with its material properties and/or semiotic modalities. As Michel Callon (1998, 2007) and others (MacKenie et al. 2007) have shown in a different context and more generally, markets as bundles of persons, technological actants and robots, calculating procedures, specific metrics of value, and objects that can undergo securitization, can be conceptualized as calculative devices performing the world envisioned by economics. While I also adopt Callon's notion of calculative/performative device to describe mutual funds, I argue that the forms of financial knowledge and ideologies of money that it facilitates do not come from a single normative source but are socially situated and diverse. To be more precise, the way fictitiously reported increases in net asset values, the commercials for *FNI*, or the financial guarantee contract signed by *CEC* do more than reflect the situation of the fund. Actually projecting the image of a sound/successful entity and attracting increasing numbers of retail investors is a direct manifestation of the functions performed by diverse components of the device.

The elusive category of money is contingently incorporated into the diverse material things that are continuously rearranged, drifted, and reinterpreted, performing contextually the various functions of commensuration, assessment, or temporal transfer of value. Dematerialized fund shares, account balance statements, investor account balances, assets under management safeguarded by a depository institution, calculative formulas linking asset values to the number of individual investors, financial guarantee contracts safeguarding the redemption values of sums invested – all of these are particular instances and contingent materializations of mutual fund

“money” serving contextually as traces, proofs, accounting evidence, or bases for the assessment of value. It is at the intersection of the distinct forms of knowledge, ideologies of value, and material entailments that the indexical and metapragmatic dimensions of money can be studied. Such an approach is no longer concerned with the accuracy or resilience of monetary measures of value - a topic associated mainly with modernist understandings of money – but with the way situated monetary practices constitute practical modalities, assessments, and conveyances of value.

Contractual forms and material artifacts characteristic of mutual funds serve multiple indexical functions. In one sense, these functions refer to the modality in which such material embodiments of money incorporates value, that is, literally as an “index” of the contingent values of the assets making up the portfolio of the fund. In a different way, the indexical function of contractual forms and account statements specific of mutual funds engender the identity of investors, and this can range from “innocent” gossip and evaluations of a particular person (as “rich,” “knowledgeable,” possibly “corrupt,” with a “cohesive family,” etc.) to classifications of people in terms of the entitlements to compensation premised on a series of contingent actions, such as having filed for the redemption of shares, or having petitioned the police in 2000 and thus qualifying as a claimant in the civil trial.

The indexical functions of contract money are framed and/or contextualized by various forms of metalinguistic and metapragmatic phenomena. Whereas numerous metalinguistic resources employed during the disputes over *FNI* were already illustrated above, there are also choices and practices having metapragmatic effects. For instance, the choice between the criminal or civil trial and the commercial trial, mediated, as already shown, by numerous events affecting the financial guarantee contract with *CEC*, is metapragmatic. More than just another

contingency related to the possession of the necessary financial resources to be pledged upfront as a stamp duty for the commercial trial, the choice is a silent commentary on the meanings of contractual responsibility, rights, litigation strategy, and the achievement of justice. Usually implicit in the choice of litigation strategy, such commentaries are openly articulated by outspoken informants such as N., J., or A. Pursuing the avenue of commercial litigation is an implicit endorsement of a vision of mutual funds as essentially risky financial enterprises, of the importance of contractual responsibility over more collectivist understandings of financial success, and of the importance of self-initiative over reliance on the state. All of these are in spite of the constant criticism from those pursuing a criminal or civil trial about the morally unfair, illegitimate, and even “corrupt” ways of *ANI-FNI*. At the same time, the claimants in the trial seem to ask back for the money *stolen* from them, not the financial proceedings of a shrewdly made contract. They see the state as the agent meant to perform justice rather than taking their faith into their own hands, and hope the money will be recouped from those responsible for the collapse of the funds rather than from some liable third party that is likely to be a state institution funded from the public budget. Such metapragmatic considerations tend to have a considerable impact on the choice of legal strategy, since the vast majority of investors stayed in the penal trial even when it became clear that commercial litigation would be more successful, since the validity of the financial guarantee contract had been already confirmed by two courts. If the state would not be able to restore justice, many were thinking, what would be the point of litigating with much stronger financial institutions or powerful people like Vîntu?

#### 5.4 THE TRIAL AND RETRIAL IN THE FNA CASE

Under the heat of public protest and even sporadic episodes of social unrest, the police and the public prosecutor began a criminal investigation of those involved in the collapse of *FNI* and *FNA* a few days after the funds operations and the activity of the asset manager were suspended by the securities regulator. *FNI* and *FNA* were tried as separate criminal cases by the Bucharest Tribunal, and the sentences were appealed to the Bucharest Court of Appeals and to the Supreme Court of Justice in the *FNI* case. While the various criminal and commercial trials in the *FNI* case were briefly presented in the previous chapter, the criminal trial in the *FNA* illustrated fundamental questions about the rights and actions engendered by mutual funds, the legitimate operations and possible gains/losses of such entities, and the legal responsibilities of asset managers, depositaries, and securities regulators.

The criminal trial in the *FNA* case began in November 2003 at the First Criminal Section of the Bucharest Tribunal<sup>182</sup>. Initially, Ioana Maria Vlas (former manager of SOV Invest) and her substitute for the months when she was out of the country (a vice-president of *CENTROCOOP* appointed on the board of SOV Invest), members of *FNA* Council of Trustees before the collapse, Nicolae Popa (manager of Gelsor), and Sorin Ovidiu Vîntu himself (the mastermind and final beneficiary of the scheme) were among those tried for their criminal liability; the Romanian securities commission, *Țiriac Bank* (the depositary for the fund at the time), and CEC (*FNA* investor with significant share redemptions, shareholder of SOV Invest, and represented by a member on the board of the asset management company) were tried for their civil liability

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<sup>182</sup> See Penal decision no. 875/A of December 15, 2006, Case File no. 5861/3/2003, Second Penal Section, The Bucharest Court of Appeals.

towards the investors for having failing in their duties. *Banca Agricolă* and the investors (represented by *ANI-FNA*) were the claimants in the civil trial.

Surprisingly for the investors and for public opinion but not incomprehensible for those familiar with the workings of the Romanian judiciary well into postsocialism, the *FNA* case was divided into a “*Banca Agricolă* case,” in which Vîntu and others would be tried for the prejudice brought to the bank through the sale of overvalued *Industrial export* shares; and an „*FNA* case” in which all the other indicted persons were tried for other alleged felonies and misdemeanors. What is particularly awkward is that the two sets of charges and the rest of the investigations were kept separate by both the public prosecutors and the judges. At one of the first sessions of the court, the “*Banca Agricolă* case” was returned to the prosecutor to redo the investigation and submit a more comprehensive indictment, a decision supposedly motivated, uncommonly, by the poor state of health of the main defendant.<sup>183</sup> The investigation was conducted further by different prosecutors, allocated between different offices of the National Anticorruption Directorate and the Prosecutor's Office attached to the High Court of Cassation and Justice, and all major charges against Sorin Ovidiu Vîntu were dropped after a financial expert, commissioned by the prosecutors but performed by somebody who had been a former employee of a company indirectly owned by Vîntu, allocated all the blame for the financial prejudice to some mid-level banking executives working for *Banca Agricolă*.<sup>184</sup>

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<sup>183</sup> See Lucian Efrim, 2012, “Cercetările privind-l pe Sorin Ovidiu Vîntu, în dosarul FNA, stopate de Sâmpetru și Bălan” [Investigations regarding Sorin Ovidiu Vîntu in the FNA case were halted by prosecutors Sâmpetru and Bălan], *Mediafax.ro*, July 12, 2012, available at: <http://www.mediafax.ro/social/cercetarile-privindu-l-pe-sorin-ovidiu-vintu-in-dosarul-fna-stopate-de-sampetru-si-balan-9853348>, accessed: December 10, 2012, for a detailed description of the institutional complicities and equivocal measures that resulted in the dropping of charges against Sorin Ovidiu Vîntu.

<sup>184</sup> For a description of the conflict of interests in which the financial expert appointed by the prosecutor found himself in this case, see Dan Badea, 2010, “Expertul din dosarul FNA era subalternul lui SOV” [The expert in the FNA case was Vîntu's employee], *Curentul*, September 12, 2010, available at: <http://www.curentul.ro/2010/>

The division of the initial *FNA* case and the separation of the investigations led, according to many, to an incomplete understanding of the mechanism of the fraud, to a situation in which only some of those involved have been held accountable for their actions, and, very important for *ANPI* members, to a dead-end with regards to the recouping of losses. This is also among the main conclusions of the resolution to reopen the case against Vîntu in 2010 and the new indictment act signed by Romania's General Prosecutor. This development was made possible both by the reforms in the Romanian judiciary during the last few years and by the arrest and extradition from Indonesia of Nicolae Popa, Vîntu's agent, convicted and sentenced to fifteen years in prison in the „*FNA* case” while still a fugitive.<sup>185</sup> The new indictment finds it unusual for the case involving Vîntu to have been separated from the rest of the *FNA* case and for the major charges to be dropped just one day after that. This way, instead of being tried for being an accomplice to forgery and for money laundering, he faced smaller charges of forgery and perjury, crimes that had either been pardoned soon after that or for which the statute of limitations for litigation had been reached before he was convicted.<sup>186</sup> Deficient investigation regarding Vîntu had further impacted the resolution of the entire *FNA* case because, according to the General Prosecutor:

The fact that the various crimes have been investigated in separate cases has caused the neglect of their temporal and causal dimensions, as well as of the congruences among the

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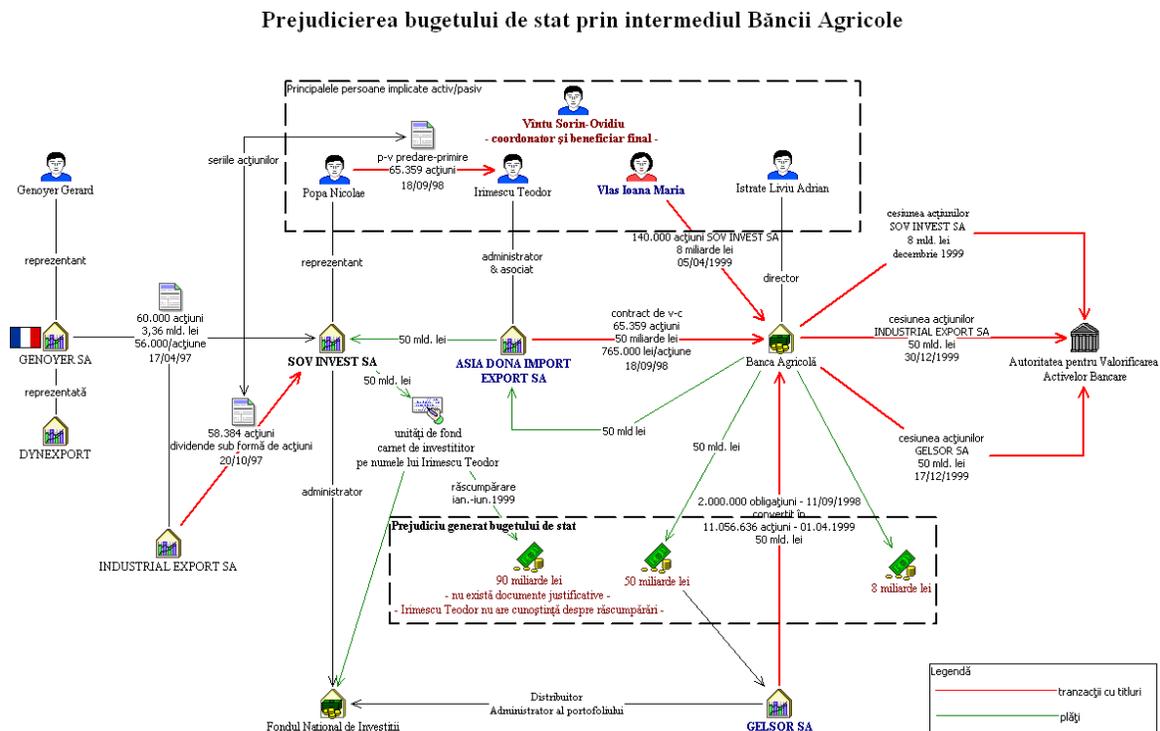
[index.php/2010091348733/Actualitate/Expertul-din-dosarul-FNA-era-subalternul-lui-SOV.html](http://index.php/2010091348733/Actualitate/Expertul-din-dosarul-FNA-era-subalternul-lui-SOV.html), accessed: Dec. 10, 2012.

<sup>185</sup> See Arnaz, Farouk, 2009, “National Police to Deport Romanian ‘Bernie Madoff’”, *The Jakarta Globe*, December 28, 2009, available at: <http://www.thejakartaglobe.com/home/national-police-to-deport-romanian-bernie-madoff/349591>, accessed: December 10, 2012, for a local report of Nicolae Popa's extradition from Indonesia.

<sup>186</sup> See Ordinance no. 1452/C/2011 of August 3, 2011 issued by the General Prosecutor of Romania regarding the reopening of the investigation of Sorin Ovidiu Vîntu and others regarding money laundering and complicity to connivance, p. 47, available at: <http://zvj.ro/192512-ordonanta%201.pdf>, as well as the Indictment Act of September 24, 2012, issued by the Prosecutor's Office attached to the High Court of Cassation and Justice, <http://admin.ziarulring.com/images/file/rechizitoriu%20SOV-FNI%20pdf.pdf>.

modalities of action and the accused. This way, investigations were limited to the administrative layer of “GELSOR” group, without the proper contextualization of those involved, neglecting the chronology of events and the final beneficiary of the illegal funds, through the successive fragmentation of the case files and the disregard of the informal decisions making abilities possessed by Sorin Ovidiu Vîntu.<sup>187</sup>

A more comprehensive investigation<sup>188</sup> is better accounting for all connections, actors, and actions and can be visualized through complex graphic representations produced by the investigators of the Prosecutor's Office attached to the High Court of Cassation and Justice.



**Figure 4: Actants, relations, and transactions involved in the case on Banca Agricolă.<sup>189</sup>**

<sup>187</sup> Ibid, p. 4.

<sup>188</sup> The indictment act resulting from this new criminal investigation has already been sent to court in the fall of 2012.

<sup>189</sup> Graphic representation of actants, relations, and transactions that made possible the “prejudice to the state budget through transaction involving Banca Agricolă.” Source: Ordinance no. 1452/C/2011 of August 3, 2011 issued by the General Prosecutor of Romania regarding the reopening of the investigation of Sorin Ovidiu Vîntu and others regarding money laundering and complicity to connivance, p. 78, available at: [http://zvj.ro/192512-ordonanta%20\\_1\\_.pdf](http://zvj.ro/192512-ordonanta%20_1_.pdf).

At the same time that the “*Banca Agricolă* case” was superficially investigated and then tried, the partial “*FNA* case” went to trial and, subsequently, retrial leaving many of those involved unsatisfied. Before even going to trial, part of the residual assets of *FNA* was allocated for temporary administration to Quadrant Asset Management in 2002<sup>190</sup>. *ANPI* protested this measure as it did not involve the investors through their general meeting, but only the tacit agreement of *ANI-FNI*, the association created by some SOV Invest affiliates.<sup>191</sup> Especially sensitive was the likely transformation of *FNA* into a closed-end fund with the change of the asset manager. Not only had N. had a frustrating experience with such an organizational transformation before, but a 2002 law regarding the capital market had reconfigured the mutual fund sector by transforming all categories of funds from mutualist organizations controlled by collectives of investors into financial products/schemes owned and administered by the asset managers.<sup>192</sup> The securities commission subsequently organized a competitive selection process through which CA IB Asset Management was appointed as the new administrator of *FNA*. The fund was suggestively renamed *Integro* and all the retail investors appearing in the database as owning *FNA* shares in 2002 (approximately fourteen thousand people) were automatically

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<sup>190</sup> See 2002 Annual Report of the Romanian National Securities Commission, available at: <http://www.cnvmr.ro/pdf/raportanual/ro/Raport-Anual-CNVM-2002.pdf>.

<sup>191</sup> See „*ANPI* - De ce e necesară Adunarea generală a investitorilor la *FNI* și *FNA*” [*ANPI* – The reasons why organizing the General Meeting of *FNI* and *FNA* investors is necessary], and “*ANPI* - Comunicat în atenția investitorilor *FNA*” [*ANPI* - Communique for the attention of *FNA* investors], documents published on November 2000 on the website of *ANPI* and saved on my personal computer in the summer of 2005.

<sup>192</sup> See Government Ordinance no. 26/2002 regarding collective investment undertakings. This law was replaced by a new one just two years later when Romania’s accession into the EU became a genuine possibility. Law no. 297 of 2004 (still in force at present) has a similarly broad regulatory grasp but is harmonized with the EU regulations of the capital market and with CESR/ESMA best practices regarding the regulation and supervision of the capital market.

converted into *Integro* investors.<sup>193</sup> The asset management was later merged into Pioneer Asset Management, the current administrator of the fund, which is owned by *Unicredit Tiriatic Bank*. This last resulted from the merger of *Tiriatic Bank* with the local branch of Austria Creditanstalt Bank and the purchase of the resulting entity by the Italian bank Unicredit.

This changing institutional arrangement created numerous complications and conflicts of interests in the *FNA* case. As *ANPI* had a long history of litigation with *Tiriatic Bank* over various issues, N.'s relationships with the lawyers representing Pioneer Asset Management in the *FNA* case were tense. These lawyers were also representing Unicredit *Tiriatic Bank* in separate legal actions through which N. was trying to get the annulment of the successive mergers of *Tiriatic Bank* - Austria Creditanstalt Bank – Unicredit, realized while the status of *Tiriatic Bank* minority shareholders was still being disputed in court. The much more knowledgeable, better dressed, and better paid lawyers representing the bank were often patronizing of N. in their comments in court, by remarks such as, “the *ANPI* representative will lose this argument as he has already lost so many in the commercial trials involving the bank...” or “the representative of the investors makes unsupported claims as he has in the past.” Such comments indexed the differences in legal knowledge, financial resources, litigation experience, and, key for the issues in dispute, the performance of contractual rights and obligations on which financial institutions were based.

But this was not the only overlapping set of disputes. Associations of investors such as *ANPI* and *ANI-FNI* had similar involvements in the *FNI* case in which they brought civil actions against both those directly responsible for the collapse of the fund (the asset manager's executives, SOV, and his assistants) and against other institutions, such as the securities

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<sup>193</sup> As the *FNA* archive was partially lost/destroyed, the possible mismatches between the list of *FNA* investors on May 24, 2000, the day the fund was suspended, and that of investors in the reorganized fund *Integro* became a continuous motive of speculation regarding the frauds that have been performed with *CNVM* complicity after 2000.

commission and CEC, for their civil liabilities towards the defrauded investors. At the same time, *ANPI* and *ANI-FNI* were still disputing their right to speak in the name of *FNA* investors or arguing about the means and meanings of representation in these cases. Last but not least, J., the president of *ANI-FNA*, was an energetic supporter of the new asset manager in its attempts to revitalize *FNA* as *Integro*. While claiming that all investors would be better off continuing with the new asset manager rather than redeeming their shares soon after the mutual fund has been reorganized,<sup>194</sup> J.'s insistence, in the hallway of the Bucharest Tribunal where the *FNA* case was retried in 2008, that all those who want to continue with *Integro* drop their civil liability actions in the *FNA* case, seemed awkward. While J. or any other party in the trial was legally allowed to approach the other parties in the process and suggest any form of legal conduct, the insistence with which he tried to persuade lay investors to drop all charges in the case was morally revolting for N., the senior members of *ANPI*, and even some of the non-affiliated investors I managed to discuss this with in between court sessions in the *FNA* criminal case.

As the court proceedings revealed, J. had two reasons to discourage lay investors from litigating. On the one hand, he wanted to let off some steam in the retrial where more investors as had been summoned as civil litigants in the process,<sup>195</sup> and where *CENTROCOOP*'s representative on the board of *SOV Invest* (and the vice-president of *CENTROCOOP*, for whom J. worked at the time) risked being sentenced to several years in prison. On the other hand, *Unicredit Ţiriac Bank* – the institution that took over all the assets and liabilities of *Ţiriac Bank*,

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<sup>194</sup> The inventory of the residual asset portfolio performed by the newly appointed manager determined a drop by more than two thirds from the last stated level of the *FNA* net asset value in May 2000. Therefore, the investors choosing to continue participating in *Integro* right after its reorganization would have to accept a loss of about two thirds in value, hoping the new asset manager would be able to soon turn that into a profitable investment, and filing civil litigation claims against those responsible for the initial collapse of *FNA* if they planned to recuperate any of the money lost in the event.

<sup>195</sup> The improper summoning of *FNA* investors in the first trial was one of the main motives why the Bucharest Court of Appeals ordered a retrial in the *FNA* case at the end of 2006. See Penal decision no. 875/A of December 15, 2006, Case File no. 5861/3/2003, Second Penal Section, The Bucharest Court of Appeals, pp. 16-17.

the depositary bank for *FNA* until its collapse – was tried for its civil liability towards the investors. As the same bank now owned Pioneer Asset Management, the administrator appointed for *Integro*, it was in the awkward position of being liable in the case and yet profiting from the collapse of *FNA*. Given the provisions of the new mutual fund regulations being adopted in Romania at the time, asset management companies were now the owners of mutual funds rather than just the agents of the collectives of mutual fund investors. This way, Unicredit Țiriac Bank was both the indirect owner of the reorganized fund and liable towards of the investors in the initial fund. Through his actions, J. was trying to secure a favorable court decision regarding the bank thus irritating many of the investors who felt that the bank and the asset manager were preventing justice since a favorable resolution for the lay investors meant significant losses for the financial institution.

J.'s positioning constituted a constant source of conflict with N. Not only was N. discontent with the way *ANI-FNA* had tried to assume the representation of all investors before and during the first phase of the *FNA* trial, but J.'s continuous efforts to persuade investors outside the courtroom (something N. interpreted as a form of harassment) and his interventions in front of the court infuriated him. Thus, during the court hearing in his double role as both litigant and representative of investors, J. claimed he had solicited the redemption of the *FNA* shares in 2000 but his request had not been honored. He subsequently decided to continue with the reorganized fund and to drop any civil liability claims toward *Țiriac Bank*, *CEC*, or the Romanian securities commission.<sup>196</sup> Other *ANI-FNI* affiliated investors took a similar position, claiming they did not want to continue civil litigation and had no claims against any of those

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<sup>196</sup> See Entry of appearance by I.Ș. on March 5, 2008, Case file no. 4883/3/2007, First Penal Section, The Bucharest Tribunal.

tried.<sup>197</sup> The spite N. felt towards J. was reciprocated. J. often made interventions in court demanding that N.'s comments be ignored, or making a statement contrary to that previously made by N. Furthermore, J. often launched verbal attacks at N. while both of them were advising investors in front of the courtroom and spread rumors about his opponent, claiming the latter had not really been an *FNA* investor and was in the trial only for the fees he could get from those joining his association.

There were, thus, many overlapping disputes, contractual relations, and forms of association in the case that the judges were either not aware of or purposefully ignored because of political command, at least so N. thinks. Although, as Robert Hayden observes (letter to author, February 13, 2013), litigants without professional legal training might not have an accurate understanding of the trial, cases such as N. are representative of the way the majority of lay investors interpreted court proceedings. This is none the less because representatives of investors like N. crafted common visions at the meetings of the associations of investors. Misunderstandings, partial and fragmentary knowledge, or a deeply lay outlook on judicial matters by most investors are invaluable resources for my dissertation as they informed the daily actions of many of my informants. Such relations formed the context of multiple forms of referential meaning and non-referentiality: forms of discourse adopted in court, registers of lay or legal language, intonation, forms of address, or unexpected emotional bursts (especially when talk of values and morality was initiated), the physical disposition of the parties involved in the courtroom, their gestures, or general appearance – all contributed to an incredibly rich array of meanings being continuously produced in court. All these made the deciphering of verbal interactions among the litigants, which were themselves mediated and “ritualized” by the judge,

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<sup>197</sup> See Entry of appearance by T.R. on March 5, 2008, Case file no. 4883/3/2007, First Penal Section, The Bucharest Tribunal.

a challenge as they constituted a set of overlapping indexical orders rather than simply being expressive of the substantive issues in dispute. Often times, the perspective of the public prosecutors seemed too narrow, given the rich social interactions taking place in the courtroom or just outside of it; financial journalists seemed to miss many of the implications of the concrete issues being discussed; and both Ioana Maria Vlas, the main defendant present in court and N. were protesting, although for entirely different reasons, against the course of litigation set by the judge.

It is maybe no surprise that the final judgment in the *FNA* case is strikingly simplistic in contrast to the breadth and depth of social interactions performed in court. While the first trial ended with the conviction of Ioana Maria Vlas, Nicolae Popa (SOV's accomplice, a fugitive from justice at the time), and one of the *CENTROCOOP* representatives on the SOV Invest board, the other three financial institutions present at the trial were also declared to be financially liable for the losses to the investors. No attempt was made to involve Vîntu in the case, no connection was realized with *Banca Agricolă*, and the responsibility of politicians and bureaucrats were not seriously investigated. The Bucharest Court of Appeals later ordered a retrial<sup>198</sup> but this was mainly due to the improper summoning of the retail investors as they were listed in the fund evidence taken over by Quadrant Asset Management in 2002, and of Nicolae Popa, who was hiding in Indonesia at the time of the trial. The Court of Appeals did not accept requests for a new financial expert to draw up a more detailed list of losses and liabilities for them, for any additional evidence, or for the investigation of additional actors involved in the collapse of *FNA*. N. and *ANPI* were accepted as parties in the retrial but the procedures for the proper summoning of the rest of the investors threatened to jeopardize the actions of the court.

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<sup>198</sup> Penal sentence no. 670 of June 6, 2008, Case file no. 4883/3/2007, The First Penal Section of the Bucharest Tribunal.

Many people had changed residence or died in the meantime, and the court had to prove it had delivered the summons to the right address or to the right heir of the initial investors.

N.'s interventions in court and written petitions were usually rejected, dismissed without too much justification, or even ignored. He was often removed from the court for his insistent and both technically defective and nervously articulated formulations of positions and his claims as a civil litigant were not even addressed in the final judgment reached by the court.<sup>199</sup> J.'s fate was not better as he was also occasionally removed from the court<sup>200</sup> for not making claims with regards to the issues that the judge had decided to examine, but rather digressing on his own interpretation of the case in dispute. While undisciplined litigants or those perceived to be a nuisance would probably receive similar treatment in courts belonging to well-functioning judiciaries in stable democracies, the way those perceived as the representatives of lay investors (the many without financial resources or professional legal representation) was taken as a form of public injustice and commented on repeatedly by my informants.

Issues pertaining to legal epistemologies and the practical ideologies of litigation, adding layers of referential and non-referential meanings to the interactions taking place in courts and just outside of them, are directly involved in the reconfiguration of the moral and political order in the judicial disputes presented in this paper. Filtered usually through the language of judicial disputes, such metapragmatic aspects of the legal/administrative interactions should be read into the broader collection of semiotic resources deployed in social disputes. Previously, Hayden (1987), pursuing questions about orderly vs. disorderly interactions in courts formulated by Atkinson and Drew (1979), and O'Barr (1982), and drawing on insights from conversation

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<sup>199</sup> Penal sentence no. 423 of March 20, 2007, Case file no. 24632/3/2006, The Second Penal Section of the Bucharest Tribunal.

<sup>200</sup> See Court decision no. 875/A of December 15, 2006, Case file no. 5861/3/2003, Second Penal Section of the Bucharest Tribunal.

analysis, has been able to show that the contrast between the orderly turn-taking in Western courts and the frequent overlaps and interruptions observable in Indian caste panchayat courts is explained by, but also signifies, the fact-finding mission of the former courts in opposition to the task of the latter, which is to establish the normative value of facts already known.

Dealing with what is, at least apparently, a more complex context of disputes, ones in which the orderly exchange of arguments alternates with sudden bursts of emotional speech and disorderly turn-taking,<sup>201</sup> both in court and in meetings of some of the litigants in front of the courtroom (meetings usually mediated by the leaders of the associations of investors), I find it useful to borrow Hayden's argument and adapt it to what is, at least apparently, the more complicated/messy institutional setting in which I conducted research. The complexity of my case is caused not only by the alternation of orderly and disorderly turn-taking, but also by the diverse character of the court interventions of those entitled to speak: sometimes addressing directly the questions of the judge, sometimes digressing on issues pertaining to principles, moral values, or attempts at reframing the entire dispute.<sup>202</sup> At the same time, the conglomerate of rhetorical styles and argumentative strategies have to do both with the radical heterogeneity of the actors present in court: judges, prosecutors, lawyers, the accused, technical experts, state authorities (*CNVM*), financial institutions (*Banca Agricolă*, *CEC*), the investment vehicles whose fate is being decided (*SOV Invest*, *FNA*, *Pioneer Asset Management*), associations representing investors, or non-affiliated investors, as well as with the diversity of arenas in which the disputes I focus on take place – courtrooms, court hallways, public meetings of state authorities and

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<sup>201</sup> The right to speak is assigned by the judge in Romanian courts. However, I witnessed several episodes when the judge tolerated the interruptions of the court proceeding by interventions from the public or some of the lay investors present in court. This seems to be the case especially in trials of sensitive issues for the broader community and at which the crowd attending court hearings is significant.

<sup>202</sup> Such interventions by the representatives of investors have often led to their expulsion from those particular court sessions.

investors, or meetings of the associations of investors. In such distinct yet interconnected situations, phenomena of *tone-switch* perform the shift of focus among distinct regimes of verbal interaction, such as alternation between orderly forms of dispute in which turn-taking is sequential and interventions focus on well-specified issues, and hectic interventions abounding in metapragmatic elements and through which litigants try to reset the discussion and impose their own topics or normative registers. These code-switches index the alternation between fact-finding episodes and attempts to call into questions the procedural rules, legal principles, political rights, and moral values involved in the disputes. That goes to the very heart of Hayden's argument as well. Beyond an ideal-typical analysis based on the contrasting evidence from American and Indian disputes, Hayden's contribution can be taken as a model for processual analyses of successions of factual and normative arguments during disputes.

Such a nuanced representation of disputes, as consisting of both factual accounts and moral-ideological reflections, opens up discussion of the pragmatic and metapragmatic aspects of legal discourse. This semiotic approach to legal disputes, well summarized by Elizabeth Mertz (1994, 2007a), allowed me to focus not only on the verbal interactions and the oral registers during the situations I witnessed, but also on equally important yet often neglected forms of communication among the actors of disputes: court decisions and transcripts of court proceedings, institutional correspondence between the associations of investors and state institutions, informal email communications among the actors involved, as well as press releases, interviews, and opinion articles published by the actors in dispute in connection to the issues in dispute. Focusing on a diverse register of semiotic resources, not only verbal interactions but written forms of communication, gestures, dress codes, and the manipulation of physical space in

the courtroom, is the best way of getting at the meta-pragmatic actions, legal epistemologies and practical ideologies manifest in socially consequential disputes.

The court rulings and sentences<sup>203</sup>, sustained by the Bucharest Court of Appeals and the High Court of Cassation and Justice, were disappointing for the lay investors. Although the sentences against Ioana Maria Vlas and Nicolae Popa were sustained, other defendants were acquitted and the financial institutions involved were relieved of any civil liabilities. This left investors with a bitter taste: the sense of only partial justice having been done and the practical impossibility of ever recovering the prejudice. While the securities commission, the depository bank, and CEC (all organizations controlling significant financial resources) are no longer liable, the individuals convicted or SOV Invest and Gelsor are bankrupt. The reactions of those involved in the trial are telling: while N. is disappointed and advises his associates to keep faith in the European Court of Human Rights (the court where he ultimately sends all his cases after losing in national courts), J. considers that the verdict of the judge was “unrealistic and illegal”; this is so because “the verdict reached by the judge has no relation to the contents of the case file, with our [ANI-FNI] claims or those of the prosecutor. We asked for apples, he gave us pears, this is how it happened.”<sup>204</sup>

At the same time, Ioana Maria Vlas is even blunter about the possible political influences that prevented a comprehensive investigation and fair resolution of the case:

The judge is sovereign in court. She applies the law and does so according to the letter of the law and her own conscience. It isn't easy to make justice... Let us not forget that acts

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<sup>203</sup> Penal sentence no. 423 of March 20, 2007, Case file no. 24632/3/2006, The Second Penal Section of Bucharest Tribunal.

<sup>204</sup> See “Ioana Maria Vlas contestă în instanță condamnarea primită în dosarul FNA” [Ioana Maria Vlas contests in court her conviction in the FNA case], *Realitatea.net*, June 11, 2008, available at: [http://www.realitatea.net/ioana-maria-vlas-contesta-in-stanta-condamnarea-primita-in-dosarul-fna\\_297242.html](http://www.realitatea.net/ioana-maria-vlas-contesta-in-stanta-condamnarea-primita-in-dosarul-fna_297242.html), accessed: December 10, 2012.

of justice are not abstract, a-temporal, or devoid of emotional charges. Economic, social, and political factors all have a significant influence. [...] But I will consider this a just verdict only when the honorable gentleman Vîntu is sentenced for his actions in the FNA and FNI cases. First, because the two cases should be tried together as there is an obvious and natural causal relation between them: FNI problems generated FNA problems. Secondly, the craftsman of the fraudulent scheme, the one that benefited from the fraud, SOV, has been released of responsibilities in both cases. All the direct and indirect evidence that could incriminate him, has been, I claim on purpose, removed from the indictment signed by the prosecutor. [...] What made the prosecutor remove all that evidence just between the two rounds of the presidential elections in 2004? Unfortunately, justice cannot be performed in an antiseptic environment.<sup>205</sup>

It is no surprise that the Romanian General Prosecutor issued a new indictment act against SOV in 2012<sup>206</sup> or that investors such as those represented by N. and ANPI have tried to reach justice by pursuing alternative legal means.

## 5.5 CONCLUSION

The disputes described in this chapter bring to the fore the implicit principles informing assessments of value and compensations, as well as the transforming repertoires of justification used in such disputes. Although the assessment of potential gains and effective losses seem to be straightforward accounting issues, they are not. Not only do financial theories, legal codes, and securities regulations provide divergent interpretations, but the actors involved in disputes suggest new and interesting ways of understanding ideas of wealth, monetary gain, risk, and the

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<sup>205</sup> See interview given by Ioana Maria Vlas soon after the verdict in the retrial of the *FNA* case was reached, published in Raluca Stepanov, 2008, „IOANA MARIA VLAS: „E frustrant să vezi că Vîntu e mai presus de lege“ [IOANA MARIA VLAS: It is frustrating to realize that Vîntu is above the law], *Evenimentul zilei*, June 10, 2008, articles available at: <http://www.evz.ro/detalii/stiri/ioana-maria-vlas-e-frustrant-sa-vezi-ca-vintu-e-mai-presus-de-lege-807154.html>, accessed: December 10, 2012.

<sup>206</sup> See Ordinance no. 1452/C/2011 of August 3, 2011 issued by the General Prosecutor of Romania regarding the reopening of the investigation of Sorin Ovidiu Vîntu and others regarding money laundering and complicity to connivance, available at: <http://zvj.ro/192512-ordonanta%201.pdf>, as well as the Indictment Act of September 24, 2012, issued by the Prosecutor's Office attached to the High Court of Cassation and Justice, available at: <http://admin.ziarulring.com/images/file/rechizitoriu%20SOV-FNI%20pdf.pdf>.

role of the state. Moreover, there is an intimate relation between arguments about economic value formation and the moral justifications for practices that generate value. Those making a claim to specific commensurations of value use more than technical arguments, trying to manipulate (and reconstitute) available moral repertoires and actively situate their more or less scientific claims in a moral perspective.

One of the main aims of this chapter was to show that calculations such as those performed in courts or by asset managers, regulators, and depository banks happen neither in a moral vacuum nor in a well settled institutional framework. Rather, assessments of values, losses, and responsibilities take place in a changing ecology of moral and economic practices that makes money into an elusive yet unavoidable category whose value is premised on a series of contingent, performative, and metapragmatic elements. My attempt was to describe and analyze some detailed ethnographic situations in order to illustrate how these calculative practices are deployed and justified, the moral orders they engender, as well as the types of financial of value production they make possible. I focused on the cases of *SAFI*, *FNI* and *FNA*, two funds that collapsed during successive crises of the mutual fund sector. I have shown that in both cases (although more obviously so in the *FNA* trial) the disputes were initially aimed at determining the value of the financial prejudice and the responsibilities of the actors in charge of managing/overseeing the fund. Disputes were subsequently complicated by the numerous conflicts of interests among those taking part in the trial, by the institutional reorganization of the fund in disregard of the opinions expressed by many of the lay investors, by the collusions among financially liable parties and those meant to bring a resolution to the dispute, and, ultimately, by the radical change of the regulatory infrastructures undergirding investment funds.

The diversity of actors, rhetorical styles and argumentative logics, linguistic ideologies and legal epistemologies illustrated by these disputes were taken not as a sign of disorder or moral confusion/ambivalence but as reflective of the concomitant disputes over facts, norms, and the social/political relations among stakeholders of mutual funds. As Comaroff and Roberts (1981) have pointed out, in a context characterized by legal pluralism, situations in which rules are used to assess the nature of social/political relationships and are simultaneously reconfigured by them, in which the normative repertoire of disputes is an interpretive lens on the social reality that, in turn, shape the very norms called to render it meaningful, are not paradoxical if one shifts from the analysis of judicial rules to the processual analysis of legal disputes.<sup>207</sup> I claim that such a processualist approach is useful for understanding a set of situated disputes in which the issues at stake are interchangeably the values and responsibilities of actors in clearly defined roles, the set of rules and obligations pertaining to different kinds of actants, and the nature of the political rights and social relations of the different stakeholders of investment funds: lay investors, asset managers, depositary financial institutions, state regulators/supervisors. I further claim that the concept of legal pluralism can be meaningfully transferred from a postcolonial to a postsocialist context.

Emerging from intellectual traditions such as those initiated by Max Weber or Bronislaw Malinowski that contrasted legal, conflict resolution, or order maintenance institutions dominated by distinct substantive principles, the concept of legal pluralism and the particular scholarly perspectives it made possible were initially applied to colonial contexts in which the legal systems imposed by Western administrators functioned alongside the customary laws of

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<sup>207</sup> Comaroff and Roberts's contribution to the shift of paradigm in legal anthropology, still influential today, is excellently outlined by Robert Hayden's extensive review article published in the *American Bar Foundation Research Journal* (1984).

native populations (Merry 2006), both types of law and their corresponding legal procedures being changed as a result of this interaction. The approach later grounded one of the persistent critiques in postcolonial societies, in which the messiness of the juridical procedures was blamed on the eclectic origins of their legal systems.

Following the calls made by Sally Engle Merry (2006: 889-892) to move away from a narrow understanding of legal pluralism focusing on distinct systems of law towards the examination of dialectical relations among competing normative orders, ideological variability in responses to law, and the sources of pluralism at the core of state law itself, I find it useful to apply the concept to a postsocialist context. Here, new branches of law “rediscovered” in postsocialism (financial, administrative) overlap with older legal codes such as the Romanian Civil Code that long preceded socialism and persisted through it until the present. The Common Law based jurisprudence and precedents introduced by USAID, among others, get entangled into the transforming Civil Law of Romania. Simultaneously, EU regulations and administrative procedures such as the extensive public hearings are incorporated into the practical repertoires of those pursuing administrative adversarial litigation, thus enriching the understandings and possibilities of the contestations of laws. Last but not the least, forms of negotiation and consensus building in organizations of civil society, such as the associations representing capital market investors, now complicate the interactions among social bodies and state agencies/regulators. From their unavoidable interactions with the court system, the activities of civic associations such as *ANPI* are permeated by the logic of judicial disputes. Gathering evidence, organizing files for legal cases, elaborating practical litigation strategies, or constantly challenging administrative measures and previous court decisions become their preferred mode of operation in a context of increasingly complicated legal disputes.

Such transfers of ideas among postcolonial and postsocialist can function like conceptual bridges among traditional areas of concentration for cultural anthropology and the emerging zones of interests for anthropological knowledge production such as the (post)socialist societies of Central and Eastern Europe. In this sense, Comaroff and Robert's insight about the concomitant renegotiation of normative repertoire and social relations triggered by specific instances of dispute offers a useful theoretical lens into the complexities of the ongoing disputes and political interactions I study. Following their approach, the multifaceted disputes occasioned by the default of *FNI* and *FNA* can be classified in four categories/types of situations depending on the branches of law, type of court, issues in dispute, or level of generality. The first and most elemental were disputes over quite specific issues, such as the validity of the financial guarantee contract in the commercial law contract, the persons making decisions for the funds and their legal/contractual entitlements to do that, within a particular branch of law: civil, commercial, administrative. The second type of situation is that occurring when the disputes in a specific case (e.g., the collapse of *FNI*) are organized into mutually exclusive choices between the branch of law/type of legal strategy to be pursued, such as criminal, civil or commercial trials in the *FNI* case; or the criminal/ civil vs. the administrative adversarial trial in the *FNA* case. At an even more general level, these disputes turn into arguments over the norms that can best regulate the mutual fund industry, such as the administrative contentious case initiated to block European-style regulations or, at the very least, to safeguard some of the provisions from the previous regulatory framework. Such disputes usually end up in administrative adversarial courts and set up the normative framework that serves to reinterpret the situation that generated this type of conflict in the first place. Finally, at the highest level of generality, disputes take the form of contrasting arguments over the principles and forms of valuation grounding the different

varieties of capitalism after 1989. In spite of the neatness of the conceptual classification above, these should not be seen as mutually exclusive strategies. Rather, the classification is a mental and practical map of a series of mutating forms of conflicts; at the same time, they serve as simultaneously available repertoires in which disputes can be framed.

This chapter focused on disputes over money, responsibilities, and the reorganization of the funds. While demands for regulatory reforms and supervisory enhancements were frequently appearing in such instances, the concrete disputes over the form of the new regulations and of the overarching philosophy of the mutual fund sector will be presented in the next chapter. The shift of disputes over politics and finance towards the judiciary, illustrated by these last chapters, profoundly alters the character of money. Contemporary, contract-based forms of money, specifically not cash but financial instruments characterized in terms of their moneyness, potential conversions into cash, calculability, or ability to incorporate value, are not only priced on the market or through arbitrage procedures but increasingly come to be assessed in court. Although, like the money described by modernist social theorists (see Simmel [2004], Weber [1978], and Marx [1957a, 1957b]), contemporary money continues to be in circulation and its restrictions one of the key features (see LiPuma and Lee [2002, 2004], this is no longer grounded by bullion or state decree, but is accomplished by its performative and indexical properties. And, as many times contract-based money fails to live up to the initial hopes of investors or to the contingent necessities of context, money becomes an indexical and performative device whose value comes to be determined in court. Such court disputes illustrate well the elusive dynamics of value engendered by contractual types of money. Their growth and the benefits they bring are often illusory. Furthermore, as illustrated by the choice of litigation strategy, branch of law, or legal principles invoked, the metapragmatic aspects of the discourses used in court condition the

contingencies affecting contract types of money. This metapragmatics of court language frames, implicitly or explicitly, what is usually understood by financial gains and losses, who is to benefit or be affected by it, how can gains be securitized, what can be legitimately claimed and what can be pragmatically gotten in financial disputes, what are the rights and duties of mutual fund investors, as well as what are the regimes of circulation and value for mutual fund investments.

## **6.0 CHAPTER 6: AMBIGUOUS OWNERSHIP, COLLECTIVE RIGHTS, AND CHANGING NOTIONS OF WORTH IN ROMANIAN MUTUAL FUNDS**

The notion that value-conceptions do not exist in empirical fact and that therefore value-conceptions have to be imported from a source outside experience is one of the most curious beliefs the mind of man has ever entertained. Human beings are continuously engaged in valuations. The latter supply the primary material for operations of further valuations and for a general theory of valuation.

Knowledge of these valuations does not of itself, as we have seen, provide valuation-propositions; it is rather of the nature of historical and cultural-anthropological knowledge.

(Dewey 1939: 58)

This chapter focuses on the disputes occasioned by the process of regulatory reform the Romanian mutual fund industry underwent. Stirred by Romania's accession into the EU in 2007 and prompted by the numerous financial scandals affecting the market right from its creation in 1994, the reform was meant as a reconfiguration of the investment philosophy characterizing the capital market. The emergent values here are intimately connected to and made visible by arguments about new forms of money and financial investment, altered understandings of risk, or changing roles for the state and its regulatory agencies. The disputes surrounding the initial collapse and the subsequent attempts to rescue the National Accumulation Fund [*FNA*], which provided most of the ethnographic material for the previous chapter, constitute an excellent case able to illustrate the broad range of issues at stake in the process of financial, legal, and social change occasioned by Romania's integration into the European Union.

Concretely, while lay investors, fund administrators, securities regulators, and Romanian politicians were disputing the collapse of the mutual funds, the assessment of losses, and the allocation of responsibilities, the EU economy was going through a more consequential process of change. Initiated in the United States during the 1970s, the transformation of small scale, community based, mutualist financial organizations and trusts into closed-end investment funds, traded on the stock exchange but engaging in very risky transactions and increasingly difficult to control by the investors, was being adopted (ironically, in a more rigid way) in the European Union through the directives promoted by the European Commission with advice from the Committee of European Securities Regulators (subsequently, the European Securities and Markets Authority). As an acceding country and later full member of the European Union, Romania had to transpose all these regulatory measures into national legislation, reconfiguring the entire capital market (and especially so the mutual funds sector) that had been initially premised on mutualist forms of organization. Thus, my informants were experiencing not only a postsocialist transition to capitalism but also a neoliberal transformation in the global architecture of financial capitalism, and the reorganization of the state with its inclusion into the EU.

Whereas lay investors and their representatives tried to take advantage of the transposition of European directives by demanding more transparency, accountability, and the enforcement of their rights by state institutions, asset managers took measures to eliminate investors from the governing bodies of financial organizations. All mutual funds were transformed, under the supervision of the securities commission, from mutualist organizations owned collectively by the investors into abstract banking products. This neoliberal transformation changed the status of investors from *owners and decision makers* to that of

*consumers of financial products and choice makers.* As more and more numerous state functions were premised on such institutional solutions (investment funds administering budget resources and conditioning the social expenses of the state), more and more investors came to see the regulatory transformation as a deep change in the premises of political organization. Numerous questions haunted the lay investors disputing values and rights with the state, but the crucial one seemed to be: what are the relations between ownership, political inclusion, the assumption of financial risks, and the monetary rewards of such arrangements?

I take the contentions generated by this radical transformation as an opportunity to observe the shifting order of worth (Boltanski and Thévenot 2006) and the changing notions of ownership and rights in postsocialist Romania. Whereas formerly mutual funds were associative entities which, in spite of the ambiguous ownership, could be controlled by a collective of investors, the legal reforms brought about by the EU accession attributed control over funds to asset management companies and did away with the premises for collective action by investors. The transition from a political order in which the premises for rights, action, and value were defined collectively, as part of a larger community of investors, to a polity in which criteria of worth are premised on the more abstract qualification of investors - as actors able to choose among investment opportunities but no longer to influence the projects they take part in - generates numerous contentions with direct impact on the legitimacy of the new institutional arrangements.

By focusing on a particular instance in which the “laws of the market” (Callon 1998) are negotiated by state officials, regulators, institutional and lay investors, I suggest an interpretation of the ambivalent reception of neoliberal capitalism in Eastern Europe. The disputes I focus on engender challenging questions about the promises and failures of finance: How do new types of

investment dependent on the erratic behavior of the market fit with previous forms of monetary accumulation, which was seen as something the value of which was intimately linked to personal diligence or any legitimate form of work? Should the state be concerned with the taming of generalized forms of social risk through direct intervention, or should it limit its role to the adoption and enforcement of technocratic rules? Such questions, raised already by scholars dealing with the postsocialist transformations in money and values in Eastern Europe, were made more acute by the financial crisis of the subprime credit instruments that started in the United States in 2007 and spread towards most areas of the global economy in subsequent years.

This chapter is based on observation and interviews among the representatives of retail investors involved in the drafting and evaluation of the new regulations, and interviews with European and Romanian securities regulators, representatives of asset management companies, brokerage companies, and depositaries for investment funds. A focus group I organized in July 2008 (with the institutional support of Freedom House Romania) brought together representatives of all the significant organizations and addressed questions about the opportunity of the regulatory reform in 2004, the role of public consultations in the process and its effects on the governance of the mutual fund industry. The chapter also draws on case files of suits initiated by market actors contesting various provisions of the new regulations, and on a comparative analysis of laws and regulations for the capital market in Romania.<sup>208</sup>

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<sup>208</sup> This chapter incorporates the results of research supported by a grant from CERGE-EI Foundation under a program of the Global Development Network as well as a “Ștefan Odobleja” fellowship granted by the New Europe College, Institute for Advanced Study (Bucharest). All opinions expressed are mine and have not been endorsed by any of the funding institutions. Early versions of the chapter have been published in the New Europe College Yearbook, 2008-2009, and in the Fall 2009 issue of the *Anthropology of East Europe Review*.

## 6.1 THE CAPITAL MARKET REFORM IN ROMANIA: FROM AMERICAN TO EUROPEAN-TYPE REGULATIONS<sup>209</sup>

In retrospect, even more consequential than the actions in pursuit of material and moral reparations have been the increasing calls by institutional and retail investors alike for the revision of the previous regulations governing investment funds and for the improvement of the supervisory activity by state institutions. Grounding their claims on the histories of deception experienced during the first years after socialism and on their personal experiments with navigating in a universe of financial uncertainty, investors in mutual funds and financial analysts craved for a comprehensive reform of the field. For retail investors the goals of the reform would be to tighten regulations of investment funds and of the asset managers, as well as to reorganize the securities commission (*CNVM*) in order to enhance its supervisory abilities. After the less successful adoption of a new securities law in 2002 (without public consultations and widely contested by the majority of market participants),<sup>210</sup> the opportunity for a more comprehensive market reform was offered by the wider legal harmonization with the EU through the adoption of the *acquis communautaire*, in anticipation of Romania's prospective admission into the Union in 2007.

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<sup>209</sup> Here, terms such as “American” or “European” used to characterize competing regulatory styles are assumed reifications meant to sharpen the contrast and to make the argument clearer. As I point out below, American banks, savings and loans associations, and investment funds have also went through processes of demutualization and corporatization during the last decades so that the American and European investment funds industries, coming from a diversity of regulatory traditions, are much more similar today than they used to be before the 1980s. At the same time, “American” and “European” are terms used by my informants to distinguish between the mutualist and the corporatist architecture for funds that followed it.

<sup>210</sup> See Law 525/2002 for the approval of Government Ordinance 28/2002 regarding securities, financial investment services and regulated capital markets, published in the Official Bulletin no. 576 of August 5, 2002, available at: [http://legestart.ro/Legea-525-2002-aprobarea-Ordonantei-urgenta-Guvernului-28-2002-valorile-mobiliare-serviciile-investitii-financiare-pietele-reglementate-\(MTQzOTc-\).htm](http://legestart.ro/Legea-525-2002-aprobarea-Ordonantei-urgenta-Guvernului-28-2002-valorile-mobiliare-serviciile-investitii-financiare-pietele-reglementate-(MTQzOTc-).htm), accessed: December 10, 2012.

The Romanian National Securities Commission responded to the public demands and the political imperative to harmonize its regulatory framework for securities, exchanges, and financial investments with that of the rest of the EU members, and embarked on a massive exercise in legal reform. It promoted a new statutory law as well as a new regulation for investment management firms, collective investment undertakings, and depositories in 2004.<sup>211</sup> A key role in this regulatory reform was played by the Council of European Securities Regulators (CESR) – reorganized as the European Securities and Markets Authority (ESMA) since 2011, and its measures towards more integrated capital markets in Europe.<sup>212</sup> CESR had been established as a consultative committee to help the European Commission and the European Parliament in their efforts to integrate European capital markets, with the aim of facilitating cross border investments and financial capital mobility in Europe.<sup>213</sup> It aimed not

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<sup>211</sup> Law no. 297/2004 regarding the capital market, available at: <http://www.cnvmr.ro/pdf/legi/ro/Legea-297-2004.htm>, and CNVM Regulation 15/2004 regarding the authorization and functioning of investment management firms, collective investment undertakings and depositories, available at: <http://www.cnvmr.ro/pdf/regulamente/ro/Regulamentul-15-consolidata-2004.pdf>, were the most important regulatory reforms undergone by the Romanian securities commission in the years following the collapse of *FNI* and *FNA* and the two most important regulations affecting the mutual fund sector in Romania after 2004.

<sup>212</sup> For a brief description of the goals and workings of CESR/ESMA, see the website of the European Securities and Markets Authority: <http://www.esma.europa.eu/page/esma-short>, or the section dedicated to retail investors: <http://www.esma.europa.eu/content/Welcome-Investor-Corner>. For somebody willing to have a better perspective on the origins of CESR/ESMA and the initial goes of its founders, The Final Report of the Committee of Wise Men on the Regulation of Securities Capital Markets (or, simply, the Lamfalussy Report) makes an instructive reading: [http://ec.europa.eu/internal\\_market/securities/docs/lamfalussy/wisemen/final-report-wise-men\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/lamfalussy/wisemen/final-report-wise-men_en.pdf). For someone having observed from a certain distance the activity of the institution, a shift of emphasis from the integration of capital markets to financial stability within the EU is noticeable. Thus, whereas for CESR the overarching goals were capital market integration and investor protection though regulatory/supervisory harmonization and the encouragement of cross border transactions, for ESMA, the overarching stability of the EU's financial system gains preeminence while uniform investor protection, equal conditions for competition, and regulatory/supervisory uniformity across the EU, along ESMA's cooperation with banking and insurance authorities in the Union, are all converging towards the goal of financial stability. Last but not the least, Eilis Ferran (2004) has realized a comprehensive and insightful analysis of the policy making mechanism introduced with CESR from a legal perspective. The book can be read by anyone interested in the new policy mechanisms created by the European Union and can be a good complement of more ethnographic descriptions of the workings of such mechanisms.

<sup>213</sup> CESR was the concrete result of a series of plans and policies outlined in the Financial Services Action Plan (FSAP) initiated by the European Commission in 1999 and made an integral part of the "Lisbon Agenda" by the European Council of April 2000. FSAP's aim was to further the creation of a single market in financial services within the EU. *A Committee of Wise Men on the Regulation of Security Markets* chaired by Baron Alexandre

only to make national governments adopt harmonized regulations and to stimulate better cooperation among national securities regulators, but also to promote new modalities for policy making and the adoption of regulatory measures regarding the capital markets.<sup>214</sup> The new policy-making mechanisms instituted by CESR/ESMA drew on broad consultations with all market actors (including retail investors) and were premised on the transparent adoption of new regulations. Thus, the model for the regulations currently adopted in Romania was provided by both the EU directives in operation and by the recommendations from the European Commission through the Committee of European Securities Regulators.

According to the annual reports published by the Romanian securities commission during the pre-accession period<sup>215</sup> and to assessments by market participants, Romania has transposed, even if somehow “mechanically” and without paying attention to the costs of immediate compliance by market actors, all the key EU directives and recommendations adopted before 2004.<sup>216</sup> Subsequently, new legislative interventions by the Romanian securities commission meant to absorb the post-2004 directives and regulation adopted by the EU were made almost every year since then. The synchronization of regulations and policies among *CNVM* and the rest of the securities regulators within the EU have been routinized. Such attempts at regulatory reform were meant to address the requests by market participants to specify more clearly the procedural aspects of the new rules, to eliminate the overlaps between laws of the capital market,

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Lamfalussy was mandated by the *ECOFIN* of July 17, 2000 to produce a more accurate diagnosis of the capital market regulation across Europe and to suggest more specific policies to further their integration.

<sup>214</sup> Apart from a lucid evaluation of the weaknesses in European capital markets, the *Final Report on the Regulation of European Securities Markets* suggested a systematic set of measures organized according to a four level approach consisting of framework principles (level 1), directives and regulations to implement the principles (level 2), enhanced cooperation among national securities regulators to implement levels 1 and 2 (level 3), and actions to enforce Community law and to strengthen European coordination in securities regulation (level 4).

<sup>215</sup> All the *CNVM* annual reports can be downloaded from the website of the institution at: <http://www.cnvmr.ro/ro/raportanual.htm>. Last accessed: December 10, 2012.

<sup>216</sup> These refer to the Prospectus Directive, the Market Abuse Directive, the Transparency Directive, and the Markets in Financial Instruments Directive (MiFID).

regulations covering banking services, and the Company Act, as well as to redesign the entire law regarding the capital market, and possibly reorganize the securities commission itself. The Lamfalussy League Table – the yardstick of the degree of legal synchronization with the EU directives<sup>217</sup> – indicates that Romania was a champion of quick transposition of the European *acquis* into national legislation, even if it was one of the last two states to join the union in 2007.<sup>218</sup> Unfortunately, social and political analyses criticize Romania’s defective domestic institutions that make it impossible most of the time to apply or enforce the laws on the books. As a result, instead of providing ground for future socio-economic development, the thick layer of laws and regulations add to the levels of inefficiency of Romanian bureaucracy.

Enthusiasm towards the new regulations inspired by the EU directives or its guides of best practices was confirmed in an interview I conducted with two directors of the Romanian securities commission in the fall of 2006.<sup>219</sup> These two young and, at least apparently, well-meaning and willing to learn professionals of *CNVM* seemed like captives of an ideology of rapid modernization facilitated by Romania’s EU integration. They saw Law 297/2004 regarding the capital market and Regulation 15/2004 regarding the mutual fund sector (actually adopted in the summer of 2005) as two very good examples of “modern and harmonized” regulations. Coming out of a twinning effort realized with the Italian securities commission that was funded

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<sup>217</sup> See the Lamfalussy League Table on The Transposition of Lamfalussy [i.e., CESR endorsed] Directives as of December 19, 2008 at [http://ec.europa.eu/internal\\_market/securities/docs/transposition/table\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/transposition/table_en.pdf), indicating that, less than two years after joining the EU, Romania had no transposition deficit unlike some of the earlier members of the Union. A complete list of directives adopted at the EU level is presented in the Table. Unfortunately, the pace of the transposition of the European *acquis* did not translate into a similar performance of the capital market or of the institutions overseeing it.

<sup>218</sup> See the Transposition of Lamfalussy Directives as of December 19, 2008 (Lamfalussy League Table), available at: [http://ec.europa.eu/internal\\_market/securities/docs/transposition/table\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/transposition/table_en.pdf), accessed: February 15, 2013.

<sup>219</sup> The informal interview, performed on September 22, 2006, was with the head of the European Integration Department and the head of the International Relations Department from the Romanian National Securities Commission. While I had prepared a list of questions in advance, most of which I covered during our discussion, I also allowed my two interviewees to direct the discussion to what they saw as key points. Although I did not record the interview, I took a thorough set of notes on site and left with numerous materials provided by the interviewees.

by the PHARE program, the law and the regulation (a piece of secondary legislation making possible the practical implementation and enforcement of the law) transposed into Romanian legislation all the EU directives concerning the fields of securities and capital markets in force at the time. They replaced four other key laws affecting the capital market adopted just two years before,<sup>220</sup> when Romania was not yet sure it would join the EU, but also brought the Romanian laws up to date with CESR overseen regulations. As my two interviewees emphasized, both the regulations of 2002 and, especially those of 2004, represented a departure from the regulatory framework in force at the time when several mutual funds (notably *SAFI*, *FNI*, and *FNA*) had collapsed. The new laws brought a “revolution” of the regulations as the older ones “were no longer up to date and could not assure the level of modernity and harmonization necessary for the prospective competition for securities investments with EU countries.”

When asked to identify what elements of modernity brought about the regulatory “revolution,” the two professionals indicated various European directives and regulations adopted in the areas of securities since the 1980s. A sort of circular logic, moving between EU regulations, measures aimed at regulatory modernization, and the ongoing nature of the transposition of EU norms, was almost inescapable for the *CNVM*. They confirmed during the interview the continued concern of the institution for the protection of retail investors, its concern for the proper representation of local investors on the capital market on other European markets, the willingness of all the young employees of *CNVM* to learn the CESR style of policy making, and the genuine desire for transparency by those working for the commission. This was more of an ad-hoc set of practices than a well routinized procedure, my interviewees confessed,

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<sup>220</sup> These were Government Ordinance (GO) 27/2002 regarding commodity exchanges and financial derivatives, GO 26/2002 regarding collective investment undertakings, GO 25/2002 regarding the Statute of *CNVM*, and GO 28/2002 regarding securities, financial investment services, and regulated capital markets.

as the CESR consultation model had not been formally transposed into an internal document of CNVM. The Romanian securities commission published its main laws and regulations on the website for consultation before being adopted, in order to collect opinions, comments, and propositions from all interested, organized public meetings where all public actors were invited, and, what appeared the most important, held one-to-one consultations with key market actors. Unfortunately, there were no transcripts or notes taken after the public meetings (including those concerning the acceptance or rejection of propositions from the participants), and the transcripts of bilateral consultations where the technicalities of the regulations were analyzed, as well as a record of those with whom consultations had been held) were also not public. Frustratingly for those formulating demands for more transparency from the securities commission, the meetings that appeared to be the most consequential for the form taken by the regulations were kept secret.

Even so, the two representatives of the commission were firm: “we are transparent, we have nothing to hide!” While they confessed that they would only discuss key issues, such as new policies mandated by EC/CESR affecting all market actors publicly, but could effect changes at the level of definitions or principles without public consultations, the two assured me that was in accord with CESR and IOSCO<sup>221</sup> procedures for public consultation that they had been studying thoroughly. Furthermore, while my interviewees acknowledged that public consultations were mandated by the CESR and its policies in the field of securities, they seemed to ignore, perhaps on purpose, the domestic laws imposing transparency in legislative and administrative acts.<sup>222</sup>

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<sup>221</sup> The International Organization of Securities Commissions, <http://www.iosco.org/>.

<sup>222</sup> Law 52/2003 regarding the transparency of administrative decision making, available at: [http://legislatie.resurse-pentru-democratie.org/52\\_2003.php](http://legislatie.resurse-pentru-democratie.org/52_2003.php), accessed: December 10, 2012, had been in force for more than three years at the time of the interview and was directly applicable to the activity of the Romanian securities commission.

While the European Commission was closely monitoring the transposition of European directives into national legislation as a condition of Romania's accession to the EU,<sup>223</sup> there was no effective way of assessing the quality of the implementation of newly adopted regulations or the supervisory activity of the Romanian commission. Being just an observer of CESR meetings before 2007, without the rights to vote or to take part in confidential meetings, *CNVM* was not part of the mechanism of peer review during the period when the most important reforms of the local capital market, in force even today, were adopted. Concretely, while the European Commission made sure that the *acquis communautaire* was transposed by Romania in timely manner, thus covering in practice levels 1 and 2 of the Lamfalussy policy model, the institutional grey zone in which the Romanian securities commission found itself during the pre-accession period made it difficult for its European partners to induce level 3 and even level 4 measures, that is, the sets of practices insuring the spread of the best modalities to enact and supervise the Lamfalussy market philosophy in national arenas. The interview with the two Romanian securities commission officials revealed that the zone of political liminality *CNVM* found itself in before accession created an institutional blind spot with regards to the best practices identified by CESR. Throughout that period, the ideology of energetic Europeanization/modernization, assessed by the pace at which the *acquis* was transposed into national legislation, informed the ethos of the commission experts, often at the expense of more moderate and experience-based legal propositions from actors of the local capital market.

That the Romanian capital market and those of other acceding countries in CEE were relatively unknown to CESR and the European Commission became clear to me after a series of

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<sup>223</sup> The Lamfalussy League Table, introduced earlier, was the working instrument of the European Commission in relation to national regulators of securities markets.

interviews with professionals and responsible people from CESR in August 2008.<sup>224</sup> These officials were aware neither of the scandals that had affected the Romanian capital market before the country began on the path of EU accession, nor of the intense contestation of the regulations being adopted just a few years before. The protection of retail investors seemed to be at the peak of their institutional agenda, according to the statements of CESR officials and the numerous examples of legal provisions, consultative practices, and policy initiatives they provided during our discussions. At the same time, lay investors from CEE countries were rather invisible entities for them, for several reasons. On the one hand, in spite of the robust procedures of public consultations institutionalized by CESR or the regular “Investor Day” events organized by the Committee, almost no organizations representing retail investors in CEE had the professional knowledge or the financial resources to take part in them. Furthermore, given the relative size of the two industries, CESR seemed to be more concerned with the way Western hedge funds, funds of funds, and other non-harmonized investment-fund types complied with prudential rules meant to protect retail investors rather than the way Eastern European varieties, mostly emerging from the privatization process and atypical when compared to Western taxonomies, accomplished the same goals. The functioning of Eastern European funds as well as the practical application of CESR- mandated regulations had not been made the object of any detailed analysis by CESR officials or during any of the public consultations organized by it.

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<sup>224</sup> A set of successive interviews were graciously arranged for me by CESR Secretariat at the headquarters of the institution in Paris on August 1, 2008. My interviewees were Victoria Powell, Director of Communications at the time, Richard Stobo, responsible for Investment Management, and Carlo Comporti, the Secretary General of the institution. The persons I met were chosen by Ms. Victoria Powell and Mr. Carlo Comporti to respond to questions related to areas of interest I had indicated ahead of time. Although I did not have a say in the choice of interviewees, I had complete freedom in formulating questions on any topic and I felt the choice of respondents was optimal given my research interests. The general format of the interviews consisted of a 10-15 minute exposition from each of my discussion partners, followed by 30 to 60 minutes of answers to my questions. Although I was asked not to record the interviews, I was allowed to take extensive notes during the discussions. I have also written a detailed set of notes about the interviews within days after the completion of the discussions. Neither of these interviews would have been possible without the continued support of Ms. Cristina Guseth, Director of Freedom House Romania.

On a different note, but equally consequential for understanding the ambiguities in the harmonization of the public policy process in the field of securities, the institutional relations between CESR and national regulations should be understood. Thus, my repeated questioning regarding the inadequate performance of the Romanian securities commission or the specific measures taken by CESR to correct them were met with surprise initially, discomfort (progressively), and ultimately triggered an unexpected response. CESR officials felt compelled to explain that, in terms of institutional hierarchies, CESR was subordinated to the Romanian securities commission and this was regardless of the specific performance of the East European regulator. CESR was a committee of securities regulators giving advice to the EU institutions. As a consequence, the staff and responsables I had the pleasure of speaking to were subordinate and assumed to facilitate the work of national regulators among which CNVM was a recent yet equal member. It is true, my interviewees argued, that CESR had to be very persistent in its “advice” to Romanian authorities and had to push hard for the EU directives to be transposed in a timely and comprehensive manner, but that did not give CESR any formal authority over a member of the Committee. This ambiguity of roles was a continued source of hesitations when it came to evaluating and enacting the best practices of securities regulation/supervision: CNVM was bound by the *acquis* conditionality during the pre-accession phase, but CESR became its subordinate soon after accession happened.

As a consequence of the successive interventions in the regulatory framework, and in spite of the efforts to transpose the best European practices through regulatory reform, and the best intentions of all market actors, the results have failed to meet many of the expectations for improved rules and better practices. Even though the *CNVM* organized public meetings and has accepted suggestions from various interested parties (institutional investors, administrators,

depositories) including associations for the protection of investors, the results have been ambiguous at best. Areas of improvement alternate with provisions that are either inapplicable or extremely costly when compared to the benefits in terms of market transparency and investor protection.

Not surprisingly, regulations concerning mutual funds and financial investment companies have had a mixed reception from asset managers, brokers, and institutional investors.<sup>225</sup> Although they acknowledge some considerable improvements from the pre-2004 regulations in terms of institutional clarity, better allocation of responsibility between managers, depositories and distributors of funds, clear rules regarding prospectus, easier administrative procedures and registration of funds simplified entry and exist procedures, such institutional actors claim that the existing regulatory framework was already left behind by developments in EU regulations and in management practices of European fund administrators, as reflected by the European Fund and Asset Management Association (EFAMA)<sup>226</sup> recommendations and implemented indicators of fund performance and risk. Furthermore, the Romanian securities commission has transposed many of the European regulations overnight, based on poor translations, and without paying enough attention to the practicalities of enforcing the new

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<sup>225</sup> Many of the assessments and interpretations of the subsequent sections of the paper are based on the results of a focus group on “Regulatory reform, public consultations, and the development of the capital market in Romania” organized in Bucharest in the summer of 2008. The participants in the focus group formed a diverse collective of stakeholders on Romanian capital market, representing institutions such as: the Romanian Senate, The Romanian Brokers’ Association, *RASDAQ* (the over-the-counter securities market in Romania), the Foreign Investors Council in Romania, the Central Depository for the Stock Exchange, several asset management companies, law firms with expertise in securities law and investment fund regulations, journalists from financial newspapers and business dedicated TV stations, leaders of civil society organizations, and independent analysts.

<sup>226</sup> EFAMA is the pan-European professional association of asset managers to which the Romanian Association of Asset Managers [*Asociația Administratorilor de Fonduri (AAF)*] has affiliated during my research. More information about the activities and views of EFAMA are available on the website of the institution: [www.efama.org](http://www.efama.org).

provisions. This necessitates a lot of “trimming” of the newly adopted laws, meant to reduce institutional uncertainty and the costs of compliance with the rules.

Representatives of the asset managers, for instance, are unhappy with the lack of responsiveness the Commission has shown towards the investment fund industry. T., the managing director of the Romanian Association of Asset Managers [*Asociația Administratorilor de Fonduri (AAF)*], is particularly disappointed that *CNVM* has ignored their methodology for the calculation of net asset values in investment funds.<sup>227</sup> Without presenting the specific technical issues at stake, T. thinks the fund investors will ultimately suffer because *CNVM* refused to adopt the EFAMA inspired methodology that *AAF* proposed. The securities commission has ignored the interest of the funds market as well as the demands of those that fund its budget. As the commissions and fees paid by all market actors contribute the most important part of *CNVM* budget, “the Commission should act like any employee, that is, listen to the demands of those that pay its salary.” To my objection that this collusion of interests among the asset managers and the securities commission is constantly criticized by other market actors, T. claimed that this is a misrepresentation as *CNVM* commissioners take pride in the fact that they are only accountable to the Romanian Parliament and, by implication, are non-responsive to market pressures. Being appointed by the Parliament, they only respond to political command and are interested in the reelection of those that appointed them. Varujan Vosganian<sup>228</sup> is an excellent illustration of “political” behavior when it comes to the capital market, thinks T. Thus, although he was very critical of the actions of the Romanian securities commission and an advocate of the secondary market in government bonds (a key asset for the mutual fund industry

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<sup>227</sup> Interview with T., managing director of *AAF*, July 16, 2008, Bucharest.

<sup>228</sup> Varujan Vosganian is one of the Romanian financial specialists whose book was reviewed in chapter three. A poet, politician, and financial specialist, he has occupied a variety of political positions in postsocialist Romania: Member of Parliament, Minister of Finance, and Minister of the Economy.

all over the world) while a President of the Parliamentary Commission for Budget and Financial Affairs, Vosganian lost his appetite for reform as soon as he was appointed Minister of Finance. As the asset managers stand for an insignificant market of investment funds, both in terms of assets under management and number of investors, they do not have the political leverage to influence the legislative process. The assumed collusion between *AAF* and *CNVM* is only an impression created by the choice of the asset managers, contrasted, for instance, by the more vocal interventions of the Brokers' Association [*Asociația Brokerilor*], of using mainly consultations with the Commission and very moderate public interventions. Such moderate conduct is often misinterpreted as a cover for hidden interests and relations with the commissioners.

At the same time, representatives of retail investors and many of the independent financial analysts and journalists have offered more critical assessments of the recent legal provisions. Thus, with regard to investor protection, the new regulatory framework is less comprehensive than the one developed in the mid-1990s with support from USAID and modeled on the regulations of the Securities and Exchange Commission [SEC] in the United States,<sup>229</sup> especially when it comes to the individual rights of lay investors. The shareholders of mutual funds, according to the previous regulations, voted in the General Meeting of Investors on issues pertaining to the activity of the fund and were represented by a Council of Trustees mandated to overlook the activity of asset managers. Although the involvement of the trustees was a fiasco in the case of the mutual funds that collapsed in the past, many consider this no reason to eliminate it altogether. The new regulations inspired by the European framework for investment funds eliminate the role of both the General Meeting of Investors and of the Council of Trustees,

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<sup>229</sup> See chapter three for a locally grounded critical perspective on the USAID market building project in Romania.

allocating the ownership and responsibility of operating investment funds to asset managers. The protection of retail investors is effected by the more clearly written mandatory provisions of the prospectus and by specifying the entry and exit procedures for holders of fund units (shares) when major changes in management, organizational structure, or investment strategy are made. As the next section of the chapter shows, attempts by the associations of investors and independent experts to provide more generous entry/exit terms for the shareholders, increased information provision requirements for the asset managers, the possibility for independent oversight of the asset management activity, and even to preserve some of the favorable provisions of the old regulations, have been met with refusal by the securities commission and criticism by the asset management industry.

The effect of the regulatory change on the governance of these collective entities has also been ambivalent. Asset managers seem to repudiate altogether the issues pertaining to corporate governance from the discussions about the EU harmonized investment funds. For them, corporate governance refers to relations inside asset management companies and, at most, those inside financial investment companies. From such a perspective, the principles governing relations among the diverse stakeholders of investments funds, and especially those among retail investors and asset managers, are obscured when subsumed by the prospectus provisions and the entry/exit provisions.<sup>230</sup> The view of corporate governance as an issue that is rather irrelevant for the relations among retail investors and asset managers was shared, at least until a few years ago, by the representatives of CESR.<sup>231</sup> In an interview in 2008, Carlo Comporti, the Secretary

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<sup>230</sup> See Interview with Adrian Tudose, president of the Romanian Association of Asset Managers (*Asociația Administratorilor de Fonduri*) on July 16, 2008.

<sup>231</sup> As the recent financial crisis seems to have called for more attention to the sector of financial intermediation and to have moved the goal of financial stability at the very top of ESMA/CESR priorities, the Authority is giving now increased attention to aspects pertaining to corporate governance in the securities intermediation sector. A section on

General of the Committee of European Securities Regulators, indicated that corporate governance is an approach of modeling relations among stakeholders of corporations (and thus pertaining to the Company Act), but not for the particular relations among actors within non-corporate entities such as mutual funds.<sup>232</sup> The Internal Market and Services Directorate General of the European Commission, on the other hand, had sustained initiatives for the promotion of corporate governance in European companies, and it dedicated a whole section of its portal to the issue. At the same time, CESR tried to avoid an overlap with the Commission on matters over which it did not have legal or political competence and focused rather on issues such as the simplification of the prospectus of investment funds, the due information of (especially) retail investors, and the encouragement of prudential mechanisms meant to avoid the defaults of funds targeting mainly non-qualified investors.

Such an approach comes into direct contradiction with the demands of retail investors. They claimed that, given the histories of deception on Romanian financial markets and the poor record of law enforcement, investors' concern with the security of their money cannot simply be relegated to impersonal rules. Retail investors have argued that the existence of comprehensive rules had not prevented the previous collapses of mutual funds. In this sense, they did not trust the securities commission with enforcing existing regulations, given both its past record of ambivalent supervision and its current performance during public consultations. Furthermore, they argued that allocating ownership rights to the collective of investors in the fund and modeling their interactions and decision-making process on forms of corporate governance

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corporate finance, including issues on corporate governance, is now kept on the website of ESMA: <http://www.esma.europa.eu/page/Corporate-Finance>, accessed: December 10, 2012.

<sup>232</sup> See Interview with Carlo Comporti, General Secretary of CESR, August 1, 2008, Paris.

implemented by international/well known corporations would have been a better way to secure the fair management of mutual funds.<sup>233</sup>

As a consequence, associations of investors accused the *CNVM* of having organized superficial and formal consultations and of not having incorporated their suggestions, meant to enforce the rights of retail investors or to improve corporate governance in investment funds, all to the advantage of professional investors and fund administrators. At least from the point of view of retail investors, so far the process of harmonization with the EU framework has led to deregulation, with ambivalent results and affecting various interested parties asymmetrically. This situation has stirred further public protests from the association of investors and has led to court action against the Romanian securities commission by market actors intending to force the suspension or modification of the new regulations.

## **6.2 THE MEDIATION OF EUROPEAN REGULATIONS BY LOCAL DISPUTES ABOUT THE CAPITAL MARKET**

But if and when *desire* and *end-in-view* intervene between the occurrence of a vital impulse or a habitual tendency and the execution of an activity, then the impulse or tendency is to some degree modified and transformed: a statement which is purely tautological, since the occurrence of a desire related to an end-in-view *is* a transformation of a previous impulse or routine habit. It is only in such cases that valuation occurs. This fact, as we have seen, is of much greater importance than it might at first sight seem to be in connection with the theory which relates valuation to desire and interest, for it proves that valuation takes place only when there is something of the matter; when there is some trouble to be done away with, some need, lack, or privation to be made good, some conflict of tendencies to be resolved by means of changing existing conditions.

(Dewey 1939: 34)

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<sup>233</sup> See interview with N. on the “new philosophy” of the capital market advertised by the *CNVM* commissioners on May 4, 2006.

The regulatory reforms described above was prompted by and filtered through disputes over the notorious financial collapses affecting the mutual fund industry. It has played into some of the very legal and institutional contentions that have made it necessary, complicating the situation further. Such is the case with the National Accumulation Fund (*FNA*).

The National Association for the Protection of Investors, for instance, has energetically protested against some of the new regulations concerning the mutual fund sector, targeting specifically the “new philosophy” brought by the successive laws of 2002 and 2004 with regards to the organization of investment funds. Having gone through the experience at *SAFI*, the mutual fund that collapsed in 1996 with suspended operations for years in a row, and finally was transformed into a closed-end fund with the acceptance of only a minority of the investors, N. decided to get involved even more energetically towards finding a solution for *FNA*. As shown above, N. had protested just months after the collapse of the *FNA* against the hesitant attitude of the Romanian securities commission that, instead of either finding a provisional administrator or facilitating the organization of the General Meeting of Investors meant to decide the fate of the fund, had rather “tolerated” (“been complicit with”?) *ANI-FNA*’s initiatives through which it assumed increasing authority over former *FNA* investors.<sup>234</sup> Later on, *ANPI* contested the plans to transform *FNA* into a new type mutual fund (it was ultimately rebranded *Integro*) soliciting the dissolution of the fund, the sale of residual assets and the return of the proceedings to the remaining investors. The law adopted in 2002 changed the nature of mutual funds, *ANPI* argued, removing the General Meeting of Investors and the Council of Trustees from deciding on the

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<sup>234</sup> See „*ANPI* - De ce e necesară Adunarea generală a investitorilor la *FNI* și *FNA*” [ANPI – The reasons why organizing the General Meeting of FNI and FNA investors is necessary], and “*ANPI* - Comunicat în atenția investitorilor *FNA*” [ANPI - Communique for the attention of *FNA* investors], documents published on November 2000 on the website of *ANPI* and saved on my personal computer in the summer of 2005.

strategy and management of the fund and allocating decision-making to the asset management company – now initiating, owning, advertising, and administering all its investment funds.<sup>235</sup>

*ANPI*'s involvement went beyond the specific administrative measures adopted in connection to *SAFI*, *FNI*, or *FNA*. N. and his close collaborators realized that they were disadvantaged by the regulation changes they were witnessing, rather than by any specific administrative measure adopted or mandated by *CNVM*. Therefore, *ANPI* leaders tried to get involved in the process of regulatory reform, considering that they would thus be able to secure more favorable provisions regarding retail investors and the associative forms they had been using that far. While the political climate and the existing legislative procedures did not favor their involvement in the drafting of the regulations adopted in 2004, Romania's prospective admission into the EU reconfigured the dynamics of the process of regulatory change. Both the law regarding transparency in public administration adopted in 2003<sup>236</sup> and the specific procedures mandated by the European Commission gave domestic non-state actors the chance to participate at least nominally in the process of regulatory change. In the sphere of securities regulations, CESR had been trying since its creation to set a record of transparency and consensual decision making among state-regulators and market actors. This gave *ANPI* the chance to interfere more directly in to the Romanian process of legal reform.

Concretely, after the adoption of the law setting the regulatory framework for the capital market in 2004,<sup>237</sup> retail investors demanded more direct public consultations before adopting secondary legislation, that is, regulations and instructions issued by the securities commission to

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<sup>235</sup> See „Comunicat ANPI pentru investitorii FNA – Integro” [*ANPI* Communique for *FNI-Integro* Investors], documents published on February 2001 on the website of *ANPI* and saved on my personal computer in the summer of 2005.

<sup>236</sup> See Law 52/2003 regarding the transparency of administrative decision making, available at: [http://legislatie.resurse-pentru-democratie.org/52\\_2003.php](http://legislatie.resurse-pentru-democratie.org/52_2003.php).

<sup>237</sup> See Law no. 297/2004 regarding the capital market, available at: <http://www.cnvmr.ro/pdf/legi/ro/Legea-297-2004.htm>

operationalize the provisions of the law. As the deadline for the adoption of regulations regarding mutual funds was fast approaching and *CNVM* was yet to organize discussions, *ANPI* issued a public protest, sent to the press and to the securities commission, demanding public consultations on the draft project of the regulations.<sup>238</sup> The “Protest” was a summons to the securities commission to comply with the procedures for public consultations, but it also included a list of proposed changes to be made to the draft Regulation published by the Commission. These proposed changes regarded the reinstatement of the collective ownership rights mutual fund investors had according to the previous version of the regulations, the correction of ambiguous formulas and especially the removal of textual overlaps among Law and Regulation,<sup>239</sup> clear rules regarding the information of investors and the performance of provisional asset managers in times of financial crisis, provisions related to the liquidation of the funds and the consultation of investors when significant transformations were made to the acts of incorporation, as well as clear and generous exit procedures, which basically gave sufficient time to retail investors to redeem their shares if the fund objectives were adjusted or when the asset manager was changed.

The securities commission responded promptly and a public meeting with all relevant actors of the mutual fund sector, including the financial press, was organized a couple of weeks later.<sup>240</sup> The public meeting took place on June 17 and, as the public announcements and the

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<sup>238</sup> See Press release no. 16 / June 1, 2005, *Asociația Națională pentru Protecția Investitorilor*, and Protest no. 17 / June 1, 2005, *Asociația Națională pentru Protecția Investitorilor*, documents published on November 2000 on the website of *ANPI* and saved on my personal computer in the summer of 2005.

<sup>239</sup> The Romanian securities commission had strangely copy-pasted whole paragraphs of the Law into the Regulation and then explicated, detailed, or specified these fragments of the law into subsequent paragraphs of the Regulation. This did not only seem useless to N., but it created potential problems and possible conflicts a future legal changes. It meant that the Law and the Regulation should be changed similarly and simultaneously every time in order to avoid unintended contradictions among distinct legal provisions.

<sup>240</sup> See Letter to *ANPI* from June 8, 2005, Direction for Authorization and Regulation, Romanian National Securities Commission.

articles in the financial media seemed to indicate, *CNVM* was open to suggestions and would soon vote on the amendments.<sup>241</sup> As one of the commissioners informed the press, the Regulation was premised on “rethinking” and “reorganizing” collective investments.<sup>242</sup> According to the new regulations, retail investors would have a more direct contractual relationship with their chosen mutual funds. Having the chance to opt out of the funds anytime they mistrusted the asset manager, there would be no need for the “old fashioned” associative forms in which investors had to decide collectively on the investment objectives of the fund, on the appointment or the change of an asset manager, or on the legal actions to take against potential fraudsters. Existing funds would simply have to reorganize into one of the investment vehicles stipulated by the new Regulation or dissolve and reimburse the investors. To make their contribution even clearer, *ANPI* sent *CNVM* an even more detailed list of amendments and suggested changes.<sup>243</sup>

Things did not turn out as expected, unfortunately, and N. had to send another grievance to *CNVM* indicating surprise that so few of their amendments had actually been incorporated into the final version of the Regulation in spite of the openness simulated during the public meeting, and reiterating their demands.<sup>244</sup> The documents stated again the main propositions that had not been included in the Regulation but, in addition to the previous correspondence with the commission, it had distinct overtones. Thus, *ANPI* used several examples of decisions and practices concerning defaulted funds that affected negatively the interests of retail investors. Such examples illustrated a particular legal epistemology on which N. and his associates were

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<sup>241</sup> See Dan Străuț, 2005, Țgăurile negre din legislația fondurilor mutuale în dezbateră publică” [Black holes in mutual fund regulations to be debated publicly], *Adevărul*, June 17, 2005; and Zamora, Gabi, 2005, “Micii investitori au căzut la pace cu CNVM [Retail investors have agreed with *CNVM* over regulations], *Averea*, June 18, 2005.

<sup>242</sup> See Press release of the Romanian National Securities Commission from June 17, 2005.

<sup>243</sup> See Letter to *CNVM* no. 22 / June 21, 2005, *Asociația Națională pentru Protecția Investitorilor*.

<sup>244</sup> See Letter to *CNVM* no. 23 / July 29, 2005, *Asociația Națională pentru Protecția Investitorilor*.

drawing, one in which legal arguments and the critical evaluation of laws/regulations is grounded in previous negative episodes that the new laws were meant to make impossible. The prospective evaluation of the new regulations did not follow a deductive logic (what practical effect a certain legal provision is logically expected to generate) but was done according to a practical and situated reading of the new provisions (“this or that ambiguous formulation of the law would not prevent a specific episode of the past from happening again”). This argumentative logic was used to contrast the promises and idealistic engagements of the Romanian securities commission regarding the non-repeatability of systematic defaults once the capital market was properly regulated. To the *ANPI* investors, *CNVM*'s promises were not worth too much as they were contradicted by the recent crises affecting the market and, at a more general level, by a situated legal epistemology illustrated by the investors, one that drew heavily on past examples as future possibilities.

*ANPI* focused its arguments on institutional liminal zones, such as situations in which the new regulations are invoked to solve old crises, and (the cases of *SAFI*, *FNI*, and *FNA* were invoked again. Fraudulent asset managers would be empowered by the new regulations and not bound by the previous legal norms any more, could assume decisions previously made by the collective of investors and/or mask losses and responsibilities behind institutional reorganizations. This is why *ANPI* was persistent in claiming that investor/consumer rights proposed by the securities commission should always translate into the language of ownership rights. That is, investors should not be seen as only consumers of financial services free to opt out of problematic ventures, but should continue to be treated as collective owners of mutual fund entitled, to decide on the fate of the undertaking, and to hold the asset managers accountable for their decisions. As the *ANPI* letter to *CNVM* states:

Since in all situations, asset managers invite the investors to contribute financial resources that would be invested on the capital market, [...] any investment gives its holder a property right in the fund. [...] The asset manager distributes fragments of property in the fund and assumes, in exchange, the duty to execute the asset management contract that involves the legal, prudent, and profitable administration of the fund, one that would be beneficial for both the asset manager and the investors.<sup>245</sup>

This type of bind on the asset manager is necessary, *ANPI* considers, as, in situations of default, investors most often have nothing to redeem from the fund, and “they [investors] should at least have the right to get out of the fund before any major changes in the organizations of the fund.” “This will make asset managers more responsible [...] as it would mean they will know they have to reimburse all the investors in case they decide to change the fund.”<sup>246</sup>

After several other petitions from *ANPI* and responses from CNVM<sup>247</sup>, N. decided to initiate administrative legal action against the securities commission.<sup>248</sup> As *ANPI* investors felt trapped into *SAFI/FOA* after the transformation of the fund into a closed-end variety and litigation in the *FNA* case did not seem to meet the demands of retail investors, N. considered an administrative case against the securities commission to be a sort of litigation hedging strategy. As he reasoned at the time, even if the *SAFI* and *FNA* cases were lost in court, *ANPI* could try to get a revision of the initial judgment as well as an annulment of the administrative acts of the

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<sup>245</sup> Ibid., p. 2.

<sup>246</sup> Ibid.

<sup>247</sup> See Response to *ANPI* no. 22035 / August 22, 2012, Romanian National Securities Commission, Letter to CNVM no. 25 / September 23, 2005, *Asociația Națională pentru Protecția Investitorilor*, and Decision no. 2934 / October 31, 2005, Romanian National Securities Commission, through which the securities commission rejects all the amendments to Regulation 15/2004 proposed by *ANPI* and motivates its decision.

<sup>248</sup> See Sue petition by *ANPI* against The Romanian National Securities Commission at the Administrative Contentious Section of the Bucharest Court of Appeals in 2005. A copy of the main documents in the case file was generously provided to me by N.

securities commission if they managed to get the court to accept their objections to the new legal provisions concerning mutual funds on which *CNVM* based its acts.<sup>249</sup>

Unfortunately for N., things went even worse for the retail investors in the case based on administrative law. *ANPI* submitted the same claims as those initially made in front of *CNVM*.<sup>250</sup> The procedural exceptions raised by *CNVM* were rejected by the court and the trial began at the beginning of 2006.<sup>251</sup> *ANPI* further detailed its claims but kept the same argumentative strategy, based on the use of past examples of default and present issues in contention to indicate the weak points in the laws and suggest modalities of improvement.<sup>252</sup> The case of *SAFI/FOA* that had to be given a new license by the securities commission was an example given much weight in the legal arguments formulated by *ANPI*. *SAFI Invest*, the asset manager, had transformed it into a closed-end fund and was now trying to fit it within the new classifications adopted through Regulation 15/2004. As the manager was having doubts about that process, the Commission bent the law, N. claimed, allowing it to go beyond the deadline set for that process and even suggesting the choice to be made by the asset manager.<sup>253</sup> The contentions in the *FNA* penal case, where the continuity of the fund and the rights to redeem the shares were disputed among retail investors, the associations representing them, and the asset manager, were also given as an example in the administrative case to illustrate the weaknesses of the proposed regulations.<sup>254</sup>

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<sup>249</sup> See interview with N. on July 22, 2006 on the administrative contentious case against the Romanian securities commission.

<sup>250</sup> See Sue petition by *ANPI* against The Romanian National Securities Commission at the Administrative Contentious Section of the Bucharest Court of Appeals in 2005.

<sup>251</sup> See Decision after public meeting on February 8, 2006, Case file no. 4544/2005, the Administrative Contentious Section of the Bucharest Court of Appeals.

<sup>252</sup> See Written submission to the court on February 8, 2006, Case file no. 4544/2005, the Administrative Contentious Section of the Bucharest Court of Appeals.

<sup>253</sup> N. was particularly dissatisfied with this as he considered the securities regulator/supervisor should not interfere in asset management decisions or in the relations between retail investors and asset managers.

<sup>254</sup> See Written submission to the court on May 10, 2006, Case file no. 4544/2005, the Administrative Contentious Section of the Bucharest Court of Appeals, p.9.

Furthermore, while the right of the investors to be informed about the accounting situation of the fund, especially in situations of crisis, is a component of their right of property warranted by the Constitution, *ANPI* demanded that the preeminence of the asset manager over lay investors, facilitated by the new regulations, be eliminated. The securities commission colluded with the interests of the asset management industry in eliminating the collective ownership and decision rights of investors, N. argued, as, the leverage of individual investors was now much less than that of their previous associative forms.<sup>255</sup>

*ANPI* used the same “paradigm of argument” (Comaroff and Roberts 1981: 84-85) based on forms of abductive reason<sup>256</sup> as they used in the FNA case. Starting from the examples of asset managers infringing on the rights of retail investors, and taking examples of fraudulent behaviors as indicative of the permissibility/inadequacy of regulations, *ANPI* considered that current regulations should be further changed. At stake are the legal provisions themselves. At the same time, *CNVM*’s paradigm of argument drew repeatedly on forms of deduction arguing, at the most basic level, that current regulations are modern and harmonized and thus sound even if permissive; and, as such regulations usually induce prudent behaviors by asset managers, the market will be in good shape in the future. Its arguments were about the expected conduct of asset managers and were formulated in support of its version of legal reform. The two strategies described above illustrate the contrasting legal epistemologies of the two litigants. Such socially grounded legal epistemologies refer to the forms of argument brought in court, the issues that can be disputed through law (what can be contested/argued/censured/enabled in diverse juridical

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<sup>255</sup> Ibid., pp. 12-13, as well as Interview with N.

<sup>256</sup> I use the concept of abductive reason developed by CS Peirce (1883). Peirce defined abduction as a form of syllogistic reason contrasting deduction. Thus, whereas deduction is based on the generation of necessary results from sufficient premises – AAA-1 (rule, case, result), the abductive reason is based on a reversed order of the components of the syllogism – AAA-2 (rule, result, case). The schematic representation of the syllogisms corresponding to deduction, induction, and abduction is well explained at the page dedicated to CS Peirce by the Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/archives/fall2010/entries/peirce/>.

procedures), as well as the forms of evidence considered appropriate. And whereas the strategies used by *CNVM* are not surprising, important questions can be formulated about the conditions and causes of the approach adopted by lay investors. Whether because of disappointment with the wishful deduction of the securities commission behind which investors saw continued abuses, or because of their lack of formal legal knowledge or the practical approach to new types of knowledge (financial law and administrative litigation) as an adaptation to the increasing legal pluralism in the field, or as an illustration of the cognitive opportunism widespread among the retail investors and constantly illustrated by my informants, the abductive argumentative strategy illustrated by *ANPI* seems more attuned to mundane types of reason and lay forms of understanding law.

In practice, court proceedings were brief and rather superficial. The legal representative of *CNVM* was absent from the court on several occasions and was later allowed to submit written comments, while N.'s arguments and requests for further evidence were often ignored. This was the case when he asked the court to demand that *CNVM* submit as evidence the administrative acts through which it enabled *SAFI/FOA* to re-register as a new type of fund. The request was denied by the court because, given the fact that *ANPI* was suing to have those administrative acts annulled in a separate administrative contentious case, the same acts were considered irrelevant in this case. Given the way litigation was conducted throughout the whole trial, it was no surprise to N. that he lost his case first at the Bucharest Court of Appeals<sup>257</sup> and later in the appeal submitted to the High Court of Cassation and Justice.<sup>258</sup> What was both surprising and genuinely

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<sup>257</sup> See Sentence no. 1080 from May 17, 2006, Case file no. 4544/2005, the Administrative Contentious Section of the Bucharest Court of Appeals.

<sup>258</sup> See Decision no. 2329 from May 3, 2007, Case file no. 37639/2/2005, the Administrative and Fiscal Contentious Section of the High Court of Cassation and Justice of Romania.

disappointing for N. was the biased attitude of the courts: judges simply copy-pasted from the written submissions of the securities commission into the motivation of the sentence.

*ANPI's* subsequent attempts to contribute to updating of Regulation 15/2004, made necessary by the legal developments in the EU and in Romania, were also futile. Although the Romanian securities commission had organized new public consultations at the request of *ANPI*, the amendments proposed by the association of investors were derided and rejected. As part of a crowd of attendees at that meeting, I was able to witness the intriguing and disproportionate treatment the representatives of *ANPI* received. While it is true that their exposition was less formal than that of the representatives of the asset managers and the Commission, the derogatory comments by the lawyers representing the former, or the expediting remarks by the state officials seemed out of place. While lawyers of the asset management industry were frequently stating that *ANPI* representatives did not understand the issues in debate that have already been explained/addressed during previous consultations, *CNVM* officials were often interrupting the interventions of *ANPI* representatives, were urging them to hurry in the allocutions, and were adopting a patronizing tone of voice when addressing the *ANPI* people. Even more surprising was the attitude of many of the financial journalists present who gave in to the temptation to villanize the representatives of the lay investors: laughing and puffing when representatives of small investors tried to present their arguments, exchanging complicit looks with the asset managers, or ironically referencing earlier statements of the investors when formulating their questions to the securities commission representatives. Conflicts of interests (*CNVM's* budget is derived mainly from the fees paid by the institutional investors) as well as forms of institutional and cognitive authority (journalists both admired industry executives and depended on them for

news and analyses) placed *ANPI* in a structurally weak position that they were not able to change in spite of all their strategies.

N. tried to set up a legal hedging scheme: he would take part in litigation in the *FNA* and *SAFI* cases and, if the retail investors did not have their demands met that way, *ANPI* would be able to claim that the regulations that facilitated the reorganization of the funds were, the reorganized funds would be dissolved, and the investors would be reimbursed. Unfortunately, his hedging strategy turned into negative leverage as N. lost all the cases in which he was involved. N.'s and *ANPI*'s very risky strategy came from their structurally weak position within the judicial field: unable to manipulate the informal channels of the judiciary or to navigate the ambiguities of the increasingly complex legal system in their favor, the representatives of lay investors lost all types of legal action initiated and at every level of litigation.

For an outside observer, however, their repeated failures can facilitate insight into the political and moral premises of the emerging financial arrangements in postsocialism. The arguments *ANPI* leaders used in disputes with regulators and asset managers articulated a sort of “moral metalanguage” (Keane 2008) permeating postsocialist monetary practices. In dispute were not only concrete issues or even specific legal provisions but local conceptions of what a mutual fund is, the normative relations among the stakeholders, their specific rights, as well as the moral justifications for all the above. At play were the values at stake in political participation, the conglomerate of values, evaluative principles, and practice of justification articulating competing “orders of worth” in the jargon of Luc Boltanski and Laurent Thévenot (2006). Following them, the overlapping disputes over money and the moral values informing financial conduct is illustrative of contexts characterized by dissonant “orders of worth,” ones articulated around competing evaluative principles (Stark 2009).

While representatives of the retail investors are still bitter about the results of all their strategies of dispute and about the lack of sensitivity towards their concerns shown by the Romanian securities commission, state officials and fund administrators argue that the new regulations are “more modern and harmonized [with European directives].”<sup>259</sup> The emulation of the EU regulatory framework will not only create the premises for Romania’s incorporation into the common market for financial services but will, its supporters believe, bring a “new philosophy” to the mutual fund industry. Thus, the intricacies of collective forms of ownership and action engendered by the old legislation have been eliminated by a clear allocation of control to administrators, and the protection of investors improved by more clear and transparent procedures. In the long run, Romanian regulators hope the imitation of European institutions and the opening up of the Romanian capital market to European financial service providers will increase its soundness and will inculcate the “proper values” to Romanian investors. This practical theory of imitation and of regulatory change imposed top-down by the EU is in contrast to local theories of the financial market introduced in chapter three; it recapitulates the mimetism towards the West engendered by the USAID-built capital market. One can see, beyond the particular nuances, the same shyness towards the West, the same institutional rush and absence of critical approaches. Furthermore, the attitude of the Commission reveals a persistent form of disdain for local initiatives, for lay actors of the capital market, and for the forms of knowledge based on experience rather than theory.

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<sup>259</sup> The evaluation of the new regulations was made by two *CNVM* directors I interviewed in September 2006. Formulaic and repetitive, the insistence on the two words signified the institutional and cultural mimetism of Romanian authorities and indexed the weak position of the domestic authorities, who had to transpose the EU *acquis* overnight, in relation to the EU regulator which was, in institutional terms, subordinated to national institutions. On a different level, this formulaic iteration also indexes the subaltern position of the specialists of the regulatory authority towards politicians, as well as their consequent inability to assume a technocratic vision.

While many investors and independent financial analysts might conclude that in Romania mutual funds are a good example of a failed institutional import and an attractive financial package that deceived lay investors rather than funding the growth of the capital market, a more nuanced account is in order. A succinct description of the current state of the mutual fund industry in Romania must integrate at least two perspectives. It might be true that the new regulatory infrastructure can facilitate the circulation of financial capital, as the Romanian securities regulators argue; but if not enforced properly it offers plenty of leeway for deceptive fund administrators.<sup>260</sup> From a different perspective, retail investors seem entitled to claim that the previous collective ownership provisions were closer to the principles of mutuality and offered better means of control over their money, but their persistence in refusing to accept any kind of change makes them anachronistic, and can easily put them in a position to miss the opportunities of a more integrated capital market in Europe.

The nostalgic invocation of the mutualist architecture for funds and the laments of retail investors over the corporatization of relations in investment funds echo much wider criticism of the demutualization process brought by the growth of neoliberalism after the 1980s. The idyllic world envisioned by Frank Capra in his classic *It's a Wonderful Life*<sup>261</sup> is now almost gone. The small-town savings institutions where the bank customers also owned the institution while their savings were the source of loans that helped develop the same local community have been replaced by the branches of regional or national banks. Money saved by locals now contributes to the pool of capital being circulated around the world and invested in risky projects

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<sup>260</sup> *FNI* and *FNA* were only the most notorious cases of mutual fund collapses in postsocialist Romania. Several other examples of funds that lost important amounts of their values when the fraudulent practices of asset managers were uncovered are less known outside Romania although they feed into the concerns of the investors described by this paper.

<sup>261</sup> See *It's a Wonderful Life*, Produced and directed by Frank Capra, Screenplay by Frances Goodrich, Albert Hackett, and Frank Capra, Released by RKO Radio Pictures, Inc. The film is now streamed at YouTube: <http://www.youtube.com/watch?v=w10BWUsAYyY>.

disconnected from the needs of those who contributed it. The “locals” everywhere have to use variable interest-rate mortgages (financed by other local people in other parts of the world) that often end in default. At the same time, if local banks continue to be owned by communities, their funds are most often drawn away from the community through investments in derivative contracts and special purpose vehicles that promise to pay interest above the variable rates of the money market.

The literature illustrating the demutualization of financial practices around the world is growing. Thus, while Battilani and Bartley (2012) realize a comparative historical overview of forms of demutualization taking place in various sectors of the financial system, Felix Treptow (2006) or Lounsbury and Pooya (2012) focus on the demutualization of stock exchanges. Although there are researchers finding the economic advantages of demutualization (Lai, McNamara, and Yu 2008), more critically-minded social scientists tend to see the undersides of the process (Klimecki and Willmott 2008; Schneiberg 2008; Goldstein and Schneiberg 2009; Hayes 2010). In spite of the concomitant demutualization/corporatization of financial institutions in the US, American investors benefit from a more diverse ecology of investment funds. Mutualist investment vehicles in which investors are represented by Councils of Directors or Trustees continue to exist alongside incorporated investment funds in what Schneiberg and Bartley (2010) consider a regulatory hedging strategy of American authorities. According to the two, this strategy consists of “creating sectorial redundancies through specialized financial sectors organized according to alternative principles” (282) of which the mutualist variety of investment funds constitutes a resilient alternative to the more modern investment vehicles.

### 6.3 SOCIAL CHANGE, EU INTEGRATION, AND THE CHANGING ORDERS OF WORTH IN ROMANIAN MUTUAL FUNDS

Just as one cannot get out of language to talk about language, so one cannot get out of the moral order in order to talk about the moral order. What does this mean for the analyst? It means that she/he uses her/his moral membership, her/his knowledge of the mundane organization of the practico-moral order as a *resource*, even as she/he turns into a *topic*.

(Jayussi: 247)

The attentive examination of disputes over regulations facilitates a better understanding of the ways in which transnational processes involving the financial market (in this case, the pan-European harmonization of capital markets) are constituted locally and interpreted through the lens of disputes taking place at the national level. An EU-driven regulatory process may take a diversity of forms in national arenas, the specific socio-political contexts that mediate it locally being to a considerable extent responsible for the end result of the reform, for its practical consequences, and for its subsequent legitimacy. The contradictions witnessed in disputes over regulations are accentuated by the financial scandals and senses of political inequality witnessable during the last two decades but are, for the same reasons, an excellent window into the postsocialist changes in economy and society.

Although the conflict over the new regulations is the conspicuous phenomenon, at play is a deeper process of mediation through which European regulations are transposed, rather than simply translated, at the national level. While Romanian authorities had no option out of the pan-European harmonization of laws pertaining to the capital market, the process of mediation is visible in the negotiations between diverse institutional actors over the classification of funds by the newly adopted laws, over relations between (the EU)-harmonized and non-harmonized institutional forms, over the understanding of the basic categories and definitions of the new

regulations, or over the specific ways in which the new laws were interpreted and enforced. All these elements indicate a process of mediation that is simultaneously more flexible, continuous, and open-ended than a straightforward regulatory conflict settled in court. Symbolic factors add to rational arguments formulated in terms of the costs of compliance, long-term effects, or a means to ends rationality to explain support for particular interpretations and choice of legal categories. Often, issues related to the symbolic power of actants or the manipulation of ideologically charged notions such as that of “Europeanization,” described further below, are more efficient factors giving the whole process of legal reform a mimetic, non-pragmatic aspect.

Situated actors draw on socially grounded forms of discourse to manipulate such regulatory processes for their own ends, building a diversity of meanings that often contradict the intentions of the initiators of the process. The rhetoric used by the actors involved facilitates our understanding of the ways “Europeanization” and “European integration” have become powerful argumentative repertoires in contemporary Romania, although ones displaying a remarkable internal diversity. In a context where the EU integration became the overarching legitimating discourse, a situation Romania was in at least until the recent economic crisis, hierarchies of power and the endorsement of particular institutional forms were often realized through the pragmatic manipulation and the creative redefinition of the meaning of European categories. Glossing over the distinct ways in which actors connect to the normative market models and the suppression of differently situated opinions on the reform by the actors responsible for its implementation, all in the name of Europe, blatantly contradicts the purpose of public consultations. Part of the policy-making model on which the creation of CESR was premised, public consultations were meant to encourage critical assessments of the new regulations in order to eliminate their problematic provisions in a timely manner and to build their legitimacy

gradually, but were often used by Romanian authorities as a way to delegitimize socially grounded criticism of the reforms and to monopolize the symbolic forms associated with EU politics. Thus, the Romanian securities commission capitalized on the involvement of CESR and of the European Commission in the process and used the motive of Europeanization as a self-understood reason to accept the reform. During the interviews I conducted, directors in the securities commission repeatedly claimed that the new regulations were “more modern and more harmonized” with the European framework, failing to specify what that meant exactly and in what respects that was an improvement over the previous situation, in spite of my repeated questions on the issue. A similar rhetoric monopolized the mass-media interviews and newspaper articles published by specialists affiliated with capital market authorities in Romania.<sup>262</sup>

The discourse about Europeanization, insistently and often superficially used by public authorities in Romania during the last years, is performative<sup>263</sup> to the extent that it creates the appearance of unconditional agreement with reforms and de-legitimizes alternative critical positions at the moment of their articulation. In this regard, retail investors among whom I conducted research were relegated to an inferior position characterized by ambiguity.<sup>264</sup> This hierarchy of discourses achieved in practice disfavored retail investors as actors adopting a

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<sup>262</sup> Such interviews and opinion articles are published regularly by the financial newspapers in Romania such as *Bursa*, *Ziarul Financiar*, and *Săptămâna Financiară* or broadcast on the *Money Channel* (a TV station dedicated to business programs).

<sup>263</sup> The concept launched by John L. Austin in his *How to Do Things with Words* (1962) is adopted here to describe the effects of the manipulation of the idea of Europe and of the process of Europeanization by Romanian authorities. For a good illustration of the way the concept can be used to describe the effect of financial theories on communities of brokers and their practices see Michel Callon’s initial adoption of the idea in the social analysis of economic theories and financial markets in his introduction to *The Laws of the Market* (1998) or his later article on *What does it mean to say that economics is performative?* The concept of performativity was later elaborated in the social studies of science by Donald MacKenzie in his *An Engine Not a Camera: How Financial Models Shape Markets* (2006). The most authoritative source about the concept of performativity is the book edited by Donald MacKenzie, Fabian Muniesa, and Lucia Siu, 2007, *Do Economics Make Markets? On the Performativity of Economics*. Princeton: Princeton University Press.

<sup>264</sup> The public perception of investors such as those represented by *ANPI* comes in sharp contrast to the sense of purpose, determination, critical awareness demonstrated by the *ANPI* leaders during all the discussions we had on the implications of the Europeanization of regulations on the domestic mutual fund industry.

critical stance towards the reforms introduced by the state found it hard to question the political consensus on the necessary Europeanization of Romania. As the discourse about Europeanization is monopolized by public authorities, it is almost impossible for lay investors to ground their claims in a similarly legitimate grand narrative. Equally significant, lay investors appealing to “European values” such as transparency and generalized public dialogue on reforms at the same time had to argue that the American model of the capital market was better as far as they were concerned. As far as I noticed, this simultaneous criticism of European laws regarding the capital market yet appreciation of the EU politics of administrative transparency is confusing for *ANPI* followers. EU laws seem to come together and to be taken wholesale by local actors: either they are seen as all good, or as all bad. Few of those I interacted with seemed disposed towards a detailed critical analysis with nuanced effects.

The situation described further illustrates the negotiations of the various moral/economic/legal criteria according to which a particular perspective on changes affecting the market is accepted as more relevant than competing ones. Alternative orders of worth are competing legitimating bases for legal-economic disputes. As shown in the previous sections, the actors involved in disputes not only struggle to put their claims in accord to one regime of value or another, but constantly argue over the relevant form of justification for the new legal infrastructure of the market. In the process, they actively renegotiate and reconfigure the prevalent orders of worth in which their disputes over value are dynamically situated. In spite of the effort to promote specific regimes of justification meant to naturalize their arguments, most of those I interviewed and observed seem to overlook and even conceal the contingencies of the process of reform. Both critics of rapid institutional import and the advocates of modernization-qua-emulation of European political categories appeared to neglect the diversity of the actors on

Romanian capital market, portraying them as passive and uncritical receptors of cultural forms, devoid of agency. Consequently, both interpretations ignored the local adaptation of imported forms and, in spite of the numerous allegations of corruption and personal involvement, missed the pragmatics of this mimetic act.

From a different perspective, the focus on the local process of cultural translation both neglects and illustrates of the wider debates in Europe over the varieties of capitalism more compatible with the aims and values of the European Union: on the one hand, the more individualistic, more efficient, yet “predatory” Anglo-Saxon model and, on the other hand, the better regulated forms of social capitalism dominant in many countries of Continental Europe. The over-simplifying dichotomy between the two main varieties of capitalism glosses over a situation that is more nuanced, complicated, and harder to classify than we are led to believe. The intense debates within “the West” itself over the desirable types of capitalist formation or over the aims and forms of regulations were made more visible by the recent financial crisis of the subprime instruments and the subsequent reforms of the financial architecture of the European Union.<sup>265</sup> Ironically, as various researchers of the phenomenon have shown, with regards to financial regulation and the infrastructures of the financial market, the “Paris [pan-European] consensus” on the matter seems to enforce the neoliberal dogmas of unrestrained capital mobility more effectively than the “predatory” American regulatory framework based on self-regulation and flexible innovation (Abdelal 2007). In his wonderfully instructive book, Rawi Abdelal traced the progressive elimination of rules on capital mobility in the US and Great Britain after the 1970s and the way the US managed to pressure (through bilateral politics and through the role of American credit rating agencies in sanctioning the bonds of non-compliant

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<sup>265</sup> See Issing (2009), Hieronymi and Vautravers (2009), as well as Recine and Teixeira (2010) for an outline of the most important measure of reform targeting the financial sector after the crisis of 2008.

governments) most countries around the world into eliminating restrictions to capital movements. Interestingly enough, leaders of the European Union (among which a key role was played by French socialists) tried to recover some of the competitive advantage lost to American and British finance by turning the EU into a zone where national capital circulated freely. The effort to create uniform regulations for European capital markets that has so directly impacted the lives of my informants was part of this more general process of turning the EU into a space of unrestricted capital mobility.

Given the multifaceted disputes centered on the contemporary regulatory reform of the Romanian capital market, a different approach, one paying attention to the diversity of actors involved in the process and meant to shed light on the pragmatics of the observed interactions, can render the entire process understandable. In this sense, I regard the legal contentions stemming from this process as forms of action situated in context and historically grounded rather than simply as debates over cultural formations. Moreover, negotiations over the social values and moralities permeating the various regimes of monetary accumulation in Eastern Europe play out in disputes over regulations. Values should neither be treated as the determinants of social action nor simply as its result, but, as the ethnomethodological literature on values, values-in-use and their social constitution suggests (Jayussi 1984, 1991), as constituents of action which themselves take a lot of effort to be negotiated and made to appear as taken for granted.

Consequently, this chapter has focused on the continuous renegotiation and routinization of values occasioned by arguments about new forms of ownership, altered understandings of risk, and the changing role of the state and regulatory agencies. Several issues seem to generate insoluble disputes among diverse participants in these debates and have consequently organized

my approach. The (mis)fit between new forms of investment and monetary accumulation dependent on the market's erratic behavior and the previous notions of money whose value was intimately linked to personal diligence (or any legitimate form of work) is a resilient theme that emerges in most of the scandals generated by financial collapse in postsocialist Romania.<sup>266</sup> This theme becomes more acute with the emerging forms of social inequality based on the manipulation of money and financial practices.

Similarly, a resilient understanding of risk as a communal category whose effects can be mitigated by the collective action of investors comes into direct contrast to newer conceptions of risk (promoted by champions of the capital market) as a measure associated with a portfolio of previous personal choices, and as an assessment of the situation of individual investors rather than collective subjects. This theme emerges from disputes over the specific form a mutual fund should take as either a collective entity owned by the investors or as an abstract product (very similar to a bank deposit) that can be managed and marketed by an asset manager towards a diversity of individual investors.

Last but not least, this episode highlights the ongoing arguments about the role of the state given the accentuated financialization of economic and political processes during late capitalism. Critics of financial globalization and supporters of social capitalism argue that the state should be concerned with the taming of generalized forms of social risk through direct intervention (e.g., bailing out bankrupt financial institutions whose collapse would affect many lay investors, offering compensations from the state budget to investors whose savings have been washed away by bank and investment fund managers). On the other hand, supporters of

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<sup>266</sup> Various anthropologists of Eastern Europe have identified this motive in the case of many other financial scandals happening in most of the former communist countries in the region (Verdery 1995a, 1995b; Humphrey 2000; Mandel and Humphrey 2002; Korovilas 2004).

neoliberalism (such as economists working for the IMF and the World Bank) usually claim that the state's regulatory role should be limited to the adoption and enforcement of technocratic rules. The state should avoid and limit direct monetary interventions as bankruptcies and losses are part of the "natural selection" of viable businesses functioning under capitalism.<sup>267</sup> Although the various forms of state intervention in the financial markets are hard to separate in practice, the above distinction between forms of political and regulatory intervention captures well the options available for state authorities during the postsocialist financial crises.

#### 6.4 CONCLUSION

The *end-in-view* is that particular activity that operates as a co-ordinating factor of all other subactivities involved. Recognition of the end as a co-ordination or unified organization of activities, and of the end-in-view as the special activity which is the means of affecting this co-ordination, does away with any appearance of paradox that seems to be attached to the idea of a temporal continuum of activities in which each successive stage is equally end and means.

(Dewey 1939: 49)

This chapter has focused on the transformation of disputes over losses and compensations occasioned by the collapse of several Romanian mutual funds into regulatory battles over the reorganization of the funds and subsequently into ideological battles over the most desirable regulatory frameworks for mutual funds. Given the multifaceted contentions over value

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<sup>267</sup> An interesting inversion of positions could be witnessed in 2008 during the bank failures in the United States and some European countries. At the time bank owners and managers called for the bailout of the troubled financial institutions while left-wing critics warned the public about the dangers of nationalizing losses without eliminating speculative financial practices and making management more responsible. The choice was framed similarly by state authorities having to decide on the most appropriate forms of state intervention in the banking industry with the purpose of preventing a general collapse of the financial system. *The Financial Times* is a good venue where various propositions for the reform of the financial system made by either political leaders or prominent academics are presented and compared.

described in the previous chapters, it comes as no surprise these disputes are not limited to the recuperation of losses, but aim at redefining the rules of investment and at influencing the conditions under which some of the existing financial organizations can be maintained. At least as consequential as investors' actions for material and moral reparations were their campaigns for the revision of the previous regulations governing investment funds and for the improvement of the state's supervisory activity. Such calls for regulatory interventions were justified not only by examples of past financial defaults but also by the contemporary trajectory of the collapsed mutual funds, the most notorious of which were not legally dissolved. Rather, they were repeatedly suspended from operation and later transformed into either closed-end funds with increasingly rigid entry/exit procedures, or into UCITS (a new variety of funds introduced by EU regulations), in which the collective ownership rights of investors have been replaced by a sometimes elusive right of exit. While advocates of such organizational transmogrifications argue that the funds have been given a second chance, lay investors generally feel "trapped" in the new entities (like "serfs on financial estates"). They argue that they have lost control of their money and complain that such measures are meant to conceal the responsibility of those involved in the initial collapse of the funds - administrators and state officials alike.

The legal reform has taken a hasty and chaotic character, as the most immediate goal was that of adopting the European regulations before the closing of the EU accession negotiations in 2005. The suggestions made by lay investors have been consistently neglected without sufficient justification from the Romanian securities commission and in spite of the fact that no contrary position on most of the issues in dispute has been officially adopted by any other of the market actors. No wonder, then, that the most vocal contesters of the new laws have been the retail investors' representatives. They argue that the initial (American-inspired) regulatory framework

was better since it attributed a more important role to non-institutional investors. To blame for the numerous financial defaults are not the rules themselves, representatives of retail investors believe, but those who should have been responsible for the sound functioning of the capital market. Lay investors argue that, lacking a proper “investment culture,” during the 1990s, regulators, administrators, and investors alike had mimicked the American procedures of collective governance without adopting their basic values. According to them, the solution after 2000 should have consisted of piecemeal regulatory interventions, improved supervision, and proper enforcement of regulations.<sup>268</sup>

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<sup>268</sup> Such opinions were expressed by the leaders of ANPI. They were documented during interviews conducted throughout my fieldwork research and in the frequent opinion pieces published by the president of *ANPI* in the daily financial newspaper *Bursa*. See, for instance, Mihai Nicolaevici, 2007, “11 ani de “administrare” suplimentară SAFI” [Eleven years of addition management by *SAFI Invest*], *Bursa*, May 7, 2007, available at: [http://www.bursa.ro/11-ani-de-administrare-suplimentara-safi-9693&s=print&sr=articol&id\\_articol=9693.html](http://www.bursa.ro/11-ani-de-administrare-suplimentara-safi-9693&s=print&sr=articol&id_articol=9693.html), accessed: February 15, 2013.

## **7.0 CONCLUSION: CHARY OPPORTUNISTS: CONVERSIONS OF VALUE AND SOCIAL MUTATIONS IN POSTSOCIALIST ROMANIA**

To be opportunistic, in the positive as opposed to the pejorative sense of the term, is to be able to find moments for action that others, who knew what they were looking for, were unable to recognize.

(Stark 2009: 175)

In September 2012 the *Bundesverfassungsgericht* (the Federal Constitutional Court of Germany) decided that the ratification of the European Stability Mechanism and the fiscal pact recently adopted by the German Bundestag were constitutional. The new treaty enacted a mechanism meant to safeguard financial stability in Europe that was strongly supported by Angela Merkel, the powerful German chancellor. Vocal politicians from the opposition parties tried to block the validation of the treaty by Germany claiming that too much of local taxpayers' money would be used to purchase the bonds of troubled and less disciplined European countries, that Germany was in danger of losing more of its sovereignty to the EU with the adoption of the treaty, and that the German parliament did not have enough power relative to that of the chancellor when it came to European matters. The decision reached by the constitutional court was seen by many as having momentous effects for the further integration of the EU, for the efforts to rescue Greece

from financial crisis, as well as for the stability of the Euro.<sup>269</sup> This highly charged juridical event, closely watched by people all over the EU and beyond, has continued not only the avenue of judicial integration in Europe, one of the preferred modalities of policy-making inaugurated by the EU (Sweet 2004, 2010), but is part of a wider process described as the judicialization of politics all over the world (Ferejohn 2002; Hirschl 2004, 2008; Chorev 2008; Grugel and Ruggirozzi 2009).

During the postsocialist period, Romania was no exception to this trend. Courts, and especially the constitutional court, were called upon to settle an increasingly diverse array of social and political issues: the restitution of nationalized property, forms of retroactive or restorative justice, increasing commercial and civil liability disputes, the fate of political elections, layoffs and wage cuts in the public sector, the reorganization of the public pension system, or the compensation due following the numerous financial and political scandals of the transition period. While the increasing role of the judicial system in criminal and civil matters was to be expected after the dissolution of the Communist Party and its quasi-monopoly of power, courts also came to play a significant if unexpectedly important role in the definition of money, its legally acceptable forms of circulation and manipulation, or its legitimate forms of value and the ways to assess it.

This conclusion returns to some of the key questions formulated in the introduction: why is it that so many of the financial practices in postsocialist Romania end up in litigation? Can one talk about the judicialization of finance? Is there anything specific about forms of money whose

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<sup>269</sup> See Roland Nelles and Severin Weiland, 2012, “Constitutional Court Ruling: A Setback for Germany's Euroskeptics,” published in *SpiegelOnline.de*, September 12, 2012, available at: <http://www.spiegel.de/international/europe/constitutional-court-ruling-a-setback-for-germany-s-euroskeptics-a-855413.html>, accessed: February 15, 2013, as well as “Germany and the euro: Yes, but...,” *The Economist*, September 15, 2012, available at: <http://www.economist.com/node/21562981>, accessed: February 15, 2013.

value comes to be determined in court? Anthropologists have already written about the judicialization of politics in the postcolony (an inclusive term referring to a condition shared by countries in Africa, Latin America, or postsocialist Eastern Europe), where law and disorder produce each other dialectically with the spread of contemporary neoliberalism (Comaroff and Comaroff 2006). While accounts from all over the postcolonial/postsocialist world seem to confirm the authoritative diagnostic of Jean and John Comaroff, their theoretically infused approach should be joined by ethnographies that pay close attention to local details and to the perspectives of those living the postcolonial condition, as well as by questions regarding processes that seem to transgress the confines of the postcolonial world.

Related to the first of the questions formulated above, the American reader may be struck by the way postsocialist Romania seems to evolve towards the model of democracy envisioned by de Tocqueville after visiting America in 1831, that is, one in which the most important political and social issues will ultimately be brought to the court.<sup>270</sup> While agreeing with Robert Hayden's comment that this may be "be the best evidence that the socialist court systems did not permit political cases, since post-socialist ones must do so" (letter to author, February 13, 2013), I also suggest some important distinctions and a different explanation for them. Thus, Guillermo A. O'Donnell (2000) shows that, as Europe was characterized by strong states and law was an auxiliary of administration, Tocqueville was struck by the combination of a weak state, the omnipresence of the law (even in places where the state did not have representatives), and a strong judiciary that enforced law in America. Whereas Tocqueville was struck by the popular support for the law in America and the role of the judiciary in enforcing and even making law,

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<sup>270</sup> See especially "Title VI: Of the Judicial Power in the United States and Its Action on Political Society" in Alexis de Tocqueville, 2010 [1835], *Democracy in America: historical-critical edition of De la democratie en Amerique*/Alexis de Tocqueville; edited by Eduardo Nolla; translated from the French by James T. Schleifer, Indianapolis: Liberty Fund, Inc.

one does not see the same thing in postsocialist Romania. Although neoliberalism facilitates the incorporation of American democratic forms and their resources (especially notions of fundamental individual rights and their enforcement in court when the state cannot protect them or actually abuses them), the formal resemblances between Romanian and American judicial procedures are “false friends.” The metaphor based on the deficiencies of loan translation conveys well, in my view, the contrast between the popular ideologies in support of the law Tocqueville observed in America during the nineteenth century and the duplicity towards laws and authorities resilient from the socialist period (holding that laws are cheap talk, means nothing, is just on paper, or is for suckers) and the present opportunism with regards to the judicial process. The over-abundance of litigation in Romania is not necessarily in the name of justice (although there is incessant talk about justice), but rather it is a last resort for people lacking political resources or who are unhappy with the results of politics. Litigation is the expression of emerging forms of vindictory citizenship (see below) in which the constant appeal to litigation generates the instability of values and the disregard of the idea of justice. In the case of Romania, the judiciary is an available repertoire of practice or a pragmatic resource when politics is inaccessible to lay people rather than the principle of a well-functioning democracy.

In East European societies formerly dominated by the Soviet Union, using the judiciary appeals to people in diverse social categories and differently endowed groups, but especially to those who seem to be threatened by the momentous social changes. Former communist elites, who can hardly be suspected of neoliberal ideological convictions,<sup>271</sup> pursue legal avenues and

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<sup>271</sup> This statement should be nuanced. Robert Hayden, for instance, points out that, in many former socialist countries, the most committed neoliberals seem to be the younger members of the former communist elite, who managed to privatize for their own benefit much of the assets of state socialism. Romania makes no exception in this sense. The newer generations in the former communist parties and retired Securitate agents cynically and opportunistically pursue any chance of enrichment opened by neoliberal capitalism even if (or especially as) this

use constitutional courts as controllable decision making arrangements when democratic politics threatens to escape their control because of the emergence of new themes of substantive debate, new actors engaging in public matters, and new forms of competition in the political arena. Equally important, lay citizens are also inclined to prefer litigation to political negotiations or economic arbitration in spite of the reputation for corruption of local judges. Not properly represented by the state and distrustful of politics which they see as a puppet show for the legitimization of theft, lay citizens seek refuge in the courts. Many may perceive judicial interactions more as ritual complaints rather than as routinized forms of action. Unlike politics or financial speculation, litigation is supposed to be rule driven, procedure specific, and give every plaintiff the turn to speak that, in spite of the often unsatisfactory results, induces a ritual character to such engagements through which closure may be brought to even the most traumatic of social events. Even in cases where judicial decisions were not favorable to the litigants (and did not bring closure), many of those pursuing litigation expressed contentment that they had done everything in their power and argued their case to the best of their knowledge.

At the same time, the neoliberal reform of the state and the regulations promoted in the process are both responsible for and illustrative of the judicialization of finance and politics, all the more so as pensions, life insurance, health insurance, and, increasingly, education funding come to be based on financial arrangements. Neoliberal governmentality, characterized by its insistence on procedure, transparency, and accountability, has been routinized initially in the forms of omnipresent markets as allocative devices and the reorganization of public administration around cost-efficiency criteria, but has progressively migrated outside “the

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goes against the state or the interests of the many. At the same time, I argue that members of the first and second echelon of power under socialism, that is, the “older” generations in the neo-communist parties in Romania were mostly nostalgic for socialism, distrusted democratic politics and often used the judiciary to block or bend transparent procedures.

economic” towards “the judicial.” This progressive spread of neoliberal modalities of power facilitated the displacement of customary administrative routines or political negotiations by court procedures in the resolution of disputes over key social issues. Courts have come to serve both as means and metapragmatic frames for disputes over money, assessments of (economic or social) values, ownership and civil rights, restorative and retributive justice.

In the case of the former socialist countries of Eastern Europe, EU integration has brought about not only a mass of new regulations and administrative procedures (the transposition of the European *acquis* being the most visible process), but also a persistent insistence on the reform of the judiciary, for instance, through the Mechanism for Cooperation and Verification [MCV] instituted by the European Commission in relation to Romania and Bulgaria.<sup>272</sup> The MCV was conceived as a means for further democratization and for the containment of postsocialist disorder (to borrow the concept proposed by the Comaroffs), manifest in the abuse of public office, constant bending of the law, repeated misappropriation of public funds, and omnipresence of channels of informality as substitutes for modern (EU) bureaucratic logic. Although it reflects the inadequacies of Bulgarian/Romanian judicial practices and administrative procedures in the area of law enforcement, the singularization of the two countries in the Balkans among those recently admitted to the EU (especially in light of recent events in countries such as Hungary, Italy, or Greece) engenders an Orientalist logic as the MCV extends much beyond the initial period for which it was envisioned and the liminal status

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<sup>272</sup> Information about the EU decision to impose the Mechanism for Cooperation and Verification on Bulgaria and Romania for the period after their accession in January 1, 2007 can be found on the dedicated webpage at: <http://ec.europa.eu/cvm/>. The last “Report on Progress under the Co-operation and Verification Mechanism in Romania” by the European Commission can be downloaded at: [http://europa.eu/rapid/press-release\\_IP-13-56\\_en.htm](http://europa.eu/rapid/press-release_IP-13-56_en.htm), accessed: February 15, 2013.

of the two countries, always in danger of having their voting rights suspended from the European Council, becomes a chronic condition.

EU interventions contribute to the discursive production of law and disorder, something the Comaroffs and the contributors to their volume have shown. This, arguably, is not only a syndrome of the “post” condition but also of liminal states, characterizing the passage from one societal project to another in which the EU seems to have taken the place of communist teleology. Thus, in Romania, the judiciary becomes equally an object of heightened political concern and a means of achieving transformations attuned to those values proclaimed by the EU to be “European.” Law constitutes a frame for the accelerating debates over social, political, and economic values and, as in some other Eastern European countries (cf. Hayden 2002c; 2005 in the case of Bosnia) a means for the external imposition of democracy.

The pursuit of law as a means to further political goals has been one of the preferred avenues for the integration of Europe. The European Union has been described as a neoliberal project driven often by judicialization as much as by political compromise and historical considerations (Sweet 2004). At the same time, actors in peripheral countries like Romania often experience the EU as a labyrinth of legal procedures whose paths they have to learn to navigate if they are to achieve anything. Postsocialist repulsion for politics, which is often seen as an arena for duplicity and personal enrichment rather than compromise and collective achievements, as well as ideas about universal rights and well-defined legal procedures, contribute to the embrace of litigation and judicial means by many of my informants. Judicialization is thus not only an external/from above imposition, but also induced by perceptions of local practices and pressures from below. It is also the local achievement of actors such as N. and *ANPI* that induce them to make the pragmatic/opportunistic choice to pursue the capillaries of neoliberal

governmentality for which law is one of the preferred modalities. In the process, my informants and their companions alter their condition and drag Romanian judicial procedures towards the practice of European courts (such as the European Court of Justice or the European Court of Human Rights) premised on common law and driven by legal precedent thus generating a hybrid jurisprudence well described by the concept of legal pluralism crafted in a (post)colonial context.

This is not to say that Romania all of a sudden becomes a Common Law country like the USA or the UK but rather that some Romanian judicial practices progressively come to resemble those of international institutions and courts premised on common law. There is, after all, great resistance among the Romanian courts and the judicial establishment trained in civil law to adopt common law practices. This happens as, not knowing American common law, and not even knowing the Romanian civil law properly, people like N. and the others I worked with nevertheless use any available opportunity that seems to promote their cause: the law mandating transparency in public administration or the public consultation procedures implemented by CESR/ESMA, or ECRH jurisprudence for example. Through their actions, my informants and the many others that act like them are making Romania little by little into a neoliberal country even if they are not aware of all the consequences of their actions. Change happens not according to a master plan but rather opportunistically, pragmatically, in unintended ways, and through the contextual recombination of possibilities and modes of action opened by the macrostructures. Change comes about through the everyday attempts of simple people to repair and put to work the assemblages of institutions, regulations, judicial means, and political ends that affect their lives.

As I ended this dissertation, some of my informants were trying to find meaning in the aftermath of a long and demanding scandal. M., the editor of *Bursa*, was still disappointed with

the configuration of the local capital market and with the lack of foresight of its actors and regulators. A., the lucid and sarcastic investor, hesitated whether to give up on his efforts to get Romanian authorities to really prosecute those who defrauded *FNI* investors although he was more relaxed after already having gotten compensation after the commercial trial. N., the tireless litigant and representative of lay investors, shared M.'s disappointment with the market and was genuinely irritated by the corruption affecting the Romanian judiciary; this, however, meant he would have a "lot of work" to do even after the *FNI* case would be long settled. Ioana Maria Vlas, the former manager of *FNI* and *FNA*, was enjoying her new life in the countryside and writing a book about her life as a financial manager and her experiences in prison. Sorin Ovidiu Vîntu had been jailed for blackmailing and threatening to kill Sebastian Ghiță, one of his business partners, and was also facing trial in several other cases.<sup>273</sup> His business had shifted from finance and the capital market to media and television. *RealitateaTV*, the news station he built and turned into a powerful political instrument and means of extracting rents from public contracts, had become his best known enterprise.

Planning to take control of Vîntu's television while he was away, Ghiță, a 35-year-old rising star of Romanian business and politics, had opened his own news station (*RomaniaTV*) and had been elected to the Romanian Senate in December 2012. Allegations about his connections with the secret services were always present but they accelerated with his dispute with the owner of *Antena3*, the Romanian news station with the largest audience, owned by a notorious collaborator of Securitate and the person said to have managed the Cyprus-registered company through which the socialist secret services ran all foreign trade before 1989.<sup>274</sup> The

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<sup>273</sup> The episode was already described in chapter four above.

<sup>274</sup> The owner of *Antena3* is one of the central characters of *Kapitalism*, the documentary by Alexandru Solomon introduced in chapter four.

mushrooming of news stations during the decade after 2000 indicates a shifting arena for the accumulation of money. Hosting discussions of political and moral values and employing a diversity of discursive registers, from the analytic to the hysterical, such TV stations have facilitated access to power and thus possibly the embezzlement of public funds. Generating losses every year, but able to postpone paying taxes indefinitely by threatening to unleash public campaigns against those in power, television has become an alternative circuit of monetary accumulation for „media moguls” who secure kickback contracts by supporting opportunistic politicians in their bid for election.<sup>275</sup>

In presenting the continuous conversions between diverse forms of capital and embodiments of value, this dissertation has described an ethos of chary opportunism emerging both as a response to and a catalyst of economic transformations and mutations in social values. Objects of financial and emotional investment have changed; forms and media supporting disputes over values have mutated as well; the only thing that seems resilient is a wary form of opportunistic conduct, the appeal to courts for solving all important disputes about money and its value (from plain contracts to tax levies and state budget administration), as well as the constant appeal to the state to mitigate risks and the effects of the market. Forms of citizenship based on recurring litigation and the demand for compensation by the state have multiplied almost “fractally” in postsocialist Eastern Europe: political opponents exiled or incarcerated by the communist regime (Stan 2013), former proprietors dispossessed by communist nationalization (Otoiu 2010), persons irradiated after the Chernobyl nuclear explosion (Petryna 2002), investors that lost their money in bank runs (Srećko and Štiks 2012), pensioners demanding proper retribution for their life-long work (Kideckel 2009) - all demonstrate an emergent form of

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<sup>275</sup> As Robert Hayden pointed in one of his commentaries to this chapter, such arrangements resemble in many ways the business models of Silvio Berlusconi or Rupert Murdoch.

*vindictory citizenship* where the basic rights are affirmed in the process of claiming compensations for their suppression.<sup>276</sup> While forms of postsocialist citizenship based on the reconstitution of rights in court have been documented, further questions are engendered by such legal-political developments: how is life together possible for citizens of such fractured and negatively integrated societies? What are the conceptual vocabularies that can best capture the imaginaries of such people? How are we to understand social and economic values when nothing seems to be as resilient as change itself?

The social processes described by this dissertation have been facilitated by a resilient ethos of chary opportunism. Key for the workings of the socialist second economy, such attitudes continue to inform the social mutations of meanings and values after socialism. Ignorant about the financial practices proposed to them but pushed by growing inflation, desiring the affluence of commodities and opportunities in the west but not being ready to give up the security of socialist paternalism, the people I worked with seemed to reinforce the old ways of approaching practical matters with every new venture in which they got engaged. Critical of the greediness of those who had stolen their money and of the self-interest of their leaders, my informants frequently changed their allegiance from one civic association to the next, from one leader to another, and from one form of litigation to another. Although the forms of money they engaged with have changed over time and so did their plans for the future they had tied into each new investment, the fundamentally wary attitude of my informants kept pushing them into contesting the results of speculative investments (which they pursued both because of the ways risks were cunningly disguised by asset managers and because of the role imitative behavior has played in

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<sup>276</sup> Robert Hayden pointed out the similarities between the aims and strategy of “cause lawyering” in the United States and the practices pertaining to what I call vindictory citizenship in Romania in spite of how differently the Romanian and American actors talk about their strategies. The more attentive examination of the parallels between the two strategies based on explicit comparisons between such cases can be done in a separate study.

matters concerning money in Romania's recent history), into refusing the forms of calculation performed by the market, and into looking for responses to issues pertaining to value in court.

Persons are not the only agentive actors appearing in this study. The last chapters illustrate two forms of social agency: that of persons in chapter four and that of organizations and institutional forms.<sup>277</sup> These are overlapping and mutually reinforcing forms of agency at the intersection of which takes place the weaving of social action. Although I have been describing processes that seem to take place on different planes, such as the micro-social interactions of my informants and the macro-historical process of European integration, these really represent differing facets of the same situations I have been studying. Paying attention to the intertwining forms of agency facilitates shifts of focus between levels and an understanding that apparent "levels" themselves are an effect of perspective, of the focus on a particular (kind of) actor. While easily reified in social analysis, processes of social change take shape as trajectories of the overlapping agency of various actors.

This study proposes an understanding of money as an indexical and performative device, the social circulation of which is mediated by the metapragmatic effects of the judicial forms it rests on. Neither a plain thing nor a simple idea, money is constituted by a reconfiguring collective of actants (objects, persons, and values) whose modes of action and bundles of material properties facilitate contingent meanings and shifting notions of value. Although neither cash nor bullion, the forms of money manipulated by my informants are not simple abstractions of value, dematerialized and dissociated from the networks in which they circulate. Rather, money is being constantly re-materialized into both the graphic artifacts that mediate its

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<sup>277</sup> Research so far indicates that documents such as contracts and graphic artifacts employed by the fund administrators and litigant investors also manifest forms of agency. However, investigation of such phenomena will make the object of a separate study.

technical functions (published net asset values, accounting statements, etc.) and the inscriptions people use to support their claims to compensations (account balances and statements, medical investigation reports, personal letters, etc.). The continued efforts to re-materialize money function like “hooks” for moral justifications and attempts at its reinsertion into a world of solidarity and social relations, its transformation into a socially controlled instrument subsumed in social goals.

Last but not least, the roles of institutions and organizational forms become apparent in disputes over the metamorphoses of collapsed funds. Being facilitated by successive regulatory reforms, the transformation of investment funds from mutualist organizations into abstract financial products grew into one of the disputes with the deepest consequences among those I have observed. As the last chapter revealed, the new regulatory framework takes away investors’ ability to *voice* their concerns (by eliminating the Council of Trustees and its attributions) and only leaves them the possibility to *exit* collective investment undertakings (Hirschman 1970). More precisely, investment funds are now initiated and controlled by specialized financial companies and investors are allowed to redeem their shares for a very brief period of time when major changes to their Articles of Incorporation are made. Retail investors fear the new legal infrastructure of the market will become just another “form without substance” - an institutional import devoid of meaning and functionality, if the regulators keep siding with institutional investors and ignoring retail investors.

In specific contexts and building on histories of financial disputes, local actors appropriate European Union initiatives, filtering them through local meanings of money and value and adapting them to their immediate goals. In the process, the very premises of social action get renegotiated. Ideas of ownership, rights, and value are refashioned generating new

orders of worth that further constitute the medium into which new institutional imports are made. The uneasy reception of the new institutional arrangements is related to the shifting premises for the formation of value and the deeper changes in the prevalent conceptions of worth (Boltanski and Thévenot 2006[1991]) associated with Romania's economic transition. Whereas formerly mutual funds were associative entities which, in spite of their ambiguous ownership could be controlled by a collective of investors, the European Union - promoted reorganization of investment funds attribute the key role to asset management companies. Asset managers now have control over the funds, being simultaneously the initiators and owners of such investment vehicles. The premises for collective action by lay investors no longer exist, as each participant to the fund now has an individual relation to the fund manager rather than one mediated by the General Assembly and the Council of Trustees that were mandatory under the previous regulations. Thus, the transition from a political order in which the premises for rights, action, and value were defined collectively, as part of a larger community of investors, to a polity in which criteria of worth are premised on the more abstract qualification of individual investors as actors able to choose among investment opportunities but no longer to influence the projects they take part in, generates numerous contentions with a direct impact on the legitimacy of the new institutional arrangements.

The particular approach used here to the concomitant reorganization of the normative repertoire and social relations combines the processualist approach to law of Comaroff and Roberts (1981) with more recent sociological perspectives on conflicting evaluation principles, dissonant cognitive practices, alternative forms of justification, and the ongoing production of accounts (both in the narrative and the financial meaning of the term) for the collective accomplishment of social action (Boltanski and Thévenot 2006; Stark 2009). While also

considering dramatic forms of disagreement and formalized disputes, the sociologists mentioned above have assimilated well the ethnomethodological postulate according to which the mutual and simultaneous accomplishment of meaning and of the practico-moral order is the habitual condition rather than the aberration. A persistent sense of dissonance (Stark 2009) among moral values and principles of evaluation is part of the postsocialist condition. The struggle to deal with such competing orders of worth and to bring one's actions into accord with alternative forms of value in repeated instances of justification, although much more clearly illustrated by dramatic disputes such as the ones presented in this dissertation, is not an exception but the form taken by everyday actions in contexts in which the practical-moral order has to be continuously reassessed and reaffirmed.

Aiming to create a theory of the practical modalities in which agreement is reached in the presence of contradictory logics that stem from continuous acts of justification meant to account for and morally guide social action, Luc Boltanski and Laurent Thévenot envision six such forms of worth (equally applicable to persons, things, and actions) in modern polities. Inspired by the writings of political philosophers, these practical grammars of politics are the market polity (articulated by Adam Smith) where competition is the higher common principle and the price is the yardstick measuring the worth of goods; the inspired polity (St. Augustine) of individual creativity and originality; the domestic polity (Bossuet), dominated by tradition, hierarchy, and the model of the family; the polity of fame (Hobbes) and recognition in the public space; the civic polity (Rousseau) based on principles of rights and law, the logic of solidarity in the welfare state; and the industrial polity (Saint-Simon), of technical performance and efficiency. These distinct models of the polity, a concept referring to a common structure taken by the diverse orders of worth and which grounds the multiple forms of legitimate agreement can be

envisioned in reality, must respect at least two principles. One principle is that of the higher common good that is invoked to solve disputes within the same order of worth; there are as many principles of the higher common good as there are orders of worth. The other principle is that of common humanity; it validates each of the proposed orders, situates them on a common level of justification, and excludes as unacceptable orders premised on ideas of inequality among people (for instance, the diverse eugenic visions of politics).

Boltanski and Thévenot go beyond structuralist attempts at specifying the grammars of the distinct orders of worth, and illustrate ways in which these orders play out in disputes. Thus, disputes (anything from verbal disagreements to ongoing litigation) can end up with the settlement of the issues at stake within the same order of worth, the contestation of the prevalent order and an appeal to a different order of worth, compromise as a temporary solution among people looking for justification according to different orders, and relativization (private agreement), ignoring the conflicting orders of worth and the search for a common good.

Relations among persons are, according to Boltanski and Thévenot, mediated by the things relevant for each order of worth. Whereas tradable goods are objects relevant for the market polity, political procedures are objects relevant in the civic polity. Furthermore, each polity grounds forms of criticism towards the alternative orders. For instance, whereas discourses grounded in the market order would see the civic order as generating inefficiency and disregarding individual rights, critical assessments facilitated by the civic order would generally emphasize the disregarding of fundamental political rights in the name of the market and individual consumer choices. Compromise among the civic and market polities is generally hard to imagine, although current developments in the field of corporate social responsibility and business ethics try to overcome the radical contrast between the two orders of worth.

Whereas the civic and the market polities envisioned by the two French intellectuals can be used to describe the contrasts between mutualistic and the neoliberal architectures for investment funds experienced by Romania during the last two decades, the exact classification of the two types of regulations is not the most valuable lesson offered by their social theory. More important is their conceptualization of the persistent if reconfiguring disputes over the types of rights and actions envisioned for mutual fund investors and the contrasting regimes of value that ground such contrasting views. Thus, although historically one observes the transition among two distinct regulatory philosophies in Romania, these should be seen in practice as more than mutually exclusive regulatory orders: they are alternative regimes of justification for the actors of the Romanian capital market.

As David Stark has shown, in agreement with the initial intuition of Boltanski and Thévenot, contemporary financial and political practice is often characterized by the coexistence of alternative/contrasting principles of evaluation, a situation generating a persistent *sense of dissonance* (2009). Contentions between evaluative practices are not accidental and made visible by moments of crisis, such as the collapses of *FNI* and *FNA*, but constitute “normalcy” in a constantly reconfiguring ecology of evaluative principles. Furthermore, social and moral values are neither uncontested social ends, nor simple means towards other overarching goals, but are constantly renegotiated in practice. Consistent with John Dewey’s *Theory of Valuation*, the means to ends relation should be complicated as part of reconfiguring dynamics of action in order to avoid the reification of values (1939). In this sense, the ethnomethodological literature on values, well summarized by Jayussi (1984, 1991), as an understanding of the relation between values and conduct as “not contaminant, regulative or determinant, but *constitutive*” (Jayussi 1991: 231), has integrated well the pragmatist analysis of valuation. Furthermore, as “moral

diversity and difference are given in the logic of conventionality” (ibid: 244), change is to be understood as a routinized contemporary condition for values implicated in the conduct of practical life, rather than as the symptom of deviations from or the collapse of the moral order.

Although specific moral judgments and appeals to values are implicitly negotiated in the process of arguing over concrete issues, what seems to have been reinforced over the years and with each scandal in Romania is an attitude of chary opportunism in which the appeal of new and risky financial ventures promising unprecedented monetary gains and the prudent option for collectivist institutional solutions known to have worked in the past, are combined in creative ways. In spite of the contradictory appearance of such mixed attitudes, the description renders well the simultaneous lack of trust in any formal and abstract solution and the immediate copying of practices and attitudes that have proved to work in previous situations and are adopted by large numbers of those sharing similar experiences. It also explains the peculiar forms of social order and change witnessed in contemporary Romania.

What came out repeatedly during my research is the preference of lay investors for a more collective form of action in connection to the funds and to their investments (i.e., something close to the initial American model of the regulations), at the expense of the more impersonal and individual relations suggested by EU-inspired regulations. Such people know they have recouped some of their money only when they acted collectively, through investors’ associations representing their interests, and believe that the worth of each investor and her monetary gain are premised on the inclusion in such collectivities. This opinion was repeatedly recorded in interviews conducted by the author with lay investors struggling to recover money lost with the collapse of *FNI* and *FNA*. It raises fundamental questions about the catalysts of social action in contemporary Romania.

In spite of simplistic explanations trying to link the unprecedented success and growth of the two mutual funds to the forms of institutional communication adopted by the asset managers and the banks involved to “impersonal” legal forms or to the aggressive TV commercials at the time, ethnographic research indicates that action was, rather, situated in overlapping social networks. Such loosely articulated networks of acquaintances, friends, and relatives constitute the medium through which practical examples, information, and knowledge are disseminated and the loci where the bases of collective action are set. At the same time, several years after the reform described in this chapter had been accomplished, my informants continue to be afraid that behind the impersonal regulations and rules of transparency, poorly enforced by the securities commission in any event, administrators will have enough freedom to defraud new funds, since they will no longer be controlled by investors. Such claims by retail investors can be taken to reflect a generalized sense of insecurity towards the abstract forms of high finance, as well as the uneasy reception of and lack of trust in undertakings otherwise common in market economies.

Issues such as those addressed by this study are urgent matters in postsocialist countries, where most of the former state-run social protection systems are externalized to the market and built on the infrastructure of financial arrangements (e.g. the implementation of private pension systems or the privatization of state ownership). The connections between knowledge, risk assessment, and value, central for the practices involving money throughout the world, reveal some of the fundamental dimensions of social change in postsocialist Romania. Leaving behind a world in which most of the financial processes tended to be subordinated to central planning and for which communists envisioned the complete elimination of money, my informants struggle to make ends meet in a world where money is the pervasive idiom in discussions about value. Having departed from a world of monetary stability, my informants now experience a world

where goods are standardized and abundant, yet money is increasingly fluid, the object of manipulation, uncertain, new and diverse, with a lot of possibilities for spending and investment.

The sense of insecurity displayed by people I worked with is all the more acute in a social setting where the episodes of deception have been numerous and have usually ended in defeats and losses for lay investors. It is particularly difficult to accept that the value of financial investments or complex forms of money are not necessarily dependent on God, gold, or the sovereign state, but rather reflexively linked to the generalized trust of all those interchanging it. This specific outlook makes it easier to understand the ethos of my informants and the specific form of change it makes possible. Change does not come as a result of stable preexisting configurations of value that make possible a new social order, but more as a result of accidental arrangements of events in specific situations. Previously tested routines are applied to new situations. This often results in misappropriations that generate mutations in social meanings, and change as unintended consequences. Thus, change happens while many are still looking backwards, and the past enters the present not as continuity but as an instance replicated instrumentally in situations of radical uncertainty. The ongoing challenge is to understand how people accommodate such forms of persistent instability and how they routinize the continuous negotiation of values implicit in social action. The understanding of the practical negotiation of values is the key for the scholarly representation and ethnographic writing of processes of social change.

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