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Legal Transfer and the Legitimation of Law: Implications of Farm Family Property Provisions in Albanian Legislation

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Land Tenure Center

AN INSTITUTE FOR
RESEARCH AND EDUCATION
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RURAL INSTITUTIONS,
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LEGAL TRANSFER AND THE LEGITIMATION OF LAW: IMPLICATIONS OF FARM FAMILY PROPERTY PROVISIONS IN ALBANIAN LEGISLATION

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ABSTRACT

This paper discusses the relationship between transfer of laws from one country to another and legitimation of the law associated with the transfer. Drawing lessons from the legal transfer experience of Latin America in the 1960s, the paper attempts to ascertain what relevance, if any, legal transfer has in the context of the emerging market economies and democratic societies of the former communist countries of East Europe and the Soviet Union. It is argued that attempts at exporting laws have failed when little or no attempt is made to understand the processes of how law is legitimized within a specific country. The cultural orientation of a particular country or section of society at a particular point in time will determine how legal culture is formed and sustained and will thus affect the degree to which law is legitimized. Drawing on the theoretical discussions of section one, a short case study of law related to rural property rights in Albania is presented in section two.

LEGAL TRANSFER AND THE LEGITIMATION OF LAW: IMPLICATIONS OF FARM FAMILY PROPERTY PROVISIONS IN ALBANIAN LEGISLATION

by

Rachel Wheeler[1]

1. LEGAL TRANSFER AND LEGITIMATION

1.1 INTRODUCTION

To observe the impact of legal transfer from one country to another one can look to the past experiences and the extensive critical literature of such transfer, such as the 1960s Law and Development movement in Latin America. It may then be possible to more fully comprehend some of the barriers faced by East European (EE) and the Former Soviet Union (FSU) countries that are rigorously importing laws from other countries with the aim of promoting a quicker and more efficient transition to market and democratic institutions. The majority of the transition countries look to established democratic societies for guidance in economic planning and legal specifications needed to support newly emerging institutions. Concurrently, established economies such as the United States and West Europe tend to assume the paternalistic role of providing expensive economic and legal aid to these countries. The aid is usually provided through technical assistance by large multilateral, "function-standardized" bureaucratic institutions. As I will discuss below, the misinformed legal transfer experience of the 1960s left a large question mark over further law and development initiatives. However we see a similar method of assistance re-emerging in the transition economies of the EE and FSU.

The question posed in this paper is not concerned with why the misguided legal development experience of the 1960s is re-emerging (though this is certainly a question of interest). Rather, given that there has been a resurgence of legal aid, what lessons can be learned from the past and what are some of the important issues that need to be considered if legal assistance is to become potentially workable.

1.2 CONCEPT OF LEGAL TRANSFER AND ITS HISTORICAL MOTIVATION

Over the past decade the concept of legal transfer has been studied and discussed by scholars in varied fields in an attempt to evaluate its desirability in terms of legal assistance to developing countries seeking to "rationalise" or change their legal systems. Much of this literature has focused on the Latin American law and development movement of the 1960s and early 1970s. Legal transfer is clearly not unique to this period or region as a quick reflection on British colonialism and the Roman expansion will testify. The Romans pushed

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Roman law to the boundaries of their empire. The British colonists carried common law institutions and tradition to many parts of the world, including India, Africa, and North America, with overall success. And as Gardner (1980) reviews, "the twentieth century witnessed legal export of a different kind, as many traditional societies—among them Japan, China, Turkey, Pakistan and Israel—consciously borrowed and adapted diverse elements of Western law as a vehicle for 'modernity' and 'development.'"

The past motivation for any transfer of parts or all of a legal system is probably best encapsulated in the statement by David (1963, p. 188): "Ethiopia cannot wait 300 or 500 years to construct in an empirical fashion a system of law which is unique in itself, as was done in two different historical eras by the Romans and the English. The development and modernisation of Ethiopia necessitate the adoption of a 'ready-made' system." Implicit in this is some notion of catch-up theory, similar to that of technological innovation literature, where less developed countries can use predeveloped expertise and systems that enable them to leapfrog over lengthy periods of development.

Some of the most notable scholars have addressed the issue of legal transfer. Marxist theory interprets much legal export as an extension of a "superstructure of class oppression." Dependency theorists emphasize the geopolitical domination and cultural imperialism underlying much of the transport history. The more mainstream discussions on legal transfer can perhaps be segregated into two camps. On one side, there are theorists such as Montesquieu and Otto Kahn-Freund (1974, also citing Montesquieu 1784) who talk of the complexities of transfer, whereas on the other, theorists such as Watson (1974), David (1963), and Galanter (1991) highlight the ease of legal transport. Montesquieu argued that legal transfer is inhibited by specific environmental factors such as climate, fertility of soil, wealth, trade, and geographical position of a country. As a result the legal transfer becomes difficult and hazardous, involving more complex cultural disjunction than it might at first appear. Kahn-Freund (1974) is sympathetic to Montesquieu's analysis but contends that over time things have changed such that the environmental factors are much less important as barriers to transplantation, but "the political factors have equally gained greatly in importance."[1] Kahn-Freund believes that the degree to which any rule can be transplanted depends on "how closely it is linked with the foreign power structure"[2] (ibid., p. 305). Transport success requires a knowledge of foreign (the donor) laws and its social and political structure.

In contrast, Alan Watson is of the opinion that successful borrowing can be made from a very different legal system even when nothing is known of the political, social, or economic context of the foreign law, though he does acknowledge that a law reformer with knowledge of the donor legal system would be more efficient. He criticises Montesquieu for underestimating the amount of successful legal borrowing that has occurred throughout history, drawing on examples such as the reception of Roman law in West Europe and the acceptance in the Turkish Civil Code of 1926 of Swiss family law. Watson's main point is that rules of private law "have no inherent close relationship with a particular people, time or place"; therefore he concludes that legal transport is "socially easy." Despite the conflict of approach, both Kahn-Freund (1974) and Watson (1991) acknowledge that "foreign legal rule will not easily be borrowed successfully if it does not fit into the domestic political context" (ibid., p. 295).[3]

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[1] "Political factors" is widely defined as encompassing social, cultural, and political influences.

[2] "Foreign" here refers to country or place that is receiving the transfer, not the place in which the "rule" originated.

[3] Although it seems that Watson did not explicitly accept this in his earlier writings

The point of conflict between the two camps tends to neglect the fact that the success of legal transfer may often depend upon the form it takes. As is obvious from a review of the many different transfer experiences and the variety of interpretations of the motivations of these transfers (geopolitical expansion or integration in adherence to a dependency model, or a manifestation of social values and controls), legal transfer can take many different forms. The literature on this subject is sparse. I will utilize Gardner's (1980) useful typology of forms of transfer to provide some frame of reference for the following sections of the paper.

Gardner (1980) presents his typology as three pairs of transfer types: (1) direct versus indirect, (2) invited versus imposed, and (3) infused versus interactional. Direct relates to the direct transfer of legal institutions, instruments, and laws (such as exporting a constitution from one country to another). Indirect relates to the transfer of legal concepts, values, and models, that is, law in a less tangible form. This can involve educational programs and legal training. When a transfer is invited the initiative comes from the recipient culture, whereas in the case of an imposed transfer the exporting culture takes the initiative. The latter is commonly associated with geopolitical conquest and colonization. An infused transfer occurs when the initiative comes primarily from the exporting culture but has selective acceptance from the recipient culture. An interactional transfer is more of an ad hoc, ongoing, legal transfer process "related to ongoing cultural and intellectual exchange generally" (ibid., p. 22).

The categories can of course be intermixed. For instance, in the case of British colonialism transfer was both direct and indirect, in the nature of its being imposed. The British colonialists carried the common law to diverse parts of the world, including India, Africa, North America, and the West Indies. Gardner (1980, p. 31) quotes a commonwealth observer as noting, "for most Englishmen, having established the 'rule of law' on the Indian subcontinent was probably the proudest achievement of the British." The French and English emphasized the developmental importance of law and the legal profession in Africa and Asia and engaged in the direct export of European legal models. The Chinese and Japanese transfer experience, however, was invited and infused. In the twentieth century many traditional societies, such as Japan, China, Turkey, and Israel, "consciously borrowed and adapted diverse elements of Western law as a vehicle for 'modernity' and 'development'" (ibid., p. 30). This kind of legal export is quite different in nature to that of the British colonies. The transition experience of the FSU and the EE countries today involves yet a different mix of transfer type, where in many cases it is direct and infused and in a few cases interactional.

For purposes of this paper I am not interested in cases where transfer was imposed or completely uninvited. Instead I view transfer as a process to which a recipient country is not opposed; in other words, it is voluntarily accepted. This brings me to the focus I intend to give to legal transfer. Although interesting, this paper does not attempt to resolve the scholarly conflicts on the best way to transport law. Rather, given that voluntary transfer occurs (with or without the knowledge of the donor or recipient culture or politics), what are some efficient ways of facilitating it into the recipient country's existing legal culture so that the transfer becomes useful. This sort of focus is particularly useful in the context of the transition economies of EE and countries of the FSU where legal change and import is happening at an alarming rate. In many cases foreign consultants have no time to gain knowledge of the recipient culture just as local experts have had no time to gain knowledge of the donor culture.

In the next section I will briefly review the rationale and paradigm in which the law and development movement of the 1960s took place, using the works of Trubek and Galanter (1974) and Gardner (1980) to draw out some lessons from this "failed" experience.

1.3 WHY THE LEGAL MOVEMENT OF THE 1960S HAD INSIGNIFICANT IMPACT: A BRIEF OVERVIEW

The extensive critique of the 1960s' development experience provides perhaps the best insights into how recipient countries adapt (or not) to legal transfer. The term "development decade" for the 1960s reflected, among other things, a world view born of the Cold War and the Marshall Plan—a view nurtured in the ideology of purposeful activism, educational advancement, and material well-being. Notions of individual rights, constitutional democracies, and positive and self-regulating changes in legal systems were the order of the day. The era was one of transnational obligations and Western paternalism. In fact, the whole movement reflected an attitude of political and moral superiority of the West, which expressed an underlying obligation in support of assistance to "underdeveloped" countries.[4]

With the development decade came a diverse entourage of development agencies filled with foreign "development expertise" and technical know-how. Gardner (1980) informs us that if these notions of transnational activism smacked of ethnocentrism, as indeed they often did, they were also laced with a persistent and confident optimism.

Law as a separate factor of assistance to development was initially ignored; however, in the mid-1960s a law and development program emerged, focused primarily on promoting democratic rather than market principles. Gardner (1980) describes the Latin American transfer experience as being an indirect and principally infused process, targeted at specific areas of legal systems. The main focus was on education, law and development training, and introduction of legal concepts such as the "rule-of-law."

Gardner (1980) reports that, as the decade progressed, the "developed' and "modern" society was no longer perceived to be so firmly established in this category or to be immune to the stresses of the less developed societies. By the end of the decade the mood of transnational activism was growing less confident and increasingly skeptical. The mood of the law and development movement was not immune to these changes.

Drawing on their own experiences, especially in Latin America, Trubek and Galanter (1974) reflect on the crisis in the law and development movement that emerged out of the Americas. In the early years of assistance many scholars and officials shared a set of tacit assumptions in adherence to what has become known as a paradigm of "legal liberalism." Essentially this paradigm encompassed principles about (1) the relationship of the role of law in society, and (2) the relationship between legal systems and development. I am primarily interested in highlighting the erroneous assumptions underlying the second set of principles.

In brief, the legal liberalist model found its base in the following assumptions:

1) the centrality of the state: the state is seen as instrumental in social change and control, utilizing law as a tool to influence society;
2) law as the ultimate means for social change;
3) changing law will lead to behavioral changes;
4) the legal profession represents society's interests; and
5) legal systems of developing countries will naturally evolve in the way prescribed by the liberalist paradigm.

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[4] The ethnocentric tone of the development movement is explored in detail by Trubek and Galanter (1974) and Gardner (1980).

Of course the paradigm also forwarded other ideas such as that law is able to restrain governments and that legal institutions help to foster equality; this paper, however, finds particular interest in the assumptions laid out above, especially the first three. These assumptions imply that law can be used as a rational instrument or tool to achieve development objectives and increase social well-being.

Trubek and Galanter (1974) show that one reason for the law and development crisis of the early 1970s was that this paradigm failed to account for the realities of many developing countries. For instance, it assumed a central power of the state, while in many developing countries other bodies of power and political relations existed as well. The model also assumed that societies are socially and politically pluralistic—a quality that is rarely observed in poorer countries and is arguably not observed in many Western ones as well. In fact, many third world countries at that time had authoritarian or totalitarian regimes. In essence, the liberalist movement attempted to force an idealistic model (of what they thought the United States adhered) on developing countries under the erroneous assumption that these countries were similar in structure to the United States. Clearly, and of course in hindsight, many scholars point to the fact that this strategy was doomed. The legal movement did not foresee the differences in organizational and social culture that would hinder the successful implementation of their model.

But even if these countries did have all the characteristics needed to conform to the paradigm, would it have succeeded? There are more fundamental ideological flaws in the model than simply that of reality constraints—one being the implied causality from using law as a tool for changing behavior. The reason causality should run in this direction is unexplained by the paradigm but relies on the naive 1960s' acceptance that law and legal institutions are respected and legitimized because they represent authority, rather than viewing legitimation as a normative decision originating from society itself—a Weberian legitimation. Hyde (1983) discusses three unfortunate consequences that excessive and uncritical reliance on Weberian legitimation has had for the sociology of law. It has led to a "sloppy form of discourse in which moral positions are taken without substantive moral argumentation" (ibid., p. 386). Second, it has maintained a "specious functionalism" by which all law is assumed to be functional for a regime. Finally it has discouraged necessary sociological attention to the substantive-normative content of legal rules. The issue of legitimation is discussed below.

1.4 LEGITIMATION: REVERSING THE CAUSALITY

A review of the study, definitions, and analysis of legal legitimation leads to a confused conception of what the term actually means due to the wide diversity of idiosyncratic definitions. To understand under what conditions a legal structure, a government, or an institution can become an authority one must understand how authority becomes legitimized. This section attempts to make sense of existing definitions and draw on the work of theorists such as Hyde (1983), Friedman (1991), and Tyler (1990) to provide a workable definition of the concept. As Hyde (1983, p. 380) reviews, "in the sense in which it is most commonly encountered, legitimacy of a social order is the effective belief in its binding or obligatory quality." This much-used notion essentially derives from the Weberian notion of legitimacy that involves a two-stage causal relationship. Procedures, rituals, ideology, and substantive decisions of legal institutions measurably shape popular beliefs in the legitimacy of legal and political institutions which in turn creates a behavioral reaction of obligation and loyalty. That is, a virtuous cycle of legitimation is able to find its expression through the "top-down" causality of law to beliefs to behavior. It is understandable that this model would be appealing, especially to authoritarian governments that want to apply law by force.

Coercive models are qualitatively different to Weberian models as invocations of legitimacy in that the latter derive from some sense of voluntarism or obligation occurring in the absence of any direct force. I will not address what some theorists call coercive models of legitimation since I believe it is a misnomer to connect coercion and legitimacy; coercion should instead be connected to rational cost-benefit models of human behavior. Instead I discuss the theoretical and conceptual problems underlying the Weberian model of obligatory legitimacy to formulate a more useful definition.

Weberian sociology has been developed by inquiring into the basis of law's legitimacy in the West. In accordance with the causality underlying his model, law may provide the technical apparatus for the exercise of state power. To Unger (1976), the concept of "legal order" or "legal system" is an ideological construct of law separate from any other identifiable set of nonlegal beliefs or norms, be they economic, political, or religious. However, as Epstein (1994) and others point out, neither Unger nor Weber explains how the belief structure sustains legal order. That is, they fail to account for why people submit to legal domination. Hyde (1983, p. 382) also states that "defining the concept of a belief in legitimacy does not establish its existence." He highlights the lack of recognition of customary norms and motivations of self-interest in Weberian sociology. Epstein (1994) explores the ideological power of law that explains voluntary submission to law as well as to other institutions of social control. He goes some way to explaining the importance of belief structures in legitimation, but implicit in his theory is a top-down model of causality based on hegemony.

The above models have been critiqued for a failure to prove this causality, empirical evidence being nonexistent or ambiguous. In fact, empirical evidence for the existence of legitimacy is weak due mainly to a lack of clarity in the concept. As Hyde (1983) states, without an adequate theory of the mechanisms by which law influences belief and behavior, these models appear quite implausible. In fact, he believes that Weberian legitimacy does not exist, claiming that "obedience stems from a combination of habit, fear of sanctions, and individual conviction that the requested compliance is in the actor's interest. Where these reasons are insufficiently strong there simply is no adherence to an order" (ibid., p. 388). Implied is the causality between rationality (at an individual or group level) and legal authority rather than legitimacy and legal authority. I am inclined to agree with him since there exist examples from the FSU and East Europe, where traditional customs are strong, that show that legal norms will be rejected if perceived as deviant from popular consciousness.

Hyde (1983, p. 426). goes so far as to recommend that we abandon the concept of legitimacy altogether: "Not only is it a problematic concept that is difficult to disentangle from other concepts, but it is notoriously difficult to empiricise." Although Hyde's case for abandonment is strong, his criticisms are in fact focused on the top-down Weberian causality of legitimation. His "bottom-up" criticism of this causality is convincing; however, this does not necessarily leave the notion of legitimacy defunct. Rather, it could be redefined by turning the Weberian model on its head—reversing the causality so that legitimacy can be observed with reference to how the belief system can legitimize the legal system in terms of voluntary usage and respect. This encourages a recognition of what influences popular perceptions of legal institutions, how the legal system is created (i.e., popular participation or imposition), and consideration of information constraints to system-usage. In this way the concept of legitimacy becomes useful in exploring the factors that lead to successful, or unsuccessful, legal transfer.

By recognizing a more interactive notion of legitimacy, this paper relies on a "bottom-up" approach where attitudes and norms existing in culture serve to provide formal and informal law with legitimacy. The behavioral basis for this view of legitimacy is one of voluntarism, where people feel obliged to conform to law without any form of external coercion. The sense of obligation may derive from cultural, institutional, or political orientations; however, this does not divert from the fact that people are able to voluntarily legitimate

law. This formulation provides space for formal law to engender existing legal cultures and thus promote legitimacy of a system; law disconnected from considerations of cultural norms is likely to remain dormant. In keeping with Arnold's (1935) model of substantive legitimation, legal norms are likely to derive some impact from correspondence to substantive values already held by the population.

With a more interactive formulation of the concept of legitimacy such that behavior, norms, and culture are important factors, one must necessarily recognize the importance of legal culture. I will briefly touch on the work of Friedman (1985) to clarify this concept. Friedman talks of legal culture as being part of a general culture encompassing political, economic, and social variables. His study observes real changes in behavior and ideology over time in the American culture. Central to his analysis is a notion of a network, or "reciprocity of expectations." The precise form this reciprocity takes is what differentiates one society from another. He shows that the evolution of Western society into one represented by individualism has led people to depend on the behavior of strangers. This means that they cannot enforce a reciprocity of interests without a third party (i.e., a lawyer or enforcement mechanism). In other societies, where the social and political evolutionary process has been different, where group values rather than individual values are important (such as in some countries of the FSU and China), the expectations that a society has in a legal system are very different. Essentially the structure of a society at a given point in time is characterized by established attitudes and norms that will legitimize a system of social order only if that system is reflective and responsive to those attitudes and norms. This is particularly insightful in the context of EE and FSU, where the flavor of the day is legal change and import. In contrast to Weberian causality, Friedman states that "ideas held by masses of people can influence or shape concrete behaviour which in turn creates the structure and substance of living law" (ibid., p. 107).

Tyler (1990) moves the analysis of legitimation into the realm of psychology. Using data from 1,575 subjects in Chicago, he performs cross-sectional and longitudinal analyses in an attempt to understand why people obey or disobey law. He takes a normative rather than an instrumental perspective by focusing on how people internalize norms of justice and obligation. Compliance is the basis for the effective operation of legal authorities, and these authorities can never take that compliance for granted. The study found that the extent to which people will or will not follow the law in their daily lives depends very much on normative concerns, and that the most important influence on compliance with the law is a person's assessment that "following the law accords with his or her sense of right and wrong" (ibid., p. 64). In contrast to instrumentalist prescriptions for obtaining compliance, Tyler concludes that normative compliance requires education and socialisation, which of course take time; he thus prescribes that democratic societies require normative commitment to function effectively.

In concluding this section, I forward that in understanding how "legal transfer" relates to issues of legitimation it is more useful to conceptualize a bottom-up approach to legitimation, particularly in the context of EE and FSU countries. This opens up a more fruitful discussion of how imported laws can be mobilized. The conclusions of Tyler's (1980) study suggest that successful legal transfer will require long-term commitment by governments along the lines of education, legal information dissemination, incorporation of normative values into law, and other public interaction if the new, imported laws are to be made useful.

It seems that one of the main reasons for the failure of some of the law and development programs of the 1960s was not so much that they forgot about the importance of the legitimacy factor but that they uncritically relied upon the Weberian conception of legitimacy. Even today in parts of EE we observe a similar reliance on this instrumental model. Weberian legitimacy in the EE and FSU countries is very difficult to support. Even when these countries were under communist rule it was insupportable since not only did the governments apply force to make people comply but convinced the population of

the regime's potential of longevity and the absence of realistic alternatives, hence inducing obedience of the habitual or expedient variety. Probably the strongest critique of using Weberian theory in these ex-communist economies comes from the fact that the general populace has a very low opinion of judicial courts and generally have no information concerning legal institutions or the norms pronounced by these institutions, directly undermining Weberian legitimacy. The following section discusses these issues in more detail.

1.5 RECENT APPROACHES TO LEGAL TRANSFER IN EAST EUROPE AND THE FSU

With the collapse of communism and central planning in the East European countries and the Former Soviet Union in 1990–1991, there appears to have been a crazed surge by American and European international agencies to resurrect something very similar to the questionable "development" attempt of the 1960s and 1970s. Most notably, the World Bank, the International Monetary Fund (IMF), and the U.S. Agency for International Development (USAID) have formulated extensive economic, social, and political reform programs to get these economies "back on track" as quickly as possible. The conditionalities attached to these programs are similar, if not more stringent, to those given to many Latin American and African countries two decades ago. With this revived development surge, the law and development movement can again, and probably with more ease, find a niche in the general development package. This is because the move from a socialist economy to a democratic and market economy requires a re-rationalisation of laws and institutional structures. Unlike the legal systems of countries that committed themselves to a particular form of development years ago, the legal systems in these post-socialist economies now require a complete reorientation toward rationales compatible with a new democratic outlook and intended market relationships. These transition economies are characterized by limited human capital trained for drafting legislation, implementing procedures, and structuring legal institutions to facilitate a dynamic market. Thus, the international aid agencies claim to find ample justification for providing legal assistance. Whether these agencies can ever justify an ethnocentric or paternalistic approach to development assistance is one question. Another is: Given that they do provide assistance, is it provided in a useful way? I will address the second of these questions.

Legal systems in the post-communist economies are not well adapted to a market economy (Rubin 1994; Hendley 1996). Under communism, law was seen as an instrument for implementing and maintaining party principles and remained rigid and unresponsive to potential change. As Hendley points out, this led people to conceive law as highly instrumental, where politics consistently trumped law. "As a result, citizens did not view law as a means of protecting themselves from encroachments by the state or its agents. This vision of law as a mechanism of control emasculated soviet society" (Hendley 1996, p. 167). Krygier (1990) also ties the antipathy to law, common throughout the Soviet bloc, to the highly instrumental use of law by Soviet-style regimes. Hendley (1996) points out the common perception of law as an infinitely malleable tool of the party. The autonomy of law in Russia during most of the Soviet period was politically untenable. In fact, the whole legal culture cultivated under the Soviet system was not conducive to the transition to a market economy.

The breakup of many of the command economies in the early 1990s required a whole new set of laws and legal structures to be put in place. Enormous amounts of laws have been drafted and passed with the help of foreign assistance and still new legislation is proposed and passed at an alarming rate in many of these countries. Legal institutional reform has also been high on the agenda. Part of the World Bank Structural

Adjustment Program to the Baltics, the Balkans, and FSU are small grants for rule-of-law adjustment which in part focuses on institutions.

The appeal of a Watson-framework for "socially easy" transfer[5] and a Weberian model of legitimacy to transnational aid institutions promoting legal reform and for recipient governments is obvious. With these two concepts, theoretically, one can build an efficient legal system quickly. Hendley (1996) shows, however, that in reality this has not been the case and much in the new laws that have been put in place post-1990 has little or no relevance for economic and social actors. She highlights natural systemic-inherited barriers[6] to legitimation for the new system. Path dependence connected with the Soviet past explains much of the "staled attitudes" of Russian populace for legal reform.[7] After years of unfulfilled promises and skepticism of legal institutions, people are wary of new reform programs and are still unwilling to use them. These latter attitudes became habits during the Soviet period and, in view of this past experience, it is not rational for them to dehabituate. Economic actors are familiar with certain patterns of behavior and these are reinforced by informal norms created under a communist system and still in existence. This adheres to the conclusions found in the Chicago study that normative compliance requires education and socialization (Tyler 1990).

There is general recognition by foreign advisors and recipient countries that a market economy requires an appropriate legal framework in which the economy can grow. A major uncertainty, however, emerges from the debate: What and who defines the appropriateness of law and legal institutions for a particular country? One suggestion has been that post-communist economies adopt entirely the civil code of a capitalist economy. Rudiger Dornbusch (1991), for example, argues that establishing institutions, including a legal system, is a second priority to establishing the rules of the game, that is private property rights and freedom to transact. Dornbusch suggests that countries should adopt the entire civil code from a country such as Finland or the Netherlands. As Rubin (1994) points out, there are several reasons why this kind of legal transfer is likely to be problematic. First, a code would be difficult to interpret both substantively and linguistically for an economy with no market tradition. Leoni (1991) supports this by stating that translation difficulties arise because words are rooted in institutions that may be lacking in another culture. Second, Rubin (1994) focuses on the lack of legal training of "recipient lawyers" needed to support a legal transfer unless that transfer is adapted so that is understandable to the legal professionals and consistent with the country's existing legal culture. As discussed previously, legal culture is embedded in the practical use of law which emerges from the historical evolution of norms and patterns of behavior that sustain legal institutions. That is, legal terms in a market economy are defined only by their use in that kind of economy. Thus the successful transport of law[8] from one society to another characterized by a markedly different history, tradition, and behavioral norms requires adaptation to fit the recipient culture.

As well as "path dependence," Hendley (1996) observes the skepticism that Russians have with foreign assistance. This is not a problem unique to Russia. The motives for international assistance are increasingly

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[5] See Watson (1974, pp. 80–81).

[6] "Systemic-inherited barriers" refers to behaviors that were encouraged and institutionalized under the Soviet system in order to perpetuate the system. Now, however, in the face of liberal change toward a democratic society and market economy, these behaviors act as barriers to effective transformation.

[7] Hendley (1996) draws on David Stark's (1992, pp. 48–54) notion of "path dependence," but here uses it for an analysis of legal reform. Stark argues that historical legacies cannot be ignored in the economic reform process, that market-based economic reforms cannot be effected merely by applying technocratic rules with no consideration for existing institutional arrangements and culture.

[8] Successful in the sense that it is legitimized and becomes functional.

questioned. Over the past few years there has been a proliferation of articles critiquing the bureaucratic inefficiencies of USAID due to its inability to achieve significant results in transition economies. Similarly the World Bank and other assistance agencies have not gone unscathed. Hendley (ibid.) tells how in Russia the Western assistance programs were top-down and technocratic in their approach and concludes that the results of these programs reflected and perpetuated the disconnect between the law-making process in Moscow and the reality of daily life in the rest of Russia. Hendley states that the top-down nature of the assistance effort is reflected by the almost exclusive focus on legislation and legal institutions. There has been a clear lack of concern in making the legal reforms fit the specific cultural context. This simply perpetuates the Soviet legacy of profound skeptisim toward law and exacerbates the fact that people are unlikely to use legal institutions to resolve problems. If reforms are to be meaningful, they must aspire to more, namely, to reshaping basic societal attitudes toward law. Without ideological legitimation from below, any law will remain dormant.

In a similar vein Rubin (1994) criticizes the top-down approach used in Russia for passing legislation. He says that this will only result in internal inconsistencies and that one needs to focus instead on the organic, interactive nature of how law develops over a longer period of time. This provides a rationale for incorporating public views and societal changes into the legal drafting process. It also encourages a higher level of public interaction on behalf of governmental agencies and international organizations.

Finally, as some scholars have pointed out, an implicit assumption of agencies advocating the wholesale adoption of another country's law is that the recipient country is starting from a position of no law. All countries have an existing legal system, so the issue should be one of adapting existing law and maybe importing some laws rather then starting completely anew.

It seems that the recent legal assistance experience in EE and FSU has not heeded the failed transfer attempts of the 1960s and thus the efforts carry limited potential for success. Nor has there been any major redefinition of development concepts such as legitimation. The next section looks at a specific case of property law and inheritance law in Albania in order to highlight problems of legal transfer and the need for cultural specificity in the formulation of law.

2. CASE STUDY OF THE LEGAL PROVISIONS FOR FARM FAMILY OWNERSHIP AND INHERITANCE IN ALBANIA

2.1 INTRODUCTION

After nearly fifty years of a centrally managed command economy with the state as the sole owner of immovable property, Albania is now making the transition to a market-oriented economy. A key aspect of this transition is the transfer of state-owned property, particularly immovable property, into private hands. How private property rights are defined affects women's and men's economic opportunities. Thus the formal rules laid out by the formal legal system and customary beliefs governing access to and transfer of property and the means by which rules are interpreted and enforced are very important for the development of the country. The issue this section attempts to address is: Given rural Albania's family-oriented set of customary norms and beliefs, based primarily on patriarchalism and patrilineal inheritance, how effective is this mixture of Western legal import and Albanian traditional values that in some places emulates individualistic Western notions of property rights and in other places attempts to preserve the existing rural family tenure system?

And what are the likely problems that will emerge during the transition given the potential conflict between family notions of ownership, on the one hand ,and individual notions, on the other hand?

2.2 ALBANIA: A BRIEF OVERVIEW

Albania is a Balkan country situated across the Adriatic Aea from Italy. It is bordered on the southeast by Greece and Macedonia and in the north by Kosova, Montenegro, and the formerYugoslavia. It is a small country, only 28,000 square kilometers, with a population of only 3.4 million. The northern part of the country is characterized by rugged mountainous terrain which historically has been inaccessible and thus has retained many older traditions of the country. By contrast, the south is flatter and is subject to more influence from other countries due to trade, successive invasions, and refugee movements.

Ethnographic studies carried out in the late nineteenth century and during the first half of the twentieth century have documented the strong family features of Albanian communities. Albanian customary law, which was traditionally governed by oral customary codes called *kanun*, identifies the family, composed of members of a particular family who live under the same roof at any one point in time, as representing the basic and most important unit in the social and public order since the beginnings of Albania's recorded history (Vokopola 1968). Since the household unit is customarily based on patrilineal descent, the married sons (with their families) of a married couple would live under the parents' roof. In this way extended families, often comprised of several brothers and their descendants, would form a single residential and economic unit (Whitaker 1976). The survival of this large family unit over an extended period of time is due to a variety of factors, one being the need for mutual defense, especially in the north where the mountainous landscape does not favor centralized rule of law and police functions.

As well as having a strong family networking system at the foundation, Albanian society has been characterized as patriarchal, where a male head typically assumes the role of decision maker and financial controller, and patrilineal, where the membership in a family group is reckoned through the male line. In traditional society women gained access to property through their relationship to either a father or a husband and in the context of a family. They had no right to property inheritance. In fact, the right to inheritance was not a concern for most women since the assumption was that they would be provided for throughout their lives. It was thought that if a married woman claimed property from her father's estate, her husband (who belongs to another clan, or *fis*) would subsequently control that piece of land. As a result, political structures based on localized *fis* ties would become undermined, since the borders between local communities would become less clear (Backer 1983).

The above description of traditional Albanian society provides a historical reference by which we can analyze what is occurring in contemporary Albania in terms of family and individual property rights in relation to legislation developed since 1991.

2.3 LAND PRIVATIZATION PROCESS AND ORIGINS OF THE CIVIL CODE

In Albania problems arising from legal transfer are subtle and complex. First, sections of laws were imported from a variety of different countries, not just one. Second, only in some places did the imported law adhere directly to the notion of individual rights that are supposedly the basis of a democratic society.[9] Third, the

[9] Here I am referring only to the immovable (real estate) property law.

way in which some of the laws were passed meant that Albanian parliamentary officials, who were probably unsure of the rationale and origins of these imported laws, were able to change their content immediately prior to enactment. This has created inconsistencies and ambiguities in some areas of the law. The following analysis will attempt to draw out a few of these ambiguities, relating them where possible to problems of legal transfer and legitimacy.

2.3.1 Egalitarian rationale of the land privatization process

The Albanian government has made a firm commitment to instituting a market economy and a democratic political system. Legislation promotes the concept of equal rights for all Albanians including the right to own private property. This notion of equality is expounded in a variety of different laws and privatization procedures. The privatization of ex-cooperative land was formalized with the passage of the Law on the Land (no. 7501) in 1991. The law was developed solely under Albanian initiative, with little foreign assistance. In the law, land was to be distributed to the families that were resident on the cooperatives at the time of the passage of the law. The distribution of the approximately 420 collectivized ex-cooperatives' agricultural land to 383,600 rural households was done by Village Land Commissions. The law required that a "quota" of land be calculated on a per-capita basis. The number of people living in a particular village was determined and the per-capita allotment of land of differing qualities was calculated. The members of the Village Land Commissions had the responsibility for deciding which families got what land, and they were usually part of the local community and recipients of land themselves. The ownership certificate issued to each family indicated, among other things, only the name of the household head.

The rationale for the method of land distribution is not completely clear. Some people argue that the method was political; others say that it was not well defined. However, discussions with officials who were involved in the formulation of the Law on Land suggest that there was in fact a rationale for the distribution. One view held was that at the time of passage the law provided a fair and equal distribution of property rights for all the population of Albania. This rationale is implied in some laws.[10]

Of course the concept of a "equal and fair land distribution" can be interpreted in many ways. From an individualistic point of view it can be argued that the intention of the law was to provide a just distribution of land to the population (individuals) at the time of distribution, and therefore it should be able to identify specific individual rights to specific areas of land if a "just" distribution is to be realized. In fact, extensive field work indicates that people do believe that they as individuals have a right to some property. The fact that the extended family structure is still a very important part of Albanian reality means that it is unlikely that anyone would enforce that individual right. Observations from a set of focus group meetings with rural women from around the Tirana District revealed that the concept of assuming an individual's right was outside many of the women's social reality. However, people do feel that they cannot be alienated from their property right.

In my opinion,[11] however, the main emphasis in the land privatisation law appears to be on the family rather than the individual. There appears to be concern for upholding the importance of the family unit while at the same time giving rights to individuals in accordance with new democratic principles. Regardless, the "family" focus and prominence given to the male "head of household" signatory is certainly not arbitrary. We see the same focus laid out in the farm family section of the civil code and in everyday Albanian life.

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[10] See various decisions: nr. 230, nr. 255. All indicate an egalitarian rationale.

[11] Based on reading the privatization law and supporting decisions and orders.

2.3.2 Civil code sources and the rationale of the "farm family property section"

In 1990 the Albanian government invited a group of international consultants, attached to the IMF, to assist them in compiling a civil code for the newly democratized Albania. The IMF team included professors from the University of Trento in Italy. The first project attempted to use the old code, based on the Italian, French, Swiss, and Egyptian codes, that had been in force during the reign of King Zog.[12] The team compiled what was commonly known as the Red Book. Many ministers of the 1990 government were in favor of this code; however, it did not pass through parliament because it carried connotations of fascism. Moreover, the social climate of the early 1990s required something new.

A reshuffling of ministers and a new appointee as the Director of Codification in 1993 led to a radical departure from the previous compilation attempt. In fact, many of the new ministers were hostile to the Red Book, abandoned the project instead, and brought in a delegation of consultants from the Council of Europe. The Council of Europe (EC) team was appointed on a fixed-term, one-year rotation basis. The team was predominantly composed of Italian academics from the University of Trento and, interestingly enough, included the professor who had been instrumental in forwarding the Red Book. After nine months of discussions with professors at Tirana Law School, officials in the Ministry of Justice, and foreign advisors, the Civil Code was passed in mid-1994. Despite the lengthy compilation process, the code took only three to four days to pass through parliament; the only major changes made by Parliament were related to inheritance procedures.

Considering the number of Italian academics involved in the drafting of the code, it is not surprising that the Albanian Civil Code derives much of its content from Italian law, in particular the Italian Civil Code of 1943. Other influences came from the Dutch Code (commercial law), the German Code, and the Vienna Convention of International Sale of Contracts (sales contract section). Apparently the final version of the code did not directly adhere to what had been recommended by the EC team. For instance, some articles had been changed, leaving interpretation of particular issues ambiguous. The rationale for these changes remains a mystery to most people now working with interpretation of the code. Discussions with the ex-director of codification have not been fruitful; however, reliable sources are available for the origins of the rural property ownership section of the Civil Code. This is what I intend to focus on below.

The import of Italian law into the Albanian Civil Code was a sensible decision since not only is this country a close trading partner and source of political and financial support for Albania, but ,more importantly the history and cultural evolution of the two countries prior to 1945 were very similar. In Italy prior to 1945 there was a large rural agricultural sector characterized by family farms, patriarchal systems, and patrilineal heritage—similar to Albania in the early 1990s. It therefore seems logical that the Italian Code of 1942 should be the main source of import for the rural property section of the new Albanian Code—logical in the sense that many of the imported substantive principles in the law were already, supposedly, held by the general populace of Albania and thus the new laws were likely to be legitimized from the bottom.

Thus, the main theme of co-ownership in the Albanian Civil Code (general section, part B) derives from the Italian Code of 1942. The institution of family co-ownership was enforced in the Italian Civil Code until 1975.[13] Rural family members had a choice: either to manage land as a unit or to assign land to only one

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[12] Prior to 1945.

[13] Other laws concerning inheritance procedures were also passed in Italy at this time to support this institution. For instance, in the 1940s a law was passed that prohibited farm members from disposing of land in a testament as they wished.

family member on demonstration that s/he could cultivate the land. The other members received monetary compensation. This regulation was an attempt to counteract land fragmentation and encourage farming on a larger scale. Implicit in this institution was the binding nature of the inability to divide land. We see this provision exactly replicated in the Albanian Code, where land is *indiviso*, owned by all family members:

> When the share (of farm family property), is requested by only one member it is valued and paid in money. When the allotment is requested by several members of the farm family **with the purpose to create another farm family**, the share can be given in kind, with the condition that the agricultural land that remains to the remaining family member should not be less than a minimum standard for cultivation (Civil Code, Article 228).

In fact, the prohibition of the atomization of landholdings is an essential element for the protection of the agricultural economy of Albania since extremely small holdings may be inefficient for adequate production.

In the code we also see that an explicit attempt was made to preserve the concept of the Albanian farm family, customary family principles, and the head of household as legal representative:

> The property of the farm family is jointly owned by its members, who through their labours or other means, have contributed in the creation and increase of the farm economy (Art. 222, 1994 Book Title 3, B Civil Code).
>
> The farm family is composed of persons who are related by kin, marriage, adoption or through being accepted as family members (Art. 223).
>
> The farm family is represented in the property relationships with a third party by the head, who is elected by the family members (Art. 224).

2.4 POTENTIAL LEGITIMATION CRISIS IN ALBANIAN LEGAL IMPORT

Considering the above discussion, using the Italian Civil Code as an import seems clear and rational. Three critical problems can be identified, however, concerning transfer issues and legitimation that are likely to undermine the whole transport process. First, other laws, such as inheritance, that were crucial to the stability of the farm family institution in Italy, were not implemented as support to the farm family property section of the Albania Civil Code. Second, rapid societal transition and evolution over the past three to five years has left the family model of ownership somewhat inappropriate and has highlighted its inability to support individual family members' rights, excepting those of the head of household. Third, a severe lack of knowledge of laws by the general populace together with a systemic and inherited lack of respect for legal institutions imply that the law, though it theoretically resembles popular culture, is in fact not being legitimized. I will discuss these points in turn.

2.4.1 Lack of supporting legislation

A corollary to the farm family provisions in the Italian Code of 1942 was a law of 1940 that prohibited subdivision of land and prevented people from disposing of land as they wished in their wills. The heirs had a choice to manage land as a unit or the land could be assigned to one of the family members on demonstration

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Unfortunately, when Albania adopted the "peasant property" section of the Italian Civil Code, it failed to import supporting legislation such as the inheritance laws.

that s/he could cultivate the land. In the German-speaking area of Italy a similar form of co-ownership prevailed where the first son inherited everything in order to avoid splitting the farm (a system of "masocuso" or farm-closed tenure). These laws supported the preservation of the farm family institution and were necessary to prohibit land fragmentation, at least until 1972,[14] when the concept was done away with altogether. However, unlike the Italian code, the Albanian Civil Code does not provide sufficient supporting laws to uphold the farm family institution. This is particularly relevant with respect to inheritance.

The inheritance section of the Albanian Civil Code endorses the functionality of wills for every individual, stating that **"**The will may be done by any person who has completed 18 years and the wife under that age when she is married. The child from 14 to 18 years may make a will only for the property earned by his labour"(Art. 373). Whether a belief or a law, this view seems to contradict the concept of family property for a variety of reasons:

- Individual wills undermine the "corporate" philosophy of joint-farm family property made explicit in the Civil Code.
- Inheritance law specifies that "anyone from joint heirs has the right to demand at any time apportion of hereditary property even if the testator has ordered differently" (Art. 353, Civil Code). However, in the section on Co-ownership in General (part B) of the Civil Code, Art. 227 states that "a farm family member cannot alienate any of the joint property parts unless it has been allotted to the member as personal property." Logic therefore implies that individuals within farm families do not have the right to will their share of the property to anyone they wish. According to the code they are able to take their portion in cash but not in property (Civil Code, Art. 228).
- Property belongs to the family as a unit and the individualization of property rights remains abstract rather than personalized. Members of the farm economy apparently have no land that belongs to them as individuals and that they are able to will. This relates back to an earlier point: the corporate or collective form takes precedence because it is the **unity** of the enterprise that is necessary for production and longer-term economic sustainability.

It is therefore inconsistent for the Civil Code to make provisions for the indivisibility of farm family property and at the same time allow everyone to make wills. There can be no wills and no determination of ownership by will for farm family land, simply because the concept of the farm family and its relation to immovable property supersedes that of an individual and his/her relationship to property. The lack of clarity in the law means that it is highly problematic to enforce and is unable to act as a disincentive to the apparent reemergence of patrilineal inheritance systems.[15]

That the Civil Code has not limited inheritance for farm families can possibly be explained by two reasons. First, although the inheritance provisions were imported from Italy, Albanian parliamentary officials did not understand the rationale underlying the farm family institution when they considered the code and therefore saw no harm in changing the inheritance provisions. Second, the installation of a democratic society and the rule of law in Albania requires an acknowledgment of individual rights, and therefore it would have been politically unjust to stipulate that a sector of the population was not able to dispose of its property as it

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[14] In 1972, the Italians adopted a new Civil Code that no longer incorporated the notion of the farm family institution.

[15] Recent research by Wheeler (1998) and Lastarria-Cornhiel and Wheeler (2000) shows that there is strong evidence that a patrilineal inheritance system is reemerging similar to that which existed in Albania prior to 1945.

wished. This second reason clearly contradicts the farm family notion emulated in the ownership sections of the code. In either case, it is a problem associated with misinformed legal transfer.

2.4.2 Rapidly changing societal and family structure

The family model imported from the Italian Civil Code of 1942 relies on a model of family solidarity and cohesion where individual members are not alienated from a share of "income" or property. It also assumes that the head of household will act benevolently toward other family members in keeping with a model of patriarchal altruism. Unfortunately for the law, this model is losing its relevance in transitional Albania. The family structure in Albania is changing dramatically as the family becomes more nuclearised. Results from a 1995 survey[16] show that while multigeneration households are still common in rural areas, it is now rare to encounter several married brothers and their families living in the same house. Even in the most northern, isolated areas there was a very low incidence of three, four, and five multigeneration households.

Other anecdotal evidence also points toward a breakdown of the centrality of the family to Albanian society. There are documented incidents of heads of household getting drunk (or gambling) and giving away the farm family land on the presumption that it is theirs by traditional inheritance and that theirs is the only name on the title deed. Women have to assume a farm manager position since many men are migrating from the country either permanently or seasonally. Some villages are experiencing up to 30 percent migration. The heads of household, who are the holders of the title, can migrate leaving the family without the power to prove ownership of property. They may also leave their families without the right to rent or mortgage the land. Ironically, the family may not possess the security of ownership that the law intended.

Direct and indirect (television) foreign contact with West Europe is bringing with it new and different life expectations, particularly of the younger generations. The divorce rate has been increasing at an alarming rate over the last three years, leaving many people without the traditional family security. Evidence from Tirana courts indicates that women are increasingly demanding shares of the property in cases of divorce. Daughters are claiming inheritance rights to family land. Men are realizing that their daughters-in-law have inheritance and ownership rights to the family land of their fathers. They subsequently pressure their daughters-in-law to claim "their share" of property and bring it into the husband's family. In reality the courts are finding these cases very difficult to deal with since by law everyone should have a right to farm property distributed after 1991. Since no one can be excluded from inheritance, the provisions for preserving farm family property stand in contrast to this, as do some of the patriarchal customs and traditions.[17]

Currently there is not an imminent legal crisis since many of these problems are resolved according to customary tradition before coming to court. An increasing number of cases are coming to court, however, where individuals are demanding their rights. Due to legal ambiguities, the courts are not able to deal swiftly with claims and thus the legal system is perpetuating the already existing public perception that it is inefficient. These emerging cases show the family property model of protection as practiced in Albania is becoming increasingly inefficient and point to potential problems in the future. The initial rationale for the Civil Code did

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[16] See Wheeler (1998).

[17] Empirical research has shown that a reemergence of traditional inheritance systems is occurring. Of 360 respondents in a recent study, 79% said that sons only would inherit the farmland after the death of both parents. Also 71% of the respondents said that only males have the right to inherit the lands acquired since 1991. Given that this patrilineal inheritance system is dominant, the majority of property will pass down the male line of the family (Wheeler 1998).

not foresee these problems and therefore the method of dealing with the cases remains ambiguous. These ambiguities need to be clarified before there is an "individualist" crisis.

2.4.3 Legitimation problems

It is still argued by some that the egalitarian goals of farmland distribution can be adequately achieved through the family ownership model. Fieldwork (Wheeler 1994) exists suggesting that even if a legal framework was clear enough to allow members of a farm family to exercise their rights or to leave their own wills for their share of property, for the majority of rural Albanians individual rights within the household are not of immediate concern. The thought of demanding a share of family inheritance still remains an alien concept, especially for women, since it is customary for a woman to marry and have access to her husband's family property. However, these attitudes do not mean that the family model is adequate; it could imply that people have never been educated to use the legal system to deal with conflict, or it could be related to a path dependence issue (discussed earlier), or it could simply be a lingering traditional bias that provides rights for some and not for others. It is no longer reasonable to assume that egalitarian goals can be achieved through reliance on a customary model of ownership that is rapidly losing its characteristics in this time of transition. The fact that few people use the courts does not lessen the need for clarity in the law today, especially when we consider the increasing frequency by which people are left with no rights.

The reason that many cases do not currently reach the courts is due in part to an almost complete lack of knowledge by the general population of current law. In addition, those people who do take inheritance cases or subdivision cases to court experience lengthy hearings and judges unable to interpret existing laws in an accurate way, reinforcing the path dependence discussed in section 1. This inefficiency signals that it is a costly and timely procedure to go to court and, therefore, the public tends to avoid using the legal path. As long as ambiguities persist it is likely that customary practices will dominate, implying that some people are not able to exercise the property rights that government intended to give them.

For an outsider looking into the Albanian legal property ownership system, one could erroneously conclude that the legal transfer of the Italian section of the 1943 Civil Code on farm family property has been a success. It has been legitimized and the family farm is being preserved in Albania. However, 90 percent or more of the rural population has no knowledge of the law so it is not being legitimized. The illusion that law is legitimated comes from the resemblance of the law to what customary tenure systems already dictate. Customary norms have clearly been a more important influence on compliance than legitimacy; therefore, we cannot conclude that the rural population has a respect for legal authorities. This has potentially serious implications because as society changes, people will change perhaps without regard to the law, leaving the legal system in a crisis. Legitimation of law requires, first of all, laws that can be applied and, second, programs of public legal awareness. For legislators and drafters, a knowledge of the changing society and values would be useful in drafting laws. This means working with the people to find out emerging problems, but without undermining the structure of the family that is still so important in Albania.

3. DISCUSSION

The vagueness surrounding the logic and compilation of the Albanian Civil Code has the potential of presenting large problems in the future, especially if the current family ownership structure evolves into one where individual concerns become dominant. Although it may have seemed a good idea to import some laws from Italy, the discussion above shows how important it is to be country and history specific when

formulating law. It seems that a knowledge of the recipient and the donor cultures and institutions by the local officials and the foreigners, respectively, may have helped to avoid problems. In this case it has an impact mainly on people attempting to implement the laws. The confusion they face undermines any potential confidence that the legal system requires in such a critical stage of development. Furthermore, the family focus creates potential problems in the face of a rapidly changing social structure.

The law has attempted to attach customary obligations to legal rules; however, these customary values are changing at an alarming rate. By relying on a static version of customary values to uphold formal law, for example, that the head of household must not abandon or ignore his family, the legislators have failed to protect the rights that they purportedly gave individuals in the first place. Obviously there is no need to undermine the importance of the family at this period in Albania by recommending laws based only on individual rights; however, laws must allow for individuals to exercise those rights if they desire. Reliance on only a family model will not facilitate the move to a democratic and market economy.

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