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Mora, Agathe (2023) “Property rights are human rights”: bureaucratization and the logics of rule of law interventionism in postwar Kosovo. PoLAR: Political and Legal Anthropology Review. ISSN 1081-6976

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“Property rights are human rights”: Bureaucratization and the logics of rule of law interventionism in postwar Kosovo

Agathe Mora

University of Sussex

Correspondence
Agathe Mora Email: a.mora@sussex.ac.uk

Abstract

What makes property restitution “successful” in postwar Kosovo? How are multiple, overlapping, and conflicting property regimes folded into the process of postwar transition? And what can the implementation of rule of law illuminate about international interventionism? Daily practices at the Kosovo Property Agency (KPA, the administrative, quasi-judicial institution that the United Nations tasked with postwar property restitution) reveal the runaway effect of the growing bureaucratization of international human rights: institutional success is measured through neoliberal “technologies of accountability,” and the project itself becomes the key outcome. This is the result of a paradigm shift in global development that saw the legalization of property rights as a cornerstone of post-conflict state-building. A parallel shift towards managerialism and auditability in public sector management has given rise to demands for efficiency and accountability in transnational institutions. Together, these moves, which found fertile ground in Kosovo’s reconstruction process and determined the mandate and institutional setup of property restitution, transform rule of law from an idealized public good to a shortsighted, box-ticking exercise chiefly concerned with the production of measurable returns. These benchmarks sidestep the complicated
Decisions rendered by the Kosovo Property Agency (KPA), the administrative, quasi-judicial institution the United Nations (UN) tasked with postwar property restitution in Kosovo, were tangible evidence that “something had been done”; something that the agency and donors could report. Ruedi, the head of the Swiss Agency for Development and Cooperation (SDC)—a major KPA donor—explained this to me over lunch in Pristina in 2012.¹ For the Swiss, as well as for other international donors in Kosovo who were used to and in need of “actionable” evaluations to justify their commitment, the only measure of success of property restitution was the number of property claims processed and adjudicated. Ruedi told me, “This is our only way to make sure that the caseload is steadily diminishing; the only way to make sure that this does not drag on forever.”

Relatively powerless and underfunded, the KPA is a paradigmatic example of a contemporary transitional justice mechanism that is understood as a short-term, bridging, technical-legal project rather than a national process of righting past wrongs. For Ruedi, the KPA was a problematic project and not the SDC’s most successful financial commitment in Kosovo by far. He continued: “On a scale ranging from red to orange to green [green projects being the most successful ones with tangible, easily measurable achievements], the KPA is orange—hopefully not red.” A one-off donation made sense. Justifying a longer commitment was more difficult because the KPA was never meant to last and the project had hardly any tangible extrajudicial, social impact. It was not ideal, but hopefully it was “orange,” not “red.” At the end of its mandate in 2016, the agency had processed a total of 42,749 claims.² Reports by the KPA itself, the European Rule of Law Mission in Kosovo (EULEX), and KPA donors all hailed its work as one of the major successes of the implementation of the rule of law in postwar Kosovo.

What does the “success” of a transitional justice institution such as the KPA mean? How are multiple, overlapping, and conflicting property regimes folded into the process of post-conflict transition? And what can the implementation of rule of law through bureaucratic practice illuminate about the neoliberalization of international interventionism and institution-building?

Kosovo has seen one of the most extensive experimentations with externally supervised state-building ever. Following the North Atlantic Treaty Organization’s (NATO) military intervention in 1999 and a very wide-ranging UN peacekeeping mission, Kosovo is today the site of the largest civilian mission of the European Union (EU). As such, property restitution, as part of the broader setup of transitional institution-building, is a process that is unique in its legal and political framing given Kosovo’s disputed and ambiguous political status, yet one that in its starkness also reflects and epitomizes broader patterns of the neoliberalization of rule of law programs around the world.

This article illuminates how a paradigm shift in global development in the 1990s that saw law and institution-building as necessarily intertwined means of achieving economic development (Urueña, 2015, 78) found fertile ground in Kosovo’s reconstruction process and determined the mandate and institutional setup of the KPA. A parallel shift toward managerialism and auditability in public sector management has given rise to demands for efficiency and accountability in transnational institutions. These two parallel, neoliberalizing moves have transformed rule-of-law programs from an idealized public good to a box-ticking exercise chiefly concerned with the production of measurable returns. This is achieved through what I term “technologies of accountability,” mechanisms and procedures at every step of the mass processing of claims. The effect of these techniques is that rule of law becomes synonymous with chain-producing reports and decisions, which in themselves come to count as the outcome. The rule of law in this particular setting then translates into a set of bureaucratic procedures that deliver neither the justice nor the transparency and accountability it promises.
My research evolved over the course of 14 months of ethnographic fieldwork between 2012 and 2013, much of it while serving as a research intern at the KPA. Using the toolkit of “observant participation” (Wacquant, 2004, 6), I did work that other staff members could use and spent from 8 a.m. to 5 p.m. every day of the week in offices of the KPA, the Kosovo Property Claims Commission (KPPC; the adjudicatory body of the KPA), and the EULEX-run KPA Appeals Panel at the Supreme Court. I use my experience as a KPA research intern to examine how “technical approaches that focus on forms, procedures, and the organization of data into categories are used to grapple with situations of conflict” (Merry and Coutin, 2014, 11).

Because a KPA internship contract signed directly by the executive director governed my research, units welcomed me and taught me their work as if I were to become a full team member. Just like any new employee, I received a computer-based, technical training into everyday work. I received an old Dell laptop, a desk, and a chair, all of which the helpful staff of the procurement unit moved each time I changed offices. I would start by reading the material, mostly the standard operation procedures and internal guidelines, that the head of unit had given me. I would then ask staff members to walk me through their routines and explain their reasoning as I looked at their computer screens. I had access to the unit’s computer applications and was assigned some routine tasks that I could perform under supervision. One became a KPA professional by learning the language of inter- and intra-unit cooperation—a language based on acronyms, application-centered logic, and quantitative output.

My focus on technologies of accountability that KPA staff mobilized in their daily work is in conversation with recent work on the bureaucratization of human rights within international institutions in response to the juridification of politics and the rise of neoliberal governance (Billaud and Cowan, 2020; Merry, Davis, and Kingsbury, 2015; Niezen and Sapignoli, 2017). Juridification, or the displacement of political issues into the realm of law, serves to judicialize contentious social issues and, at the same time, dissolve political responsibility for their resolution by placing them in the hands of seemingly apolitical experts (Blichner and Molander, 2005; Eckert et al., 2012). This “turn to law” is accompanied by a process of “rendering technical” the application of power, which technicalizes and depoliticizes the language of intervention (Ferguson, 1994).

Audit culture is a consequence of demands to measure the efficiency of public institutions by market principles. Accordingly, the activities of legal bureaucracies have become focused on the measures to assess their performance and thus on the production of metrics. Measures of accountability and efficiency become in and of themselves criteria for success (Billaud 2020; Niezen and Sapignoli, 2017). The language of efficiency makes certain goals appear unquestionable and desirable, while “the creation and rapid spread of auditing technologies exemplifies how policies often have a ‘runaway effect,’ actively reshaping the environments into which they have been introduced” (Power, 1997; Shore, Wright, and Però, 2011, 3). Audit culture makes what is auditable or measurable visible while occulting and rendering insignificant everything else. As a consequence, my material shows, rule of law and human rights have been reduced to numbers.

Audit culture also “shape[s] the parameters of human agency in [very] intimate ways” (Billaud and Cowan, 2020, 7). Managerial principles inculcated “new norms of conduct and professional behaviour” in staff members (Shore and Wright, 2000, 57): they took pride in being “efficient” and willingly submitted themselves to internal audit as a form of professional ethics. Many saw these technologies and techniques as “necessary” to ensure transparency and objectivity and felt gratified to be part of an institution that worked to “protect and implement human rights” in a sociopolitical environment often portrayed as corrupt and illiberal (Mora, 2019). Yet, as will become clear, my interlocutors were often also skeptical of the property restitution process. Staff were under a huge pressure to produce, and the near total absence of extrajudicial effects made many of them cynical toward EULEX and international intervention.

Rule-of-law institutions and discourse come with their own epistemology and are part of a specific assemblage of national and international actors, as with neoliberal economic institutions. By attending to the genealogies of property regimes and property restitution in Kosovo, this article shows that during Kosovo’s progress to supervised and contested statehood, the work of internationally supervised postwar reconstruction folded in and erased all kinds of transitions—not only from war to peace but also from socialism to market capitalism and from property possession to ownership. The disconnect between the lofty ideals invoked in the setup of these institutions, the neoliberal
techniques and technologies they deployed to pursue their goals, and the lived realities of their intended beneficia-
ries reveal the dark side of human rights work: the structural violence inherent to such bureaucratic processes and,
ultimately, the incapability to address the fundamental iniquities of contemporary neoliberal life (Mora, 2020; Moyn,
2018; Ortner, 2016).

We expect property restitution to reconcile—if uneasily—a broad range of ethical, political, and social concerns
(Zenker, 2014). Yet, as my research shows, the juridification and judicialization of property restitution and audit cul-
ture flatten all these dimensions into a single denominator of valid ownership rights. Rather than performing the classic
anthropological move to analyze the tension that always arises between the promises of transnational legal appar-
tuses and local lived experiences (Allen, 2013; Eltringham, 2014; Rojas-Perez, 2017), I use the inner workings of the
KPA to reveal how the institutional setup (mandate and operating procedures) determines what the institution focuses
on and the kind of results it produces: rule of law and human rights as quantifiable, measurable outputs. This analytical
focus does not allow for a parallel discussion about the "real-life" effects of institutional decisions. Instead, my focus
here is on internal procedures and on how such a push for measurability has reshaped the quasi-judicial process of
property restitution.

A SHORT HISTORY OF PROPERTY REGIMES IN KOSOVO

Kosovo’s recent history is marked by a succession of political and property regime changes culminating in “multilay-
ered and overlapping transitions” (Subotic, 2015, 410). Under the Ottoman Empire, the tapi system (certificates of
allotment; tapija in Albanian) governed property ownership in what is today Kosovo with cadastral records based on
population and tax records. After the defeat of the Ottoman Empire in the 1912–1913 Balkan Wars, the countries
that took over these territories (Montenegro for the western municipalities and the Kingdom of Serbia for the east)
incorporated the tapija system and initiated the first lands survey (Stanfield et al., 2004, 1).

Following World War I, the newly formed Kingdom of Serbs, Croats, and Slovenes saw Kosovo as the “sacred heart-
land” of the Serbian Orthodox Church that Serbia had lost to the Ottomans between 1389 and 1690 (Judah, 2008, 21,
33). The “liberation” of Kosovo saw the large-scale emigration of ethnic Turks. Many Albanians, who at that time made
up about 62 percent of the population, also left, while many Serbian and Montenegrin settlers arrived. The remaining
Albanians, claiming ownership through inherited but unrecognized tapija deeds, faced discrimination (by the repres-
sion of their language, for example) and marginalization (Malcolm, 2002, 285). A 1920 “Decree on the colonization of
the new southern lands” established that colonists could take over vacant state land, uncultivated communal land, and
land confiscated under “provisional measures” in 1919 (280).

After World War II, Kosovo was integrated into the Socialist Federal Republic of Yugoslavia (SFRY) in 1946—not as
one of its six “nations” but as the autonomous region of Kosovo-Metohija, a “constituent part” of the federal state of
Serbia. During the early socialist period, major private enterprises, houses of three or more apartments, and buildings
located on land designated for urban planning were also nationalized (KPA, 2011). Mounting dissatisfaction among
the Albanian population over the curtailing of Kosovo’s autonomy and their social and cultural rights in the mid-
to late 1960s led to a gradual improvement of their situation. This process culminated in the 1974 Yugoslav constitution,
which gave the autonomous provinces of Kosovo and Vojvodina almost the same rights as the constituent republics.
During that “golden age” of Tito, Albanians enjoyed higher levels of education, improved access to jobs, and rights to
their own banking system, police, parliament, and government.

This 1974 constitution introduced the concept of social ownership. It nationalized and transformed land parcels
into socially owned enterprises (SOEs) under the socialist ideal that property should be collectively held and man-
aged; that is, “everything is owned by the workers, who contribute to the betterment of society” (Wolf Theiss, 2009, 4).
However, only 9 percent of agricultural lands were actually transformed into SOEs, with over 90 percent still held pri-
vately despite the shift to socialism (Stanfield et al., 2004, 4). Possession lists named private landholders as possessors.
Importantly, possession of plots became quasi-synonymous with ownership over time (Stanfield and Tullumi, 2006, 4).
Following the 1980 Law on Basic Property Relation, urban residents could own houses and buildings but were only granted use and occupancy rights to the land (Stanfield and Tullumi, 2006, 3). Publicly owned enterprises and SOEs constructed and managed socially owned apartments, the main form of housing, for their employees and the latter contributed to maintenance with obligatory salary contributions. Despite not owning their homes, employees were given permanent occupancy rights. Surviving family could inherit or swap one apartment for another apartment, but not sublet, sell, or supplement it with a second residential property (Cordial and Rosandhaug, 2008, 17–18).

After Tito’s death in 1980, these dynamics changed again. Tito had managed to paper over Yugoslavia’s economic deficiencies and keep centrifugal forces in check; now, economic inequalities became more apparent. Tensions between Albanians and Serbs in Kosovo mounted throughout the 1980s. After his election, Serbian president Slobodan Milošević maneuvered to revoke Kosovo’s autonomy and increase Serbian dominance over Yugoslavia (which in turn strengthened nationalist tendencies in the other republics, eventually triggering war and the breakup of Yugoslavia).

In Kosovo, the 1990s were marked not only by the systematic discrimination against Kosovo Albanians but also by a shift from socialism to market capitalism. "Special measures" introduced in 1990 resulted in the dismissal of many Albanians from SOEs and the subsequent loss of their occupancy rights in socially owned apartments, which were mainly reoccupied by Serbs. When the privatization process transformed occupancy rights into ownership rights, these Serbs benefited from their new ownership.

With mounting oppression, Kosovo Albanians formed an unrecognized government, which established a parallel, underground system of teaching in Albanian and organizing civil resistance that the diaspora financed. Ultimately, however, these parallel institutions were unable to protect the population and assert its rights. A resurgent Kosovo Liberation Army (KLA, or UÇK in Albanian, formed clandestinely in 1993) carried out organized attacks from 1997 onward, leading to further escalation of violence and Serbia’s declaration of war in February 1998 (Del Ponte, 2008, 274–75).

During that period, a large number of property maps, cadastral books, possession lists, and other transaction archives were removed from local government offices to Serbia. Accordingly, when open war started in 1998, there was already a great deal of legal uncertainty regarding property rights in Kosovo.

By August 1998, an estimated 200,000 Kosovo Albanians had been displaced from their homes (Judah, 2008, 82). In February 1999, a meeting between the warring parties was called to put a stop to the displacement and killings and negotiate a solution. When Serbia refused to sign the agreement, NATO initiated an aerial bombing campaign against strategic targets in Serbia—a decision that the UN Security Council did not endorse but was nevertheless considered a "humanitarian intervention" to avoid repeating the failure of international peacekeeping troops to protect civilians in Srebrenica in 1992 and in Rwanda in 1994.

When Serbia gave in after 78 days of bombing, the UN Security Council passed Resolution 1244, which stipulated the withdrawal of Serbian forces and the establishment of a NATO-led international peacekeeping force (Kosovo Force, or KFOR) and a UN civilian administration (the United Nations Interim Administration Mission in Kosovo, or UNMIK). Before KFOR gained full control, however, the KLA established itself in many localities, terrorizing and displacing Kosovo Serbs and other minorities as well as Kosovo Albanians whose political allegiances were suspect (Tawil, 2009, 11–13). The KLA distributed, rented, or sold properties to loyalists and returnees, often "on the basis of fraudulent title or through fraudulent powers of attorney" (Tawil, 2009, 13). Businesses and agricultural properties formerly belonging to Serbs or to the state were also seized and redistributed. While the conflict displaced up to 300,000 Kosovo Albanians, the withdrawal of Serbian forces resulted in the mass expulsion and flight of Kosovo Serbs. Returning Kosovo Albanians occupied the houses from which Kosovo Serbs had been expelled; some returned to the socially owned apartments they had lost under the discriminatory laws of the early 1990s.

In 2000, UNMIK estimated that official records of privately held land rights corresponded to actual possession for only 30 percent of occupied land (UNMIK/PISG, 2003, 5). As a result of the conflict, an estimated 300,000 homes were damaged or destroyed, and as many as 75,000 properties were abandoned (UN, 2000).

This is the checkered, contested state of property relations that UNMIK encountered when it set out to rebuild Kosovo under international tutelage. It is precisely the legal and political complexity of the situation detailed above
that fed into and justified the setup and mandate of the KPA. Other post-socialist and post-conflict transformations folded in—and often erased—institutional setup and reforms across the region, which I detail for Kosovo in the next section (Coles, 2007; Gilbert, 2020). Postwar reconstruction took a tabula rasa approach, as if Kosovo’s transition from socialism to market liberalism had been successfully completed a decade earlier—when, in fact, the decade-long conflict across Yugoslavia had left open political and moral questions about who owned what.

PROPERTY RIGHTS ARE HUMAN RIGHTS

Following this first “war officially conducted to protect human rights” (Douzinas, 2000, 129), the degree of international political and legal influence in postwar Kosovo was unprecedented. This is crucial in understanding how international actors have driven the push for rule of law I detail in the following section. This is not to say that Kosovan actors were absent, but it is important to pay attention to the genealogies of the various institutions and modes of governance to distinguish between the epistemologies of these different institutional forms.

The logic of liberal interventionism that had justified NATO intervention against Serbia would now pave the way for and come to define UN involvement in the mounting humanitarian crisis and post-conflict transition. Together with demands for market reforms, these coalesced into a heady ideological brew that boiled down to the tenet that “property rights are human rights,” which fundamentally shaped the mandate and outlook of the KPA.

We can distinguish between two phases of reconstruction: from humanitarian emergency to reconstruction and state-building, corresponding roughly to the transition from UNMIK to EULEX, and from a restitution process focusing on possession to one focusing on ownership. Following this section on the ideological foundations of property restitution in postwar Kosovo, my ethnography shows how the logics of that second phase panned out in practice, providing evidence for how neoliberalizing logics of rule of law were implemented through everyday bureaucratic processes.

As Kosovo Albanians started to return to Kosovo under the protection of KFOR and with about half of the available housing stock destroyed, many took possession of abandoned Kosovo Serbian properties. It was also common for Kosovo Albanian returnees to find their own property already occupied, forcing them to seek alternative shelter (von Carlowitz, 2004, 309). The housing crisis, compounded by this rapid increase in “secondary occupations,” began to be seen as a threat to general security and safety. The UN Security Council Resolution 1244 of June 10, 1999, “determined to resolve the grave humanitarian situation in Kosovo” (preamble) and tasked the international presence in Kosovo to “[assure] the safe and unimpeded return of all refugees and displaced persons to their homes” (paragraph 11.k). It did not, however, provide substantive rules for the implementation of return (Cordial and Rosandhaug, 2008, 23).

Due to Kosovo’s unresolved status, UNMIK was endowed with wide-ranging legislative and executive powers, including the administration of the judiciary. It had the authority to reestablish the rule of law, build a democratic, multiethnic polity in line with transnational human rights ideals, and generate economic development through “good governance” measures (Pandolfi, 2010, 156). Rule of law included the reestablishment of property rights to address the housing crisis and kickstart economic development. UNMIK’s mandate thus included the administration of movable and immovable public and socially owned property as well as private property.

Kosovo’s court system was judged weak, dysfunctional, and incapable of ensuring the “efficient and effective” and “fair and impartial” resolution of residential property claims in an increasingly volatile sociopolitical environment (UNMIK RES/1999/23). To remedy this, UNMIK established the Housing and Property Directorate (HPD) and Claims Commission (HPCC) in 1999. The objective of HPD was to restore a status quo ante corresponding to a property rights reality that preceded the discriminatory laws passed under Milošević and the dispossession that had occurred during the war. Here, property restitution was limited to residential properties and signified the restitution of previously legally acquired rights that would have remained valid had the Kosovo population not experienced Serbian discriminatory policies and war-related displacement. In practice, this meant avoiding the determination of “underlying rights” or titles as much as possible and preferring the ordering of repossession in most claims. HPD also sidestepped taking decisions on ultimate ownership rights by referring the issue to “local” courts.
Yet this purely technical-legal reading of history also generated new forms of rights inequality. The validity of property rights was analyzed based on a narrow, hierarchical understanding of property entitlements, which saw previous private ownership (or permanent possession) as trumping any other form of property rights.

HPD’s exclusive focus on residential property restitution, rather than on both residential and nonresidential as well as agricultural and commercial private property, was the determining factor that led to the creation of a second restitution mechanism, the Kosovo Property Agency (KPA). According to a European Agency for Reconstruction feasibility study, HPD’s narrow focus on housing went against standards set in international soft law and the Pinheiro Principles (published in 2005), which further established housing, land, and property rights as basic human rights (Leckie, 2008; Paglione, 2008). It also went against Bosnian precedent. In Bosnia-Herzegovina, the restitution legislation was indeed amended to cover both residential and nonresidential property rights, recognizing the importance of “economic sustainability” for successful returns (Arraiza and Moratti, 2009, 434–35).

The rights-based, liberal approach to property restitution as advocated in the Pinheiro Principles follows a rationale with clear influence from development economics, for which Hernando de Soto’s *The Mystery of Capital* (2000) was hugely influential. De Soto argued that legalizing property rights and adopting a formal, homogenized system of property legislation would enable greater economic development, as people would be able to use their property as collateral to borrow money for investments and avoid unnecessary conflict through rights legalization. This dominant discourse postulates a direct link between the rule of law and successful statehood with all its attributes, including stable institutions and “a technological framework for an ‘efficient’ market” (Mattei and Nader, 2008, 5).

Thus, the emphasis shifted from repossession to ownership. Upon its creation in 2006, the KPA’s mandate was to resolve ownership and user rights claims for private, immovable property involving circumstances related to the armed conflict that took place between February 27, 1998, and June 20, 1999 (UNMIK RES/2006/50, section 3). These narrow cut-off dates meant that ownership claims from the period covered by the mandate superseded the outcomes of prior injustices—including the discriminatory laws and fraudulent informal transactions, which were arguably among the root causes of the conflict. It also meant that an agency largely staffed by Kosovo Albanians and some internationals became responsible for the restitution of property rights mainly to Kosovo Serbs displaced at the end of the war. Ensuring the return of the Kosovo Serbian minority was a cornerstone for rebuilding Kosovo as a “multiethnic democracy” (and preventing the logics of ethnic territorialism that governed the reorganization of postwar Bosnia-Herzegovina). As a lawyer at the KPA told me, “The KPA is only confirming an existing situation [by looking at the] very short period of ‘98–’99. [The KPA] is not going deeply into the creation of property problems. It’s more a human rights issue” (Mora, 2019).

To sum up, the former HPD approach tried to find immediate remedies in an unclear legal environment and thus focused on possession and user rights for residential properties. The KPA’s approach was premised on a direct link between the legalization of property rights and economic development through the normalization of a private property regime; that is, ownership, privatization, and marketization of titles. The role of the two consecutive institutions of property restitution was to implement not a policy of regime change but a policy of status quo; the overall goal was not to transform the socialist property regime but to adapt it to Western standards. This, the international community believed, was the best way to ensure the quick return of refugees and displaced persons to their homes and thus reverse the ongoing ethnic homogenization of the territory. This would also pave the way for a full-fledged private property regime by future “local,” sovereign institutions. It is critical to understand that rule of law and legalized property rights, especially on the issue of Serbian minority rights, are an argument for the legitimacy of a contested Kosovan state sovereignty.

PROCESSING CLAIMS AT THE KPA

This ideological background—combined with the sheer number of cases, the narrow mandate, contingent donor funding, and the temporary nature of the KPA—all contributed to how the institution worked, evidenced in the managerial logics that came to define its modus operandi.
Lawyers at the KPA often repeated that the institution’s role was not to create new rights but to restore already existing rights. Available cadasters and other official documents were used to find out who had last legally held a right over the claimed property. To be legally valid, a right had to have been acquired neither under discriminatory circumstances nor through other illegal means, such as duress, while also remaining valid at the time of adjudication (Figure 1).

The KPA adopted managerial techniques under the umbrella of a mass claims processing system to streamline the process and ensure efficiency. A mass claims approach, it was argued, would provide “effective remedies to claimants within a reasonably prompt period of time and in a manner which was economical and consistent” (Cordial and Rosandhaug, 2008, 29). One of the KPCC’s three commissioners justified the use of mass claims processing as follows:

In view of the high number of claims and their similarity, a mass claims process must be organized in a fair and efficient manner to ensure that claimants are treated equally and all the claims are resolved within a reasonable period of time. (HPCC/RES/7/2003 in Heiskanen 2006, 29)

The proponents of ad hoc instruments of arbitration argue that the requirements of a mass claims mechanism, such as relaxing procedural standards and standards of evidence, make sense from a cost-benefit viewpoint without undermining the quality of judgments (Das and Van Houtte, 2008; van Haersolte-van Hof, 2006). Taking their cue from the South African property restitution model—whose slow pace was blamed on the overreliance of the judicial approach on oral hearings and adversarial proceedings (Das, 2004, 436)—the KPA mandate drafters chose to make the institution almost exclusively reliant on written submissions and evidence. Case Processing Teams (CPT) of KPA lawyers bundled cases into batches of similar types and adjudicated according to standard operation procedures.

Technology served as a tool for transparency and general accountability: an in-house IT system and tailor-made computer applications were designed for each unit at the headquarters and regional levels, which also brought about specific institutional logics and procedures to case processing. Applying managerial strategies to computerize and routinize claims processing and compartmentalize tasks between different units constructed an internal “nomenclature of trust”—a way of producing “reasonable certainty” out of contested truths (Mora, 2016). These strategies shaped the administrative legal framework into mundane bureaucratic practice and KPA staff into rule-abiding technicians of law. The law was transformed into mundane cause and effect functions on computer screens.

Saranda was a longtime secretary for the File and Data Management Unit (FDM), the KPA’s archivists. The dusty, crumbling room she and her colleagues occupied on the first floor overflowed with documents. Files were strewn across the floor, and precarious towers of papers awaiting filing threatened to collapse on the unsuspecting intruder. As I sat next to her at her desk, Saranda explained to me how to “separate claims” (to divide a claim into two or more new claims to ensure that each claim is limited to one claimant and one type of property but also to increase one’s daily processing output). This is how Saranda walked me through the steps to be followed:

In mother claim file: insert pages. Go to Y Drive separation. Insert the memo in the mother claim. Print all documents until the notification report. Change data in claim intake according to request from verification, notification, or CPT. Then: create physically a new claim and inform by email the different units concerned about the division.

This incomprehensible technical jargon epitomizes how managerial techniques informed everyday work (Figure 2). Working on electronic databases requires a highly interactive, relational dynamic with information because “the narratives embedded in the data structure are very thin” (Hull, 2015). Because databases are so interactive and so easily accessible in multiple ways, the role of the ethnographer is “to figure out how people actually draw particulars together from these vast amounts of data and create particular stories for particular ends” ibid.

Separating claims necessitated close cooperation among staff of “lower” units in the processing chain: FDM, Notification (geographically identifying properties and notifying potential respondents of the ongoing legal process), and
FIGURE 1  Piles of KPCC individual decisions. Photo by Leart Zogjani, 2016. Source: Agathe Mora. [Color figure can be viewed at wileyonlinelibrary.com]
Verification (explained in the next paragraph). These units prepared case files for the CPT lawyers analyzing the legal merits of claims.

A few weeks after my initiation into case separation, I had the chance to follow up on the same issue, this time with the Verification unit, which verified the genuineness of externally produced documents. One floor above FDM, I was helping to add information on the verification of documents that was necessary for the separation protocol. One claim, however, did not seem to need separating, and I wanted to find out why a decision to separate had nonetheless been taken. Against the advice of my Verification colleague, I approached the Notification and CPT officers who were logged into the database as those who had worked on that specific claim. Agron from Notification was helpful as always. In his late 30s, he was one of the two headquarter cadaster specialists and had a technical secondary degree in geodesic science and previous work experience with the Kosovo Cadaster Agency. He agreed with my reading of the claim and laughed when I said I wanted to go talk to CPT: “You know what people say about Notification and CPT?” he asked me rhetorically. “Notification is the catastrophe unit and CPT is the complication unit. Go, but you might not have all the facts here.”

The CPT officer, as my colleagues expected, was not pleased when I came to inquire about what I perceived as a mistake on his part. Because I was attached to Verification at the time, I was considered unworthy of asking legal questions. I was quickly put in my place when the CPT officer pulled out a Serbian court decision, which had not been part of the file as it appeared on the Verification screen, as evidence to request separation. “It’s a factory, here. I treat the claim and decide what to do,” he said, irritated. I apologized and went back to Verification, a little ashamed of my boundary-breaking initiative. My Verification colleague laughed when I told her of the encounter: “Here, you have to produce. The number of claims you process counts more than anything else.”

The location of people’s desks within the building (that is, the prestige of their unit in the processing hierarchy) and the software on their computer dictated their work. Computerization, compartmentalization, and routinization of claim processing dictated the division of labor in the production of legal knowledge. Case processing was, like a post-Fordist mass-production chain, highly structured with a pyramidal power structure and integrated technologies to increase turnover (Wilf, 2016, 732). Each unit had a specialist but limited outlook on the files’ database, looking only for the information they needed to perform their tasks and avoiding conflictual discussions with other teams by keeping their queries purely technical or by not asking any questions at all to units higher in the processing hierarchy. Crucially, officers had to log all activity in the database; any changes were attached to their name, making them individually responsible for both diligence and throughput.

**RULE OF LAW BY NUMBERS**

EULEX, which ran the Supreme Court team in charge of KPA appeals, and the KPA were famous for closely filtering the information they disseminated. Despite (or perhaps because of) vows of transparency and good governance, both KPA and EULEX were largely perceived as opaque. Parties to claims had no idea how the KPA worked. Apart from short explanations in the decisions themselves (often illegible to non-initiates), the reasoning behind its decisions remained a mystery.

As the rule of law mission, EULEX’s standards of accountability and good practice came to dictate the expectations for how the KPA and the Supreme Court KPA Appeals Panel accounted for their work. At the time of my research, the Panel had a translator, a legal officer, a registrar, and three judges: two international civil judges (from Germany and Bulgaria) and a Kosovo Albanian judge. Apart from the national judge, whom the Government of Kosovo paid directly, they were EULEX staff. Hans, the registrar on secondment from Switzerland, dealt mainly with EULEX-related administrative matters. He explained EULEX’s “best practice,” hunched over a pile of files on his desk:

*Hans:* They are crazy with numbers here. Weekly report goes from Thursday to Wednesday. Monthly report from the 20th to the 19th for the central database. Then there is the three-monthly report. Now
we even have to deliver the calendar date of decisions, etc. Nobody reads anything. We fully feed them with data.

Me: Why do they need all this?

Hans: This is the European way of thinking; this is bringing rule of law to Kosovo. It is total administrative overkill. We are not solving the problems; we are only reporting the problems. And this is the general approach of the EU.

Such accounting practices, as "verification" rituals (Power, 1997), are self-feeding loops: bureaucratic systems auto-generate bureaucratic procedures, reproducing themselves endlessly through the accumulation of information. Hans pointed to how such bureaucratic reproduction works:

[EULEX] had a planning team two years before starting the mission in 2008. I never saw a paper from them. We had to invent all our procedures. They didn't have a clue about justice. We had to invent how to collect court fees, how to publish our anonymized decisions. No guidelines.

They change all the time the way the data should be handled statistically. For example, last week they wanted to have the data about how many cases we have as per a certain date. But of course, we were writing on a monthly basis. Now they want it randomly. This is ridiculous. More work for nothing.

Also, I and others who are supposed to fill in the data, we don't have access to the database. The system tells me the info I entered has been successfully saved, but I cannot recall it for example. EULEX sees this as its main task: to fill in this database with something nobody reads. This is EU best practice.

Following the procedure, or inventing "best practice" for the sake of quantification, became the outcome. This directly influenced the way the institution set the ethical and legal norms it wished to follow. It translated into a measurable understanding of rule of law, serving internal efficiency and accountability norms first and foremost. Rule of law, from the point of view of filling in the database and complying with internal quotas, meant ensuring audit-friendly compliance with international standards: the number of files processed on a daily and weekly basis, the type of legal issues treated, and the outcome of the legal procedures were translated into numerical indicators of all kinds. Whether claimants and respondents had received notice of a legal procedure or had been informed of a decision, whether the right property was being investigated or not, whether the property being claimed was or was not occupied, and whether the decisions had an extrajudicial impact were all irrelevant questions because they fell outside the institution's scope of audit. The legal and ethical norms of transition, which UNMIK and then EULEX had set up for themselves, dictated the procedural rationale. This rationale, in another enactment of the same bureaucratic self-feeding loop, served to measure compliance with rule of law standards.

CONCLUSION

From the mid-2000s on, the neoliberal mantra of "property rights are human rights" along with new managerialist imperatives of "good governance" have had profound implications for how rule of law is understood, how rule of law institutions implement their mandates, and how their work is assessed. Rule of law in postwar Kosovo became synonymous with chain-producing reports and decisions.
Asking about KPA’s interaction with economic institutions is therefore the wrong question to ask, as the decisions rendered contribute little to a “flourishing” property market. The number of Serbian claimants who returned to Kosovo after a positive decision is negligible, and the KPA rental scheme designed to enable financial compensation for legitimate titleholders unable (or unwilling) to come back has had very limited economic impact.

Rather, this case shows how globally circulating, if heterogenous, neoliberalizing ideals of market efficiency and rationality have become a highly malleable ideological resource for a variety of actors of all political stripes to position themselves and vie for political capital (Schubert, 2022)—in the case of Kosovo, as a means to become “European.” Property restitution is held up as argument by the Kosovo government for Kosovo’s independence as a stable, multi-ethnic, rule-of-law-abiding postwar polity with unambiguous property relations and by the international community as a success story of intervention and state-building. This allows Kosovan and Serbian political leaders and the EU to engage in an exercise of box-ticking to measure compliance with a managerial understanding of rule of law. That these bureaucratic logics are “the European way of thinking” is very telling for the specific neocolonial rationales at play in these initiatives: EU accession as an ever-receding horizon that dominates any discussions about state reform, not only in Kosovo but in other countries in the region as well.

The “runaway effect” of this is that neoliberal audit criteria measure the success of property restitution: the project itself becomes the key outcome. Anthropologists have understood property as a codified bundle of social relations (Verdery and Humphrey, 2004). Yet the consequence of the juridification of restitution politics and institutional measures of transparency and accountability is precisely the unbundling of rights from relations. Bureaucratization reduces human rights and the rule of law to numbers and epitomizes the inherent contradictions of contemporary international interventionism.

ACKNOWLEDGMENTS

I would like to thank Sandra Brunnegger for her invitation to present an early draft of this article at a workshop on “Infrastructures of Injustice” at the University of Cambridge and at a follow-up workshop on the same theme at Princeton University. Versions of this article were also presented at research seminars at Yale University and the University of Lucerne, as well as at the German Anthropological Association Conference at the University of Konstanz. I am very grateful to Jessica Greenberg, Jon Schubert, the three anonymous reviewers, and the participants to the workshops and research seminars for their stimulating comments.

ORCID

Agathe Mora https://orcid.org/0000-0002-7691-8112

ENDNOTES

1 All interlocutors have been given pseudonyms.
2 The agency’s mandate (i.e., some remaining evictions and the operation of the property rental scheme) has now been transferred to the Kosovo Comparison and Verification Agency.
3 The bundling proceeded according to the nature of the property claimed (agricultural, residential, or commercial); whether the claim was contested or not and the number of respondents for contested claims; whether the claimant was the property right holder, a family household member, or the holder of a power of attorney; and the most probable outcome (i.e., whether the claim should be granted, dismissed, or refused).

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How to cite this article: Agathe Mora. 2023. “Property rights are human rights”: Bureaucratization and the logics of rule of law interventionism in postwar Kosovo. PoLAR: Political and Legal Anthropology Review 1-15. https://doi.org/10.1111/plar.12517