THE ROMANIST SUBSTRATUM IN THE CIVIL LAW
OF THE SOCIALIST COUNTRIES

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1. General Remarks

The law of the socialist countries moves along patterns which are so different from those of law in Romanist countries that it may be considered as forming a separate family of law. This statement has been often repeated. It is intended to facilitate research in a specialized field of law and, from a didactic point of view, it is adhered to in distinguishing disciplines to be taught. This article has no intention of casting any doubt upon it.

However, the fact that the socialist legal systems belong to a separate juridical family does not exclude the existence, within their very bosom, of "substrata" of varying degrees of importance and different kinds. More precisely, they comprise Romanist substrata originating in the centuries-old application of the Corpus iuris civilis or of Byzantine sources, or, more importantly, in the utilization by the legislator, and by the interpreter, of categories elaborated in the usus modernus pandectarum and then passed down through the universities.

Of course, the clash between Romanist tradition and the political necessities of the socialist revolution has resulted in tradition being sacrificed. And yet, the building of socialism does not mean that only one technical-juridical method has been uniformly adopted. While, in the field of constitutional law, the underlying political questions are of such importance as to leave very little choice as to the legal "techniques" to be used, the margin of choice is, on the other hand, very broad in the fields of civil and economic law. It may suf-

1. I hope I shall not irritate the reader too much by using the term "substratum", meaning "pre-existing cultural stratum", as linguists, e.g., do.
2. Civil law, in the definition of the jurists of the countries dealt with, corresponds to Romanist civil and commercial law, excluding family and economic law. Economic law is the set of rules applicable to state enterprises and their relations. In some countries, the distinction between the two disciplines is, however, rejected.
There is a Romanist tradition as opposed to the tradition of common law or of Islamic sharia.

For a long series of reasons, this Romanist substratum beneath the legislations (and, more generally, the law) of European socialist countries could be easily overlooked by scholars.

Scholars of Roman law may, for example, confine their interests to the diffusion of Roman law itself, without considering the diffusion of other, more contemporary legal systems based upon Roman law — nineteenth century gemeines Recht — ius commune — (with the general theory of juristic acts, the actio doli generalis, and the general action for unjust enrichment) or, indeed, the codified law emerging from the liberal revolutions (with the general prohibition of tortious behavior, the general principle of contractual freedom, and transfer of property under contract).

Historians from the socialist countries who, unlike our own, have the merit of looking into the more recent history of their countries, are logically more inclined to dwell upon the framing itself, and the dialectic-materialistic analysis, of the results rather than on the “neutral” technical data involved in this type of analysis. There are, of course, exceptions.

3. An example, chosen at random from the works available to us, might be Bianchi, Předve formy monopolizácie za burtodné ČSR, Bratislava 1965.

4. E.g., Andreev, “Rimskoto pravo v Balgarija” published in Sofia in 1965, deals, in 39 pages, with Roman (Byzantine) law influences upon Bulgarian feudal law, and with French, German, Italian and Russian law influences upon Bulgarian bourgeois law.

A more important example is the collection edited by Csizmadia, Kovács, Die Entwicklung des Zivilrechts in Mitteleuropa (1848-1944), Budapest 1970. Here we find monographs devoted mainly to the analysis of the infrastructural or ideological significance of juridical methodologies and institutions (Peschka, Horváth, Bianchi, who return to the subject dealt with in the work quoted above). We also find authors concerned with the history of law and thought in the German-speaking countries (Kuntschke, Thieme, Lieberwirth, Melzer) or with historical-systematic problems (Buchda), or with specific and limited historical periods (Victor deals with the years 1939-1944 in Bohemia and Slovakia, and Buzás writes about the Hungarian revolutionary period, 1917-1919). We find, most of all, a very clear picture of the history of Hungarian institutions, and this picture constitutes the very nucleus of the work: Asztalos examines the metamorphosis of civil law, in general, from 1848 to 1944; Mádl describes the various attempts at codification; Bernáth describes possessory protection from 1802, Kovács analyzes forms of ownership marked by feudal characteristics, Sarlós examines a series of rights conferred by letters-patent (the right to open bakeries, mills, inns), Tákány-Szűz explains mining legislation based on the Austrian model, Peczé the law on industrial inventions (which reacts against the Austrian model), Weiss speaks of contract laws and Szegvári of the working woman, Bözörményi-Nagy, Pap and Degré write about the law of inheritance, marriage and guardianship, respectively. Also recommend the contributions on the process of codification in Poland (Radwański) and in Serbia (Petrić), and wider research on the evolution of Czechoslovak law (Luby presents the background to Slovak non-codified law in the period 1918-1948, Houser explains labor laws from the Austrian era up to the 1931 draft), and