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Retraditionalisation as a Change:
Roman Foundations of Postcommunist Property Law

After the fall of communism at the beginning of 1990's, postcommunist countries in Central and Eastern Europe have tried to reintegrate its law in the continental legal family. A major step in that direction was made by the passage of new civil codes or property laws based on „old“ European codifications (e.g. Code Civil, ABGB, BGB). These new codes or laws represent a determined rupture with the communist legal order in the field of property law, and in many cases, a retraditionalisation, i.e., return to the principles, institutions and solutions of the Roman legal tradition. Thus, for example, the principle of numerus clausus of the real property rights is reintroduced. In contrast to the communist collectivistic notions, the institution of ownership has again been built on Roman(istic) legal foundations. Furthermore, the principle of the legal unity of immovables, derived from the classic Roman rule superficies solo cedit and nearly completely neglected during the communist era, is elevated to the level of the fundamental principle of property law. In addition, fiduciary transfer of ownership has for the first time been introduced in some postcommunist private law systems and shaped on the model of the archaic Roman fiducia cum creditore contracta in accordance with the needs of the contemporary market economy etc. Starting from these and other similar examples, the aim of this paper is to show to what extent, after the fall of communism, the postcommunist property law was restored on Roman legal foundations. Therefore, this paper is also a contribution to a discussion on the retraditionalisation as a change in the postcommunist legal world.