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Stoicism and its Influence on the Roman Law

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Abstract

Quite correct view is that Stoicism give the theoretical basis of the Roman idea of Natural law (lat. *Ius naturale*), because the ethical teachings of the Stoics could easily be adapted to the practical needs of expanding Roman Empire. And exactly, the idea that the right of the Citizen is the primary category vis-à-vis the right of the State experienced its ultimate embodiment precisely in the Roman law.

Keywords: Stoicism; Roman law; praetors; Ius honorarium; bona fide.

1. Introduction

Stoicism (from Greek: *Stoa poikile*), as a philosophy school, was established at the end of the IV century BC, and existed until very 529 AD, when Justinian I closed all philosophy schools across the Roman Empire. A period well enough for the Stoicism's philosophical ideas, derivates in a kind of encompassed system, to offer a good theoretical frame for the Roman *natural-juridical concept*. Nevertheless, Stoicism's ideas were mostly widespread during the Hellenic period and also the Roman society, so that they had final influence on many juridical concepts. Considering the fact that through the system of these ideas, some influences of Cynicism can be followed, including those of Socrates, as well as Heraclitus, Aristotle and Plato – we can furthermore conclude they represent a kind of creative synthesis of ancient intention that gets in Rome and reflects in then "sprit of time". Moreover, Stoics themselves insisted on participation in the social and political areas, which additionally enforced the influence of their philosophy. A philosopher's duty is to react politically! If Epicurus' view was that a philosopher is not worthy to be engaged in statesmen affairs, on the contrary, Zeno speaks that in fact it was his duty: "The philosopher would take part in statesmen affairs, unless someone obstructs him" [1].

2. Stoics

Stoics especially during the period of the so-called Late Stoa, saw the philosophy not just as an empty and unnecessary theorizing, but also as a way of life. Seneca can be said that he himself defines philosophy as a way of acting when saying that "it is nothing more than a principle of proper living, or a science for **honest living** i.e. an ability of proper life running [2]. Therefore its complications are so directly influential in both personal and social lives. Actually, stoics create a philosophy system that includes three areas: physics, logic and ethics. On this occasion we are not going to explicate it in details, just will shortly cover some aspects, in order to locate precisely the place and the role of *ethics* in such system, for it deduces late political-judicial implications. But the base of such ethical system was laid in physics – they define world as a vivid, reliable and material whole. Immanent on this whole, stand the reliable principle, the Mind, or God. He represents the active, creative and teleological principle of the world. In this sense, everything in this world runs according to the will of the *Logos*! Everything in the world runs according to precisely established laws. Entire events are part of a unique law, the Law of necessity. Human soul, as a part of such divine "flame", can recognize such order and live according to it. The Law of God (*lex divina*) is laid into human's nature as well, which enables a human to become virtuous.

Logic has its value in this case, more precisely a part of it – the epistemology. Although their starting point is even sensualistic, the knowledge that starts with senses, does not ends there. If life's goal is life in accordance with Nature, an insight into necessity must be done. It can be reached only by **Reason.** So, life in accordance with nature means life in accordance with reason. It means "a cataleptic image" (fantasy) – accordance with cognition, i.e. its nature (*natura*), out of which ethics and law implications spring. *Virtue* is "life in accordance with mind/reason", or according to Cleanthes, virtue represents real acting according reason, it represents a "genuine reason's" product (*orthos logos*) [3]. A divine logos is pervaded into human reason so that a human is able to live in accordance with the divine/natural universal law as well as in accordance with nature. Following his/her own reason, a human actually acts in accordance with "the reason of the universe" (*nomos koinos*).

If law is mind that exists in nature, it is easy to determine the concept or justice, i.e. to conclude it directly from the Law, ergo from the mind, out of which the concept of **natural law** (*ius naturale*) can be embedded. Practically, Stoics introduce the term "subduing, i.e. subduing under law" into philosophy and law vocabulary, so that the concept of freedom in the Roman Empire was understood as a concept consistent with *Law* appreciation. In this way, the concept of freedom in judicial and political sense was postulated, because real freedom is benefited within the Law.

3. Roman law

Roman law (*Ius Romanum* or *Ius Romanorum*) is often said to be "perfect law" (*ius perfectus*) because, observed from an axiological discourse, it is based upon the internal value and virtues, and not so upon the power of the state coercion and authority. It was actually well appointed by Leibniz (Gottfried Wilhelm Leibniz / 1646–1716), who in a letter to Hobbes (Thomas Hobbes / 1588–1679) from 1670 says that "half of the Roman law comes under the pure *natural law*"![4]; and this pure natural law actually is the intuitive, congenital "law of

higher order" (Hugo Grotius / XVII century); an outpour of a just and "empyreal law" respectively. In order to create a real image of Stoicism's influence upon the Roman law, we must note down the following tectonic changes, that thanks to the pervading of its ideas, appeared within the perception of law in Ancient times. In this way it was directly specified into the law system. But, frankly speaking, at this point of view we must note the fact that Roman judicial system as a whole, from an important aspect, stagnated behind Stoics theory, because it makes difference between free people (*status libertatis*) and slaves (*status servitutis*). Although the notion of a man as "an instrument that speaks" (*instrumentum vocale*), and someone's property, is defeating, it managed to survive within the social Roman system.

a) The affirmation of the naturalistic law **order in nature** (*ius naturale*), as well as in the humanistic law of nations (*ius gentium*) implied that Roman citizens had the right to choose which of the two objective and valid common law systems will be used in the regulation of their subjective relations – whether to apply the rough and old *ius civile* (civil/quiritian law), or the new and more flexible *ius honorarium* (honorary/magistrate/praetorian law). Interestingly, within the Roman juridical system, alongside the two parallel existing law orders, two others were additionally developed, which were not typically and exclusively Roman, because they also referred to non Roman citizens. Those were the *Ius naturale* (the natural i.e. vivid law) and *Ius gentum* (law of nations)[5].

b) The productive development of the Roman **juridical notion** and science enabled judicious jurists from the so-called Classical period, which corresponds with the pervading of Stoicism's ideas, to assert that law is "the art of goodness and equity" (*ars boni et aequi* – Celsus), and they are "the keepers of the cult of Justice". As the lucid Phoenician Ulpian (Domitius Ulpianus / around 170–223) pertinently asserts: „We [jurists] are sometimes called 'priests' – for we respect justice, preach about goodness being recognized, and separating the just from unjust, allowed from forbidden… if I am not mistaken, we preach not false, but proper philosophy"[6]. Undoubtedly, this noble jurists, which satisfied the appetite for common juridical formulations, build noble jurisprudence that shows that the answer of a juridical problem is determined primarily from the values, and not from the doctrines or dogmas! As early Roman jurists were occupied with practical law roles or so-called case jurisprudence, those of the "golden" Classical period were more included into scientific and abstract elaboration of concepts, or so-called *regular jurisprudence*. This is opposite to modern, contemporary, pompously, law education where the reign of logic is absolute, and the so-called precise law rules are the base of the system, which more and more sinks into juridical inflation i.e. satiation of system from inordinate law standardization within all pores of social existing [7].

c) The emancipation of the Roman honorary law and the introduction of the unchallenged law principle **bona fide** was the next benefit that came out of the Stoicism's influence upon the Roman law. Namely, the old Civilian law (*Ius civile Antiquum*), which served earlier, had to adapt to the newly developed social-economical and judicial turnover. It was materialized by the efficacy of the higher magistrates – firstly by praetors (*praetors*), aediles, quaestors and leaders of the provinces, which simultaneously had judicial function (*iurisdictio*), with their right to issue common or special orders called edicts (*ius edicendi*). These edicts were also added the so-called praetorian, magistrate or *honorary law* (*Ius honorarium / Ius praetorium*). This magistrate law in many cases withdrew from the severity, the inflexibility and the austere formalism of the archaic civilian law, which blocked the dynamic relations into the judicial service, in the same way as *ius*

strictum did [8]. This period emerged many law notions and concepts cited and included into the Roman law, which furthermore point that a law, during its regulation of relations between people, must contain minimum moral (*minima moralia*) such as, for example, the principles of "good faith" (*bona fide*) or the concept of "conformity and equality" (*aeqitas*), "the right and good" (*aequo et bono*), "no bad intention / no bad thought" (*sine dolo malo*) etc.

d) Finally, the changes that appeared within the domain of **law protection**, or the process law, which refers to the indictments and justice (*Ius quod ad actiones pertinent*), have been seen into the replacement of the actual Roman *legis actiones* with the new so-called formular process i.e. civilian litigation. Stoicism managed to satisfy the need of the Roman jurisprudence for common formulations and severe separations, enabling the archaic schemes of the *legis actiones* (a primitive type of severe indictments) to be changed with more flexible templates of the *formula*. As a matter of fact, the principles *bonae fidei* that overpowered the entire Roman material and formal law managed to make the *legis actiones* very unpopular among people. If the excessive formalism is added to the *legis actiones* process, as well as the passive role of the magistrate, it would cause "the old process" to become a barrier in the development of the Roman law circulation, and to acquire the epithet outlived in the full sense of the word. In such occasions, the following so-called *formular process* (*per formulas*) emerged and lasted until the middle of the 3rd century AD. The *legis actiones* were replaced with regular law means called *actiones*, which were divided according many criteria, as well as so-called extraordinary law means (*extraordinaria auxilii*). The essential changes occurred primarly in the so-called *in iure* process – or the process conducted in front of the praetor, as an incarnation of the state *imperium*, which as a whole contributed to become much cheaper and less risky, which furthermore became more acceptable for the lower classes, for: "all the *legis actiones* gradually became hated among people, because exaggerated perfectionism of the old jurists, who actually created the law then, caused a situation where everyone who made even a small violation would lose the issue" [9].

4. Conclusions

As can be seen from this paper, during the so-called Hellenistic period (III–I century BC), where its notions come to an end, Stoics also emerged establishing the later **Roman jusnaturalism** by means of their syncretic philosophy. The original idea of *cosmopolitism* was inherited by the post-Socratic Cyrenaica school of philosophy and its eminent representative Aristippus (435–355 BC), and taught that *kosmopolis* is "a union between gods and people" (Hrisippus) [10]. The Eternal mind, which represents a rule of what was right and what was wrong, which governs the world preaching what is moral, and what is not – germinal or causal principles glow (Greek *logoi spermatikoi* / Latin *rationes seminales*), which affect to animals as instincts and affect to people as Mind [11]. Within "the ethics of duty", which does not seem to be revolutionary at all, is pathetically democratic, of which Sophists also distanced – Stoics instead of *Nomos*, they opposed the *Thesis* to *Physis* i.e. "the opinion / theory". They opposed the notion of a man as "community being" (*zoon koinonikon*) to Aristotle's *zoon politikon* by means of a deterministically-fatalistic variant. At the end, the Stoics, within their pantheism, managed to expand this concept realizing it as a common and eternal Law of the world [universal / cosmic order], perceiving it as a "genuine / enlightened mind" (*orthos logos*).

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[4] Cited in Светомир Шкарић, Уставно право II, Union-Trade, Скопје, 1995.

[5] See: Иван Борисович Новицкий, Римское право [Учебник], Wolters Kluwer, Москва, 2009.

[6] Cf. D. 1, 1, 1, 1 – Ulpianus libro primo institutionum; D. 1, 1 – De iustitia et iure (D. 1, 1, 1, 1 - Ulpianus 1 inst.: Cuius merito quis nos sacerdotes appellet: iustitiam namque colimus et boni et aequi notitiam profitemur, aequum ab iniquo separantes, licitum ab illicito discernentes, bonos non solum metu poenarum, verum etiam praemiorum quoque exhortatione efficere cupientes, veram nisi fallor philosophiam, non simulatam affectantes).

[7] More in Philip J. Thomas: Филип Томас, „Bona fides – the Roman values and legal science“, Proceedings of the International symposium 'Contemporary law, legal science and the Iustinian's codification' (Vol. I), Faculty of law "Iustinianus Primus", University "Ss. Cyril and Mathodiuos", Skopje, 2004, 511–512. In this critical context of contemporary law education, dr Thomas cites the great work of the Harvard professor Duncan Kennedy interestingly titled "Legal education and training for hierarchy" (1982).

[8] Cf. D. 1, 1 – De iustitia et iure (D. 1, 1, 7, 1 - Papinianus libro secundo definitionum).

[9] Gai, *Inst.*, IV, 30 sq. See also: Иво Пухан и Мирјана Поленак-Аќимовска, Римско право, Правен факултет, УКИМ, 2001, 361; & Димитар Апасиев, „Ius naturale - Поздаборавениот правец во философијата на правото“, Годишник на Правниот факултет при Универзитетот „Гоце Делчев“, Штип, 2010.

[10] Ernst Bloch, Naturrecht und menschliche Würde, Frankfurt a. Main, 1961, 27-28 – quoted by: Ljubomir Tadić, Filozofija prava, Naprijed, Zagreb, 1983.

[11] Stoicarum veterum fragmenta (SVF, II, 975).