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Philosophical Pride: Stoicism and Its Influence on Roman Law

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Abstract: This article explores the Stoic concept of natural law and its profound influence on Roman jurisprudence. The Stoics believed in a rational and purposeful order to the universe, where reason governed all aspects of life. They posited that all individuals, regardless of nationality or race, were endowed with reason and subject to the same universal principles. This belief system shaped Roman legal thinking, leading to the development of principles of equality, humane treatment, and the recognition of the inherent rights of individuals. This article delves into the historical evolution of Stoicism, its impact on Roman law, and its continued relevance in contemporary legal theory.

Keywords: Stoicism, Natural Law, Roman Jurisprudence, Universal Principles, Equality, Legal Theory

1. Introduction

All things are parts of one single system, which is called Nature; the individual life is good when it is in harmony with Nature.

- Zeno, 4th Century B.

The Natural Law Theory is the oldest theory of jurisprudence. In the ancient times there was a connection between natural law theories and religion. This continued until the secularization of natural law in the seventeenth century. The historical sketch of natural law is spanning over 2500 in which there are many different interpretations of natural law. Jurist of different ages have assigned different meaning to the term "natural law". For stoics, it was divine law i.e. the command of God imposed upon men. In the words of Lord Lloyd of Hampstead, natural law thinking has occupied a pervasive role in the field of ethics, politics and law from time immemorial.

1.1. Stoicism: A Historical Background

The Stoic school of philosophy was founded by a thinker of semitic origin by the name of Zeno. Zeno of Citium was a student of the important Cynic Crates of Thebes, and toned down some of the harsher principles of Cynicism with some moderation and real-world practicality. During its initial phase, Stoicism was generally seen as a back-to-nature movement, critical of superstitions and taboos. Zeno's successor was Cleanthes of Assos, but perhaps his most influential follower was Cleanthes' student Chrysippus of Soli, who was largely responsible for the molding of what we now call Stoicism. He built up a unified account of the world, consisting of formal logic, materialistic physics and naturalistic ethics. The main focus of Stoicism was always Ethics, although their logical theories were to be of more interest for many later philosophers. Stoicism became the foremost and most influential school of the Greco-Roman world, especially among the educated elite, and it produced a number of remarkable writers and personalities, such as

Panaetius of Rhodes, Posidonius, Cato the Younger, Seneca the Younger, Epictetus and Marcus Aurelius. In the greek philosophy, Aristotle had the greatest influence on the doctrines of the law of nature. Aristotle regarded man as part of nature but also as being endowed with the distinguishing faculty of reason. This recognition of human reason as both part of nature and as a capacity for volition, insight and discovery, formed the basis for the stoic conception of the law of nature. This was developed by the Stoic philosophy into an ethical or moral principle. Stoicism first appeared in Athens in the period around 300 B.C. and was introduced by Zeno of Citium. It was based on the moral ideas of Cynicism. According to Zeno, nature is identified with reason and natural law is law of reason. The law of nature is the mind of man and when he lives according to his reason he conforms with natural law.⁵

1.2. Greek Stoicism

The Greeks first conceived the law of nature as governing the cosmos and only later applied to man and society. In the classical period, however, little attention was paid to the idea of universal law, though it was current doctrine that there was in each city-state a body of law, fundamental and unchangeable and often unwritten.⁶ It is with decline of the city-state and the rise of large empires and kingdoms in the Greek world, associated with the conquests of Alexander, that natural law as universal system comes to the force, and for this the Stoic philosophers were particularly responsible. Until the Stoics "nature" had meant "the order of things" with them it came to be identified with man's reason. To the Stoics percepts of reason had universal force. They stressed the ideas of individual worth, moral duty and universal brotherhood, and though in the early days there was a philosophy of withdrawal enjoining conformity to the universal law upon the select few of wise men alone, in the

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¹Dr. Vijay Ghormade and Prof. Dr. A. Lakshminath, Jurisprudence and legal theory, 61 (Ramesh Sethi, Hindu Law Publications, India, 2008).

² Prof. NOMITA AGGARWL, JURISPRUDENCE (LEGAL THEORY), 293 (10th ed. Central Law Publications, India, 2016). ³*Id.* at 297.

⁴JOHN D.FINCH, INTRODUCTION TO LEGAL THEORY, 22 (2ND ed., Universal Law Publishing Co. Pvt. Ltd., New Delhi, India,2011).

⁵ Prof. NOMITA AGGARWL JURISPRUDENCE (LEGAL THEORY), 297 (10th ed., Central Law Publications, India, 2016).

M.D.A.FREEMAN, LLOYD'S INTRODUCTION TO JURISPRUDENCE, 97 (8TH ed., Sweet and Maxwell Publication, London,UK, 2008).

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later development, stress was placed on its universal aspects as laying down not only for the wise, but for all men.⁷

1.3. Roman Stoicism

The roman classical writer accepted the greek conception of natural law. They classified law of Rome into three broad categories. These are, "Jus Civile", "Jus Genitum" and "Jus Naturale". 8 "Jus Civile" was the civil or the positive law enforceable by the court to regulate the relationship between the roman citizens themselves. During the period of the republic, the jus civile i.e. civil law developed. Based on custom or legislation, it applied exclusively to Roman citizens. 9 "Jus Gentium" was a part of the positive law. 10 By the middle of the 3rd century b.c, jus gentium (law of nations), was developed by the Romans to be applied both to themselves and to foreigners. Jus gentium was not the result of legislation, but was, instead, a development of the magistrates and governors who were responsible for administering justice in cases in which foreigners were involved. The jus gentium became, to a large extent, part of the massive body of law that was applied by magistrates to citizens, as well as to foreigners, as a flexible alternative to jus civile. 11 It was in this form that stoicism passed over to and influenced Roman thought. 12" Jus Naturale" was the law of nature. It is not enforceable in the courts. 13

2. Stoicism: The Topoi

In this chapter, the researcher has dealt with the three topoi of stoicism. The three important topos of stoicism are Logic, Physis and Ethics. Logic means reason. Physis means the natural science. Ethics means to live according to nature. The researcher has elaborated the three topos below.

2.1. First Topos:

Logic-Logic means Reason. For the Stoics, the scope of called 'logic', i.e. knowledge of the functions of logos or reason is very wide, including not only the analysis of argument forms, but also rhetoric, grammar, the theories of concepts, propositions, perception, and thought, and what we would call epistemology and philosophy of language. Formally, it was standardly divided into just two parts: rhetoric and dialectic. Much has been written about the Stoics' advances in logic. In general, one may say that theirs

⁷Id at 98

⁸ Prof. NOMITA AGGARWL, JURISPRUDENCE (LEGAL THEORY), 297 (10th ed. Central Law Publications, India, 2016).
⁹Raphael Powell, Maurice Alfred Millner, Paolo Carozza, Herbert Felix Jolowic and Mary Ann Glendon, *Roman Law*, ENCYCLOPEDIA BRITANNICA, (Aug 27, 2014) available at https://www.britannica.com/topic/Roman-law#ref469058 (last visited on Oct.11, 2017).

¹⁰ Prof. NOMITA AGGARWL, JURISPRUDENCE (LEGAL THEORY) 297 (10th ed. Central Law Publications, India, 2016). ¹¹ Supra note 9.

¹² M.D.A.FREEMAN, LLOYD'S INTRODUCTION TO JURISPRUDENCE, 98,(8TH ed., Sweet and Maxwell Publication, London,UK, 2008).

¹³ Prof. NOMITA AGGARWL, JURISPRUDENCE (LEGAL THEORY), 297 (10th ed. Central Law Publications, India, 2016).

is a logic of propositions rather than a logic of terms, like the Aristotelian syllogistic. ¹⁴

2.2. Second Topos:

Physis-Physis means the combination of natural science and metaphysic. The Stoic topos of Physis includes what we today would classify as natural science, metaphysics, and theology. When it comes to natural science and cosmology, the Stoics sought to "live according to nature," which requires us to make our best efforts to understand nature. This also implies a very different view of natural science from the modern one. Stoics thought that everything real, that is, everything that exists, is corporeal, including God and soul. They also recognized a category of incorporeals, which included things like the void, time, and the "sayables". This may appear as a contradiction, given the staunchly materialist nature of Stoics philosophy, but is really no different from a modern philosophical naturalist who nonetheless grants that one can meaningfully talk about abstract concepts which are grounded in materialism because they can only be thought of by corporeal beings such as ourselves.1

They embraced what we might call a "vitalist" understanding of nature, which is permeated by two principles: an active one, identified with reason and God, referred to as the Logos and a passive one. The active principle is ungenerated and indestructible, while the passive one which is identified with the four classical elements of water, fire, earth and air is destroyed and recreated at every, eternally recurring, cosmic conflagration, a staple of Stoic cosmology. The cosmos itself is a living being, and its rational principle (Logos) is identified with the Stoic Fire. Consequently, God is immanent in the universe, and it is in fact identified with the creative cosmic Fire. Cosmic conflagrations, for the Stoics, repeat themselves in exact manner, apparently because God/Nature laid out things in the best possible way the previous time around, and there is therefore no reason to change. Cicero, in De Fato, lays out the Stoic theory of causality and actually equates fate with antecedent causes. Chrysippus had argued that there is no possibility of motion without causes, deducing that therefore everything has a cause. This concept of universal causality led the Stoics to accept divination as a branch of physis, not a superstition, as explained by Cicero in De Divinatione. 16

2.3. Third Topos:

<u>Ethics</u>- The central theme of Stoic ethics is to live according to nature and resign oneself to what is fated in the world around us. There are three themes to Stoicism's ethical recommendation, the first of which involves living according to nature and its laws. Stoics coined the famous

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¹⁴Edward N. Zalta, *STOICISM*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Dec. 6, 2013) *available at https://plato.stanford.edu/entries/stoicism/#Log* (last visited on Oct.11, 2017).

¹⁵James Fieser, infra note 16.

¹⁶ James Fieser, *The History of Philosophy: A Short Survey HELLENISTIC PHILOSOPHY* (Sept.1,2017) available at https://www.utm.edu/staff/jfieser/class/110/3-hellenistic.htm (last visited on Oct,24 2017).

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expression that there is a spark of divinity in each of us, by which they meant that the ordering principle of divine reason permeates each person just as it does the cosmos as a whole. To live ethically, then, is to live according to this ordering principle as it appears in both human nature and nature as a whole. The second theme in Stoic ethics involves reconciling free will with fate. According to the Stoics, we have some kind of control over our own thoughts, but no control over the events outside of us that are ruled by fate. ¹⁷

Stoicism focused on ethics, which was in turn informed by what the Stoics called "physis" i.e. a combination of natural science and metaphysics and what they called "logic" i.e. a combination of modern logic, epistemology, philosophy of language, and cognitive science. The three topos of the Stoicis were very sound and effective one. They strongly reflect upon the concept of natural law given by the stoics.

3. Stoicism: Its Influence on Roman Law

In this chapter, the researcher has dealt with the influence of Stoicism on Roman law. Stoicism moved to Rome where it flourished during the period of the Empire, alternatively being persecuted by Emperors who disliked it such as Vespasian and Domitian and openly embraced by Emperors who attempted to live by it, most prominently Marcus Aurelius. It influenced Christianity, as well as a number of major philosophical figures throughout the ages. The early 21st century saw a revival as a practical philosophy associated with Cognitive Behavioral Therapy and similar approaches. Stoicism is a type of eudaimonic virtue ethics, asserting that the practice of virtue is both necessary and sufficient to achieve happiness. However, the Stoics also recognized the existence of "indifferents" that could nevertheless be preferred or dispreferred, because they had planning value with respect to the ability to practice virtue. Stoicism was very much a philosophy meant to be applied to everyday living, focused on ethics, which was in turn informed by what the Stoics called "physis" i.e. a combination of natural science and metaphysics and what they called "logic" i.e. a combination of modern logic, epistemology, philosophy of language, and cognitive science.18

The theory of Stoics exercised great influence upon the Roman jurist and some of them paid high tribute to "natural law". ¹⁹Cicero, the great roman lawyer and statesman, was strongly influenced by the ideas of the stoic philosophers. In ascribing "natural force" to the law, Cicero made it clear that mind and reason of the intelligent man was the standard by which justice and injustice were to be measured. To Cicero, the sense of justice, though capable of growth an refinement, was a universal possession of all reasonable men. He said that justice is inherent in nature and that it can never be

⁷infra. ⁸S. Pobzion, Angient logie ST separated from utility.²⁰ Cicero favoured the position that an untruly unjust law lacks the quality of law. 21 Cicero referred to natural law as superior to positive law. It is solely due to him that Stoic form of the law of nature took room in Roman legal philosophy. Cicero says that since divine reason is inherent in the universe, it was identified with physical ordering of the universe. 22 For Cicero, such a cosmic reason, the lexcaelestis, was a divine law but one accessible in its relevant parts to the human mind, through rational insight and enquiry. Such perceptions were then considered "natural law", the lexnaturae, and it is this which Cicero advances as the proper model for the making of laws. 23 Man with his faculty of reasoning stood superior. In the eyes of universal law all men are equal. Man is by nature sociable. He recognized the freedom and rejected the idea that we are slaves of the law. He says that there are limits to the use of law as an instrument of power. It should be determined by what is sacred and just and be as far as possible a reflection of divine and eternal law as revealed through reason. To run counter to or try to restrict the natural law by legislation is immoral.²⁴ Thus, Cicero emphasized on Man's nature as the "true" source of laws. Natural law effected legal development in Rome. The theory of Stoics exercised great influence upon the jurists during the Republic period and some of them paid high esteem to "natural law". But in roman system the theory of "Natural Law" did not remain confined only to theoretical discussions. Romans were very practical people. The Roman jurist considered the law of nature as based on reason and formed a cosmopolitan legal system. Maritime and mercantile customs even of foreign laws were taken by Roman lawyers and included in the cosmopolitan rules of Roman law. The study of science of law, as a separate and distinct science, came to be recognized. The jus gentium enabled the development of roman jurisprudence. ²⁵An important element in stoic concept of natural law was the principle of equality. The stoic philosophers were convinced that men were essentially equal and that discriminations between them were on account of sex, class, race, or nationality were unjust and contrary to the law of nature. This stoic idea of human quality gained some ground in the political philosophy and jurisprudence of roman empire. The great emperors of that period such as Antoninus Pius and Marcus Aurelius, as well as the jurists, like Papinian and Paul, were under the sway Of Stoicism. ²⁶ With regard to slavery, the stoic idea of human equality, made itself felt in the definition of slavery which is founded in Justinian's Corpus JurisCivils. Seneca, the Roman Stoic philosopher demanded a more humane

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¹⁸S. Bobzien. *Ancient logic*.STANFORD ENCYCLOPEDIA OF PHILOSOPHY, available at http://plato.stanford.edu/entries/logic-ancient/ (last visited on Oct.10, 2017).

¹⁹ Dr. V.D.MAHAJAN, JURISPRUDENCE AND LEGAL THEORY,598(5TH ed. Eastern Book Company, Lucknow, India).

²⁰ EDGAR BODENHEIMER, JURISRUDENCE: THE PHILOSOPHY AND METHOD OF THE LAW,14 (4THed., Universal Law Publishing Co. Pvt. Ltd, New Delhi, India, 2004). ²¹Ibidat 15.

 $^{^{22} \}rm Dr.S.R.MYNENI,\ JURISPRUDENCE\ (LEGAL\ THEORY),380\ (2^{ND}\ ed.\ Asia\ Law\ House,\ Hyderabad\ ,India,\ 2013).$

²³ HILAIRE McCOUBREY&NIGELD.WHITE, TEXTBOOK ON JURISPRUDENCE, 69(Indian ed.,5th ed., Oxford University Press, 2012).

²⁴Hilaire, Supranote 20.

²⁵Dr.S.R.MYNENI, JURISPRUDENCE (LEGAL THEORY) 381 (2ND ed. Asia Law House, Hyderabad ,India, 2013).

²⁶ EDGAR BODENHEIMER, JURISRUDENCE: THE PHILOSOPHY AND METHOD OF THE LAW,16 (4THed., Universal Law Publishing Co. Pvt. Ltd, New Delhi, India, 2004).

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regulation of slavery. The emperor Claudius decreed that a slave who had been cast off on account of old age or sickness should become free man. Hadrian forbade masters to kill their slaves except upon the judgement of magistrates. Antonio Pius provided that slaves who had been ill-treated by theory owners might lodge a complaint with the magistrates.²⁷The stoic concept of natural law and equality can be seen in the legal development of Roman family. It affected the legal status of roman housewife and contributed to her gradual emancipation from autocratic power of the husband. The "lex Julia de adulteriis" enacted by Augustus, abolished the husband's power of life and death over his wife in the manus marriage. ²⁸ The legal relationship between parents and children was assuming humane forms. It may be said that many of the leading men of Roman political and legal life in the late republic and the imperial period stood under the influence of stoic philosophy. ²⁹ The philosophical concepts of stoicism had a significant impact on the political and legal developments of the roman empire.³⁰

4. Stoicism: Post Greek and Legal Theory

In this chapter, the researcher has dealt with the concept of Stoicism after the Hellenistic Era and stoicism in the contemporary era. Stoicism has flourished not only in the modern legal era but also in the contemporary modern legal theory.

4.1. Stoicism after the Hellenistic Era

In the Hellenistic era also, stoicism flourished. Here, the stoic philosophers focused more on independent individual life. The development of natural law theory continued in the Hellenistic school of philosophy, particularly with the Stoics. The Stoics pointed to the existence of a rational and purposeful order to the universe. The means by which a rational being lived in accordance with this cosmic order was considered natural law. Unlike Aristotle's "higher law," Stoic natural law was indifferent to the divine or natural source of that law. Stoic philosophy was very influential with Roman jurists such as Cicero, thus playing a significant role in the development of Roman legal theory. Hellenistic philosophers, therefore, devoted less attention than had Plato and Aristotle to the speculative construction of an ideal state that would facilitate the achievement of a happy life. Instead, the ethical thinkers of this later period focussed upon the life of the individual, independently of the society as a whole, describing in detail the kinds of character and action that might enable a person to live well despite the prevailing political realities. In general, we might say, such philosophers tried to show how we should live when circumstances beyond our control seem to render pointless everything we try to accomplish. The Hellenistic schools of philosophy, then, exhibit less confidence and propose solutions less radical than their Athenian predecessors had in the golden era.³¹

available

4.2. Contemporary Stoicism

Stoicism has also influenced modern law and legal theory. The Stoic philosophy became the springboard of three significant ideas of modern law and legal theory. The first was the conception of universal law for all humanity under which men are equal. The second was a method of deriving universal governing principle of law as a distillation from the various laws of different places on this earth. The third was the conception of the law which will bind all the states in this world which was later to become known as international law.³² The stoics popularized the maxim, "Live according to nature". This did not necessarily mean "in primitive simplicity". A thing was in accord with nature when it was governed by its own leading principle, and in the case of a man with this was reason. The universe itself was governed by a reason similar to that which dwelt in man, and hence he who based his life on a rule of reason could face the world with confidence; for whether he understood or not the turn of fortune's wheel, a universe based on reason could not be hostile to him. The stoic, perhaps in a superficial way, thus erected a popular theory of the unity of life out of the deeper elements of Greek thoughts. ³³ Stoicism has not evolved continuously: its development was "interrupted" by the decline of Hellenistic philosophies and the rise of Christianity, and although Stoic ideas have influenced plenty of philosophers. The world we live in now is in some respects very different from that of the ancient Greco-Romans. Some Stoics, such as Hierocles were called "conservatives", others were pragmatists, Marcus Aurelius, and some were "progressive" by the standard of the time. So Modern Stoics may also come from the political, not just the theological. spectrum.³⁴Much of the modern Stoic urge is based on the ideas of Seneca, Marcus Aurelius and the slave-turned sage Epictetus. 35 Therefore, it can be said that stoicism has influenced the modern law to a very great extent because it had upgraded the status of the suppressed housewives, and had eradicated slavery to a very great extent.

Conclusion and Suggestion

Stoicism was a living philosophy, developed in many variations by creative thinkers, for almost 500 hundred years, from about 300 B.C. to A.D. 180. 36

http://www.philosophypages.com/hy/2w.htm(last visited on Oct.24, 2017).

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 $^{^{27}}Id$ at 17.

 $^{^{28}}Id$ at 18.

²⁹*Id* at 19.

 $^{^{30}}Id$ at 20.

³¹ Garth Kemerling, Hellenistic Philosophy, PHILOSOPHY PAGES (Nov.12,2011)

P.B.MUKHARJI, THE NEW JURISPRUDENCE (THE GRAMMER OF MODERN LAW), 62 (Dr.N.L.Mitra ed., 2nd ed., Eastern Law House, New Delhi, India, 2016).

³³ G.W.PATON, A TEXTBOOK OF JURISPRUDENCE, 101 (Indian ed., 4TH ed. Oxford University Press, 1972).

Massimo, What is Modern Stoicism, MODERN STOICISM (Aug.9,2017) available https://howtobeastoic.wordpress.com/2017/08/09/what-is-modernstoicism/(last visited on Oct. 26, 2017).

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ZONE(Nov.17, 2014) http://www.abc.net.au/radionational/programs/philosopherszone/m odern-day-stoicism/5896364 (last visited on Oct.24, 2017).

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The researcher has concluded the Research topic after researching the Stoic concept of natural law and its influence on Roman law in detail. The Stoics pointed to the existence of a rational and purposeful order to the universe. Stoics considered nature not merely as an external order of things but also as man's insight. The stoics postulated a world state with equality of all men. Stoics believed that reason governs all parts of the universe. Any part of the universal nature is governed by reason. Man lives "naturally" if he lives according to his reason.³⁷To the Stoics, the postulates of reason are of universal force. They are binding on all men everywhere. Men are endowed with reason, irrespective of nationality and race.³⁸ A sound theory of natural law is one that explicitly, with full awareness of the methodological situation just described, undertakes a critique of practical viewpoints, in order to distinguish the practically unreasonable from the practically reasonable, and thus to differentiate the really important from that which is unimportant. 39, 40

Stoicism is an approach to life; controlling the emotions and accepting both life's forces and fate in an otherwise chaotic and unpredictable cosmos. This was not an irrational acceptance. Beneath the chaotic appearance of life, stoics argued that the cosmos was an orderly arrangement where man and the cosmos behaved according to distinct principles of purpose. Reason and law operated throughout nature. Stoics reinterpreted pagan ideas of the prevalence of many Gods behind and influencing various events and happenings, substituting an idea of an all-encompassing rational substance pervading phenomenon within the cosmos. The term God was used to conceptualise a unified form of reason which controls and order the structure of nature, and thus determining the course of events in the world. 41 Much of Stoic "physics," of course, has been superseded by modern science. Even Stoic logic, as groundbreaking as it was at the time, and as influential as it was until the 19th century, has been surpassed by its modern counterpart. 42The Stoic belief that all human beings share in a common rational nature, that we're all part of a single community as fellow brothers and sisters, emanated directly from their underlying system of logic, physics, and ethics; a crucial context which is often left behind in the partial uptake of Stoic principles. 43 During

the so-called Hellenistic period, where its notions come to an end, Stoics also emerged establishing the later Roman jusnaturalism by means of their syncretic philosophy. 44 Hence, stoic theory of natural law is a sound one. Roman law is the starting point for the systematic study of western legal system and thought. Romans founded the modern analytical approach to law, but they could not make any substantial contributions to legal philosophy because in theory they confused law with justice and morals. But, the Stoic concept of nature was a sound one.

http://www.roangelo.net/logwitt/stoicism.html#physics-versus-mathematics (last visited on Oct.24,2017).

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⁴² Massimo, What is Modern Stoicism, MODERN STOICISM (Aug.9,2017) available at https://howtobeastoic.wordpress.com/2017/08/09/what-is-modern-stoicism/(last visited on Oct. 26, 2017).

⁴³ Joe Gelonesi, The Rise Of Modern Stoicism, THE PHILOSOPHER'

S ZONE (Nov.17, 2014) available at http://www.abc.net.au/radionational/programs/philosopherszone/m odern-day-stoicism/5896364 (Last visited on Oct.24, 2017).

⁴⁴DimitarApasiev and TrajceStojanov, *Stoicism And Its Influence On Natural Law*, 23(1) INTERNATIONAL JOURNAL OF SCIENCE BASIC AND APPLIED RESEARCH, ,88 (2015).