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## **IDEAS OF STOIC PHILOSOPHY IN SERBIAN MEDIAEVAL LAW**

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**Abstract:** Although the textbooks of Stoic philosophers did not survive from the period of independence of the Serbian mediaeval State (from the 12th to the 15th century), some Stoic ideas emerged in Serbia through the texts of Roman lawyers, who in the period of the Principate wrote under the great influence of Stoic philosophy. However, Serbian lawyers did not read the original Latin works of Roman jurists, but rather their Greek translations and adaptations from Byzantine legal miscellanies. Some ideas of Stoic philosophy could be found in several chapters of the Serbian translation of the *Syntagma*, a nomokanon miscellany put together in 24 titles (each title has a sign of one of the letters of Greek alphabet) by the monk Matheas Blastares from Thessaloniki. The fragments were taken from Roman *jurisprudentes* Gaius and Florentinus.

**Keywords:** Stoic philosophy, Roman law, Gaius, Florentinus, *Epanagoge*, *Syntagma* of Matheas Blastares, Serbian mediaeval law.

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**A**lthough the textbooks of Stoic philosophers did not survive from the period of independence of the Serbian mediaeval State (from the 12<sup>th</sup> to the 15<sup>th</sup> century),<sup>1</sup> some Stoic ideas were present in the translated fragments of Roman *jurisprudentes*, who in the period of the Principate wrote under the great influence of Stoic philosophy. However, Serbian jurists (regrettably, we do not know their names) did not use the original Latin books from Roman lawyers. They translated several Byzantine legal miscellanies,<sup>2</sup>

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<sup>1</sup> It is very possible that Serbian mediaeval scholars read the fragments of Stoic philosophers from the Byzantine compilations that did not survive because among the remaining literal sources we can find popular works from the antiquity such as “The Romance of Troy” (Ο Πόλεμος της Τρωάδος) and “The Romance of Alexander.” However, “The Romance of Troy” and “Romance of Alexander” could have come to mediaeval Serbia from Adriatic maritime towns, first of all Dubrovnik (Ragusa). See *Stara srpska književnost* 21, 1986.

<sup>2</sup> The Serbian law from the early 13<sup>th</sup> century developed under the direct influence of the Byzantine law. The first Byzantine legal miscellany that appeared in Serbia around 1219 was the *Nomokanon of Saint Sabba* or *Krmčija* (from Russian *Кормчая книга*, lit. *The Pilot's Book*). On his way back from Nicaea (Νίκαια, modern *Iznik* in Turkey), where the Serbian Church got its autocephalous, Sabba stopped in Thessaloniki where he probably

which contained some fragments of Roman *jurisprudentes* inspired by the ideas of Stoic philosophy.

In the 14<sup>th</sup> century the Serbian monarchy became more powerful than the Byzantine, but the ideal of a world Empire was still attractive to Serbs. The system of the hierarchical world order was still found,<sup>3</sup> but the desire of the Serbian Kings was to become Emperors themselves. This was realized in 1346, when King Dušan proclaimed himself *the true-believing Tsar and Autocrat of the Serbs and the Greeks*. Educated as a young man in Constantinople, Dušan knew very well that if his State pretended to become an Empire, it should have, *inter alia*, its own independent legislation. Accordingly he began preparations for his own Law Code immediately after the establishment of the Empire, following the examples of his model, the great Byzantine Emperors and legislators Justinian I, Basil I and Leo VI. In a charter of 1346, in which he announced his legislative programme, he said that the Emperor's task was to *make the laws that one should have* (ЗАКОНИ ПОСТАВИТИ ЈАКОЖЕ ПОДОВАЊЕТИ ИМЕТИ).<sup>4</sup> These laws are undoubtedly the laws of the type which Byzantine Emperors had, namely general legislation for the whole of the State's territory. In the social and political circumstances the Serbian Emperor (Tsar) had to accept the existing Graeco-Roman (Byzantine) law, although modified in accordance with the Serbian custom. A completely independent codification of the Serbian law without any Graeco-Roman law could not be produced and therefore Serbian lawyers created a special *Codex Tripartitus* codifying both the Serbian and Byzantine law. The Russian scholar Timofey Dmitrievich Florinsky (Тимофей Дмитриевич Флоринский) noticed this as long ago as 1888, pointing out that in the oldest manuscripts Dušan's Code is always accompanied by two compilations of the Byzantine law: the so-called "Justinian's Law" and the abbreviated *Syntagma of Matheas Blastares*.<sup>5</sup> Dušan's Law Code, in the narrow sense, is the third part of a larger Serbo-Graeco-Roman codification.<sup>6</sup>

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composed the famous *Nomokanon* (from Greek νόμος = law and κανόν = rule; ЗАКОНУПРАВИЛО in Slavonic translation). The ecclesiastical rules of the *Nomokanon* (Νομοκάνων) were taken from two Byzantine canonical collections, with the canonist's glosses: the *Synopsis* (Σύνοψις) of Stephen from Ephesus (beginning of the 6<sup>th</sup> century), with the interpretations of Alexios Aristenes (Ἀλέξιος Ἀριστηνός, about 1130) and the *Syntagma* (Σύνταγμα) in XIV titles (a work of an anonymous author composed between 577 and 692), with the interpretations of John Zonaras (Ἰωάννης Ζωναράς, first half of the 12<sup>th</sup> century). Among the Roman (Byzantine) laws (νόμοι), Saint Sabba's *Nomokanon* contains the whole *Procheiron* (Πρόχειρος Νόμος, *Handbook* or *The Law Ready at Hand*) of Basil I (ЗАКОНА ГРАДСКАГО ГЛАВЫ in Serbian translation) and a translation of 87 titles of *Justinian's Novels* (*Collectio octoginta septem capitulorum*). The author of this collection, done before 565, was the Patriarch of Constantinople John Scholastikos (Ἰωάννης Σχολαστικός). The *Nomokanon* of Saint Sabba has no prototype in any Byzantine or Slavonic codex and it retained its place within the Serbian legal system being neither challenged nor abrogated. However, it is really strange that until nowadays we have no critical edition of *Nomokanon*. The only edited fragment is the text from the *Procheiron* (*Zakon gradski*) based upon the transcript of the Morača monastery in Montenegro (Dučić 1877; 34-134). In 1991 appeared the photoprint reproduction of the *Iloviša* (monastery in Montenegro) *Manuscript* from 1262 (Petrović 1991). The translation into the modern Serbian language contains the translation of chapters 1-47, while the whole text has 64 chapters (Petrović, Štavljanin-Đorđević 2005).

<sup>3</sup> Ostrogorski 1956: 11.

<sup>4</sup> Novaković 1898: 5; SANU 1997: 430.

<sup>5</sup> Florinsky 1888.

<sup>6</sup> Šarkić 1990: 141-156.

The so-called “Justinian’s Law” was a short compilation of 33 articles regulating agrarian relations. The majority of these articles were taken over from the famous *Farmer’s Law* (Νόμος Γεωργικός), issued between the end of the 7<sup>th</sup> and beginning of the 8<sup>th</sup> centuries. This law had been completely translated into the old Serbian language. Further articles were culled from the *Ecloga* (Ἐκλογή τῶν νόμων, lit. *Selection of the Laws*), the *Procheiron* and the *Basilika* (τα Βασιλικά). This collection also does not exist in a Greek version and so represents the original work of Serbian lawyers.<sup>7</sup>

*The Syntagma*, a nomokanonik miscellany put together in 24 titles (each title has a sign of one of the letters of Greek alphabet) by the monk Matheas Blastares from Thessaloniki, came to be known in Serbia in two translations, a full version and an abridged one.<sup>8</sup> The compilers of Dušan’s codification radically abridged the earlier translation of the whole *Syntagma* from an original 303 chapters to 94. They had two reasons for abbreviating the earlier text in such a manner. The first was of a completely ideological character, as Matheas Blastares’ *Syntagma* expresses the political hegemony of the Byzantine Empire on ecclesiastical as well as constitutional terms. Accepting the commentaries of Byzantine canonist Theodore Balsamon (Θεόδωρος Βαλσαμών, 12<sup>th</sup> century), Matheas Blastares reflects the omnipotence of the Byzantine Emperor, his both spiritual and political *dominium*. He actually restricts the independence of the autocephalous Churches whilst emphasizing Byzantine hegemony over the Slavic States which at that time threatened Byzantine interests in the Balkans. The independence of the Bulgarian and Serbian Churches was denied (although both were autocephalous) as was the right of other nations to proclaim themselves Empires. We can scarcely believe that the complete translation of the *Syntagma*, expressing these opinions, was ordered by the Tsar. Rather it expressed the aspirations and interests of the pro-Greek party in Serbia, as well as of those Byzantine citizens who had come under Serbian control after Dušan’s conquests.<sup>9</sup> Following the appearance of the full translation in 1347-1348, the work on the abbreviation of the *Syntagma* began. It should be noticed that there is no Greek original of the abbreviated version in which all the chapters referring to the hegemony of Byzantium are omitted.

The second reason for undertaking the abbreviation was more practical. The abridged *Syntagma*, as a part of Dušan’s Law Code, was designed for the use in ordinary courts. For this reason most of the ecclesiastical rules were omitted and only those with secular application were retained.<sup>10</sup>

The full version (D – 11) has a few passages taken from Roman jurists that contain some Stoic ideas. Those are the following fragments:

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<sup>7</sup> Edited by Solovjev 1928: 236-240. The new edition (Marković 2007) contains the original Old Slavonic text, a translation into the modern Serbian language, photographs of the manuscripts and a summary in English.

<sup>8</sup> Edited by Novaković 1907; supplements by Troicki 1956; translation into the modern Serbian language by Subotin-Golubović 2013; edition of the Greek text Ralles, Potles 1859.

<sup>9</sup> Troicki 1953: 155-206.

<sup>10</sup> Solovjev 1928: 76-81; Šarkić 1990; 73-77; Panev 2003: 27-45; Minale 2009: 53-66; 2017: 187-211; Alexandrov 2012.

## I

Gaius, Institutiones I, 9 = Iust. Institutiones I, 3; D. I, 5,3: *Et quidem summa divisio de iure personarum haec est, quod omnes homines aut liberi sunt aut servi.* (The main distinction in the law of persons is that all men are either free or slaves).<sup>11</sup>

Gaius division was accepted in *Epanagoge* (Ἐπαναγωγή = “Return to the Point”), correctly *Eisagoge* (Εἰσαγωγή τοῦ νόμου = “Introduction to the Law”), a Byzantine legal miscellany from the 9<sup>th</sup> century and in Greek translation the text is:

Epanagoge XXXVII, 1; SyntagmaΔ – 11, Greek text: Τῶν προσώπων ἄκρα διαίρεσις ἐστὶν αὕτη· ὅτι τῶν ἀνθρώπων οἱ μὲν εἰσὶν ἐλεύθεροι, οἱ δὲ δοῦλοι.<sup>12</sup>

The translation in the old Serbian language follows the Greek text from *Epanagoge/Eisagoge* and it runs as:

Syntagma Δ – 11: Юже лицъ краиникъ раздѣланиѣ, се ксть отъчловѣкъ овы оубо соуть свободъны, овы же рабы.<sup>13</sup>

It seems that this distinction, taken from Roman law through *Epanagoge/Eisagoge*, had a more declarative character: legal sources in mediaeval Serbia did not allow the conclusion that the population had been divided into free persons and slaves. Even *Syntagma* of Matheas Blastares, a few chapters later, says that among those who are free exist *počteni* (почтенъни, noble, gentle, honest, in Greek text ἐντιμοὶ) and *sebrī* (себри), in the meaning of *common, vulgar, low, base* (εὐτελεῖς in the Greek original).<sup>14</sup> In several articles (53, 55, 85, 94 and 106) of Dušan’s Law Code a commoner (*sebar*; себаръ) is opposed to a nobleman (*vlastelin*, властелинъ), providing different penalties for the same trespasses. It is said in the article 85 of the Prizren transcript besides other things: ...and if he be not noble, let him pay twelve perpers<sup>15</sup> and be flogged with stics (...ако ли не боудѣ властелинъ, да плати .xii. перперъ и да се вѣе стапѣи).<sup>16</sup> However, all other manuscripts of Dušan’s Law Code replace the words *if he be not noble* with terms *if he be commoner (sebar)*. One may conclude that the expression *sebrī* (commoners) was the general name for all dependent (mostly village) inhabitants of mediaeval Serbia. Therefore, two main classes in mediaeval Serbia were noblemen (*vlastela*) and commoners (*sebrī*).

## II

Florentinus libro nono institutionum, D. I, 5, 4 = Iust. Institutiones I, 3: *Libertas est naturalis facultas eius quod cuique facere libet, nisi si quid vi aut iure prohibetur. Servitus*

<sup>11</sup> Stanojević 2009: 30; Krueger, Mommsen 1895: 2, 7.

<sup>12</sup> Zepos 1931: II, 347; Ralles, Potles 1859: 236. Although they are very similar, the difference between the Latin and Greek text exists: Gaius says *summa divisio de iure personarum haec est*, while the *Epanagoge (Eisagoge)* uses the terms τῶν προσώπων ἄκρα διαίρεσις ἐστὶν.

<sup>13</sup> Novaković 1907: 249.

<sup>14</sup> Novaković 1907: 509-510; Ralles – Potles 1859: 481; On the meaning of the word *sebar* see Novaković 1886: 521-523. Cf. Šarkić 2006: 355-360; Mažuranić 1975: 1295-1296; Skok 1972: III, 210.

<sup>15</sup> The “perper” was the Serbian money of account. The word is a corruption of the Greek ὑπερπερος meaning gold “tried in the fire.”

<sup>16</sup> Burr 1949-50: 214; Novaković 1898: 67; SANU 1997: 122.

*est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur* (Freedom is one's natural power of doing what one pleases, save insofar as it ruled out either by coercion or by law. Slavery is an institution of the *ius gentium*,<sup>17</sup> whereby someone is against nature made subject to the ownership of another).<sup>18</sup>

Epanagoge XXXVII, 2-3 = Syntagma Δ – 11, Greek text: Καὶ ἐλευθερία μὲν ἐστίν, εὐχέρεια φυσικῇ, ἐκάστῳ συγχωροῦσα πράττειν ἃ βούλεται, εἰ μὴ νόμος ἢ βία κωλύει. Δουλεία δὲ ἐστίν, ἐθνικοῦ νόμου διατύπωσις, καὶ πολέμων ἐπίνοια, ἐξ ἧς τις ὑποβάλλεται τῇ ἐτέρου δεσποτείᾳ, ὑπεναντίως τοῦ φυσικοῦ νόμου· ἢ γὰρ φύσις πάντας ἐλευθέρους προήγαγεν.<sup>19</sup>

Syntagma Δ 11, Serbian translation: И слобода оубо кстаьудоб'ство кстаьтвено комоуждо праштаюшти д'кати таже хоштеть, развѣ аште законь или ноужда възбраниаеть; работа же ксть кзычкаго закона изьображеніе и ратнок оумьшакніе, оть нке же кто подлагаеть се иногo владычствог сопротивнѣ кстаьтвеному закону; кстаьство во вѣхъ слобод'нѣхъ производе.<sup>20</sup>

We have to remark that the Greek text and its Serbian translation are different from Florentinus' Latin original. They both add that slavery “is consequence of war” (πολέμων ἐπίνοια, ратнок оумьшакніе) and “that nature has created all men free” (ἢ γὰρ φύσις πάντας ἐλευθέρους προήγαγεν, кстаьство во вѣхъ слобод'нѣхъ производе). As slavery is an institution of *ius gentium*, it is contrary to the natural law. The expression “natural law,” or *ius naturale*, was largely used in the philosophical speculations of the Roman jurists of the Antonine age. It was the law supposed to govern men and peoples in a state of nature, i.e. in advance of organized governments or enacted laws. The point of departure for this conception was the Stoic doctrine of a life ordered “according to nature,” which in its turn rested upon the purely supposititious existence, in primitive times, of a “state of nature,” that is, a condition of society in which men universally were governed solely by a rational and consistent obedience to the needs, impulses and promptings of their true nature.<sup>21</sup>

### III

Gaius, Institutiones I, 10-11: *Rursum liberorum hominum alii ingenui sunt, alii libertini. Ingenui sunt qui liberi nati sunt; libertini, qui ex iusta servitute manumissi sunt* (The free are either freeborn or freemade. The freeborn was born of free parents; freemade

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<sup>17</sup> *Ius gentium* (“the law of nations”). That law which has been established by natural reason among all men is equally observed among all nations and is called the “law of nations,” as being the law which all nations use. Although this phrase had a meaning in the Roman law which may be rendered by the modern expression “law of nations,” it must not be understood as equivalent to what we now call “international law,” its scope being much wider. It was originally a system of law, or more properly equity, gathered by the early Roman lawyers and magistrates from the common ingredients in the customs of the old Italian tribes, those being the nations, *gentes*, whom they had opportunities of observing, to be used in cases where the *ius civile* (the civil law of Roman people) did not apply, i.e. in cases between foreigners or between a Roman citizen and a foreigner (BLACK 1990: 859, 860).

<sup>18</sup> Krueger, Mommsen 1895: 2, 7.

<sup>19</sup> Zepos 1931: II, 347; Ralles, Potles 1859: 236-237.

<sup>20</sup> Novaković 1907: 249.

<sup>21</sup> Cf. Black's Law Dictionary 1990: 861, 1026.

was born of manumitted slave).<sup>22</sup>

Epanagoge XXXVII, 4-5 = Syntagma Δ – 11, Greek text: Πάλιν οἱ ἐλεύθεροι διαιοῦνται εἰς δύο, εἰς εὐγενεῖς καὶ ἀπελευθέρους· καὶ εὐγενῆς μὲν ἐστίν, ὁ εὐθέως ἅμα τῷ τεχθῆναι ἐλεύθερος ὢν, καὶ μήπω τοῦ ζυγοῦ τῆς δουλείας γευσάμενος· ἀπελεύθερος δὲ, ὁ ἐκ δούλου ἐλευθερωθέντος γεννηθεῖς.<sup>23</sup>

Syntagma Δ – 11, Serbian translation: Паки свободны раздѣлаюць се на двѣ, въ благородніе и освободніе; и благородни оубо ксть иже авіе въкоупѣ кже родити се свободѣ сїи, и не оу пар'ма работи въкоуцивъ; освобод'нїи же иже отъ раба освобожден'наго родиви се.<sup>24</sup>

It is easy to notice that the Greek text and its Serbian translation added the words “and were not grown under the slave yoke” (καὶ μήπω τοῦ ζυγοῦ τῆς δουλείας γευσάμενος, и не оу пар'ма работи въкоуцивъ). The condemnation of slavery was also according to the doctrine of Stoic philosophy,<sup>25</sup> and maybe under the Christian ideology.<sup>26</sup> Article 21 of Dušan's Law Code strictly forbids the selling of an *Christian*<sup>27</sup> into another faith: *And whoso shall sell a Christian into another and false faith, let his hands be cut off and his tongue cut out* (И кто прода христианина оу инѣ невѣр'ноу вѣрѣ, да се рѣка всече и еззыкѣ оуреже).<sup>28</sup>

However, the class called *otroci* (отроци, singular *otrok*, отрокъ) occupied the lowest rank on the social ladder in mediaeval Serbia. The word *otrok* primarily means a child or a boy; it is obsolete in Serbian, but survives in Czech as a normal word for a slave and in Slovenian, Russian and Polish as a word for a child or a boy. The legal status of *otroci* was similar to slaves, but as *otroci* had certain personal rights it seems that they were a class of people with a social status between serfs and slaves.<sup>29</sup> Besides that, for slaves Serbian legal sources also use the word *rab* (рабъ, in modern Serbian language *rob*, *роб*), *čeljadin* (челѣдинъ) and *čeljad* (челѣдъ).<sup>30</sup> However, the mention of the term *rab* (slave in the antique meaning) was very rare in Serbian mediaeval sources, so we can conclude that the distinction on the freeborn and freemade, taken from Roman jurist Gaius, had a more declarative character.

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<sup>22</sup> Stanojević 2009: 30, 32.

<sup>23</sup> Zepos 1931: II, 348; Ralles, Potles 1859: 237.

<sup>24</sup> Novaković 1907: 249.

<sup>25</sup> Cf. Taranovski 1928: 160-170.

<sup>26</sup> However, we have to notice that Roman jurists from the period of Principate, whose fragments we have taken, were not Christians.

<sup>27</sup> The word *Christian* in the Code is always used in the sense of a member of the Greek Orthodox Church.

<sup>28</sup> Burr 1949-50: 202; Novaković 1898: 24; SANU 1997: 104

<sup>29</sup> Many questions concerning the legal status of *otroci* remain disputable, but they can not be the topic of this paper. For more details on *otroci* see Mihaljević 1986: 51-57; LSSV 1999: 483-485, 622-685; Šarkić 2010: 37-51.

<sup>30</sup> When the translator of the *Nomokanon* of Saint Sabba came across several Greek terms denoting the word slave, male or female (ἀνδράποδον, δούλος, οἰκετής, παῖς, θεραπαινά), he simplified the Greek names reducing them to *rab* (male) and *raba* (female). Cf. Petrović 1990: 53-74.

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**ИДЕЈЕ СТОИЧКЕ ФИЛОСОФИЈЕ  
У СРЕДЊОВЕКОВНОМ СРПСКОМ ПРАВУ**

**Резиме**

Оригинални текстови дела стоичких философа нису сачувани из времена политичке самосталности средњовековне српске државе, мада није искључено да су били познати. Ипак, неке од идеја стоичке философије продрле су у средњовековно српско право, преузимањем неколико одломака из дела римских правника, који су живели и стварали у време Принципата и били под јаким утицајем ове, тада врло популарне, философске школе. Треба напоменути да српски правници, чија имена нажалост не знамо, нису читали оригиналне латинске текстове римских јурисконсулта, већ су до њих долазили посредством грчких превода и прерада у византијским правним компилацијама. Утицај стоичке философије присутан је у три одломка из дела Гаја и Флорентина, који су у средњовековну Србију стигли преко *Епанагоге*, византијске правне збирке из IX века. Одломци наведени у раду (у латинском оригиналу, грчком и српскословенском преводу) дају дефиницију слободе и у духу стоичке философије осуђују ропство као последицу рата и установу права народа (*ius gentium*), супротну природноме праву (*ius naturale*), јер је природа све људе створила слободнима. Чини се ипак да су ови текстови били више декларативног карактера, јер српски правни споменици не дозвољавају закључак да је у средњовековној Србији постојала подела на слободне људе и робове, као и на оне који су рођени слободни и ослобођенике. За најнижу категорију становништва користи се израз отроци, чији правни положај је био сличан робовском, мада постоје и значајне разлике.

**Кључне речи:** Стоичка философија, римско право, Гај, Флорентин, *Епанагоге*, *Синтагма Матије Властара*, српско средњовековно право.

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