

THE STOICS AND AQUINAS ON VIRTUE AND NATURAL LAW*

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I wish to begin with a few general observations about the natural law tradition and the striking thesis defended by Paul Vander Waerdt and Brad Inwood about its origins in antiquity. In Vander Waerdt's more extreme formulation, the early Stoics, whom he believes originated the theory of natural law, dispensed 'entirely with rule-based reasoning' and proposed a 'dispositional model of natural law which prescribes not the external characteristics of morally correct actions but rather the intensionalist features of the agent's motivation which guarantee that all of his actions are morally infallible.'¹ Natural law, in this view, is strictly isomorphic with the perfected rational disposition of the sage, and it prescribes nothing over and above just what such a perfectly virtuous agent should be internally disposed to do on any given occasion. Thus, at the heart of the thesis is the claim that the theory of natural law originates as a kind of radically particularist moral theory that does not presume to offer moral guidance of a general nature and that has as its exclusive focus the inner virtuous dispositions of moral agents engaged in discrete episodes of moral choice. Presumably, one might think that in principle it would be possible to derive more general, law-like prescriptions for moral actions from the reasoning behind them or from the rational and moral dispositions that engender them. But the claim here is that both moral reasoning and moral dispositions themselves are not susceptible of law-like analysis and that they are manifested in a series of discrete behaviors that themselves are immune to

* I am indebted to Norman Kretzmann for first introducing me to these issues and for many years of subsequent conversation. Paul Vander Waerdt and Brad Inwood have been defending an opposing view to the one set out here about Stoicism for so long and so ably that the present paper may seem to reflect merely a bad case of intellectual stubbornness. In any case, I wish to thank them for their friendship and intellectual indulgence. I am also extremely grateful to Scott MacDonald for comments on an earlier version of this paper, and to audiences at Columbia, Oxford, London, Geneva, Bern, Kyoto, and Notre Dame for many helpful observations.

¹ This volume, p. 18. Inwood's fullest statement is to be found in (1999) pp. 95–127. He argues for a 'more procedural understanding of moral 'law'' wherein "'law' represents the prescriptive force behind the correct moral choice of the ideal moral reasoner, the sage, whatever the content of that choice might be on a given occasion.' (pp. 96–97). Thus, his account differs from Vander Waerdt's in important ways. I will be discussing various aspects of both accounts as I go along.

more contentful general analysis. One is probably more likely to associate the kind of radical particularism claimed here for the Stoics with intuitionist theories of moral epistemology, rather than with their own relentless emphasis on rationality, but the thesis yokes together other strange philosophical bedfellows. Another crucial assumption in this thesis about the origins of natural law is its postulation of a strong link between moral infallibility and particularism. It holds that since any non-vacuous moral rule or general recommendation inevitably falls prey to exceptions, the moral deliberations of infallible moral agents cannot be guided by generalizations at any level. Again, one might be more used to associating claims about the inevitable failure of moral generalizations with theories that display a heightened emphasis on the indeterminacy of moral choice and the inexactness of the moral domain, and hence, presumably, on the consequent fallibility of moral agents. But perhaps the greatest paradox of all is the central claim of the thesis itself. Surely, it is *prima facie* a little paradoxical to claim that the tradition of natural law begins as a theory rooted in the assumption that moral reasoning is not law-like, and that when we are faced with forming our moral attitudes or acting morally, natural law can offer no contentful recommendations beyond the immediate moment. Why, one might plausibly wonder, appeal to a conception of *law*, if the aim is to endorse a radical particularism about moral choice and action?

To be sure, these claims about origins are only part of a larger and more complicated historical story. The purely intentionalist or internalist account of natural law and morality that originates in the early Stoa gives way, in Vander Waerdt's view, to a more rigid, rule-based theory under various philosophical and social pressures.² Indeed, by the time of Cicero, perhaps, and of Aquinas, certainly, and then in all accounts of natural law thereafter, the tradition transforms its notion of law from an intentionalist into an externalist one, and its focus shifts from the virtuous inner dispositions of the wise to the delineation of hierarchical sets of rules governing the external behavior of all men. In a deep sense, Vander Waerdt's overall assessment of the natural law tradition is one of depressing decline, both in its substance and in the expectations it has of its audience. It begins as a theory that attempts to ground in nature the kinds of rational motivations and dispositions we plausibly appeal to in explaining individual moral actions and that arguably are crucial for explaining accounts of the development and perfection of virtue. It declines into a theory that eliminates concern for virtue *per se* and with it, the regulation of agents' motivations and intentions. It thus settles for the mere stipulation of external behaviors and

² The historical basis for this claim is set out with great power and learning in Vander Waerdt (1989), (1991), and (1994).

thereby abandons the project of cultivating our virtuous political and social impulses.³ As a consequence, what it offers is merely an abstract and rigid code of external conduct that cannot but fail to capture the particular nuances of a moral life characterized by wisdom and virtue. Sadly, one might note, this seems an especially ironic outcome for the theory given its origins in the Stoics' fundamental belief that virtue alone is what is valuable; indeed, presumably one of the primary reasons they held virtue to be uniquely valuable is precisely because it requires the autonomous cultivation of one's inner psychological states which, in their view, are in no way dependent on the vagaries of externals.

In all stories of decline and fall, of course, there can be a kind of conceptual clarity and sense of historical inevitability that makes for compelling and exciting reading. But at the risk of playing Bishop Spadeworth to Vander Waerdt's Gibbon, I want to argue that the truth about the natural law tradition is considerably more complicated and that the basic elements that sustain it are there from the beginning and continue to persist, certainly at least through the formulations of Aquinas. One of the questions I therefore will be asking is why the tradition of natural law was able to offer viable philosophical alternatives for so many for so long, and especially for those who took themselves to be concerned with virtue and its cultivation. Moreover, since I see neither strong conceptual shifts nor decline, I do not think that we need to be on the lookout for any good or bad emperors in the story. No Stoic, even those for whom we have more evidence of an interest in delineating law-like rules of behavior, ever gave up a commitment to the inner criteria of virtue. Nor, arguably, did Aquinas. Accordingly, although such a Spadeworthian history of natural law may be more conceptually tangled and certainly less exciting, it perhaps will turn out to be more uplifting in the end, since, after all, it is a history depicting both unceasing virtue and the abiding empire of law.

It might be useful to begin with Aquinas, not only because his account is more familiar, but also because Vander Waerdt's understanding of Thomistic theory, I believe, is to a certain extent shaping his reading of the entire development of the tradition. Of necessity, I must be aggressively schematic, but it seems to me that Vander Waerdt's account relies on taking the so-called *Treatise on Law* (and so the most famous passages on natural law) in isolation from the rest of Aquinas' discussion of ethics proper. This is important, since it leads him, I think, into a parallel mistake about the relation between natural law and virtue in the early Stoa. In any case, although it might often go unremarked, it is quite obvious that Aquinas'

³ See Vander Waerdt p. 23 with the quotation from Leibniz (1706).

discussion of law follows upon an extended account of ethical theory or more precisely, if you will, virtue ethics. He discusses moral goodness (questions 1–17), morally right actions (questions 18–21), and the states of human beings that are essential to moral goodness and the performance of morally right actions — these include the passions (questions 22–48), habits in general (questions 49–54), virtue (questions 55–70) and vice (questions 79–81). Aquinas’ discussion of ethics thus begins with an account of happiness and concludes with problems of virtue.

In introducing the Treatise on Law, Aquinas says that having treated of the *intrinsic* principles of human action, i.e. those of ethics proper, he is now going to talk about *external* principles. But this does not mean, of course, that his views about intrinsic and external principles are unrelated. What he has in mind in the Treatise on Law is primarily real law of that sort that imposes external constraints on moral agents. He is at most tangentially interested in Kantian-style moral laws or what we might characterize as *moral* precepts that agents use to govern their moral conduct. Indeed, Aquinas says ‘Properly speaking, no one imposes a law on his own actions, since personal moral judgments about what one ought to do are not laws, strictly speaking.’ (q. 93.5)⁴ Yet, within the Treatise on Law, one can also find abundant evidence of the intentional requirements of Aquinas’ wider moral theory. He says, ‘A man can bring law to bear on those things which he can judge. But a man’s judgment cannot be about interior motivations.’⁵ Nevertheless it is required for the perfection of virtue that a man be right (*existat rectus*) in both sorts of acts.’ (91.4).

This requirement, not surprisingly, serves as an important element in Aquinas’ claim that there is a need for divine law. Such divine dictates about our inner states can be found, for instance, in the Sermon on the Mount in which we learn that it is not only wrong to kill, but also to hate, not only to steal, but to covet, etc.

Clearly, the fact that Aquinas’ central moral theory gives such a prominent place to virtue is itself evidence that he takes the internal states of agents to be crucial for moral evaluation. A virtue, for Aquinas, just is a disposition of the agent toward the right ends. Choice (*electio*) is therefore essential to morally right actions. At the same time, however, one might ask how these features of Aquinas’ moral thinking, which can be characterized as being straightforwardly intensionalist, are supposed to fit with the picture of externally imposed natural laws that we find in the Treatise on

⁴ For fuller discussion, see Kretzmann (1988a), (1988b).

⁵ I am indebted to Scott MacDonald for discussion of these passages. With him, I take Aquinas’ reference here to *motibus* ‘that are hidden’ to be making a distinction between internal motivations and external behavior.

Law. The question is central for Aquinas' account of natural law and also absolutely parallel, I would argue, to a key question facing the Stoics — how to connect their intentionalist moral psychology, theory of virtue, and account of moral evaluation with a set of divine and externally imposed natural requirements.

In the case of Aquinas, the connection between these two elements seems to be roughly the following. He often says that morally right action is 'action in accordance with right reason.' This formula for Aquinas arguably includes both externalist and intentionalist considerations. It is externalist because action in accordance with right reason is just that action that divine reason and natural law dictate. But the reasoning, as Aquinas says, is in the agent performing the action, and the agent's following right reason in this case is a manifestation of the agent's soul — that is his virtue — disposing him to follow reason in general.

However successful Aquinas' attempt to bring internalist and externalist elements together in one account, it seems to me that the early Stoics face a parallel problem in trying to reconcile the demands of their intentionalist accounts of virtue and happiness with what are taken to be external commands of a divine and providential reason. The same holds for the later Stoic tradition and, indeed, for natural law theorists well into the early modern period. Indeed, at no time, until very late in the tradition, does natural law become a theory focused exclusively on following a set of externally imposed commands. By the same token, it would be a mistake, however, to treat the early Stoic view as a purely intentionalist one since it is quite clear that, for them, the laws of nature emanate from divine reason — and hence are externally imposed requirements. It seems to me that something goes wrong with Vander Waerdt's claim that natural law for the early Stoa is solely about dispositions. Clearly, as for Aquinas, dispositions and the reasoning that is in moral agents are an important part of the story for the early Stoics. But we have equally compelling evidence that natural laws for the Stoics are just that — laws of nature that are not entirely reducible to a series of particularist manifestations of the inner dispositions of moral agents, however infallible.

One long-standing problem in the interpretation of Stoic moral theory has been how one connects evidence from their theories of virtue and happiness to their claims about nature and the divine. If one focuses on the Stoics' accounts of virtue and happiness, one can surely find abundant evidence for their emphasis on an agent's inner dispositions.⁶ It is sometimes

⁶ Here I simplify, since even in Stoic texts that some have taken to give strictly internalist accounts of the perfection of one's internal states and virtues, there still remain difficult questions about the kinds of roles that externalist considerations play in

tempting to suppose that this is the whole story about their moral theory, and to then infer, as I believe Vander Waerdt does, that everything of moral importance that can be said about the sage's perfected rational disposition appears in texts that describe the workings of virtue. Once one makes this step, however, it is easier to slide into a view that takes natural law to be 'dispositional'. But it seems to me that the Stoic view of moral action is in many ways no more 'dispositional' than that of Aquinas, since it is clear that the sage's reasoning is also in accordance with what are viewed as externally imposed divine requirements.

Given Aquinas' extensive discussion of both law and virtue, we would be compelled, even without the kinds of explicit indications that he offers, to attempt to piece together these two aspects of his theory. The fragmentary nature of Stoic texts perhaps makes it easier to lose sight of these twin demands on action in accordance with reason. A famous passage from Diogenes Laertius, however, reports the following claim of Chrysippus — a claim that in many ways, I think, prefigures the Thomistic linkage between internalist and externalist requirements and between virtue, happiness, and natural law:

Therefore, living in agreement with nature comes to be the end, which is in accordance with the nature of oneself and that of the whole, engaging in no activity forbidden by universal law, which is right reason pervading everything and identical to Zeus, who is the director of the administration of existing things. And the virtue of the happy man and his good flow of life are just this: always doing everything on the basis of concordance of each man's guardian spirit with the will of the administrator of the whole. (D.L.7.88, trans. Long and Sedley, 63C)

The Stoics, of course, are innocent of the kinds of voluntarist and rationalist debates that this picture of God lets itself in for by the time of Aquinas and they have a monistic moral psychology free from tensions between reason and the will. But when the Stoic sage is said to act in accordance with 'right reason' or to be following the will of Zeus, this is meant by the Stoics to capture, in much the same way as it is in Aquinas' theory, both internalist and externalist criteria. Vander Waerdt is surely right to argue that the correct moral action of a sage mandated by nature's divine reason expresses the sage's internal rational disposition arising from his virtuous state of soul. There is little doubt as well that, to borrow a turn of phrase from Aquinas, the reasoning is in the agent performing the action. But the sage's action is also in accordance with right reason and is of the sort that right reason and divine law dictate. Thus, to claim as Vander Waerdt does, that

structuring agents' reasoning and impulses toward their own good. See, e.g. Frede (1999) pp. 71–94.

the early Stoic theory of natural law is dispositional is only part of the story. The full story includes externalist demands as well as an account of the relation of those demands to individual virtuous dispositions.

It might be objected at this point, of course, that whatever the origin and nature of the commands of right reason, at least the actual content of its demands remains strictly dispositional, in the sense that nature's commands for the early Stoics are about internal states of agents rather than about particular actions or external behaviors. I take it that this is an important linchpin in Vander Waerdt's claims about Stoic particularism and, as far as I can make out, one reason for this is because he takes there to be a fairly straightforward connection between dispositional accounts and moral particularism. But, of course, there may be other routes to moral particularism. One might claim, for instance, that natural law merely gives a series of particular injunctions about moral actions (in the sense of external behaviors) on an ongoing basis. In other words, the claim that we can rely on no general rules to guarantee that we act infallibly does not mean we can only appeal to dispositions to guarantee such infallibility. Conversely, appealing to dispositions to explain moral actions does not necessarily require a commitment to particularism. One might argue that moral dispositions or the reasoning behind such dispositions are susceptible of general analysis and thus exhibit law-like features that we can use to predict the types of actions to which they give rise. Thus, one cannot merely assume a straightforward connection between moral particularism and an interest in virtuous dispositions. Note as well, that for both Vander Waerdt and Inwood, the commands of natural law cannot be about the kinds of generalized dispositions we find, say, in Aquinas, not to hate or not to covet.⁷ They must turn out to be commands aimed at getting an individual in particular circumstances into a discrete psychic state that is causally linked to a particular action. It is not clear to me what philosophical sense, if any, can be made of this claim, but if we are to attribute it to the early Stoics and connect their interests in moral dispositions to any specific theory of particularism, it seems to me that we at least need some textual warrant. But here, the dispositional theory of natural law runs into difficulty.

Vander Waerdt's treatment of the evidence from Chrysippus' *Peri Nomou* well illustrates our problem, since in his account⁸ there is not only, I would argue, a troubling elision of externally imposed divine commands, but also an assumption that the actual content of those commands is necessarily dispositional. At the same time, it seems to me that the evidence

⁷ Inwood (1999), for instance, argues that a general injunction to, say, act prudently, would be vacuous.

⁸ This volume, pp. 24–31.

is neutral, to say the least, with respect to questions of moral particularism generally.⁹ Let us begin with the exordium of Chrysippus' *Peri Nomou*.

Law is king of all things divine and human. It must preside over what is honorable and base, both as ruler and as guide, and in virtue of this it must be the standard (*kanon*) of justice and injustice, prescribing to animals whose nature is political what they should do, and prohibiting what they should not do. (Marcian *Inst.I* = Long and Sedley 67R, adapted)

The claim that Chrysippus formulates a 'dispositional' theory of natural law strikes me as problematic for several reasons. In this initial passage, which is admittedly programmatic, there is nothing to give a hint that the content of the injunctions of natural law is either about dispositions or, for that matter, about moral particulars. The early Stoics, just as Aristotle before them, have a well-articulated distinction between actions and their underlying intentions. Indeed, their ethical theory rather relentlessly stresses, some might say to point of implausibility, the claim that the only thing that matters from the point of view of moral evaluation is the intention from which an action is performed. But these worries about what, following Aquinas, we might call the intrinsic principles of human action are hardly in evidence here. Chrysippus does not claim that natural law prescribes to animals whose nature is political *how* and *how not* they should perform actions or with what sorts of inner attitudes. He maintains that natural law prescribes *what* they should and should not do. Given the centrality of intentions in their theory of virtue and also their fondness for invoking their own technical distinctions and vocabulary even in the most programmatic contexts, we should be wary of assuming the kind of neat folding of these externalist concerns into the requirements of ethics proper as postulated by Vander Waerdt. This is not to claim, of course, that Chrysippus' view of natural law is unconnected to his views of moral action. Far from it, since it would be a foolhardy to venture such a claim about a school that prides itself on the systematic unity of all of its philosophical positions. But the fact that particular Stoic views are connected does not mean that we cannot discern different philosophical motivations from separate areas of their thought coming into contact. Nor does it mean that we should merely run these separate motivations together or elide them. Of course, the question of how smoothly such motivations fit together is another matter. But at least at first glance, it seems implausible to suggest that this passage is concerned with the intrinsic principles of human action and not with the workings of an externally imposed law.

⁹ This volume, p. 28.

Moreover, Chrysippus' claim that natural law prescribes what we should do, is at best ambiguous between more general recommendations and those aimed solely at particular occasions. I say at best ambiguous, since it seems to me that only someone in the grips of a particularist theory could take this passage to preclude general law-like recommendations. But since such an interpretation cannot be entirely ruled out at this point, we need to turn to what is perhaps the crucial move of the dispositionalist interpretation.

In claiming that natural law enjoins only dispositions, Vander Waerdt invokes the Stoic distinction between *katorthomata* and *kathekonta*, which is meant to pick out the crucial difference between actions that arise from the proper moral intentions and those that may not. He further claims that natural law enjoins only *katorthomata*. The sole passage, or better, sentence he relies on for this claim comes from a passage in Plutarch (*De Stoic. Repug.* 1037c-d=SVF 3.520) whose aim is meant to show inconsistencies in the Stoic position. Here is Vander Waerdt's reconstruction of the passage in question:

They say: 'Virtuous action is the prescription of law; moral error is its proscription. Hence law proscribes many things for the base, but prescribes nothing, for they are incapable of virtuous action.'

How can natural law prescribe virtuous actions for all animals that are political, Plutarch objects, since the vicious are incapable of virtuous action? Plutarch, I take it, is concerned with what becomes a standard objection to natural law theory, and for which there is an equally standard response. Natural moral laws are unlike physical laws and therefore can be disobeyed. Thus, their prescriptions are equally for the vicious as well as for the virtuous, even if the former do not obey them. However, even if we grant to Vander Waerdt that the passage reflects a Chrysippean claim that natural law enjoins only *katorthomata* (which I think is deeply problematic on textual grounds¹⁰ and also threatens to make *kathekonta* somehow anomalously natural), it still fails to show that the Stoic account is narrowly dispositionalist in the way that he suggests.

Katorthomata are actions that are undertaken with the right rational intention and have the right focus on the good. Yet, even if natural law were held to enjoin only *katorthomata*, the most that this would show is that natural law for the early Stoics enjoins actions that are performed out of the right moral intentions. It does not follow that the injunctions of natural law themselves are solely about inner states or the dispositions producing

¹⁰ Since I have discussed this passage at length elsewhere (Mitsis, 1994), I will refrain from repeating my reasons for rejecting it as good evidence for the Stoic position.

those perfect actions. If I return a deposit with the right moral intention and my action is in accord with right reason, I have performed a perfect action (*katorthoma*). But I have not merely lit up a particular inner bulb. I have performed an action and my action also has an external dimension. This intuitively plausible feature of morally correct actions is reflected in the Stoic claim that all *katorthomata* are also *kathekonta*.

Part of the reason Vander Waerdt goes astray here, perhaps, is because of a related set of issues concerned with the Stoic response to the external failure of particular actions. Suppose, for instance, that I intend to return a deposit, and it is the morally right thing to do, but I am prevented from doing so by something out of my control. What is the moral status of my action? For the Stoics, such an action, even if it fails in achieving its external aim, is still entirely successful from the moral point of view. Accordingly, one might be tempted to conclude from this Stoic doctrine that successful moral actions can only be identified by focusing on their underlying intentions. Let us grant, for the moment, Vander Waerdt's claim that the infallible sage is the paradigmatic moral agent acting in accordance with nature's commands and that natural law only gives injunctions for successful *moral* actions (*katorthomata*). This still does not get us to his conclusion that *katorthomata* are internal dispositional states, however, or that the content of nature's commands is entirely dispositional. If natural law enjoins that a sage return a deposit and this is a perfect action (*katorthoma*), he might manage to return the deposit or he might be prevented from doing so by events out of his control. His injunction from nature, however, if it is in the form of an injunction to perform a *katorthoma*, is to perform an action. The fact that the external object of the action is attained or not is strictly a matter of indifference. But this further feature of our evaluation of the action does not show that the action itself is not part of what is enjoined by nature, however successful or unsuccessful it may be in attaining its external aim. This is because *katorthomata* are not merely dispositions; they are actions carried out from the right moral motives. Attention to the inner motivation of an action and indifference to an action's external success does not commit the Stoics to the claim that actions themselves are merely dispositions to act. Thus, a sage obeys a moral injunction to act, not merely to get himself into a particular moral mood. Of course, it might seem odd, in the light of these claims, to say that whether the sage manages to return a deposit or not, he is performing the very same moral action (*katorthoma*). But the oddity stems here, not from the Stoics inability to distinguish dispositions from actions, but from the extremity of the moral perspective they espouse and their belief that success or failure in attaining the external aim of actions does not serve to individuate those actions, at least from a

moral point of view. Thus, I do not believe that the evidence of Chrysippus' *Peri Nomou* can support the so-called dispositionalist theory of natural law, even if we grant the problematic claim that natural law only enjoins *katorthomata*.

A related worry that leads Vander Waerdt to this characterization of *katorthomata* as mere instances of dispositions is connected to a second major set of issues involving the problem of apparent exceptions to laws. In some circumstances we might think it morally wrong to return a deposit. How can proponents of natural law account for such seeming exceptions to what we take as standard moral demands? Do they, Vander Waerdt asks, make room for exceptions by somehow linking them to dispositions or by appealing to higher order rules? I myself think this is a false dichotomy, since I think the Stoics link externalist and internalist demands in their theory. They, as it were, do not follow rules without virtuous motivations and their virtuous motivations are linked to rationally ordered laws. However, in order to begin answering this question, we need to backtrack a bit and look more generally at how the question of exceptions arises in Stoic texts. Here we will be forced to take a brief doxographical detour, since I believe that both Vander Waerdt and Inwood¹¹ have used this evidence in a way that is deeply anachronistic for the early Stoa and generally misleading for later Stoics as well. But they are by no means alone in this, since the form that their discussion takes is to be found in modern scholarship at least as early as 1852 in Zeller.¹²

Our problem begins with how we are to understand a series of shocking reports (well, shocking at least to Zeller and to those with similar nineteenth century sensibilities) suggesting that the early Stoics somehow countenanced cannibalism and incest. I wish to begin by leaving this claim about early Stoicism rather vague initially, since Zeller, on the basis of a report in Diogenes Laertius (7.121), went on to restrict these practices to sages in special circumstances (*kata peristasin*). Inwood and Vander Waerdt take on board a similar reading of the evidence and use it to establish their claim that there are no universal or substantive injunctions of natural law, since all types of appropriate actions (*kathekonta*) are subject to exception. Their star cases of such exceptions are the sage's practice of cannibalism and incest *kata peristasin*. It is more likely, however, that this doctrine of actions *kata peristasin* reflects later attempts to account for doctrines of the early Stoa that had become embarrassing to later Stoics, much in the same way, say, that Aquinas was faced with explaining the polygamy of patriarchs in

¹¹ Inwood (1999) pp.102–3.

¹² E. Zeller (Leipzig, 1852), *Die Philosophie der Griechen in ihrer geschichtlichen Entwicklung* (vol.3)

the Bible. In the case of the Stoics, the Bible in question is Zeno's *Republic*, and the incest and cannibalism apparently condoned there¹³ are the sources of subsequent embarrassment.

In any case, one can hardly fail to notice that incest and cannibalism are the two practices discussed in early Stoic writings that particularly fired the imagination of the doxographers. Zeller, arguably mirroring the moves that a later Stoic apologist might be forced to make, seems particularly anxious to neutralize the ancient charges that the Stoics condoned such practices — thus, the prominence he gives to D.L. 7.121 and the doctrine of actions in special circumstances. In the case of incest, for instance, he adduces a passage from Origen (*SVF* 2.743) which reports that the Stoics allowed incest only in the extraordinary circumstances of the wise man and his daughter being the last two humans on earth. This allows him to come to the comforting conclusion that incest for the Stoics was at most a theoretical possibility available to the sage only in very special circumstances. But the attempt to account for this evidence as a kind of desert island thought experiment quickly founders on the consideration that incest is built into the very structure of Zeno's *Republic* because of his doctrine of the communal sharing of women (D.L. 7.131). Nor do we have any evidence to suggest that Zeno attempted to erect any barriers to incest in the way that Plato does in his own account of the community of women in the *Republic*. Sextus, moreover, has preserved a quotation, possibly from Zeno's *On Listening to Poetry* (*PH* 3.205=*SVF* I.256) in which Zeno discusses the relationship between Oedipus and Jocasta. Incest, he says, is merely a matter of rubbing different parts of the body and is therefore indifferent. Zeno's comment seems to reflect a cynic attitude toward the practice of incest of the sort exemplified in the cynic mock tragedy *Oedipus* that apparently made light of incest. At the very least, whatever Zeno was thinking of in this passage, it does not seem to be of the theoretical prospect of the wise man and his daughter being the last humans on earth.

At the same time, however seriously we take Origen's desert island example, incest for Zeno would still remain, even in such special circumstances, a matter of physical rubbings that are indifferent from a moral point of view. Indeed, it is hard to manufacture for the Stoics any special kind of moral imperative of the sort that seems to lie behind Origen's desert island justification. This is because, for a Stoic, there would be no moral imperative to ensure the continuation of the human race (assuming this, and not just a desire for sex, is the underlying justification for incest in Origen's report). One might argue that a Stoic would consider that insuring

¹³ This is an inference, but I believe a good one, about Zeno's *Republic* from reports about Chrysippus' *Republic* and from other testimonies about Zeno.

the survival of the human race is at least an appropriate action. But notice, this still would hardly fit the model of exceptions to rules endorsed by Vander Waerdt and Inwood, since in committing incest, the sage would be substituting one type of appropriate action for another, not merely breaking a moral rule without any appeal to another. I want to return to this issue shortly, since it raises a deeper difficulty for understanding Stoic view about apparent exceptions to moral rules. But first we need to finish our doxographical detour.

If it is in any way difficult to gauge the extent of Zeno's commitment to incest in the *Republic*, Chrysippus seems to have treated the practice with a kind of cynic insouciance. Also, given his flair for logical completeness, he apparently made clear that he thought that 'sexual intercourse with mothers or daughters or sisters' . . . has 'been discredited without reason.' (Plutarch, *De Stoic. Repug.* 1044F–1045A=SVF 3.753, trans. Long and Sedley 67F). Sextus, who for his own reasons, obviously thought it meet to focus on a practice that might create moral quandaries, reports that Chrysippus viewed incest as an indifferent, in no way restricting it to special circumstances (PH 1.160; 3.205; 3.246–48). On the one hand, of course, Sextus might have an interest in attributing this practice to the Stoics. Yet, at the same time, it seems plausible to infer from his evidence that Chrysippus is defending a practice that is a fairly straightforward consequence of a central arrangement of Zeno's *Republic* and the community of women. Thus, I think we have little reason for supposing that incest is a practice limited by the early Stoics to special circumstances. Rather, I would argue, the attempt to characterize it as an action *kata peristasin*, if not the whole notion of action *kata peristasin* itself, is a later attempt to come to grips with doctrines of the early Stoic patriarchs that later proved embarrassing.

A parallel argument can be made for cannibalism, the particular practice restricted in D.L. 7.121 to special circumstances. Again, reports about the early scholars' views suggest more of a desire on their part to register a cynic shock than to come to grips with a theoretical casuist objection to a standard moral rule. Take, for instance, the following bits from Chrysippus' *Republic* reported by Sextus:

'If from the living person a part should be cut off which is edible, we should not bury it or dispose of it in some other way, but consume it, so that from our parts a new one may be generated.' (PH 3.247= LS 67G)

And Sextus continues:

'In his books *On proper function*, he says explicitly concerning the burial of parents: 'When parents die, we should use the simplest methods of burial, as though the body, like the nails and the teeth or hair, were nothing to us and we give no care or

attention to anything like that. So too, if the flesh is edible, people should use it, as they should one of their own parts such as a severed foot and the like.' (*PH* 3.247–8=LS 67G)

Chrysippus' endorsement of cannibalism no doubt reflects a cynic desire to shock, but it also tumbles naturally out of a central and abiding Stoic claim given voice to in this passage. We should treat our bodies and those of others as though they 'were nothing to us' and we should 'give no care or attention to anything like that.' In other words, it is hardly to such practices that we should look for a Stoic account of exceptions to *moral* rules. Not only would such an account be anachronistic for the early Stoa, but also more importantly, it misconstrues the very context in which the question of exceptions to moral rules might even arise for a Stoic. In these particular cases, it seems, the Stoics are keen to show that some normal societal practices, especially those that often generate the strongest sense of taboo, have no moral basis once one comes to the realization that nothing of moral importance attaches to an external entity such as the body. It is a matter of indifference where one rubs one's bodily parts, just as it is a matter of indifference if one eats one's own severed foot. And as long as one continues to view such actions with moral repugnance, one cannot be said to be free of a fool's attachment to externals. If anything, rather than provoking a quandary about its moral permissibility in special circumstances, cannibalism seems to have provided for Chrysippus an occasion for expanding our views about what might be included in our pursuit of health. This hardly betokens a worry about the justified breaking of a moral rule; rather, it enlarges our horizons about what new foods might help fulfill the proper function of maintaining our health.

Even leaving aside for the moment questions of its provenance, if we look at how the notion of action *kata peristasin* actually arises in Diogenes, it hardly seems designed to bear the heavy theoretical weight loaded on to it by Inwood and Vander Waerdt. Diogenes reports a distinction between *kathekonta aneu peristaseos* and *kathekonta kata peristasin* (D.L. 7. 109), i.e. proper functions not depending on circumstances and proper functions depending on circumstances. An example of the first class is looking after one's health; of the second, maiming oneself.¹⁴ We generally look after our health, but we sometimes might need to maim ourselves either to preserve our health or in the pursuit of some other goal. For an example of the latter, think, for instance, of the great Roman patriot Mucius Scaevola thrusting his arm into the fire in letter after letter of Seneca to demonstrate his courage and love of his fatherland. The first thing to notice about this

¹⁴ I would argue, e.g. that cannibalism is moved from the first class into the second by later apologists.

distinction, however, is that it cannot capture, nor do I think it was designed to capture, any worries about the justified breaking of a *moral* rule. If an agent is faced with maiming himself to preserve his health, he is faced with a non-moral technical question about something, which, to the Stoic, is a matter of indifference, his bodily health. Moreover, we might say that in submitting to being maimed, he is most likely following rules for maintaining his health. There is no need to insist on this latter claim, however, since in any case, he is being presented with a problem of health, not of breaking a moral rule.

On the other hand, if he maims himself for the fatherland, like Mucius, this too presents for the Stoic no dilemmas about the breaking of a moral rule. To the contrary, it exemplifies the virtuous choice of an individual who places the needs of his country over his own health or life. It is a choice, that is, of virtue over a non-moral good. Stoic texts teem with examples of those who place virtuous goals above their life, health, wealth, etc., and although it is not always clear exactly how specific cases actually are meant to demonstrate choices of moral over non-moral goods, this is clearly the conclusion that Stoics draw from them. Of course, we still need to understand how Stoics understood agents choosing moral over non-moral paths and the role that internalist and externalist considerations play in such choices. But for now, at least, I hope to have shown that both Inwood and Vander Waerdt, in attempting to use this body of evidence to support their claim that Stoics deny that there are universal or substantive natural moral rules, have mistaken both its terms and its historical context.

Of course, this does not mean that one cannot take this distinction of action *kata peristasin* and attempt to generate an apparent moral dilemma for the Stoic. Mucius has a duty to protect the fatherland and also to honor his father. What if he must sacrifice his father *kata peristasin* in order to protect his fatherland? One reason I would resist such a move here, however, is that I think there is a better place, and one more faithful to its historical context, to raise such questions in Stoicism.¹⁵

So far my argument has been mostly negative and I can hardly claim to have shown that the Stoics think that nature does provide contentful rules that offer a rational structure for moral thought and virtuous action. But it might be helpful, at this point, to give a few brief indications¹⁶ about how one might do so. Let me begin by flagging two key points of disagreement

¹⁵ Mitsis (1993), pp.304–310.

¹⁶ Given the number of years our debate has gone on and the number of pages it has generated, I will limit myself to a few salient points. Those interested may consult the works listed in notes 2 and 3 and Mitsis (1993) for fuller discussion. These issues are helpfully discussed by Charles Brittain in 'Rationality, Rules, and Rights' *Apeiron* 34.3, 2001 pp. 247–267.

with the Vander Waerdt/Inwood view that speak to this issue. One involves the structure of moral reasoning itself and the extent to which the virtues are thought by the Stoics to be structured by law-like principles. The second involves the nature of the gulf that separates the deliberations of sages from those of ordinary deliberators.

If I have one ongoing complaint about the Vander Waerdt/Inwood project, it is that it slights what to my mind is the best evidence for the role of rules in Stoic thinking, and that is our reports of the debates between Aristo and orthodox Stoics over the usefulness of general and particular moral recommendations. Moreover, it strikes me that for anyone who takes that debate seriously, Vander Waerdt's claim that the early Stoics dispensed with rule-based reasoning appears to accurately capture the view of really only one early Stoic and that is the defrocked renegade Aristo. Even if we grant that our evidence for this early debate is in some way filtered through Cicero's and Seneca's own concerns, it seems undeniable that the early Stoics were keen to defend the usefulness of rules against the anti-rule arguments of Aristo. Exactly how this debate went is a matter of controversy; but what seems beyond controversy is that we would do better to look to Aristo and not to orthodox Stoicism for defense of a theory that dispenses with rule-based reasoning. Inwood, too, even with his new 'heuristic model' of moral rules, seems to let his Stoic wise man lurch uncomfortably between Aristo's intuitionism and something approaching the kind of evaluative attitude now standardly attributed to Aristotle's *phronimos*. In Inwood's still staunchly particularist account, rational principles, which he believes are non-prescriptive, provide a general evaluative background for the sage's reasoning. But it is hard to see how, if this were indeed the orthodox Stoics' view, they could hope to attribute to the wise man a kind of knowledge that is identical with divine rationality and the prescriptions of divine law itself. One major strength of Vander Waerdt's reading is his insistence that we take seriously Stoic claims about the confluence between the wise man's perfected rational disposition and nature's prescriptions, hence about the identity of the wise man's knowledge and nature's law. The Stoics' model of rationality, I would argue, must offer moral principles that provide more than a mere evaluative background; they should be prescriptive, external, and determinate, if the sage's reasoning in accordance with them is in any way to approach the mind of God.

My second disagreement with the Vander Waerdt/Inwood view stems from how we are to understand differences between the moral deliberations of sages and the non-wise. The historical shift that Vander Waerdt describes from virtue to rules becomes encapsulated as a timeless divide

between sage and non-sage in Inwood's account. He postulates a two-track system of moral deliberation in which sages dispense with rules, while non-sages rather slavishly rely on them. I say slavishly, since it seems that only the wise could ever be justified in breaking them. Such a view leads to a number of absurd consequences since, for instance, it would make the Stoic industry of urging on us exempla such as Mucius unintelligible, especially on Inwood's own theory, since a non-sage could hardly be justified in maiming himself for his country. Moreover, rather than creating a more flexible view of Stoic rules, Inwood's heuristic account threatens to consign sages merely to a kind of Aristonian indeterminacy while dooming non-sages to an objectionable — even for non-sages — moral unadventurousness.

Let me deal with the second disagreement first. I take the disjunction between virtue and rules and externalist and internalist justifications underlying either purported historical shifts or two-track systems of deliberation to be unhelpful and also unnecessary. Two of the central objections of orthodox Stoics to Aristo, at least as reported by Seneca, precisely depend on denying a two-level track for sages and non-sages. One is conceptual and attempts to show that any argument that denies rules must assume the existence of a further rule (see *Ep. Mor.* 95.60–61.) This is a general feature of rational thought and language and one that obviously applies to sage and non-sage alike. Reasoning is structured by rules and that is that. It is conceptually inescapable. Second, orthodox Stoics claim that knowing the fundamental doctrines or principles of morality (*decreta*) is not enough to insure correct moral action; one also needs more determinate moral rules to pick out the morally salient situations to which they apply (cf. Seneca, *Ep. Mor.* 94.32). This applies to those who are wise and those who are not equally. Indeed, this is one of the sources of dispute with Aristo and arguably grounds the whole orthodox Stoic project of picking out *kathēkonta*. So again, I think, whether in its historical or timeless version, the Vander Waerdt/Inwood assumption of what amounts to an unbridgeable gulf between virtue and rules smacks more of Aristo than of orthodoxy.

Let me close with a few comments about the structure of the wise man's reasoning and its relation to both virtue and natural law. The kinds of connection between virtue and natural law that I suggested were first developed by Stoics can be seen in very general outlines in the texts from Chrysippus that I began with. But there is an important passage in Diogenes Laertius (D.L 7.125–126), which gives us a glimpse, though unfortunately only a glimpse, of some of the deeper connections Stoics saw between virtue and rational nature writ large. This passage shows one key way that nature provides us with external rational principles to structure

virtuous actions. Diogenes reports that as part of an argument defending the unity of the virtues, various Stoics claimed that the virtues have *koina theoremata*, or common principles. Chrysippus and Hecato did so in works on the virtues and Apollodorus made the same claim in his book on the natural philosophy of the early school. The fact that this doctrine about the *koina theoremata* of virtue shows up in works of natural philosophy as well as of ethics proper should not occasion surprise, given the general connections we have witnessed between internalist and externalist concerns. Presumably, the way one comes to know such *theoremata* is through reasoning, since as we find out in Diogenes' introduction to his summary of Stoic ethics, one comes to know all things through reasoning in ethics (*dia tes en logois theorias*, D.L.7. 83) including how laws have given order to various actions (*hopos dietaksan hoi nomoi epi tois ergois*).¹⁷ Diogenes relates a further important clue about the structure of virtue from Hecato's *Peri areton* (D.L.7. 90). Hecato argued that prudence and justice, for instance, are based on *theoremata* and that they both have a structure that consists of principles (*sustasin ek theorematon*). It seems plausible to claim, on the evidence so far, that the virtues have a rational structure of connected principles that can be grasped by reasoning. Such principles also give a rational way of classifying actions.

In turning to D.L.7.126, we find the intriguing report that the man who is virtuous is able to grasp these *theoremata* and also to act. Diogenes then proceeds to offer a taxonomy of more determinate types of actions connected to the *theoremata* of the four cardinal virtues. Each virtue, he reports, has its own determinate focus for the Stoics. Justice, for instance, has as its particular subject matter actions involving the just distribution of goods. Justice also has further determinate subcategories such as equality and fairness. When we turn to prudence, *phronesis*, we find that it too is comprised of a *sustasis theorematon* whose principles have as their special focus actions that should be done and those that should be avoided. Harking back to the exordium of Chrysippus' *Peri Nomou*, we can hardly fail to notice an overlap between the functions of *phronesis* and the injunctions of divine, rational law. This, perhaps, should come as little surprise, since I promised at the beginning that this would be a story of both virtue and law — though story is perhaps a little grand for what turns out to be only a glimpse of what the Stoics thought. But this glimpse is not entirely negligible. It suggests that the Stoics believe that internally, the virtues are structured by a set of determinate rational principles (*theoremata*) that

¹⁷ The text is problematic. I am trying to offer a bland and general translation. However strongly we take this passage, it is hard to deny, though, that there is a claim about the rational structure of laws and their connection to actions.

prescribe¹⁸ what we should do and avoid; at the same time, these principles and their prescriptions are also in accord with divine reason and its injunctions about what we should and should not do. Such principles are both internal features of virtue and thus of our rational dispositions, but they are also in accordance with divine reason. (cf. D.L.93, *kat' orthon logon*). Conceived of in this way, we may be in a better position to understand two puzzles about the Stoics: why it is they can insist that sages can think like gods and that we ordinary fools can sacrifice ourselves for our countries.

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¹⁸ Cf. D.L. 126. In introducing these issues, Diogenes is tantalizingly vague on just how we are to conceive this connection between theoretical principles and actions: *ton gar enareton theoretikon t'einai kai praktikon ton poieteon*. However, it becomes clear in the course of the passage that lower level principles have prescriptive force, e.g. *ta de poieta kai hairetea esti kai hupomeneta . . .*

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