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The Stoic Origin of Natural Rights¹

The idea that we, as individual human beings, have intrinsic natural rights is often taken to be a distinctive achievement of the late medieval or early modern periods, and hence unknown to antiquity. Whatever particular explanation scholars offer for its origin--e.g. the rise of late medieval nominalism with its emphasis on concrete individuals; nascent capitalism and its concern to protect the interests of propertied classes; Hobbes' eschewal of explanations in terms of a natural telos and his attempt to explain human action in terms of efficient causes and, consequently, to find a source of rights in the 'efficient motions' of desire; the attempts of the Levellers to secure religious freedom; etc.--the notion of intrinsic human rights is widely held to be as foreign to antiquity "as the internal combustion engine."² However, I want to suggest that for a variety of historical and philosophical reasons the Stoics offer the most appropriate starting point for considering the origins of natural rights theories.

Of course, I am not claiming that the notion that all human beings have intrinsic rights ever achieved in antiquity, or indeed in any ancient philosophical theory, anything like the easy and widespread currency that it has today. We have become accustomed to seeing how every sort of political and moral demand, both at the international and domestic level, can become couched in the language of human rights, and how respect for such demands has become a principal criterion for assessing the political and moral legitimacy of particular governments. By the same token, since Rawls' A Theory of Justice, a central preoccupation of much of the recent philosophical literature has been to clarify the view that the primary function of a just society is to provide a framework for respecting the rights of individual citizens. The basic justification of rights in terms of such values as autonomy and equality, the weight that rights claims have against considerations of utility or communal solidarity, the normative grounds for rights--all these have become the questions of the hour for political philosophers. Clearly, it is beyond dispute that, since the late medieval period, the concept of individual rights has taken on a central, and recently increasingly central, role in Western political and philosophical discourse in a way unparalleled in antiquity.

At the same time, however, it is equally clear that both defenders and critics of natural rights have often made assumptions about the history and origins of rights theories, assumptions that have influenced their theoretical accounts as well. To take but one prominent recent example, Alasdair MacIntyre has offered a wide-ranging critique of liberalism which he holds responsible for a variety of contemporary social and political ills.³ He argues, for instance, that liberal rights-based theories fail to capture the

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² See Tierney, B. "Origins of Natural Rights Language: Texts and Contexts, 1150-1250" History of Political Thought, vol. 10, no.4, 1989 p. 617.

³ MacIntyre, Alasdair. After Virtue (Notre Dame, 1984).

central place that civic virtue and community should have in our public and social lives. So too, he worries that rights are typically grounded in purely formal and abstract features of rationality that fail to account for the complexities of particular historical traditions and experiences. By way of contrast, he holds up as a healthy alternative ancient Greek conceptions of civic virtue and the Aristotelian notion that we have a natural telos that can be realized only in the context of particular modes of community--communities unencumbered by the shifting rights claims of individuals in conflict since, in his view, no conception of individual rights existed in antiquity to fragment social solidarity.

A crucial element in MacIntyre's overall argument is the historical claim that it is anachronistic to impute any conception of individual rights to ancient societies or thinkers. Although this claim is, I believe, untenable, it serves to provide a putative historical foundation for a series of problematic theoretical contrasts as well. On one side, MacIntyre places communal solidarity, civic virtues, and a belief in a natural human telos, on the other, rights-based theories characterized by an aggressive, self-serving individualism and a scepticism about natural human ends and communal bonds. Once we see that such an historical picture is unfounded, however, and that at least one group of thinkers in antiquity took a commitment to intrinsic natural rights to be compatible both with a belief in a natural human telos and with the proper recognition of communal solidarity, we may begin to question MacIntyre's basic theoretical contrasts as well. The original natural rights theory was not rooted in the kind of "muscular individualism"⁴ that worries contemporary critics of rights such as MacIntyre, since for the Stoics, rights do not license the ruthless pursuit of individual advantage. Rather, the Stoics offer an account in which natural rights are bounded by natural law and grounded in a particular conception of a natural human telos and a natural impulse to community and social solidarity. Or, at least, so I argue. Of course, it may ultimately prove to be the case that the Stoics' commitments to individual rights as well as to community and a natural telos merely jostle unconvincingly in their theory; however, it perhaps may be of some historical and philosophical interest to note that, at least at their conception, individual rights were thought to grow out of commitments to a natural human community and to natural human ends.

It might be helpful to begin with a few preliminary observations about the terminology of rights, since this has been an area of much confusion. It is sometimes argued that there is a deep division between ancient and modern languages when it comes to expressions for rights. MacIntyre, for instance, makes the following rather sweeping pronouncement in the course of claiming that modern locutions for individual rights are altogether alien to ancient languages: "It would of course be a little odd that there should be such rights attaching to human beings simply qua human beings in light of the fact, . . . that there is no expression in any ancient or medieval language correctly translated by our expression 'a right' until near the close of the middle ages: the concept lacks any means of expression in Hebrew, Greek, Latin, or Arabic, classical or medieval, before 1400, let alone in Old English, or in Japanese even as late as the mid-nineteenth century. From this it does not of course follow that there are no natural or human rights; it only follows that no one could have known that there were."⁵ MacIntyre then uses these linguistic and epistemological observations to support a further dictum that, as Fred Miller points out, has virtually become a truism among recent scholars of political history and theory: that the very notion of individual rights is so foreign to ancient societies that any interpretation that invokes or imputes talk about rights to an ancient thinker is necessarily anachronistic.⁶

Although there are several fairly obvious problems with the way that MacIntyre attempts to draw a sharp divide between ancient and modern conceptions on this question, his claim raises two important methodological difficulties that one must confront in attempting to understand rights terminology. The first is connected to the study of the language of rights itself. MacIntyre places great weight on the fact that in ancient Greek, for instance, there is no general, all-purpose term that straightforwardly corresponds to what he calls "our expression 'a right'." But it has been a long time since intellectual historians have merely assumed that "because they do not have a word for it, they do not have the conception." Clearly, this is a dangerous and unwarranted assumption. English does not have a straightforward one-word equivalent for the German 'Schadenfreude' but the conception is certainly operative among English speakers and can be readily captured in the English language. The fact that

⁴ See Waldron, J. (ed) Nonsense on Stilts (London, 1989) p. xvi.

⁵ MacIntyre (1984) p.69.

⁶ Miller, Fred Nature, Justice, and Rights in Aristotle's Politics (Oxford, 1995) p.89

ancient Greek has no one-word equivalent for 'a right' does not by itself show that the conception was not operative. But how does one go about deciding that a particular conception is actually operative? Rights theories are typically connected to conceptions of freedom, the dignity of persons, and individual moral autonomy--notions that seem to find correlates in various ancient political, philosophical, and religious texts. But merely pointing to such parallels does not solve the problem of the origins of natural rights. Though one might argue that such a notion is already implicit in these doctrines, I take it that our question is a different one: through what kinds of arguments and in what patterns of language did a conception of natural rights first find explicit theoretical expression?

A second difficulty arises because expressions persist in different intellectual and historical contexts and can be continually reinterpreted by different authors and audiences.⁷ Brian Tierney, for instance, has drawn attention to various historical reinterpretations of the expression '*ius naturale*'. If one juxtaposes, say, Hobbes' definition in *Leviathan* I.14 ("The RIGHT OF NATURE which writers commonly call *ius naturale*, is the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature . . .") against ancient and medieval uses which stress the moral rightness of the *ius naturale*, one can hardly fail to notice that the phrase has been reinterpreted to fit a new intellectual and historical context.⁸ Given the persistence from antiquity of key moral and political terms which became part of the medieval and early modern discourse of rights--words such as '*potestas*,' '*libertas*,' '*facultas*,' and '*ius*'⁹-- it is clear that in trying to determine the terminology of rights, we need to pay close attention to the contexts in which such expressions were used and care must be taken not to read later reinterpretations into earlier contexts or earlier uses forward into later ones. Of course, when faced with the fact that a later canonist such as Johannes Monachus could give over twenty definitions of *ius* alone in his *Glosa Aurea* (*ad Sext* 1.6.16, fol xliv),¹⁰ the certainty of isolating precise nuances in particular historical contexts might sometimes seem remote. But if we are at least to avoid the kind of grosser traps that MacIntyre falls into, it will be helpful to keep these methodological worries explicitly in the foreground.

MacIntyre, then, is wrong to assume that if an ancient language does not have an equivalent single term for 'a right,' it lacks the resources to give expression to such a conception. So in one sense his claim is too limited. At the same time, however, it is too generous, since pointing out linguistic parallels without paying proper attention to context is equally misleading. Modern Greek has adopted the term '*dikaïoma*' as an all-purpose term for 'a right.' Although this word makes an appearance in Stoic sources in some interestingly relevant contexts,¹¹ it seems clear that it does not do so in a way that corresponds to our generalized use of the expression 'a right.' But to make such a judgment, one cannot treat the word as sufficient to itself. One must situate it in its proper historical and intellectual context.

Apart from these two general methodological difficulties, however, a further problem arises from the fact that it is hardly clear what MacIntyre is appealing to when he invokes 'our expression 'a right.''' Our contemporary expression is used in different ways in different contexts and it is not always apparent how these different uses are to be disambiguated, or indeed, how they are even related. If we say, for example, that a woman has a right to an abortion, we might only mean that she has a right not to be impeded from getting an abortion if she can find a doctor willing to perform one. But we might or might not additionally mean that she has a right to an abortion on demand, regardless of the attitudes of the medical establishment, her ability to pay, etc. There are so many distinctions embedded in our own uses of the word 'right' that it is by no means clear that it can be used univocally to refer to some single intelligible concept or to some coherently unified set of concepts. Thus, on either side of the ancient/modern divide, the question of what words and what conceptions are doing exactly what work is not nearly so obvious as MacIntyre suggests. So it will perhaps be useful to begin with a brief survey of some of the relevant language and clusters of ideas associated with rights theories and point to some potential correspondences

⁷ Pocock, J.G.A., "The Concept of Language and the *metier d'historien*: Some Considerations on Practice"

in Pagden, A. (ed) *The Languages of Political Theory in Early-Modern Europe*

⁸ Tierney, B. (1989) pp.618-23.

⁹ See Verbeke, G. *The Presence of Stoicism in Medieval Thought* (Washington, D.C., 1983).

¹⁰ Tierney, B. (1989) p.619.

¹¹ *SVF* iii. 502=Stobaeus *Eclog.* ii.7 p.97,5 Wachsm.

in ancient texts.¹² This is by way of prelude to the more difficult task of showing that these words and ideas actually came to express for the Stoics a new theory of natural rights.

We can begin with the notion of a right as the exercise of a power or capacity which others are obliged to recognize. The owner of an automobile, for example, has the power to drive it when he wishes. This particular power or right has the backing of legal authority and as such is distinct from merely physical possession. A thief who steals a car may enjoy physical control of it, but has no right to it; and the theft violates a right and hence the law. This notion of a right as the legal power to possess or use a thing--the so-called ius utendi-- is given a crisp formulation by Ockham (Opus nonaginta dierum, chpt. ii, Kilcullen) as "a licit power (potestas) of using an external thing of which one ought not to be deprived against one's will, without one's fault and without reasonable cause, and if one has been deprived, one can call the depriver into court." Such a rightful power or capacity¹³ which each exercises over one's one (suum cuique) extends not just to material objects but to actions, offices, etc. In their capacities as motor vehicle officials, for instance, particular individuals have been given the power to issue driver's licenses and hence the right to change the legal status of others; and the proper exercise of their office, correspondingly, requires security from wrongful interference.

De Legibus iii.10 offers a fairly straightforward parallel for this notion of a right (ius) attaching to the authorized exercise of a power:

Cum populo patribusque agendi ius esto consuli, praetori,
magistro populi equitumque eique quem patres produnt
consulum rogandorum ergo; tribunisque, quos sibi plebs
creassit, ius esto cum patribus agendi;

And at de Legibus iii.27, the connexion between ius and potestas is expressed explicitly:

Deinceps igitur omnibus magistratibus auspicia et
iudicia dantur, iudicia, at esset populi potestas, ad quam
provocaretur, . . .

The concept of a right attaching to the exercise of a power or capacity can be expressed in Greek¹⁴ by dunamis or esti kurios as in the following passage from Plato's Critias (120d) which describes how the king should have no right--in his sense of a power right--over the life of any kinsman, save with the approval of more than half of the ten:

thanatou de ton basilea ton sungenon medenos einai kurion,
on an me ton deka tois huper misu dokei.

Both Greek and Latin, then, are able to express the concept of a right as an authorized dominion over some object, or as a legal power to effect change, or as the exercise of a capacity within a context of the obedience to law or of the recognition of reciprocal obligations.

At this point, however, it will be helpful to refer again to Hobbes' definition of the ius naturale, since he offers an account of rights which depends on individuals being free from contexts of reciprocal obligations. He associates rights with particular sorts of liberties and argues that one has the right or liberty of doing something if and only if one has no obligation not to do so. Thus, for example, if two people decide to play a game of chess, each has the liberty right to win, and neither is under any obligation not to win. Nor does either have a right that the other not win. This conception of liberty as our acting in any way we wish provided that it is not specifically prescribed or prohibited by law is then identified by Hobbes with the ius naturale. It is clear that such a conception of a right is at odds with one based on the authorized exercise of a legal power or capacity. But does this represent a radically new way of thinking and, as Habermas¹⁵ and others have argued, one that is so different from any ancient conception that it signals the first emergence of the theory of natural rights? Several clarifications would

¹² See now Miller, Fred (1995) pp.87-139 for a detailed account of the linguistic evidence on the Greek side.

¹³ Cf. Jean Gerson's definition of ius: "Ius est facultas seu potestas propinqua conveniens alicui secundam dictamen rectae rationis." (De vita spirituali animae, lectio 3).

¹⁴ For a detailed discussion of the Greek evidence see Miller (1995) pp. 97 ff.

¹⁵ Habermas, J. Theory and Practice (Boston, 1974) p. 83ff.

seem to be in order. First, it would be odd to maintain that in antiquity there was no conception of liberty in the required Hobbesian sense. Fred Miller, for instance, has drawn attention to a passage from Plato's Crito which illustrates the general notion of a liberty right.¹⁶

“we the Laws proclaim that any Athenian who has been enrolled as a citizen and has observed the actions of the polis and of us the laws, is at liberty (exeinai) to take his things and go away wherever he wishes. And none of us Laws hinders or forbids you from going wherever you wish, keeping your belongings, whether you wish to go to a colony if we the polis do not satisfy you, or go somewhere else as a metic. (51c8ff)

It might be objected that while this passage supports the notion of a liberty right generally, it does not do so in the required Hobbesian sense because Socrates' liberty to leave Athens devolves from the power of the laws themselves. But the notion of a liberty free from such a context is readily at hand. For instance, in the sixth Philippic, Cicero says that “aliae nationes servitutum pati possunt, populi Romani est propria libertas,” where he is using libertas collectively in the sense in which he defines it in the Paradoxa Stoicorum as the “potestas agendi ut velis.” Whereas other nations are able to endure the loss of their freedom, what marks the Roman people off from others is precisely this power to do as they wish; and they are under no obligation, presumably, to refrain from so acting. Certainly, no one in antiquity had any trouble understanding the conception of individuals or groups free to do as they wish, though whether this was a fully adequate conception of human libertas or eleutheria was just as contested as it was by Hobbes' critics. Hobbes' innovation consists in linking a particular account of liberty with the ius naturale and claiming that the sphere of rights covers an area of human autonomy where individuals can pursue their own advantage unobstructed by obligations. None of the specific components of his account are unavailable in antiquity, however, and one can come to Habermas' conclusion about the origins of natural rights only if one assumes that natural rights must be defined and grounded in a Hobbesian way. But as Hobbes' critics were to point out, his is not the only way to think about liberty nor is his, as we have seen, the only way to conceive of a right. We might, for instance, associate rights with the authorized exercise of a capacity or power grounded in nature. This would give an alternative conception of a natural right, indeed the conception of natural rights that I think the Stoics first formulated. If one assumes that Hobbes' is the only going account of a natural right, then one might be justified in claiming with Habermas that a theory of natural rights never made an appearance in antiquity. But it is unclear to me that there is sufficient justification for making such an assumption.

One final complication concerning liberty must be addressed before we can turn to the Stoics' account. For Hobbes, libertas is both a metaphysical and political notion. That is, it refers not only to freedom from obligation in the political sphere but also to our capacity for determining our action free from external constraints. Throughout antiquity, words such as eleutheria, exousia, and libertas figure prominently in the ideology of political thought and discourse. It seems unlikely, however, that in their original political contexts these words were imbued with any particular connotations associated with the metaphysics of action. But in looking at Stoic texts we have to be alert to the fact that their use of these terms may reflect other theoretical commitments, especially since the Stoics' use of this language occurs in a highly self-conscious linguistic and philosophical context in which they make strong claims about the essential connexions between their moral and metaphysical views. Thus, for instance, a standard Stoic definition of eleutheria is “exousia autopragias,” or the power of independent action, which figures as a central tenet of the Stoics' explanation of autonomous human action. When eleutheria or libertas occur in Stoic texts, it is important to be aware of these metaphysical nuances. At the same time, of course, it would be a mistake to view these terms as only picking out some purely metaphysical feature of our action, given that the Stoics think that all of our independent actions take place strictly in accord with moral principles that serve as the binding laws of the universal cosmopolis. In fact, it is not just the case that Stoic eleutheria continues to have political and legal nuances; it is that in a Stoic context, in direct contrast to Hobbes, one could not understand what it means to act autonomously apart from the structure

¹⁶ Milller, Fred (1995) p. 105.

of natural moral principles that both ground and explain all independent action. We will need to return to these issues in more depth shortly; but we are now in a position, I think, to entertain the claim that talking about natural rights in antiquity is not straightforwardly anachronistic. Both Greek and Latin display a cluster of expressions that capture key elements of at least two basic notions of rights,¹⁷ rights as powers and rights as liberties. Of course, the notion of rights as powers or as liberties alone does not get one a theory of natural rights. Aristotle, for instance, in the *Politics* arguably endorses, in addition to these, a variety of rights that play a significant role in his overall political theory.¹⁸ For Aristotle, though, any rights operating in a community are conferred on specific individuals in virtue of the fact, and solely in virtue of the fact, that they hold specific political or legal offices. One might be tempted to call such rights natural in some extended sense, since they are based on natural justice and for Aristotle, the *polis* is itself rooted in nature. However, none of these political or legal rights is inalienable or attaches naturally to individuals by the mere fact of their humanity.¹⁹ If, for instance, an individual of preeminent virtue were to appear in the city, all political rights and privileges would be off, since Aristotle thinks it would be best if the virtuous person rules. In contrast, the Stoics are the first thinkers in antiquity²⁰ to develop a view of rights that are natural in the stronger sense of being naturally attached to individuals by the mere fact that they are human beings and, as such, members of a natural human community.

In order to see how this came to be the case, it will be useful to look at a common objection made against natural rights theories. Bentham, for instance, argued that the notion of a natural right was itself a logical absurdity, nothing more than “nonsense upon stilts.” This is because he thought that (1) there could be no rights without laws, and since (2) there were no natural laws, it was absurd to conclude that there could be any natural rights. It is worth looking at these two premises in Bentham’s argument in more detail, since they help to clarify the key steps that the Stoics make in developing their own conception of natural rights. Bentham’s reason for thinking that there can be no rights without laws is that he thinks that an holder of a right is the intended beneficiary of a duty, a duty which the terminus, or the person who has the obligation corresponding to the right, is obliged to fulfill. Duties, however, must be derived from laws which have the power to make them binding. Hence, for Bentham, without laws there can be no duties, and without duties, no rights. Bentham’s second premise, that there are no natural laws, depends on his particular conception of law: a law is the expression of the will of a sovereign regarding the actions of those who are subject to the sovereign’s will. Laws depend, therefore, on the existence of the sovereign will of a legislator; but since, in Bentham’s view, there exists no legislator in a position to legislate natural laws, no such laws can exist. Hence his conclusion that the notion of a natural right is an absurdity.

Roughly speaking, if we deny Bentham’s second premise about the non-existence of a legislator of natural laws, while affirming a version of his account of the connections between laws and rights—rights being construed, that is, as powers in respect to which the law enjoins duties—we get what I take to be the general outline of the Stoic account of natural rights. We can begin filling in this outline with a passage from the exordium of Chrysippus’ *peri nomou* which illustrates the Stoics’ general view of natural law:

“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

¹⁷ Miller, Fred (1995) uses a Hofeldian analysis of legal rights in terms of claims, powers, liberties, and immunities to examine the Greek evidence. I have focussed on two classes of rights roughly corresponding to Hofeldian power and liberty rights; there are some important differences, however, between Hofeld’s liberty rights and Hobbes’ notion of a right, and between Hofeldian power rights and the Stoic notion of *potestas*.

¹⁸ See Miller, F. (1995).

¹⁹ Richard Kraut has pointed out to me an exception. At *Politics* 1324b39ff Aristotle says that we should never hunt humans for the purpose of sacrificing or eating them, but must only hunt edible animals. So, presumably, every human being, including natural slaves or those in pre-political communities have the right not to be sacrificed or hunted as food.

²⁰ Appeals to nature by the cynics and sophists may have influenced the Stoics. But what separates the Stoics from these precursors (and from *Politics* 1324b39ff) is their notion of a code of natural, moral laws from which natural rights can be derived..

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. 1=SVF 3.314, trans. Long and Sedley 67R [adapted])

At the same time, the cosmos itself is viewed by the Stoics as having a political structure which is administered by Zeus' divine reason and whose natural laws provide the basis for moral values and a life in accord with nature. This can be seen in some further remarks attributed to Chrysippus by Diogenes Laertius:

“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 wont to be forbidden by the 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 the concordance of each man's guardian spirit with the will of the administrator of the whole.” (D.L. 88, trans. Long and Sedley, 57A)

Though it has recently been denied, it seems fairly clear that the notion of natural law was developed in the Stoa very early on--these after all are passages from Chrysippus--and that these laws which express the sovereign will of Zeus are meant, among other things, to provide what might be called, with proper qualification, an externalist justification of moral behavior--though this too has been denied.²¹ Of course, for the Stoics, natural laws expressing the divine will are not just externalist justifications. The Stoics think that when we start to live in accordance with universal moral principles our minds and hence our internal virtuous dispositions actually come to reflect and take on the very structure of these principles. If by an externalist account of morality we mean that agents act simply to ensure that a set of authoritative principles are not disobeyed, then the Stoic account is importantly different. The wise man's reason and nature's reason become isomorphic and as a consequence, moral actions, for the Stoics, become an arena for self-expression. Indeed, since we are divine sparks of the universal reason, it would be misleading to think that any expression of divine law could be viewed as something purely external to us; by the same token, it would be equally misleading to think that the expressions of our virtuous dispositions are purely internal. We will need to look in more detail at what it means for a Stoic to act in accordance with a moral principle, since the interpretation of their views here are important for understanding their conception of rights; but, for the moment, it at least seems reasonable to conclude that the Stoics think that the world is governed by a divine moral legislator whose will is expressed in natural moral laws that pervasively structure our moral lives. They therefore would roundly deny the second of Bentham's premises.

But do the Stoics, as I have suggested, generally agree with Bentham in linking rights to law and then take the further step of deriving natural rights from our participation in what they take to be natural moral laws? An argument by Richard Sorabji will help to bring this particular problem into focus. Sorabji argues that the Stoics could not make such a move because, broadly speaking, theirs is an ethics of duty, not an ethics of right.²² Care is needed with this claim, of course, since the kind of rigid separation between rights and duties that his argument suggests can be difficult to support. Witness the case of Mill, for instance, who at least on some accounts is thought to directly identify rights with the duties they imply. In such a view, my right to be told the truth, for example, just consists in my friend's moral duty to answer me truthfully. Bentham and, most probably, Mill, however, also think that my friend's moral duty to tell the truth is owed to me because I am the one who will be harmed in the event that she lies to me--in Bentham's terminology, I am the intended beneficiary of the terminus' duty. It is really how one

²¹ Julia Annas in The Morality of Happiness (Oxford, 1994) argues that the Stoics are seeking a strictly internalist justification of their moral theory--i.e. internal to the demands of human happiness and not based on any externally derived cosmological or theological imperatives. I remain puzzled by this view in the light of passages such as these.

²² Richard Sorabji, Animal Minds and Human Morals (Ithaca, 1993) p.140.

conceives this latter feature of the relation between duties and rights, I think, that Sorabji is addressing and that leads him to claim that Stoicism is strictly an ethics of duty.

Sorabji is not denying, of course, that the Stoics think that we should help others or show them consideration. One cannot read very far in Stoic moral texts without coming across an exhortation to sit by the bedside of a sick friend or come to the aid of a troubled stranger. Nor are the reasons for these exhortations very far from hand. Each of our fellow divine rational sparks, the Stoics believe, is a res sacra, and as such, merits communal concern (commendatio). As fellow citizens in the universal cosmopolis, it is incumbent upon us to recognize our common humanity and help others when they are in need. Sorabji, therefore, in no way denies that as a stoic, I might think it my duty to help a friend. I might also think it my duty to help a friend just because she is a fellow human being and member of the universal cosmopolis. Indeed, she might actually benefit greatly from my help. But for Sorabji, all of this would be insufficient to indicate any recognition of a right, because he thinks that if I am a stoic helping a friend, I am not doing so because I view my friend as having any claim or right to be helped. Rather, my motivation is simply to fulfill a duty--my duty to help a friend..

Clearly, there are a number of controversial claims here. Sorabji's account of the relation between rights and duties depends on a particularly demanding view of what it means, in Bentham's terminology, to be the intended beneficiary of a duty, and hence a holder of a right. For Sorabji, I take it, unless in performing a duty one displays the proper moral attitude--i.e. one based on recognizing that the intended beneficiary of a duty has a right to be so treated--there is, in some sense, no intended beneficiary of that duty at all since one only acts intending to fulfill a duty. By the same token, there has been no direct intent to benefit nor has any right been respected unless, in the performance of a duty, one actually intends to respect a beneficiary's rights. It might be objected, of course, that nothing this strong is needed to account for the satisfaction of a rights claim or to explain the benefit received by the beneficiary of a duty--Bentham and Mill arguably have in mind a weaker relation between duties and rights. But if the Stoic account can also meet Sorabji's stronger demands about the proper recognition and respect of an intended beneficiary's need, then the case for their having a theory of rights will be that much more compelling. So we need to ask, in satisfying a duty does a Stoic adequately recognize the needs of the beneficiary of that duty? And does this recognition amount to the recognition of a right?

In giving negative answers to both of these questions, Sorabji relies on a fairly widespread view of what it means in Stoicism to act from moral principles. It has become something of a commonplace that the Stoics are faced with the following odd, or perhaps even cruelly ironic, result when they try to act on their principles. If I am a Stoic and think it my duty to help my friend and then try to fulfill my duty, it turns out, so the argument goes, that I am not really trying to help my friend at all--I am only trying to fulfill a duty. Worse still, I seem to be making an instrument of my friend for the purpose of my satisfying a moral principle. I would certainly be morally better off, one might well think, acting out of direct concern for my friends and not making such a fetish of my moral principles. Indeed, as is sometimes pointed out in this context, by continuing to act according to principle, I run the risk of becoming like one of those rigid, unattractive prigs whose moral failings are so carefully exposed in the course of some of the better English novels. In any case, it is the ancient Stoics' supposed failure to act out of an appropriately direct concern for others that is held to be morally objectionable.

Sorabji's agreement with this general story, I take it, leads him to deny that their "ethics of duty" allows for the proper recognition of the rights and needs of others. It is hardly clear, however, that the Stoics think that in performing a duty, one must suspend all concern for a recipient of that duty, though, of course, they think that one must suspend concern for those elements in an action not in one's control. In Epistulae Morales 94.50, for example, Seneca suggests that the source or object of a Stoic duty--in this case, the duty of giving moral guidance--is the need of another individual:

Deinde istud, quod dicis, iam perfecti viri est ac summam consecuti felicitatis humanae. Ad haec autem tarde pervenitur; interim etiam imperfecto sed proficienti demonstranda est in rebus agendis via. Hanc fortisan etiam sine admonitione dabit sibi ipsa sapientia, quae iam eo perduxit animum, ut moveri nequeat nisi in rectum. Inbecillioribus quidem ingeniis necessarium est aliquem praeire: hoc vitabis, hoc facies.

It is the benefit of the progressor²³ that is the object or end of this particular duty, and it is this benefit that the moral advisor intends his action to bring about.

It might still be objected, however, that even if there are passages in which Stoics write as if duties are intended to meet the needs of others, the proper recognition of those needs is nonetheless overridden by their commitment to act in accord with moral principles. Such an objection, however, arises out of an unnecessary confusion about what it is to act in conformity to a principle, and from treating the motives of an action and the objects or ends²⁴ of an action as interchangeable when explaining that action. To see why this is the case, it will be helpful to look at a passage from *de beneficiis* vi where Seneca is indulging in a long casuistic discussion about the way that one's motive for performing an action and the object or end of that action can be reciprocal or not.

Alteri illi, qui beneficium dat sua causa, respondebo: "Usus me quare potius te mihi profuisse dicas quam me tibi?" "Putas," inquit, "aliter fieri non posse me magistratum, quam si decem captos cives ex magno captivorum numero redemero; nihil debetis mihi, cum te servitute ac vinculis liberavero? Atqui mea id causa faciam." Adversus hoc respondeo: "Aliquid istic tua causa facis, aliquid mea. tua, quod redimis, mea, quod me redimis; tibi enim ad utilitatem tuam satis est quoslibet redemisse. (vi 13.3)

Seneca argues that even actions that appear to be undertaken from the most blatantly self-interested motives may have ends or objects that are not self-interested. This recognition that the end of an action and its motive may not be reciprocal is significant. As Barbara Herman has recently argued, "a given end of action--helping a friend--can be the object of a whole range of different motives: prudence, compassion, fear of rejection, and so on. Different motives will affect my conception of what I am doing, its value and the point it has for me. But a full account of what an agent is doing must include both motive and end."²⁵ She goes on to suggest the following useful analogy with nonmoral practical principles.²⁶ Suppose out of concern for my future health, I begin to take some exercise. In doing this, I both accept and act from a principle of prudence. That I act from a principle of prudence, however, does not mean that I in any way fail to be concerned with my future health, which is the end of my action. Prudence, in this case, is not the object or end of my action, my future health is. To be sure, my motive for being interested in my future health is a prudential one, and it both explains and furnishes a reason for that interest; but my prudential motive does not stand in place of my future health as the object or end of my action. In choosing the appropriate means to my future health, moreover, it is not prudence, but the requirements of health that I must attend to.

These observations help to clarify why in acting from moral rules, the Stoics are not indulging in a kind of rule fetishism in which the needs of others merely become opportunities for further rule satisfaction. A Stoic may be motivated to help someone by recognizing that such an action conforms to a duty enjoined by nature's law. But the object of that action is the benefit of the individual needing help. Stoic moral rules, leaving aside questions about their range or specificity,²⁷ indicate where our duties lie; they themselves, however, are not the objects or ends of our dutiful actions. Seneca is therefore justified in suggesting that when a wise man helps out a moral progressor with *praecepta*, he does so because the progressor has a need. The wise man helps, moreover, because he recognizes that need; he is not merely

²³ I take the dative at "interim etiam imperfecto sed proficienti demonstrand est in rebus agendis via" to be a dative of concern, thus translating "the path must be shown for the sake of, or for the benefit of, the one still imperfectus."

²⁴ It should be clear that in using the terminology here of the objects or ends of an action, I am not referring to the Stoics' distinction between the *skopos* and *telos*, which distinguishes the intentions and results of actions. The problem here is the different one of what the objects or ends of an action are when one is acting in conformity with a moral principle.

²⁵ Herman, Barbara. *The Practice of Moral Judgment* (Cambridge, 1994) p. 64. I am indebted to her discussion of the relation between ends and motives throughout this section of the paper.

²⁶ Herman, Barbara (1994) p.65 ff.

²⁷ See Inwood, this volume, for further discussion.

following a rule for its own sake. Thus, there is no justification for claiming that the Stoic account of acting in accordance with nature's commands precludes the proper recognition of others' needs. But does the Stoics' recognition of the needs of others amount to a recognition of their rights?

As we saw above, Diogenes Laertius reports that for Chrysippus, living in agreement with nature is in accordance both with universal nature and also, in particular, with human nature. This emphasis on our natures as being parts of a whole, however, might seem to undercut respect for the kind of separateness and integrity of individuals typically associated with rights theories. Indeed, to many, including most recently John Cooper,²⁸ this feature of Stoicism precludes out of hand their recognition of the rights of individuals. If, as the Stoics believe, I am part of a whole and my needs and interests are to be measured with reference to the demands of the whole, it is difficult to see how any special respect or protection can be accorded to my own individual needs and interests. We need to remember as well that in a Stoic context, as Cooper quite rightly emphasizes, if I am afflicted with a terminal illness, I am not supposed merely to resign myself to my sickness and view it as a local loss for me which somehow benefits the world order writ large. That is, I am not to view it just from the larger perspective of what is best for the rational order of the cosmos; I should view it as what is actually best for me as well, as a part of that divine cosmic order. Cooper's argument should alert us to the way that we need to be aware of a wider theological and metaphysical context when examining notions in Stoicism such as rights, and how with respect to this particular issue we need to be aware of, say, their conception of the relation between local and global teleology or their metaphysical account of persons. But his blanket rejection of rights on the basis of their theology and their account of the moral personality is too quick. We can begin to see this by looking at an important passage from Epictetus which provides an initial qualification. According to Epictetus, Chrysippus claimed:

“As long as the future is uncertain to me I always hold to those things which are better adapted to obtaining the things in accordance with nature; for god himself has made me disposed to select these. But if I actually knew that I was fated now to be ill, I would even have an impulse to be ill. For my foot too, if it had intelligence, would have an impulse to get muddy.” (*Diss.* 2.6.9=
SVF 3.191, trans. Long and Sedley)

Chrysippus claims that he normally is disposed to select a preferred indifferent such as health; but if he knew he was fated to be ill, he would form a corresponding impulse to select sickness. This is in accord with Cooper's view that there may be times when Stoics should actually welcome things they do not typically take to be in their interest, and they should treat them as being the best and most rational thing for the world animal and for themselves. Does this suggest, however, that they think there may be occasions when the demands of the whole override a person's individual interest, say, in being healthy? Before answering this question, it is important not to forget that there is a particular epistemological claim at play in this passage. Since we, like Chrysippus, do not know what Zeus knows, we presumably must strive for things that are typically better in accord with our natures, things such as good health, wealth, life, etc. So at least in our ordinary attitudes, we would have no principled way of subsuming our health, or the health of others--or indeed any other particular local advantages--to the demands of the whole in a manner that would undermine individual interests or rights. From this, we might therefore conclude that Stoic theology poses no particular threat to individual rights, because we must typically act in terms of an ordinary understanding of the rational order--an order we are normally disposed to follow in a way that does not threaten the interests of individuals. Chrysippus, for example, is presumably never in a position to justify having any impulses to be sick; he must pursue health in accord with an ordinary understanding of where his interests lie. We might be tempted to conclude, therefore, that our interests as parts are protected by our ignorance of any special demands from the whole to override them.

I would not want to push this argument about the epistemology of the passage too far, however, for two reasons. First, for the Stoics, the ordinary understandings of the non-wise are in no way normative. Hence, Chrysippus' counterfactual supposition leaves open the possibility that if we had the knowledge of

²⁸ Cooper, John. “Eudaimonism, the Appeal to Nature, and ‘Moral Duty’ in Stoicism” in Engstrom.S. and Whiting, J. (edd.) *Happiness and Duty* (Oxford, forthcoming)

a wise man, we might see that there are good reasons to override individual interests on particular occasions. And these would be the only sort of reasons that carry any weight for the Stoics. Moreover, even if our grasp of what the rational order holds in store for us in the future is uncertain, this does mean that the same holds true for our grasp of the past. If I am tortured to death, my Stoic friends would have to conclude that this was not only the best and most rational thing for the world animal viewed as a whole, it was the best thing that could have happened to me--which should be an unsettling result for anyone hoping to find in this part of the Stoic account an adequate respect for rights. Thus, any defense of rights attached to such things as health, life, or wealth²⁹; is similarly liable to come to naught because of the Stoics' wider theological commitment to explaining all events in light of the rational will of Zeus.

If my local advantages and needs are to be measured solely with respect to the order of the whole, one plausible conclusion might be that I therefore have no individual right to anything. Thus, we might reasonably wonder whether the Stoics' talk about the respect owed to others because of their sacredness and dignity as fellow individuals ultimately turns out to be rather hollow. Or, at least, we might conclude that it is made hollow by their theological commitment to the rationality of the demands of the whole. What role can the rights and dignity of an individual hope to play for those cheerfully prepared to assert, 'Yes he was a sacred thing and his interests were in common with mine because he was a fellow rational being (cf. *de offic.* iii.26); but the fact that he died of torture was the best thing that could have happened to him (and to me).'?

Although such an assertion might seem *prima facie* odd for a defender of rights, it looks considerably less odd, however, if we remember the Stoics' particular account of the moral personality and their conception of value. Given that we might expect rights to be primarily attached to things that people find valuable--their lives, their property, their ability to make independent choices, etc.--,we should not find it surprising if the Stoics' account of value and rights are linked. The Stoics, of course, have a highly controversial theory of what is valuable. Things such as life, health, and wealth, for instance, are for them ultimately matters of indifference. Witness the following passage from Epictetus:

“You ought to treat your whole body like a poor loaded-down donkey; if it be commandeered and a soldier lay hold of it, let it go, do not resist or grumble. If you do, you will get a beating and lose your little donkey just the same. But when this is the way in which you should act as regards the body, consider what is left for you to do about all the other things that are provided for the sake of the body. Since the body is a little donkey, the other things become bridles for a little donkey, little pack-saddles, little shoes, and barley. Let them go too, get rid of them more quickly and cheerfully than of the little donkey itself. (*Diss.* iv.1.79)

When later theorists such as Locke or Hegel attach rights to property, it is because they think that physical possession and the interaction between self and object in a material way gives expression to a valuable part of the individual personality. For the Stoics, on the other hand, an individual's personality is not tied in any fundamental way to an external thing such as property or, as this passage from Epictetus drives home, even to one's own life or body. One's own body, for the Stoics, is something external because it is vulnerable to fortune and not in one's power; it is nothing more than a beast of burden that has been loaded down with things we should cheerfully be rid of. What is in one's power, however, is one's own moral personality, which consists essentially in one's *eleutheria* and is grounded in one's power of giving or withholding assent (*sunkatathesis*). This alone is what is essential to us as persons and what alone has any true value. We may disagree with the Stoics here and wonder whether there is something deeply misguided about a moral theory that makes questions of human life and death a matter of moral

²⁹ A problem of this sort lurks for Long's attempt to argue that the Stoics believe in rights to private property. It is hard to see what a property right can mean in a theory that is committed to saying "You have a right to your land. Of course, now that your neighbors have taken it by force and redistributed it among themselves, that is the best thing that could have happened both for you and the world animal." See Long, A.A. "Stoic Philosophers on Persons, property-ownership and community", in (ed.) Anagnostopoulos, Georgios *Ancient Philosophers on Justice, Rights, and Property* (forthcoming)

indifference. But we should not thereby expect the Stoics to attach any rights to what they consider matters of indifference; nor should we conclude, I think, that they do not attach rights to what, in their view, are the essentially valuable features of individual human beings.

To see this, we can now return to Cooper's claim about the threat that their theological views pose to individual rights. When we properly understand what it means to be an individual part of the divine order, it is no longer clear that there could be any moral interest of the whole that could threaten the separateness or moral integrity of a part. As we have seen, Chrysippus says that he would have an impulse to be sick if he knew that it were in accord with the demands of the rational order of the universe. Notice, however, that his claim is limited to health which is one of the indifferents. For Cooper's argument to go through, however, we would need a passage showing that there might be demands of the rational order that would threaten what the Stoics take to be essentially valuable feature of an individual. That is, we would need to find a passage claiming that we as individual parts of the whole might be required by Zeus' providential moral law to assent to something immoral for the sake of larger cosmic goals, or to assent to some other harm to our moral personality, our eleutheria, or our power of assent itself. But whenever Stoics talk about the way that cosmic demands subsume local ones, their examples are limited to indifferents.³⁰ This is not surprising, since it may not always be in the larger interests of the cosmos that an individual acquire or retain a particular indifferent, though it is always in the interest of the whole for its individual parts to give proper expression to reason. If it is in accord with the rational order of nature that we be sick, or impoverished, or tortured, such a demand would present, for the Stoic, no threat to our integrity or separateness as individual parts, since such indifferents are not connected in the right way to what we essentially are. What we are essentially is our moral personality; and its essential features--our eleutheria and mental faculty of assent (assensio)--are always under our control and not subject therefore to any overriding demands. Indeed, it is not clear how what we essentially are as individual parts of the divine order--moral personalities with the power of independent action and assent--could be at odds with some overall moral interest of the whole. Thus, Cooper's argument, I think, fails to show that Stoic theology poses any threat to a theory of rights rooted in the moral autonomy of individuals, though it does show why their conception of cosmic demands would override individual interests or rights attached to indifferents. However, once we properly understand what it means in Stoicism to be a moral individual, and how a moral individual is a part of a moral whole, we no longer have any reason for thinking that their theology precludes out of hand a commitment to individual rights, if those rights are linked in the right way to our moral personalities.

I have argued that there were no impediments in the Stoics' account of principled action or in their theological account of the separateness or autonomy of individuals to undermine a theory of rights. I have also argued that they have the requisite moral vocabulary and concepts centering on such notions as eleutheria, libertas, and potestas to give expression to the idea that our moral personalities are a locus for rights, and that they hold a conception of the relation between law and duties that can sustain a theory of rights. So too, they hold several key doctrines of later natural rights theorists such as the natural equality and worth of all human beings regardless of social position or gender (cf. SVF 3.254), and the fundamental worth of our moral personalities as expressed in our power of autonomous choice. It remains to look at a final Stoic argument, however, which takes all of these potential components of a natural law theory and unifies them into an explicit, theoretical expression. The guiding idea behind Stoic natural

³⁰ There may be one possible exception to this, though it is unclear how seriously we should take it. There was apparently some disagreement in the early Stoa over the question of whether virtue could be lost because of drunkenness or melancholy (D.L. 7.127-8). Chrysippus argued that a wise man could lose his virtue through drunkenness or melancholy, while Cleanthes argued that the virtue of the wise could not be lost because of the sureness of their katalepsis. Chrysippus' view seems to open up the possibility that if a wise man knew it were in the rational order of things for him to lose his virtue through drunkenness, he should form an impulse to do so. This might be an example, then, of an individual assenting to a personal moral harm for the sake of some more global demand. The ancient reports make it hard to know whether Chrysippus' or Cleanthes' view on this issue won out, however; nor do they make clear what the early Stoics thought was at stake in this argument. The sources which offer the fullest evidence for rights--Cicero, Seneca, Epictetus--register no awareness of this dispute and never suggest that the integrity of our moral personalities might be threatened by any demands of the rational cosmos.

rights, like that of the Enlightenment rights theorists who were reading them, relies on a straightforward analogy between conventional rights and natural rights. Just as there are conventional laws which generate conventional rights, so there are natural laws that generate natural rights. It is further assumed in this argument that all rights are the products of some system of laws. However, since some laws are by convention, they can only generate conventional rights; natural laws on the other hand generate rights which are natural. Other elements in the theory rely on a series of similar analogies between conventional and natural systems of rules. So, for instance, just as some rules apply to groupings or associations that are conventional, so there are rules that govern natural groups. Correspondingly, just as conventional laws enjoin duties and authorize particular offices and powers, so do laws that are natural; and the duties and particular powers authorized by nature's laws are themselves natural and apply without distinction to natural groups.

It is difficult to know exactly when this particular set of inferences began making its appearance among Stoics. Malcolm Schofield has recently charted the movement from Zeno's utopian Republic, which seems to include only the wise, to the more cosmopolitan vision of Chrysippus--certainly a necessary step for a notion of natural rights attaching to all in virtue of their common reason and humanity.³¹ By the time we get to such later Stoics as Epictetus and Seneca these analogies are already well established, though rarely defended; and if we are unsure what role, if any, such analogies played in Chrysippus' On Law or Republic, there is no shortage of them in Cicero's own stoicizing accounts of the nature of laws and the republic. Indeed, since perhaps the most thoroughgoing, and certainly the most influential, use of these analogies is found in Cicero, I will mainly describe these. Much of his account, however, can probably be traced back to early Stoics (though, cf. note 30); but since the primary task of this paper is to argue that the origins of natural rights are to be found in the Stoa, I will pass over these difficult doxographical questions for now.

For the Stoics, one is not a human being unless one is part of a community (cf. Diss. ii.5.26; i.28.19). Moreover, in virtue of our status as human beings we are all members of a natural community; and our claim to be treated as members of this community is based on our common attribute of rationality. Thus, in de legibus i, for instance, Cicero begins by setting out the grounds for natural law in a straightforwardly stoicizing account that essentially paraphrases the passage we saw from Chrysippus' peri nomou: *lex est ratio summa, insita in natura, quae iubet ea quae facienda sunt prohibetque contraria*. He then draws together the connections between reason, law, and community by arguing that all those who have reason in common must have right reason in common which is to be identified with natural law. He then concludes that all those who have natural law in common belong to the same natural community, the community of reason (I.23). After establishing the basis of natural law and the natural community, Cicero begins setting out the rules and governing conditions of various powers, duties, religious offices, magistracies, etc. The conferral of these powers and duties, moreover, is continually expressed in a way that extends the language of conventional rights and privileges to a natural community bound by a common law and a shared rationality. As we have seen, Cicero makes use of the language of rights (potestas, ius) in describing the exercise of these powers (de leg. iii.10; iii.27)³² and he derives the duties attendant upon them from laws that he deems to be natural. His notion of a right, therefore, is sustained by linking it to the due processes of law, the autonomous participation in a system of political offices, and the proper fulfillment of duties. He then makes straightforward inferences from the existence of such conventional rights, to the existence of natural rights--rights which attach to individuals in virtue of their citizenship in the natural community of reason.

Many contemporary catalogues of human rights include an array of economic, social, and cultural rights covering such things as health care, employment, property, and education. We have seen how the Stoic conception of value would certainly exclude such concerns.³³ But for all that, the Stoics give theoretical expression to the notion of natural human rights. To the extent that they focus on autonomy and ground rights in a system of legal procedures, they diverge from theories of human rights that aim at particular outcomes or at individual welfare, at least if we take our welfare to extend beyond the exercise

³¹ Schofield, M. The Stoic Idea of the City (Cambridge, 1991).

³² See above, p.000.

³³ Although given the Stoics' concern with the development of the moral personality, it is possible to see how their account of rights might come to be extended to cover something like education.

of our moral personality. The Stoics do not think, for example, that I have a right not to be tortured. But I am free to exercise my rational autonomy and show indifference to my circumstances. And I have a right to take the proper moral attitude to my torture and my torturers. It is my due as a divine, rational spark and as a citizen in the universal cosmopolis. This is perhaps an odd result for a theory of natural rights, but one which in some sense is faced in one form or another by all theories of rights based on the Stoic recognition of the importance of autonomy and choice.

In carrying out their duties, duties derived from their status as citizens participating in natural law, Stoics act in a way that accords respect for the moral autonomy, equality, and rationality of their fellow citizens. Moreover, they fulfill their offices, offices which they both have a duty and right to fulfill in accordance with Zeus' rational will. Citizens of the cosmopolis do not have a right to universal health care nor do they have a right to smoke; but apart from that, they live in a moral climate conducive to the recognition of their fellow citizens' needs and rights, rights that the Stoics think that we all share in virtue of the fact that we are human.