

examination of the place in ethical theory and practice of *praecepta* (or moral instructions) and *decreta* (or moral principles), as being about 'rules'; Kidd also established that the relevant context for this discussion was the more general Stoic theory of values and kinds of action. The tradition of interpreting *praecepta* and/or *decreta* as rules has been very hardy, despite the difficulties occasioned by the Stoics' acknowledgement of variability and flexibility in moral action, features which make 'rule' (with its connotations of fixity) subtly inappropriate. The further move, initiated by Striker in 1987, of associating such rules with natural law only exacerbates the problem.

Phillip Mitsis addresses the tension between the fixity suggested by 'rules' and the subtlety of Stoic moral practice in his 'Seneca on Reason, Rules and Moral Development',<sup>35</sup> arguing that *praecepta* and *decreta* should be understood as 'rules', that 'moral judgement and development are structured at every level by rules; and [that] these rules are grasped by reason alone' (291). He then acknowledges the force of several critiques of rule-based ethics (291–3, 295–7) and sets out to show how Seneca's theory of moral decision-making has the resources to survive many such objections. His analysis of letters 94 and 95 is in most respects convincing; but in the end it is not clear that he has justified the traditional identification of *praecepta* and/or *decreta* with rules, in the sense of moral injunctions which are at the same time substantive and exceptionless.<sup>36</sup>

It is important to get straight about this issue, since the 'rules' putatively identified with natural law are of considerable importance in Stoic moral reasoning. If they are exceptionless principles enjoining definite act types, then the use of these rules (whether called *decreta* or *praecepta*) in moral reasoning will be subject to the sorts of criticism levelled at any deductive model of ethical reasoning.<sup>37</sup> What is needed at this point is a

<sup>35</sup> The account in 'Natural Law and Natural Right', 4844–50 is similar.

<sup>36</sup> In 'Natural Law and Natural Right' he attempts to give examples of such injunctions under the guise of *aei kathēkonta*. See esp. 4837–8. But the only substantive obligation of the type which he can cite is in fact based on no direct textual evidence. See above, n. 28.

<sup>37</sup> On the general issue, see the discussion in Mitsis, 'Seneca on Reason, Rules and Moral Development'.

way forward which avoids merely terminological solutions and can give an adequate account of the following: the pervasive generality of moral injunctions; the utility of moral injunctions in guiding choice in concrete situations; the susceptibility of substantive injunctions to exceptions; and the apparent authority of the wise man to decide on permissible exceptions. If we can preserve a connection between such injunctions and a notion of 'law', then that will be a bonus; and it will be a further advantage if the Stoic theory of recommendations and precepts can be cast as dealing with 'rules'.

One account which seems particularly promising in this regard is that given recently by Frederick Schauer in *Playing by the Rules*,<sup>38</sup> following in part the work of Rawls in 1955.<sup>39</sup> One of Schauer's main concerns—and one which goes to the heart of our concern with pragmatic exceptions to rules—is with the obvious fact that rules when applied to situations can conflict with the background justification which grounds the rule. When such a conflict does occur, rule-following reasoners can react in different ways: they can reassess the situation and decide in view of the values and assessments which underlie the background justification, in which case the rule is a dispensable rule of thumb; they can find reasons to relocate the case in hand *outside* the scope of the rule to which it *prima facie* applies; or they can decide in accordance with the rule (perhaps in a modified form). This last reaction is hard-core rule following, and is characteristic of situations and institutions in which the rule is (in Schauer's terms) 'entrenched', that is, followed even when it conflicts with the substantive justification for the rule's existence.

The relevance of Schauer's work on rules to the Stoic problem is this: he shows how something can be a rule and still be completely defeasible by situational moral reasoning—it is then

<sup>38</sup> F. Schauer, *Playing by the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and in Life* (Oxford, 1991).

<sup>39</sup> J. Rawls, 'Two Concepts of Rules', *Philosophical Review*, 64 (1955), 3–32. There is also an interesting discussion of the flexibility and rigidity of legal and moral obligation in John Finnis, *Natural Law and Natural Rights* (Oxford, 1980), ch. 11, esp. 11.3.