

## Article

# The End of a Line: Care of the Self in Modern Political Thought

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**Abstract:** This article examines the reasons why Foucault thought that morality based on the care of the self died out in the modern age. I pay special attention to his contention that modern political thought was a key player in bringing about this demise. The essay consists of two parts. In Part One, I overview Foucault's conception of the care of the self and situate it within his later work on ancient philosophy and culture. In Part Two, I turn to his remarks on the incompatibility between the ancient tradition of the care of the self and an ascendant modern political philosophy based on the notions of rights and the juridical subject. To conclude, I suggest that while Foucault may have overstated this compatibility he opened the door to consider how the care of the self could be taken up in the context of modern and contemporary political theory.

**Keywords:** Foucault; care of the self; political theory; rights; human rights

Many of the genealogical analyses undertaken by Michel Foucault deal with phenomena that continue to be part of our contemporary world. One of the reasons why people still love to read him is that he had an uncanny power of vision. Foucault was able to see, like no one else, the main features of our world—and of ourselves—and the (often surprising and inglorious) places where those features came from.<sup>1</sup> He showed us how medicine and popular culture alike continue to work with, and also to resist, a notion of “mental illness” inherited from the nineteenth century. He demonstrated with unsentimental clarity how so many techniques of surveillance and control that make up our own experience of school and the workplace have their origins in penal reforms of two centuries ago. And perhaps most famously he revealed how our obsession with sex and sexuality—along with the belief that through it we can properly access and inhabit the self—dates from developments in science and government in the Victorian Age.

But what about the genealogies that didn't make it, as it were? Not all of the phenomena that Foucault subjected to genealogical analysis have endured to the present day. Some were taken over by rival forces and transformed beyond recognition. Others died out entirely. A prominent case is the moral, philosophical, and religious tradition Foucault explored in his later career under the name of “the care of the self.” Here was a dispensation of culture that dominated Western civilization for more than a thousand years, from ancient Greece, to Rome, all the way to early Christianity. Yet Foucault is clear: at some point during the modern period an ethic of caring of oneself ceased to be regarded as a viable conception of morality and subjectivity. A tradition that had organized the moral and spiritual imagination of a thousand years vanished from the mainstream.

It would take a book-length study to describe why this happens according to Foucault. Three key developments would need to be emphasized, each of which comes from a different field. Theology

<sup>1</sup> This is the quality of Foucault's that Gilles Deleuze most admired: he was, above all, a great seer (“*un voyant*”) ([1], p. 43; [2], pp. 237–38); On Foucault's method of genealogy see [3].

in the late Middle Ages started to regard attention and care for oneself as spiritually unsavory and potentially impious ([4]; [5], pp. 205–28). Philosophy from the time of Descartes on dispensed with the notion that working upon the self was a necessary precondition to receiving truth ([5], pp. 1–42). Last but not least, early modern political thought began to conceive of government—both the government of the self and of other people—according to a model of law and prescription hostile to voluntary personal practices of care and self-cultivation.

In this article I examine the third of these developments: the perceived incompatibility between modern political thought and a tradition of morality centered on caring for oneself. By singling it out I do not mean to suggest that it was the most significant reason for the demise of the care of the self. Foucault never says so, and to argue as if he did would be to flatten his account of how convergences in multiple fields work to displace the care of the self. That said, in this article I focus on it exclusively: it may not be the whole picture, yet it is a crucial part of it. And this focus, I believe, should interest three audiences. First, while Foucauldians have been adept at tracing how care of the self is contested by modern philosophy and theology, little attention has been paid to the role played by political thought, even though Foucault refers to it often [6,7]. Second, in recent years legal theorists have made much of the fact that in later writings and interviews Foucault appeals to the language of rights and human rights in relation to several political causes (See especially [8]). Given that these appeals were made at the same time as he was engaged in work on care of the self, it is important to see how Foucault envisaged the relationship (or more precisely, the non-relationship) between them. Third, and relatedly, a main branch of contemporary political theory concerns the role of ethics and ethos to maintain a flourishing democratic politics (See [9,10]). Seeing that much of this literature bases itself on Foucault's later work, it is clarifying to examine how he himself conceives of the relationship between care of the self on the one hand, and political thought and activism on the other hand.<sup>2</sup>

This article has two parts. In the first part, I present Foucault's conception of the care of the self, as well as his motivations for undertaking a study of it that occupied him for many years. In the second part, I explore Foucault's view that the ascendancy of a modern political thought based on law, rights, and the juridical subject works to marginalize and eventually to drive out the care of the self in both politics and morality. My goal in this article is thus to provide a glimpse into a kind of genealogy that Foucault is less well known for: not a diagnostic of who we are and where we have come from, but a story about a line that he thought has ended by means of ideas and institutions that have made us who we are today.

## 1. Part I

### 1.1. Morality: Code, Conduct, and Ethics

"Care of the self" (*"le souci de soi-même,"* in French) is the defining concept of Foucault's later period (1981–1984). It is the cornerstone of the work he produced in the last four years of his life, which includes two books, the delivery of five lecture series (posthumously published), and roughly a dozen essays and interviews.<sup>3</sup> One way to introduce it is to say that, for Foucault, care of the self is a morality; that is to say, it is a particular kind of morality that emerges at a specific time and place. That time and place is Western antiquity: ancient Greece, Rome, and early Christianity. But given that Foucault has a rather idiosyncratic understanding of what morality is and does, this is not a

<sup>2</sup> [11–13]. See also [14]. Other applications of Foucault's conception of ethics to political problems (broadly understood) include [15–17].

<sup>3</sup> *The Use of Pleasure* [18] and *The Care of the Self* [19] were simultaneously published in 1984. Foucault delivered lectures on ancient philosophy at the Catholic University of Louvain in 1981 (*Wrong-Doing, Truth-Telling* [20]) and Berkeley in 1983 (titled *Fearless Speech* by the publisher), in addition to his annual lectures at the Collège de France, *The Hermeneutics of the Subject* (1981–1982) [5], *The Government of Self and Others* (1982–1983) [21], and *The Courage of Truth* (1983–1984) [22]. Among the essays and interviews from this period on the care of the self, the most significant are "On the Genealogy of Ethics" [4] and "What is Enlightenment?" [23]. For an overview see [6,7,24–26].

particularly helpful starting point. We should begin, instead, by taking a step back and looking at his conception of morality in general.

He provides a handy overview in the Introduction to *The Use of Pleasure: the History of Sexuality, Volume Two* (1984). This piece is a gateway to Foucault's later period and serves as an introduction to this book and to its companion volume, *The Care of the Self: the History of Sexuality, Volume Three* (1984).<sup>4</sup> In it he states his reasons for undertaking a two-volume study of ancient Greco-Roman culture, and in particular, a study of its sexual practices. In brief, the classical world emphasizes a valuable dimension of morality that today has faded from sight (which he calls "ethics"). To reach this claim, however, he begins by setting out a broad schema of what he takes morality to be in and of itself and, from there, marks out the place and importance that care of the self-occupies within it.

Let us start as Foucault does: with the big picture. Morality, he says, has three components. He calls them "moral code," "moral conduct," and "ethics." Each particular historical morality has its own distinct codes, conduct, and ethics. Nevertheless, Foucault insists that morality, any morality, is always an amalgam of these three features.

"Moral code" and "moral conduct" work as a pair and are straightforward to understand. By "moral code" Foucault means, "a set of values and rules of action that are recommended to individuals through the intermediary of various prescriptive agencies." ([18], p. 25). "Moral conduct" refers to the actual behavior of individuals and considers whether or not it conforms to the code ([18], p. 25). A moral code, then, consists of the prescribed rules and principles of a morality, and moral conduct denotes whether or not the code is followed in practice.

What about Foucault's third component of morality, "ethics"? This is the one he is keen to discuss. Distinct from codes and conduct, ethics refers to the relationship that the self establishes with itself in relation to the precepts that make up the code.

[Ethics is a process] in which the individual delimits that part of himself that will form the object of his moral practice, defines his position relative to the precept he will follow, and decides on a certain mode of being that will serve as his moral goal. And this requires him to act upon himself, to undertake to know himself, to monitor, test, improve, and transform himself ([18], p. 25, translation modified).

It is clear that when Foucault uses the term "ethics" he does not mean something interchangeable with "morality," as we often do in ordinary language. Neither does he refer to what that word designates in Anglo-American philosophy, namely the metaphysical and epistemological examination of ethical concepts (metaethics) or the investigation of the criteria for evaluating actions (normative ethics). For Foucault, rather, "ethics" designates the relation the self establishes with itself through a moral code, and, more specifically, the work the individual undertakes on him- or herself in order to become a subject of that code.

An example helps. Take the precept that enjoins sexual fidelity between marital partners ([18], pp. 26–27). One way to look at it is in terms of code and conduct. We could trace it back to a particular prescription (say, by a moral or religious authority). We could also look at the degree to which marital fidelity is honored in a given society. Yet to consider this precept only from the perspective of code and conduct misses something essential about how morality functions, namely how individuals take up the code to constitute themselves as moral subjects in the first place. A person might, for example, use the prescription to identify that part of himself that needs attention and work, in this case to get one's desire or attention under control. An individual could also take up the precept to identify the kind of person he wishes to become, for example a dependable and serious partner. (Contrariwise, it is perfectly possible to stake an ethics by breaking moral rules. Think, to continue the example, of a person who refuses to be bound by what he sees as the puritanical rules of his milieu.)

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<sup>4</sup> This Introduction was first published independently as "Usage des plaisirs et techniques de soi" [27] in *Le Débat* in 1983. Reprinted in *Dits et écrits II*.

In sum, for Foucault morality is more than a set of rules or exhortations for individuals to follow. Moreover, and this is crucial, morality does not work simply to regulate relations between people. A core aspect of morality is also to establish the relation we have to ourselves, what Foucault calls “*le rapport à soi*,” or more specifically, “the kind of relationship you ought to have with yourself.”<sup>5</sup> “Ethics” is the name he gives to this process of self-constitution.

### 1.2. Care of the Self

Where does “care of the self” fit in this trio of code, conduct, and ethics? To use Foucault’s language, it belongs to a historical period in Western culture that gave strong priority to ethics. He coins the phrase “care of the self” to demarcate a long tradition in the history of morality that begins in ancient Greece, migrates to Rome and flourishes, and persists into early Christianity and beyond. What makes this period special for Foucault is that it is centered on the exhortation for individuals to be concerned with themselves, to attend to themselves, and to work upon themselves.

To present care of the self it is helpful to start with the original French phrase it translates: *le souci de soi-même*. Notably, Foucault’s final book is titled *Le souci de soi* (1984), but the phrase makes its appearance in his work a few years earlier, in his 1981–1982 lectures at the Collège de France.

To start with I would like to take up a notion about which I think I said a few words last year.<sup>6</sup> This is the notion of “care of oneself” [*souci de soi-même*]. With this term I’ve tried my best to translate a very complex, rich, and frequently employed Greek notion which had a long life throughout Greek culture: the notion of *epimeleia heautou*, translated into Latin with, of course, all the flattening of meaning which has so often been denounced or, at any rate, pointed out, as *cura sui*. *Epimeleia heautou* is care of oneself [*souci de soi-même*], attending to oneself, being concerned about oneself, etc ([5], p. 2, translation modified).

Foucault makes this remark at the beginning of his lecture course in order to indicate his topic for the year. He also signals the tangle of languages and traditions that he will be working through. In this short paragraph, one idea is translated into three languages: “*epimeleia heautou*” (ancient Greek), “*cura sui*” (Latin), and “*souci de soi-même*” (French). English speakers can add a fourth to this list: “care of the self.”

The core meaning of this phrase is the same in all languages. It designates attention to oneself and work on oneself. At the same time, however, there is some slippage in that the Greek and French phrases convey something that the Latin and English do not. “*Epimeleia*” and “*souci*” signify a sense of worry and preoccupation, such that in the phrases “*epimeleia heautou*” and “*souci de soi-même*” the self is a source of anxiety as well as an object of concern.<sup>7</sup> “*Le souci de soi-même*” is an attitude of concerned attention for oneself as well as a practice of working on oneself.

“Ethics” and “care of the self” are not synonymous. Although each and every historical morality has an ethical component (insofar as all morality must concern itself with the relation the self establishes with itself in relation to a code), Foucault is clear that only one moral tradition centered on the exhortation to care for the self: ancient Greek and Roman (and, to a degree, early Christian) culture. “What we have there,” he observes, “is an entire ethics that pivoted on the care of the self and that gave

<sup>5</sup> ([28], p. 263). Foucault is not alone in approaching the topic of morality through the lens of the self’s relation to itself. Other prominent accounts in English include [29,30], and especially Stanley Cavell’s later work on moral perfectionism. Within Foucault’s own milieu, we could name Paul Veyne, Pierre Hadot, Marcel Detienne, and Georges Dumézil, all of whom are specialists of classical history and philosophy. What distinguishes Foucault’s interpretation of the practices of the self is his framing of the self’s relation to itself in terms of care for oneself.

<sup>6</sup> As Frédéric Gros (editor of this lecture course) notes, Foucault was mistaken on this point. He did not mention the care of the self in the lectures of the previous year.

<sup>7</sup> Another difficulty with the English “care of the self” is that Foucault’s phrase in French is “*souci de soi*,” not “*souci du soi*.” A more literal translation would be “care of self.” Dropping the definite article helps to avoid any connotation of an essential self, which is a notion Foucault criticized over his whole career. Keeping this caveat in mind, I will continue to use “care of the self” as it is the standard translation.

ancient ethics its particular form. I am not saying that ethics *is* the care of the self, but that, in antiquity, ethics as the conscious practice of freedom has revolved around this fundamental imperative: Take care of yourself [*soucie-toi de toi-même*].” ([28], p. 285, translation modified). The imperative to care for the self is thus a determination of ethics. It is a particular way in which the relation to oneself is envisaged and actualized within a tradition.

Much of Foucault’s later work on the care of the self is taken up with descriptions of the practices and exercises of the ancient schools of philosophy: Platonic, Cynic, Epicurean, and Stoic. In a sense, this focus is perfectly understandable. These schools are veritable treasure troves of practices and discourses to cultivate the self. And so, over four years Foucault fills volume after volume—seven in total, if we count the lecture series—describing in loving detail the various exercises to care for the self in antiquity.<sup>8</sup> Some exercises are physical and corporeal, such as dietary regimens ([18], pp. 95–139; [19], pp. 99–144). Others are spiritual in nature. For example, in his 1981–1982 lecture course *The Hermeneutics of the Subject*, Foucault covers the following exercises: nightly examination of conscience to prepare restful sleep, the drilling into memory of key precepts so as to have them ready for action, daily meditation to withdraw from the world and remain undisturbed by what is taking place, regular trials of endurance to help resist temptations, arts to cultivate listening so as to better receive instruction, and daily reflection on one’s own death in order to better appreciate what you have and to bear what is to be expected ([5], pp. 47–48, 338–52, 431–33, 477–84, 537–38).

This is only a handful of the techniques Foucault discusses. There are many more. But the question is why are they so important to him? It is intriguing because Foucault is not interested in recovering or resurrecting any particular exercise. He never enjoins us, for example, to meditate or to abstain from certain pleasures.<sup>9</sup> And it is crystal clear that he does not urge a return to a Greco-Roman lifestyle. Even if this were an attractive option—and for Foucault, it is not<sup>10</sup>—it simply would not be possible. As he says, “you can’t find the solution of a problem in the solution of another problem raised at another moment by other people.” ([4], p. 256). But if this is his opinion, the question remains: why spend so much time and energy on describing exercises that are arguably only of historical interest?

His answer is direct. The ancient tradition is much more than a fascinating cultural phenomenon. It is an “event in thought.” ([5], p. 9). It is, he elaborates, “an important phenomenon not just in the history of representations, notions, or theories, but in the history of subjectivity itself or, if you like, in the history of practices of subjectivity.” ([5], p. 11). In detailing the spiritual exercises of the ancient tradition, Foucault is trying to extract something striking and more general: a conception of ethics and morality—and so too of subjectivity—which is not only singular and impressive but also, he adds, “still significant for our modern mode of being subjects.”<sup>11</sup>

How and why Foucault thinks this ancient tradition remains relevant has been discussed elsewhere [6,38]. Here I simply want to identify its main contours. This is somewhat difficult as Foucault never explicitly lists, one by one, the defining features of the care of the self. Yet three themes recur in his later writings. They concern the purpose, object, and mode of the care of the self. Taken together they make the care of the self—that is, the morality (and especially, the ethics) of the ancients—a genuine event in the history of subjectivity.

1. *The purpose of the care of the self is to transform the self.* To use two of Foucault’s favorite expressions, care of the self is a “poetics” and “cultivation” of the self. Within this tradition, the self is not

<sup>8</sup> In his attention to ancient practices of the self, Foucault follows in the footsteps of the French classicist and philosopher, Pierre Hadot. It is no exaggeration to say that Hadot’s work on spiritual exercises in antiquity is the main influence on Foucault’s later period. See [31].

<sup>9</sup> For a book of this kind (i.e., an attempt to revive specific classical exercises for us today), see [32]. Pierre Hadot makes overtures in this direction in ([33], pp. 271–81; [34], pp. 162–96), and especially [35].

<sup>10</sup> ([36], pp. 1517–18; [4], pp. 256–262). See [37].

<sup>11</sup> ([5], p. 9). In “Ethics as Ascetics” [25] Davidson argues that Foucault addresses the practices of ancient sexuality in order to elaborate his conception of ethics. McGuishin is adept at showing why, for Foucault, care of self remains necessary today. See Part 2 of *Foucault’s Askesis* [6], “Care of the Self and *Parrhesia* in the Age of Reason.”



seen as a fixed substance or pre-given essence. It is a material to be crafted in light of an end or telos. As Foucault states, the purpose of the practices of care of the self is to “change, purify, transform, and transfigure oneself.” ([5], p. 11) Ancient ethics does more than modify conduct. Its true goal is to revolutionize our ethos and way of being in the world, right down to our desires, perceptions, ideals, pursuits, and self-understanding.

2. *The object of the care of the self is the self.* Foucault is emphatic that for the ancients, the self—or more precisely, one’s own self—is the definitive object of the care of the self. “Under no circumstances,” he warns, “can this activity, this practice of the care of the self, be seen as purely and simply preliminary and introductory to the care of others. It is an activity focused solely on the self and whose outcome, realization, and satisfaction, in the strong sense of the word, is found only in the self. . . . One takes care of the self for oneself, and this care finds its own reward in the care of the self. In the care of the self one is one’s own object and end.” ([5], p. 177). The stridency of these remarks should not be misunderstood. Foucault is not saying that care of the self is by nature individualistic or egoistic, as if it must take place at the expense of other people or by ignoring them. He claims, rather, that in ancient morality the care of the self is a self-sufficient moral end. It is not preparatory labor for care of others.
3. *The mode of the care of the self is voluntary.* Foucault is equally emphatic that care of the self is not prescribed by law or rule. To the contrary, it presupposes the freedom and choice of the individual undertaking it. “Whatever the effects of austerity, renunciation, prohibition, and pernickety prescriptiveness [the care of the self] may induce, it is not and basically never was the effect of obedience to the law”. ([5], p. 317). To speak plainly, I do not try to lead a certain lifestyle or practice certain exercises because I have been commanded by someone else. I do so because I want to transform and improve myself. Caring for oneself is, Foucault insists, “a choice about existence made by the individual. People decide for themselves whether or not to care for themselves.” ([4], p. 271) It may sound odd to hear Foucault speak in such voluntarist tones, but he is firm that care of the self is “without relation to the juridical per se.” ([4], p. 260). Self-initiated subjectification is the non-prescriptive core of this moral system.

To summarize, for Foucault, the care of the self (*le souci de soi-même*) is a particular dispensation of ethics (that is, the relation we have to ourselves in relation to a moral code) which lies at the heart of Greco-Roman morality. It is special and valuable—an “event in thought,” no less—due to its unique combination of purpose (to transform the self), object (the self in and of itself), and mode (free and voluntary).

## 2. Part II

### 2.1. Two Interview Comments

In this second part of the article I present Foucault’s view that modern political thought is not only inhospitable to a morality based on the care of the self, but that it actively opposes itself to it. Again, as I stressed in the introduction to this article, modern political thought is by no means the sole culprit in marginalizing care of the self. Foucault is clear that parallel developments in modern philosophy and theology also work to push it out. That said, there is in his later work a repeated insistence that modern political thought, especially as it develops a rights-based conception of government (a government of the self and of others), interrupts and even helps to kill off the venerable tradition of the care of the self.

As a preliminary item of proof, allow me to cite two interviews in which Foucault gives voice to the idea that political thought and practice based on rights and a juridical subject—which, as we will see, is for him the hallmark of modern political philosophy—is incompatible with a morality based on care for the self. The interviews come from different contexts: one is tactical and political, the other is scholarly and historical. Yet they converge on a doubt that, broadly speaking, neither rights-based politics nor rights-based political thought can be pressed into service of ethics and care of the self.

The first is a 1982 interview Foucault gave for *Christopher Street*, a prominent New York gay magazine. This was during the time that Foucault was deep in his work on ethics. What is remarkable about this interview is that Foucault seems to almost subconsciously run through the components that make up morality (i.e., code, conduct, and ethics, which I discussed in the Part One) to formulate a response to a question about rights:

[Question:] Today we no longer speak of sexual liberation in vague terms; we speak of women's rights, homosexual rights, gay rights, but we don't know exactly what is meant by "rights" and "gay." ...

[Foucault:] I think we should consider the battle for gay rights as an episode that cannot be the final stage. For two reasons: first because a right, in its real effects, is much more linked to attitudes and patterns of behavior than to legal formulations. There can be discrimination against homosexuals even if such discrimination is prohibited by law.

... That in the name of respect for individual rights someone is allowed to do as he wants, great! But if what we want to do is to create a new way of life [*mode de vie*], then the question of individual rights is not pertinent ([39], pp. 157–58).

Without a doubt, Foucault endorses the cause of gay rights. A legal code protecting the rights of homosexuals may well be a first step, but it is an indispensable one. But upon stating his support for this moral and legal code, he immediately shifts gears to consider such rights from the perspective of conduct and ethics. In the first paragraph of his answer he insists on the importance of conduct: it is one thing for homosexuals to have rights on paper, but what really matters are attitudes on the ground and whether or not the code is respected. For us, however, it is the second paragraph of his answer that really matters. Foucault goes out of his way to deny that rights (and human rights by implication) are a site for ethical subjectivation: individual rights, he states, are not pertinent to the creation of a way of life and the manner in which we relate to ourselves. If I can be permitted to extrapolate from this quotation, it is as if Foucault is pro-rights on the one hand, pro-care of the self on the other hand, yet never shall the two meet. Each line should be pursued on its own—one political and tactical, the other ethical and existential—even if they have no business coming together.

Let us look to the second interview. It takes place in 1982, just as Foucault was beginning to wrap up his research on ancient ethics—what, in lecture, he calls his years-long Greco-Latin “trip.”<sup>12</sup> The interviewers ask him about his post-trip plans, so to speak: specifically, if he intends to seek out care of the self in contemporary politics and political thought. On its face, this suggestion seems highly plausible. Much of Foucault's past work had been on modern political topics (such as discipline, governmentality, and biopolitics). It is only natural to wonder how ancient philosophy and care of the self might relate to it. Foucault is intrigued by the possibility yet guarded in his response.

[Question:] Could the problematic of the care of the self be at the heart of a new way of thinking about politics, of a form of politics different from what we know today?

[Foucault:] I admit that I have not gone very far in this direction, and I would very much like to come back to more contemporary questions to try to see what can be made of all this in the context of the current political problematic. But I have the impression that in the political thought of the nineteenth century—and perhaps one should go back even farther, to Rousseau and Hobbes—the political subject was conceived of essentially as a subject of law [*sujet de droit*], whether natural or positive. On the one hand, it seems to me that contemporary political thought allows very little room for the question of the ethical subject. I don't like to reply to questions I haven't studied. However, I would very much like to come back to the questions I examined through ancient culture ([28], p. 294).

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<sup>12</sup> ([22], p. 2). The word “trip” is in English in the original.

Why is Foucault reluctant to take on board the suggestion that ethics and the care of the self might have a role to play in modern and contemporary political thinking? True to his word not to reply to questions he has not studied, he never explains his reasons. Still, he provides a clue. Modern political thought, he says, conceives of the subject as a “subject of law.” And this, he continues, has the effect of allowing “very little room for the question of the ethical subject.”

In this following section I try to understand what Foucault meant by this. My first task will be to see what exactly the “subject of law” is. In the interview he takes the term for granted and does not comment further, even though it serves to characterize the political thought of several hundred years. With a definition of the subject of law in place we will be able to flesh out his view that modern political thought marginalizes ethics in general and excludes the care of the self in particular.

## 2.2. The Juridical Age

“*Le sujet de droit*” is a commonly used term in French. It denotes a legal person (i.e., a bearer of legal rights and duties). But while this captures part of Foucault’s meaning, his usage has a wider scope. This can be gleaned from another spoken remark, this time in a roundtable discussion at Berkeley in 1980 conducted in English. Foucault describes the birthplace of the subject of law, a historical period of Western societies that he names “the juridical age.” Read in this context, it becomes clear that the “subject of law” of law refers to much more than a bearer of legal rights and duties. It designates an entire conception (an episteme, if you like) of politics, government, and subjectivity.

I think that Western societies have known an age of, how could you say, a juridical age, a juridical period, which started from the twelfth or thirteenth century and lasted till the beginning of the nineteenth century with great political constitutions, the great civil and penal codes of the nineteenth century, and that those juridical structures are now going down and disappearing. Anyway, from the thirteenth century to the beginning of the nineteenth century, the hope, the dream of all Western societies has been that it could be possible to govern people through laws, through courts, through juridical institutions. And the idea of writing constitutions with human rights and so on, the project of writing codes, which would be either universal for humanity, or at least universal inside the nation, was the dream of a juridical way of government. The coincidence between the art of governing and juridical structures has been I think one of the great trends of this long period—from the thirteenth to the nineteenth century ([40], pp. 98–99).

As is to be expected from a roundtable discussion, Foucault paints with broad strokes. Yet it is a version of a narrative that he sets out on other occasions as well (See [18], pp. 29–32; [4], pp. 266–67; [41], p. 49). He claims that Western societies exist in a juridical age for roughly six hundred years. Its key feature—indeed, what makes the age “juridical”—is the coincidence between “the art of governing” and “juridical institutions.” Or, put more plainly, the juridical age is guided by a belief (and aspiration) that it is possible to govern primarily by means of law and juridical institutions.

This definition of the juridical age may seem straightforward. But perhaps there is more to it than meets the eye. The reason why is that it is ambiguous as to *what*, exactly, is being governed by law and juridical institutions. What is the “subject,” as it were, of the juridical age? “People,” Foucault says at the roundtable. But the word “people” (as with “*gens*” in French) can refer to different things.

One possibility is that Foucault refers to the notion of a people (*un peuple*, in French), such that in a juridical age the members of a particular country or community are governed primarily by laws and juridical institutions. No doubt, this is part of his meaning. In the roundtable discussion he singles out standard devices of government by law—such as constitutions, human rights, and tribunals—as



hallmarks of the juridical age. Here we have a first definition of the subject of law. It is the government of a people by means of law and juridical institutions.<sup>13</sup>

But there is another way to read this passage. We must keep in mind that a main topic of Foucault's later period is how people "govern" themselves, that is to say, how *an individual person* conducts, controls, and guides him or herself. For example, in his 1980–1981 lecture course, Foucault proposes to examine the problematic of government "from a different angle," namely, "as the government of the self by oneself in its articulations with relations with others."<sup>14</sup> Continuing this line of investigation he devotes his entire 1982–1983 course to the same topic, titling his lectures *The Government of the Self and Others*. In short, the problem of how individuals govern themselves—i.e., "the government of the self" and its aims, techniques, and relation to the government of others—is a mainstay of Foucault's later period.

With this in mind, a second definition of the subject of law comes to light. It is the government of the self by means of law and juridical institutions. We thus have two definitions of the subject of law. Loosely speaking, the first subject of law, i.e., the government of a people by law, is "political" in nature. It designates a particular technique of power—one in which the art of governing a people coincides with juridical structures—and is distinct from other such techniques to govern a people that Foucault delineates elsewhere in his work, such as disciplinary and bio-power.<sup>15</sup> The second subject of law, i.e., the government of *the self* by law, is different. It is "moral." It refers to a particular phase in the history of morality in which the art of governing the self is undertaken (executed, as it were) by means of a legal code.

To appreciate the implications of this twofold definition of the subject of law (as political *and* moral) a passage from the Introduction to *The Use of Pleasure* is indispensable. Foucault outlines an epochal shift away from a morality based on ethics to one based on code.

If it is true, in fact, that every "morality," in the broad sense, comprises the two elements I have just mentioned: codes of conduct and forms of subjectivation [i.e., ethics]; if it is true that they can never be entirely dissociated, though they may develop in relative independence from one another—*then we should not be surprised to find that in certain moralities the main emphasis is placed on the code*, on its systematicity, its richness, its capacity to adjust to every possible case and to embrace every area of conduct. With moralities of this type, the important thing is to focus on the instances of authority that enforce the code, that require it to be learned and observed, that penalize infractions; *in these conditions, subjectivation occurs basically in a quasi-juridical form*, where the moral subject refers himself to a law, or set of laws, to which he must submit at the risk of committing offenses that may make him liable to punishment. It would be quite incorrect to reduce Christian morality—one probably should say, "Christian moralities"—to such a model; and yet it may not be wrong to think that the organization of the penitential system at the beginning of the thirteenth century, and its development up to the eve of the Reformation, brought about a very strong "juridification"—more precisely, a very strong "codification"—of the moral experience ([18], pp. 29–30, emphasis added, translation modified).

As I explained in Part One, Foucault's thesis in the Introduction to *The Use of Pleasure* is that every morality is made up of three components: code, conduct, and ethics. But in this passage Foucault adds

<sup>13</sup> I note that much of Foucault's work, especially from his middle period, is critical of a juridical conception of power. He particularly criticizes the belief that social and political life is governed by legal codes and state authority when, in fact, other mechanisms of power are at work (e.g., disciplinary, hermeneutic, and biopolitical). See ([42], pp. 51–59; [8], pp. 13–20).

<sup>14</sup> ([43], p. 88). For the multiple kinds of "subjects" of government according to Foucault (e.g., souls, households, children, and political subjects), see [44].

<sup>15</sup> The issue of the role of law and juridical institutions in what I have called "political" government is a debated topic in Foucault studies, with some scholars arguing that Foucault expels laws from his analysis of power (see [45]), and others claiming that his conception of law is illimitable (see [46]). For Foucault's concepts of government, governance, and governmentality as political techniques, see [47,48].

a crucial observation: different historical moralities may well privilege a certain component, often at the expense of one or the other two. This is especially true, he believes, of moralities that emerge in the modern age. Modern moralities emphasize code and conduct almost to the complete neglect of ethics, such that the government of the self is envisaged as obedience to law. To use Foucault's terms, in this period morality and moral experience undergo a "strong juridification" or "codification." That is why modern code-based morality is a key element of the juridical age: it reconfigures the government of the self in the image of law and prescription.

Ancient (ethics-oriented) and modern (code-oriented) moralities differ in kind for Foucault. The morality of classical philosophers is based on a choice—"a personal choice," he stresses time and again (See, for example [4], p. 266)—to care for the self and lead a good beautiful life. "What I tried to show," he says reflecting on his later work, "is that nobody is obliged in classical ethics to behave in such a way as to be truthful to their wives, to not touch boys, and so on. But if they want to have a beautiful existence, if they want to have a good reputation, if they want to be able to rule others, they have to do this."<sup>16</sup>

Modern (so-called "juridical") morality has a different attitude. Prescriptive in nature it conceives of morality as compliance to a code. As Foucault states in the above passage, "In these conditions, the moral subject refers himself to a law, or set of laws, to which he must submit at the risk of committing offenses that may make him liable to punishment."<sup>17</sup> From this perspective, morality is no longer a question of how the subject constitutes itself in relation to a code, as it was for the ancients. It becomes a matter of how the self is constituted by and through the prescriptions of a code. As Foucault states elsewhere, "we pass from a morality that was essentially the search for a personal ethics to a morality as obedience to a system of rules." ([41], p. 49).

In his interview comment I cited earlier, Foucault names Hobbes and Rousseau as representatives of this shift in morality. But clearly he is pointing to something much bigger: namely, the congruence between categorical societies, that is societies bound together by codes, and a vision of morality as founded on rules, on 'dos and don'ts'. Indeed, the two major branches of modern day philosophical ethics, Utilitarianism and Kantianism, both envision morality in terms of a criterion or procedure of what agents ought to do.<sup>18</sup> They are part and parcel of the juridical age. As Foucault says elsewhere, we "inherit a secular tradition that sees in external laws the basis for morality . . . We seek the rules for acceptable behavior in relations with others."<sup>19</sup>

This is the "subject of law." It is shorthand for the model of political *and* moral government by law that emerges in the modern or juridical age. And, given this duality, we could say that for Foucault the juridical age is a decisive period not only in the history of law and politics but also, and perhaps primarily, in the history of subjectivity. For if he feels justified in declaring that a morality based on care of the self is an "event in thought" and "an extremely important phenomenon in the history of subjectivity," it seems only fitting to accord the same status to the juridical age. It undertakes a no less decisive transformation of morality and what Foucault calls *assujétissement* (translated in English as "subjection" or "subjectivation"). By placing the subject of law at the heart of morality—that is, by undertaking the government of the self and subjection by means of law—the juridical age relegates

<sup>16</sup> ([4], p. 266). For an example of Foucault's view that ancient morality is based on personal choice, see his discussion of *aphrodisia* in ([18], pp. 91–93).

<sup>17</sup> Robert Hurley's translation of this line is misleading. Foucault writes, "le sujet moral se rapporte à une loi, ou à un ensemble de lois, auxquels il doit se soumettre sous peine de fautes qui l'exposent à un châtement." Hurley translates this as, "the ethical subject refers his conduct to a law, or set of laws, to which he must submit at the risk of committing offenses that may make him liable to punishment." There are two problems here. First, Hurley translates "le sujet moral" as "the ethical subject" even though for Foucault "moral" is the more comprehensive category. Ethics is a part of morality, not the other way around. And second, Foucault does not say that the subject refers his or her "conduct" to a law but, more generally, that the subject refers him or herself to a law.

<sup>18</sup> On the congruence between categorical societies and a rule-based conception of morality, see also ([49], pp. 90–145, 270–95; [50]).

<sup>19</sup> ([51], p. 228). See also his lecture remark in *Hermeneutics of the Subject*, "The theory of political power as an institution usually refers to a juridical conception of the subject of right" ([5], p. 252).

the component of morality that the ancients had privileged: ethics. In truth, Foucault's verdict is more severe. The juridical age does not simply underemphasize ethics; it subsumes it altogether under the category of the code. For when the constitution of the subject is accomplished through the prescriptions of a code, the juridical age effectively jettisons ethics as a unique dimension of morality and moral experience. Ethics loses its place and standing as a distinctive component of morality.

At last we revisit Foucault's interview comment: "It seems to me that contemporary political thought allows very little room for the question of the ethical subject." We now can speculate as to why: modern and contemporary political thought downgrades the role and importance of ethics (and thus too, of care of the self) because it fixates on the subject of law.

In light of his comments on the juridical age there are two (complementary) ways to interpret this comment. The modest option is that, according to Foucault, there is little room *within* modern political thought for the problem of ethics to emerge. We are unlikely to find much reflection on ethics in this tradition because its canonical authors construct their theories on the idea that the political government of others, and the moral government of the self, coincide with law and juridical institutions.<sup>20</sup> By drawing attention to the centrality of the subject of law in modern political thought, Foucault's comment can be understood as an explanation for why it leaves so little room for ethics and also as a caution against looking for care of the self there.

But perhaps Foucault is saying something farther reaching. Maybe his claim is not just that ethics is absent within modern political thought but, more strongly, that modern political thought is part of a broader movement, call it the juridical age, that marginalizes ethics and the care of the self as such (i.e., as core elements of morality). In this respect, modern political thought would be one flank in a more general campaign, also being carried out in such fields as philosophy and religion, to remake morality and the moral imagination in the image of a code. Read this way the purpose of his interview comment is not merely to identify the absence of ethics in modern political thought. His indictment runs deeper. Modern political thought (together with its avatar, the subject of law) would be a key player in a wider, even epochal movement to marginalize ethics and drive care of the self from the world.

### 3. Conclusions

Was Foucault right about the relation between care of the self and modern political thought? This is, of course, a topic for another day. But allow me to mention a possibility he did not seem to have considered: that the juridical subject of modern political thought could be put toward ethical use.

Put it this way. At the end of the day, the reason why Foucault finds care of the self such a valuable ethic to pursue today is because it helps people to gain a critical distance from themselves. As he states in *The Use of Pleasure*, "What is philosophy today—philosophical activity, I mean—if it is not the critical work that thought brings to bear on itself? In what does it consist, if not in the endeavor to know how and to what extent it might be possible to think differently, instead of legitimating what is already known?" ([18], p. 9). And in a rare personal aside, Foucault speaks of an urgent need—his own and one he tries to elicit in his readers—to "refuse who we are," "to think otherwise," and "to get free of oneself." ([18], p. 8). In this vein he uses a French word for which English has no equivalent: "*égarement*." [18]. Roughly translated as "straying afield of oneself," it is the action of getting distance from what is represented as the morality, reason, and commonsense of one's time.<sup>21</sup>

What I would like to suggest is that it is possible to use the juridical subject of modern political thought for precisely this goal: namely, to get some critical distance from oneself. In my forthcoming book, *Human Rights and the Care of the Self*, I propose that several of the greatest thinkers and

<sup>20</sup> Perhaps this is why of all the many strands of modern political thought Foucault names only anarchism (and Max Stirner in particular) as having given a central role to ethics and the aesthetics of the self: it alone is not based on the subject of law ([5], p. 251).

<sup>21</sup> Rabinow also draws attention to Foucault's use of this word. ([52], pp. xxxiv–xl). See also ([53], p. 243).

champions of human rights—such as Mary Wollstonecraft, Alexis de Tocqueville, Henri Bergson, Eleanor Roosevelt, and Charles Malik—saw human rights in precisely this light: as a tool for individuals to work on themselves in order to gain distance and relief from the pressures and commonsense of their time.<sup>22</sup> Each of these thinkers, in other words, conceives of human rights, and especially the juridical subject enshrined in human rights, as a means to bring out the best in oneself for the sake of one's self.

Perhaps, then, Foucault's misgivings were hasty. Modern political thought and the juridical subject are not necessarily as opposed to the care of the self as he might have supposed. But that is not the important point. What is, rather, is that by showing us key tensions between these two traditions, he also showed what would be necessary for them to become complementary. In this respect, he has opened the door to see how modern and contemporary political thought might be able to draw on the tradition of the care of the self as one form of response to social and political problems that wreak spiritual and personal distress.

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