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Foucault Among the Stoics: *Oikeiosis* and Counter-Conduct

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Abstract: This paper explores the relation of Foucault's notion of counter-conduct to the Stoic notion of *oikeiosis*. Initially, *oikeiosis* is set against Platonic *homoiosis*, specifically as discussed in the *Alcibiades*, which provides what Foucault calls the "Platonic model" of conduct. The paper examines what Foucault means by "care of the self" and points to its difference from the Delphic maxim "know yourself" that centered on a principle of *homoiosis*, or ethical transcendence. Noting how the problematic of care of the self leads to what Foucault calls "the government of conduct," the paper considers the possibility of "counter-conduct." Given that Foucault has argued that the autonomy of conduct has been rendered invisible through its "juridification," this paper proceeds with a genealogy of the codification of morals in natural law theory. This culminates with the sixteenth century return to Stoicism in the person of Grotius. Showing that a certain conception of counter-conduct present in Gerson is transformed in natural law theory into a juridical grounding of the government of conduct, this paper draws out the immanent relation of conduct and counter-conduct in the notion of appropriation. Arguing that Grotius has fundamentally misunderstood the concept of *oikeiosis*, which he takes from Cicero and which subtends his theory of appropriation, this paper suggests that a return to the early Stoic formulation of *oikeiosis* allows for a rethinking of the problem of the government of conduct. A certain moralization of action, irreducible to codification that is present in early Stoic thought provides a model of "counter-conduct." Ultimately, "care of the self," as it is given in Stoic philosophy, relates the subject of action to the principle of ethical immanence that grounds Foucault's critique of the subject.

Keywords: counter-conduct, *oikeiosis*, appropriation, natural law, Stoicism, Foucault

Introduction

In a footnote to the English translation of Foucault's *The Hermeneutics of the Subject*, a distinction is made, which arguably structures much of Foucault's late work, between ethical immanence and

ethical transcendence.¹ It makes reference to a passage from Plato's *Thaetetus*, widely quoted by middle Platonists, which emphasizes the importance of the concept of *homoiosis to theo* ("assimilating oneself to God"). This concept came to be understood as "the expression of the *telos*, the expression of the sovereign good"² and was taken up by a variety of traditions including Neo-Platonists, Peripatetics, Jewish and Christian mystics, and Neo-Pythagoreans. Significantly, this concept was positioned as a kernel of Foucault's critique of subjectivity as early as his first lectures at the Collège de France, insofar as it subtends a conception of ethics beginning with "prohibition, renunciation, passage to the universal."³ *Homoiosis*, then, is the "principle of ethical transcendence," and always involves "an effort of tearing away from the world." This principle must be distinguished from, or perhaps even opposed to, the notion of *oikeiosis* found in the Stoics, in which "the first *telos* [i.e., the sovereign good] remains," though it is arrived at through an "exercise of immediate articulation on a nature good in itself." *Oikeiosis*, in this way, provides the "principle of ethical immanence."⁴

This paper begins with an examination of Foucault's critique of the dominant mode of relation with oneself in Western thought that takes the form of self-knowledge, and proceeds to examine what Foucault, in his late ethical work, calls "care of the self." Care of the self is construed by Foucault primarily as a process of self-transformation through the application of various "technologies of the self." Looking at Foucault's analysis of Plato's *Alcibiades*, this paper unpacks what Foucault has in mind when he speaks of the "Platonic model" of self-transformation and the way in which it leads, given its reliance on the ideal of *homoiosis*, to a covering up of care of the self by self-knowledge. Next, following Arnold Davidson, this paper considers the problem of conduct and its immanent relation to "counter-conduct," during the period of the emergence of what Foucault calls "governmentality." In particular, the relation between government of self and government of others is explored. This emergence of governmentality, Foucault argues, led to a "juridification" of conduct that has deprived it of its autonomy and its force. In order to understand this point, this paper takes a look at the emergence of theories of natural and subjective right in the sixteenth century, starting with the counter-conduct of Jean Gerson, and ending with the legal codification of morality in Grotius. This, the paper argues, forms the conceptual foundation for the development of the general problem of the government of conduct. This foundation completes a movement from the discovery in real struggle of an ethical power that might provide access to the truth of oneself, to

¹ Michel Foucault, *The Hermeneutics of the Subject: Lectures at the Collège de France, 1981-82* (New York: Palgrave Macmillan, 2005), 434n7. Interestingly, Foucault also uses the term "ethical transcendence" in his doctoral thesis on the history of madness. See, Michel Foucault, *History of Madness*, translated by Jonathan Murphy (New York: Routledge, 2009), 69, 71.

² Foucault, *The Hermeneutics of the Subject*, 434n7.

³ Michel Foucault, *Lectures on the Will to Know: Lectures at the Collège de France, 1970-1971, and Oedipal Knowledge*, edited by Daniel Defert, François Ewald, and Alessandro Fontana, translated by Graham Burchell (New York: Palgrave Macmillan, 2014), 215.

⁴ Foucault, *The Hermeneutics of the Subject*, 434n7.

the knowledge of what power *is* that establishes the universality of this truth. In other words, the very power that opens to counter-conduct in early natural law theory, becomes a principal of ethical transcendence by the sixteenth century, through the institution of a kind of sovereign subject. Finally, through a critique of Grotius' model of appropriation, which depends on his (mis)use of the Stoic notion of *oikeiosis*, this paper concludes that the conceptual foundations of the government of conduct can be rethought through a return to the early Stoic understanding of appropriation and its principle of ethical immanence.

“Know yourself” and care of the self

It has been frequently asserted that the Delphic injunction “know yourself [*gnothi seauton*]” is the founding expression of the Western philosophical tradition. For Foucault, this is problematic insofar as it has provided the primary mode of relation that the human subject establishes with itself in order to access truth. Much of Foucault's late work is preoccupied with a critique of this relation of the subject to itself mediated through knowledge, as well as an elaboration of alternative forms of the relation between the subject and truth. Foucault's later genealogy of subjectivity, in this sense, focuses on an inquiry into instituted models of self-knowledge. As was the case in his early work, this genealogy revolves around the question of how the subject is established, in different institutional contexts, “as a possible, desirable, or even indispensable object of knowledge.”⁵ However, the “guiding thread” for this later genealogy of subjectivity is what Foucault calls “techniques of the self”:

The guiding thread that seems the most useful for this inquiry is constituted by what one might call the “techniques of the self,” which is to say, the procedures, which no doubt exist in every civilization, suggested or prescribed to individuals in order to determine their identity, maintain it, or transform it in terms of a certain number of ends, through relations of self-mastery or self-knowledge. In short, it is a matter of placing the imperative to ‘know oneself’ – which to us appears so characteristic of our civilization – back in the much broader interrogation that serves as its explicit or implicit context: What should one do with oneself? What work should be carried out on the self? How should one ‘govern oneself’ by performing actions in which one is oneself the objective of those actions, the domain in which they are brought to bear, the instrument they employ, and the subject that acts?⁶

If the philosophical question is how the subject has access to the truth, Foucault argues that another question must be added, which he calls the question of “spirituality”: what transformations in the being of the subject are necessary for access to the truth?

In the first lecture on *The Hermeneutics of the Subject*, Foucault distinguishes philosophy from spirituality. He suggests that philosophy is the “form of thought” that asks “not of course what is true and what is false, but what determines that there is and can be truth and falsehood and whether or not we can separate the true and the false.” In other words, philosophy is that

⁵ Michel Foucault, “Subjectivity and Truth,” in Paul Rabinow (ed.), *Ethics: Subjectivity and Truth. Essential Works of Michel Foucault 1954-1984, Volume 1* (London: Penguin, 2000), 87.

⁶ *Ibid.*

form of thought that seeks to determine “the conditions and limits of the subject’s access to truth.” Spirituality, on the other hand, is defined as “the search, practice, and experience through which the subject carries out the necessary transformations on himself in order to have access to the truth.” The practices involved in spirituality, Foucault emphasizes, are “not for knowledge but for the subject.”⁷ There is a necessary transformation of the subject’s very being since the subject does not have right of access to the truth and is not originally capable of access to the truth. Foucault writes:

The truth is not given to the subject by a simple act of knowledge (*connaissance*), which would be founded and justified simply by the fact that he is the subject and because he possesses this or that structure of subjectivity ... for the subject to have right of access to the truth he must be changed, transformed, shifted, and become, to some extent and up to a certain point, other than himself. The truth is only given to the subject at a price that brings the subject’s being into play. For as he is, the subject is not capable of truth.⁸

In other words, if spirituality is still a question of knowing oneself, such knowledge is subordinated to practices that “take care of the self” in such a way that the subject becomes capable of accessing truth.

The Platonic “covering up” of care of the self

The “simplest but most fundamental formula by which spirituality can be defined” is, for Foucault, that “there can be no truth without a conversion or transformation of the subject.”⁹ This notion of conversion is “one of the most important technologies of the self the West has known”¹⁰ and is central to the practice of care of the self. Care of the self [*epimeleia heautou*], Foucault goes to great lengths to show, originated in Greek culture but appears throughout the history of the West. Its first theoretical emergence, he argues, is in Plato, and “only the *Alcibiades*¹¹ gives its complete theory.”¹² For Plato, conversion takes the form of *epistrophē*, which can be thought of as a return to the self or a recollection that returns the soul to its source, the movement by which the soul places itself back once again in the eternal. *Homoiosis*, as “resemblance” or mirroring within oneself of the perfection of being through self-knowledge, can be understood as the source and the end of the Platonic conversion, and inasmuch as this conversion is functionally dependent on *homoiosis*, Foucault identifies “the specifically Platonic ‘covering up’ of the *epimeleia heautou* by the *gnothi seauton* (of care of the self by knowledge of the self).”¹³ Ultimately, for Plato, “take care of yourself”

⁷ Foucault, *The Hermeneutics of the Subject*, 15.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid., 208.

¹¹ Foucault writes: “what interests me and what I find quite fascinating in this dialogue, is that basically we find here in outline an entire account of Plato’s philosophy, from Socratic questioning to what appear to be elements quite close to the final Plato or even to Neo-Platonists” (Foucault, *The Hermeneutics of the Subject*, 74).

¹² Foucault, *The Hermeneutics of the Subject*, 66.

¹³ Ibid., 419.

always implies “know yourself.”

Foucault’s analysis of the *Alcibiades* begins with the way in which the problem of ignorance is uncovered through Socratic questioning. Alcibiades’ situation is a political one, and his primary concern in the dialogue is entering Athenian public life. Upon entry into public life, Socrates insists, Alcibiades will have to confront many rivals: internal rivals, since he is not the only one who wants to govern, and external rivals or the city’s enemies. In relation to both, Alcibiades is inferior. He has neither the education nor the wealth of his adversaries. Since he cannot compensate for these defects, Socrates suggests that the only thing that would enable Alcibiades to confront his rivals is “a know-how [*savoir*], a *tekhnē*.”¹⁴ If he has knowledge that would enable him to govern the city well, this would at least put him on equal footing with his rivals. At this point, Socrates asks what it is to govern the city well, and Alcibiades replies that the city is well governed when harmony reigns among its citizens. However, when asked about the nature of this harmony, Alcibiades remains silent and despairs. Socrates reassures him not to worry, since at his early age it is not too late to remedy the situation by taking care of himself, and find his place within public life. Foucault notes how, at this point in the dialogue, the need to be concerned with oneself is linked to the exercise of power:

you can see that ‘taking care of oneself’ is entailed by and inferred from the individual’s will to exercise political power over others. One cannot govern others, one cannot govern others well, one cannot transform one’s privileges into political action on others, into rational action, if one is not concerned about oneself.¹⁵

Alcibiades seems to know that the purpose of his political activity consists in the well-being of the city’s citizens, their mutual harmony, but he still does not know how to take care of the city. But since he does not yet know what harmony is nor is he even aware of his own ignorance, he must attend to himself.¹⁶ As a result, there is a need to take care of oneself insofar as one must govern others.¹⁷

In placing ignorance at the core of Alcibiades’ silence, the care of the self that Socrates recommends is really an appeal to self-knowledge: to care for the self is to know oneself. The paradigm of self-knowledge, which is echoed in Plato’s other dialogues, is provided by the well-known and often employed metaphor of the eye. The self does not equal one’s possession of a body, Socrates shows, but is equated with the soul, and so to know yourself means to know your soul. If one wants to know how the soul can know itself, one takes the example of the eye. The eye can only see itself when it sees the image of itself sent back to it by a reflective surface. Another eye, Socrates suggests, provides the best mirror in which an eye might see itself, since in this case

¹⁴ *Ibid.*, 35.

¹⁵ *Ibid.*, 36.

¹⁶ Note that this is the inverse of the scheme found in *The Republic* (cf. Foucault, *The Hermeneutics of the Subject*, 54).

¹⁷ Foucault, *The Hermeneutics of the Subject*, 44.

the eye does not only see itself in the other eye, it sees itself in the source of vision, in “the excellence of the eye.” The act of vision that allows the eye to see itself can only be carried out in another act of vision, found in the other’s eye. In the same way, Socrates argues, the soul will only see itself by focusing its gaze on an element having the same nature as itself, by fixing its gaze on that which is the very source of the soul’s nature, the soul’s excellence, which is thought and knowledge [*to phronein, to eidenai*]. That part of the soul that ensures thought and knowledge is the divine element, and by turning towards the divine the soul will be able to grasp itself. To truly see oneself one must look at the divine element in oneself and, in this way, knowledge of the divine is the condition of knowledge of the self.

Socrates tells Alcibiades:

Just as true mirrors are clearer, purer and brighter than the mirror of the eye, so God (*ho theos*) is purer and brighter than the best part of our soul ... It is God, then, that we must look at: for whoever wishes to judge the quality of the soul, he is the best mirror of human things themselves, we can best see and know ourselves in him.¹⁸

Making contact with the divine in this way endows the soul with wisdom [*sōphrosunē*], insofar as it comes to know the divine as the source of thought and knowledge, after which it will be able to turn back towards the world. Thus endowed, the soul will be capable of distinguishing good from evil, the true from the false. As in *The Republic*, the divine is the ultimate source of justice [*dikaiosunē*], and there are thus political consequences. According to Socrates, only those who ascend to comprehension of justice through contact with the divine are fit to rule the state. Concerning itself with justice, after having made the movement of ascent and descent, the soul is able to conduct itself properly and will be able to govern the city. Foucault summarizes:

Consequently, taking care of oneself and being concerned with justice amount to the same thing, and the dialogue’s game – starting from the question “how do I become a good governor?” – consists in leading Alcibiades to the precept “take care of yourself” and, by developing what this precept must be, what meaning it must be given, we discover that “taking care of oneself” is to care about justice.¹⁹

Foucault establishes what he calls “the Platonic model of conversion” around three essential points. Alcibiades does not know he is ignorant in relation to his rivals, but comes to discover his ignorance under the guidance of Socrates. Further, because Alcibiades discovers that he was unaware of his ignorance, he finds that he must attend to himself in order to put an end to his ignorance. So the first point is that “ignorance and the discovery of being aware of this ignorance [...] gives rise to the requirement of caring for the self.”²⁰ Alcibiades and Socrates thus agree on the importance of the Delphic maxim “know thyself.” The undertaking of caring for the self is understood as consisting in knowing oneself, and this leads to Foucault’s second point: “The entire surface of the care of the self is occupied by this requirement of self-knowledge which [...]

¹⁸ *Alcibiades* 133c, quoted in Foucault, *The Hermeneutics of the Subject*, 70.

¹⁹ Foucault, *The Hermeneutics of the Subject*, 72.

²⁰ *Ibid.*, 254.

takes the form of the soul's grasp of its own being."²¹ This leads directly to the third point, which is that in the Platonic model, this grasping of one's own being occurs through a process of seeing, of recognizing the divine and intelligible in one's own self (i.e., *homoiosis*). In this way, Foucault argues that Platonic recollection is situated precisely where care of the self and self-knowledge meet. Their intersection can be thought of in the form of a circuit: by recalling what it has seen the soul discovers what it is, and by thus recalling what it is the soul gains access to the truth of what it has seen. So while Foucault views Plato's philosophy as the site of the emergence of the notion of care of the self, this notion is entirely "philosophical" insofar as "Plato brings the whole of the care of the self back to the form of knowledge and self-knowledge."²² *Homoiosis* in the *Alcibiades* "founds *dikaiosunē* with a kind of unproblematic self-evidence,"²³ since endowed with self-knowledge, the soul is able to conduct itself properly, and being able to conduct itself properly it is able to govern the city.

In sum, the *Alcibiades* can be viewed as outlining the first complete theory of care of the self as it has come to be understood in the West: subordinated to the prescription of self-knowledge. Furthermore, this self-knowledge is based on having access to what is innate to the self: the self comes to know itself and in the movement of conversion, by which it knows itself, it recognizes something that it always already knew. As Foucault puts it, in the Platonic model, the truth that results from self-knowledge is "not the truth with regard to which the soul would be an object to be known, but a truth which is the truth the soul knew."²⁴ The relation between the reflexivity of the self on the self and the knowledge of the truth is established in the form of the already-there, and self-knowledge is arrived at in the element of identity. If conversion is to be understood as a certain way of constituting the subject of true knowledge as the subject of right action, which is why the convergence of the philosophical and the political in the *Alcibiades* is so significant, this takes place entirely on the side of the subject, in a kind of withdrawal from the world that puts the subject in contact with its inherent and essential goodness, and in this way offers a principle of ethical transcendence.

From care of the self to self-government

Foucault's interest in the relation between care of the self and self-knowledge can be seen as a part of a broader project of developing a genealogy of power relations, particularly under the thematic of the government of self and others, which dominates his ethical writings in the 1980s. In 1982 Foucault noted that in the past he had, perhaps, insisted too much on technologies of domination and power, and that he was more and more interested in the interaction between oneself and others, "and in the technologies of individual domination, in the mode of action that

²¹ Ibid., 255.

²² Ibid., 49.

²³ Ibid., 73.

²⁴ Ibid., 455.

an individual exercises upon himself by means of the technologies of the self.”²⁵ The encounter between technologies of domination and those of the self is what Foucault calls “governmentality,” a term introduced in his 1977-78 lectures, entitled *Security, Territory, Population*. Foucault’s use of the term governmentality in these lectures pertains primarily to an analysis of the development of “pastoral power” from the tenth to the seventeenth century, which concerned itself with the conduct of souls. To be sure, Foucault’s analysis of the *Alcibiades* can be understood as emphasizing the role of pastoral power, raising the question: “Can the city’s decision-maker, can the commander, be defined as a sort of shepherd?”²⁶ In this sense, the *Alcibiades* takes as its object the conduct of others. Yet in another, and perhaps stronger sense, it takes as its object the conduct of oneself. It is this doubling of the role of conduct in the *Alcibiades* that makes it so interesting for Foucault.

Foucault emphasizes that conduct, in the sense that he wants to problematize it, always has this double dimension:

Conduct is the activity of conducting [*conduire*], of conduction [*la conduction*] if you like, but it is equally the way in which one conducts oneself [*se conduit*], lets oneself be conducted [*se laisse conduire*], is conducted [*est conduit*], and finally, in which one behaves [*se comporter*] as an effect of a form of conduct [*une conduit*] as the action of conducting or of conduction [*conduction*].²⁷

Foucault suggests that this equivocal nature of conduct is one of the best aids for coming to terms with the specificity of power relations. If to conduct is at the same time to lead others and a way of behaving within a more or less open field of possibilities, the exercise of power is a “conduct of conducts” and a “management of possibilities.” The term “government,” Foucault insists, “must be allowed the very broad meaning it had in the sixteenth century.” Government, at that time, did not simply refer to political structures or to the management of states, but designated

the way in which the conduct of individuals or of groups might be directed [...] [and] covered not only the legitimately constituted forms of political or economic subjection but also modes of action, more or less considered and calculated, that were destined to act upon the possibilities of action of other people. To govern, in this sense, is to structure the possible field of action of others.²⁸

Yet, as Arnold Davidson has pointed out, Foucault moves quickly from the specific form of power that takes the conduct of individuals as its object to the correlative movements of counter-

²⁵ Michel Foucault, “Technologies of the Self,” in Paul Rabinow (ed.), *Ethics: Subjectivity and Truth. Essential Works of Michel Foucault 1954-1984, Volume 1* (London: Penguin, 2000), 225.

²⁶ Michel Foucault, “‘*Omnes et Singulatim*’: Toward a Critique of Political Reason,” in James D. Faubion (ed.), and Robert Hurley (trans.) *Power: Essential Works of Foucault, 1954-1984, Volume 3* (New York: The New Press, 2001), 305. This comment is actually a reference to Plato’s *The Statesman*, but it also applies to the *Alcibiades*.

²⁷ Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-78*, edited by Michel Senellart, and translated by Graham Burchell (Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2007), 258.

²⁸ Michel Foucault, “The Subject and Power,” in James D. Faubion (ed.), and Robert Hurley (trans.), *Power: Essential Works of Foucault, 1954-1984, Volume 3* (New York: The New Press, 2001), 341.

conduct. What's more, the forms that resistance to power as conducting takes, like conduct itself, have a double dimension: "They are movements characterized by wanting to be conducted differently, whose objective is a different type of conduction, and that also attempt to indicate an area in which each individual can conduct himself, the domain of one's own conduct or behavior."²⁹ Counter-conduct, then, is the struggle against the procedures and institutions implemented for conducting, from within conduct itself. Power, for Foucault, is a set of actions on possible actions, a way of acting on subjects by virtue of their acting or being capable of acting. Power is exercised only over "free" subjects, that is, subjects who are faced with a field of possibilities in which several forms of conduct are available.³⁰ However, as Davidson points out, the "autonomous sphere of conduct" has become more or less invisible to modern moral and political philosophy. This is a result of a "juridification" or "codification" of moral and political experience, resulting from the subordination of the role of conduct to law.³¹

Much of Foucault's ethical work is dedicated to rendering the autonomous sphere of conduct visible by demonstrating that there have been a number of different ways of "conducting oneself" throughout history. Conducting oneself, in these various forms, centered on the problem of how someone is able to become an ethical subject, that is, how someone is able to be both the subject of truth and subject of right action. In other words, how far do the truths one knows really provide the forms of action in one's conduct throughout life? Care of the self in the Platonic model, Foucault has shown, was subordinated to the self-evident truth of one's divine nature, and conducting oneself merely meant remembering what one always was. The "juridification" of conduct results in something very similar, whereby the subject refers its action to the truth of a code of law, given in the self-evidence of tradition. Neither the Platonic model nor the juridical model require any real transformation of the self in its effort to become capable of truth. The subject need only develop a knowledge that is waiting for it in advance, the knowledge of what it is truly meant to be, in order that it conduct itself rightly.

Significantly, Foucault introduces Hellenic philosophy, or what he calls the "Hellenistic model," as an alternative to both the Platonic model and the juridical model. Central to the Hellenistic model is the role of the Socratic principle of *askesis*, which "should be understood as a training of the self by oneself."³² *Askesis* develops self-knowledge in the effort to link a subject's actions to the truth, as the acquisition of virtue. Yet such knowledge is not merely theoretical knowledge [*epistemē thēorētikē*], but also involves practical knowledge [*epistemē praktikē*], and the latter can only be acquired through painstaking [*philotomōs, philoponōs*] training.³³ One cannot simply refer one's actions to an external standard, to a truth that does not affect the subject but

²⁹ Arnold Davidson, "In Praise of Counter-Conduct," *History of the Human Sciences* 24, no. 4 (2011), 27.

³⁰ Foucault, "The Subject and Power," 341-2.

³¹ Davidson, "In Praise of Counter-Conduct," 31; Michel Foucault, *The Use of Pleasure: The History of Sexuality, Volume 2* (New York: Vintage, 1990), 30.

³² Michel Foucault, "Self Writing," in Paul Rabinow (ed.), *Ethics: Subjectivity and Truth. Essential Works of Michel Foucault 1954-1984, Volume 1* (London: Penguin, 2000), 208.

³³ Foucault, *The Hermeneutics of the Subject*, 316.

merely requires that the subject know its place. Foucault makes it clear that “moral conceptions in Greek and Greco-Roman antiquity were much more oriented towards practices of the self and the question of *askesis* than toward codifications of conducts and the strict definition of what is permitted and what is forbidden.”³⁴

Significantly, despite the focus on pastoral power in the 1977-78 lectures, Foucault sees “a development of forms of the activity of conducting men outside of ecclesiastical authority,” which he specifies as “a whole series of aspects that form a wide range, starting from the development of specifically private forms of the problem of conduction.” This is linked, he suggests, to “the appearance, or rather reappearance, of the function that philosophy had in, let’s say, the Hellenistic period, and which had effectively disappeared in the Middle Ages, that is to say philosophy as the answer to the fundamental question of how to conduct oneself.”³⁵ The sixteenth century was a time of “intensification, increase, and general proliferation of this question and of these techniques of conduct,” and with the sixteenth century “we enter the age of forms of conducting, directing, and government.”³⁶ The general problem of “government,” according to Foucault, emerges in the sixteenth century, though with respect to different problems and in different aspects. Nevertheless, true to the dual nature of conduct, two problems stand out. On the one hand, there was the problem of governing others, “which was, of course, the problem of Catholic or Protestant pastoral doctrine,” and on the other hand there was the problem of the government of oneself associated with “[t]he sixteenth century return to Stoicism.”³⁷

In the what follows it will be shown that the two are in fact inextricably linked. In Jean Gerson’s critique of the Catholic church (a central moment of pastoral counter-conduct) and his emphasis on conformity to divine law through a subjective power to act rightly, a departure from reliance on external standards of conduct can be observed. However, the association of this power with dominion will lead in later natural law theory to its legalization. With Grotius, the justification of imperialism through the application of this same power to appropriate will provide the conceptual conditions that make possible the effort to secure the conduct of all that Foucault calls “governmentality.”

Natural rights and the problem of appropriation

Foucault famously opposed the pastorate to ethico-political spiritualities, but he also identified a number of “insurrections of conduct” internal to Christianity itself. Within these insurrections, individual conduct in relation to the community of the Church is specifically and deliberately problematized through the natural law concept of dominion. Central to these local and practical experiments in conduct are questions of self-preservation. Yet what begins as a practical

³⁴ Foucault, *The Use of Pleasure*, 30.

³⁵ Foucault, *Security, Territory, Population*, 305-6. Note that in this case, Foucault seems to equate “philosophy” with “spirituality.”

³⁶ Foucault, *Security, Territory, Population*, 307.

³⁷ Foucault, *Security, Territory, Population*, 127.

problematic of individuals' power to conduct themselves is progressively reoriented to theoretical questions of the objects of conduct. As the notion of the right to appropriate the means to self-preservation increasingly takes central place, dominion is gradually reduced to a legal power of preserving property. This is the "juridification of conduct": through a shift to conformity to law as the common measure of the power of individuals to preserve themselves, the power discovered in pastoral experiments in (counter-)conduct becomes the very means through which conduct is regulated. The power inherent in dominion, it might be said, becomes located in property law rather than in individuals, as it becomes the means of securing peoples' conduct in relation to a world of possessions.

Gerson

The thought of Jean Gerson should be considered an insurrection of conduct internal to Christianity, as he was part of that movement of reform within the Catholic church called conciliarism, and drew upon earlier juristic thought to assert the authority of the church as it was invested in the Christian community, conceived as a corporate entity. This was significant in the wake of the Great Schism of 1378, insofar as conciliarists argued that a general council representing the universal church was of greater authority than any single pope. Gerson argued that Bishops held certain rights by reason of the status of their diocese, a *ius episcopale* that included a right of preaching, a right of hearing confession, a right of giving burial, and a right of administering sacraments, independent of Roman privilege. However, he also argued for the rights of each individual member of the clergy, declaring that parish priests were originally instituted by Christ and thereby held rights associated with their office. These were individual rights in the sense that an individual could sue for them, though they were not strictly private rights, but were rights held by individuals as members of a corporate community.³⁸ For Gerson, the power inherent in corporate membership was the condition for the universality of *potestas ecclesiastica*.

Gerson was guided by his aim of church reform, but he was also anxious to avoid what he saw as the errors of other reformists, particularly those of Richard FitzRalph and John Wyclif. FitzRalph had held that all dominion, that is rulership or ownership, was founded in divine grace, or in other words, that only those who enjoyed God's grace could exercise licit authority on earth. Wyclif, taking this conclusion to antinomian extremes, argued that since church authority was obviously corrupt, they forfeited all their rights as prelates and could exercise no licit dominion over the church or its property. For Gerson, such a path could only leave the church in ruins since there was no certainty surrounding the status of any individual soul before God other than through worldly actions. Without some way of deciding whether church prelates justly held dominion, there could be no authority in the church whatever. However, this led to the greater problem of whether there was a sure way of knowing the status of any individual soul before

³⁸ Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Atlanta, GA: Scholars Press, 1997), 212.

God. Gerson notes the importance of understanding “evangelical dominion” and “human dominion,” but the concept of “natural dominion” was the most important for his theory of right.

While the conciliarists aimed at church reform, in the absence of such reform the question of how the individual soul might reform itself was paramount. Gerson rejected the idea that a person could receive saving grace through their efforts alone, condemning this view, alongside many other medieval theologians, as Pelagian heresy. According to this doctrine, by the strength of their will, a person might dispose their soul toward the spiritual life by striving to obey God’s law.³⁹ And yet, if “conformity” to divine law was the condition of righteous moral conduct, the problem was how this law could be accessed as it became increasingly obscured by human convention. Looking to obey the pure law of God, Christians nevertheless found themselves bound on pain of sin by a vast accumulation of additional local regulations.⁴⁰ And yet Gerson wrote: “No one of us is such a sinner as to have no dominion that can be called natural,” since “[n]atural dominion is a gift of God by which a creature has the right [*ius*] immediately from God to take inferior things for his use and preservation.”⁴¹ If right reason inheres essentially in God and all creatures have being and goodness from God, all creatures could be said to enjoy a certain right [*ius*] by virtue of their participation in the gift of divine reason. Gerson famously wrote: “*Ius* is an immediate faculty or power pertaining to anyone according to right reason.”⁴² Ultimately, this definition would allow Gerson to argue that every parish had a natural right to preserve itself in being just like an individual person, but it also had more far-reaching ramifications. Gerson will allow that “every positive being has as much right thus generally defined as it has of being, and thus of goodness.” In this sense even “the sky has a right to rain, the sun to shine, fire to warm, the swallow to build its nest.”⁴³ This potentially allows all creatures, both rational and irrational, moral goodness of action by way of “conformity,” though it is only human reason in its highest form [*synderesis*] that could discern universal principles of good, and, from these, derive more particular rules of conduct. Thus, humans could live in conformity with God’s law by exercising an innate *ius*, a faculty or power in accordance with their natural reason.

Summenhart

Annabel Brett considers fifteenth century theologian Conrad Summenhart to mark “the high

³⁹ Palémon Glorieux (ed.), *Jean Gerson: Oeuvres Complètes*, 10 vols. (Paris: Desclée, 1960-73), 114-5, 117-8, “[...] *peccatrix anima nitendo facere quod in se est, se disponit ad vitam.*” Here and below translations of this work are Tierney’s.

⁴⁰ Tierney writes of these additional regulations: “It was hardly possible to enumerate them all. They came from canons of popes and local councils, rules of religious orders, regulations of universities, colleges and churches, edicts of emperors and princes. In the beginning Adam had had only one law to obey, Gerson wrote, and yet he fell. How could a Christian of Gerson’s own day hope to avoid transgression?” (Tierney, *The Idea of Natural Rights*, 226).

⁴¹ Gerson, *Oeuvres*, 145-6.

⁴² *Ibid.*, 141, “*Jus est facultas seu potestas propinqua conveniens alicui secundum dictamen rectae rationis.*”

⁴³ *Ibid.*, 142

point of literature which equates *dominium* and *ius*,” and in this sense the late medieval philosopher of rights and liberties *par excellence*.⁴⁴ Summenhart agreed with Gerson’s definitions of *ius*, as a proximate power or faculty of individuals according to the dictates of right reason, and *dominium*, as a proximate power or faculty of appropriating things for licit use. However, he also makes a distinction that is not found in Gerson, stating that *ius* can be taken in two ways: in one sense it is the same as law [*lex*], “as when we say that the precepts of God are divine law [*ius divinum*] and that statutes of emperors are civil law [*ius civile*],” and in another sense it is taken to be the same as a power, “as when we say a father has a right as regards his son or a king as regards his subjects, and men have a right over their things and possessions and sometimes also over persons as in the case of slaves [...].”⁴⁵ In the second sense, right is a power insofar as it is over or towards things or other persons in possession of things. In other words, Summenhart takes Gerson’s description of right as a power to imply that right is in an important sense a relation, that is, “a habitual condition with respect to something: founded in him who is said to have right, and terminating in the thing over which or in which he has right (as the remote terminus), and in the action which he is able to perform upon or concerning that thing (as the proximate terminus).”⁴⁶

Referring to Aristotle’s *De Anima*, Summenhart notes that there are two ways to conceive of power; as the material reality of the soul that brings forth actions, and in this sense absolute insofar as it is a relation only to its own actions; or as the formal reality of a signified object insofar as it disposes the soul to actions relative to that object. In the second sense, power is a relation to some external reality, and this, Summenhart argued, was how Gerson was to be understood. Brett suggests that Summenhart is deriving his argument from John of Jandun, since “nowhere else do we find the concept of relation applied to potencies.”⁴⁷ However, John of Jandun only allowed for a definition of potency as a relation to an act, whereas Summenhart, by introducing a difference between proximate and remote termini within a relation, converts the relationship of potency to act to a relationship of potency to object. Moreover, since both right and dominion are formally relations to objects, the potency in question is the same for both. As Tierney puts it, “Summenhart thus understood a right as a power that gave rise to a relationship between a person and the object of the right [...] a right was a disposition of the right-holder in relation to something, that could be expressed only by some action regarding it.”⁴⁸

Whereas Gerson had argued that every creature has as much right as it has being, by assimilating *dominium* to Gerson’s notion of power Summenhart is allowing that it be understood as “a neutral quality which can be predicated of all created beings in so far as they are capable of

⁴⁴ Annabel S. Brett, *Liberty, Right, and Nature: Individual Rights in Later Scholastic Thought* (Cambridge; New York: Cambridge University Press, 1997), 34.

⁴⁵ Conrad Summenhart, *De contractibus licitis et illicitis* (Venice, 1580), 1. Here and below translation of this work is Brian Tierney’s.

⁴⁶ *Ibid.*

⁴⁷ Brett, *Liberty, Right, and Nature*, 40.

⁴⁸ Tierney, *The Idea of Natural Rights*, 246-7.

any kind of action which affects other creatures.”⁴⁹ Dominion, in this sense, is as much a category of natural science as it is of civic agency. That *dominium* is predicable of all creatures raises the question of whether there was a time when creation had not yet appropriated the various *dominia*, that is, a time where *dominia* were not yet distinguished. Summenhart posits a very broad range of *dominia*, including twenty-three subdivisions to account for the entire range of creation, from inanimate bodies through to irrational animals. However, the dominion that pertains to rational creatures is something different, since, as Gerson pointed out, only in humans did *ius* designate a liberty, a freedom of action in relation to the objects of their rights. Ultimately, Summenhart adopts the Roman law definition of liberty entailing a dominion of the human over itself, “for if he is free, he has the faculty of doing whatever he likes, unless prohibited by force or right.”⁵⁰ So, while there may have been a time when the *dominia* of inanimates and irrationals were indistinct, “civil *dominia* understood as involving appropriation [...] were never indistinct; because it was never the case that someone had civil *dominium* of a thing of which everyone else had *dominium* [...] because this involves contradiction.”⁵¹ In other words, human *dominia* involve liberty to appropriate, and civil polity is completely coincident with distinct *dominia*, civil law being nothing but the law determining the appropriation of *dominia*.⁵² While *dominium* is originally governed by natural law, applying to all of creation, for humans who appropriate via their freedom, *dominium* must be protected by civil law. Civil law protects the dominion of humans over themselves by protecting the things which they appropriate from the appropriation of others, and it is in this sense that their natural power to appropriate is held to be a right.

Vitoria

The Spanish theologian and jurist Francisco de Vitoria thought that while Gerson and Summenhart had made significant advances in moral and legal theory by equating *ius* and *dominium*, their naturalization of dominion was nevertheless flawed. Vitoria thought that to apply *ius* and *dominium* to both irrationals and rationals perpetuated a confusion. Following Aquinas, Vitoria believed that only a rational nature bestowed *personhood*, and therefore the right to self-government. By virtue of their intellect and will, persons are masters of their own actions, and it is only such a relationship to action, a dominion of self, that implies a right. *Dominium*, Vitoria says, can be defined in three ways. In a first sense, *dominium* is defined “strictly and peculiarly, so that it signifies a certain eminence and superiority, the same way that princes are called *domini*.”⁵³ Summenhart made the same distinction between strict and general senses of *dominium*, but Vitoria points out that in the strict sense it is not a right since right must be thought in broader

⁴⁹ Brett, *Liberty, Right, and Nature*, 40.

⁵⁰ Conrad Summenhart, *Septipertitum opus de contractibus pro foro conscientie atque theologico* (Hagenau, 1515), Tract 1, Q. 1, 5a conc. Here and below translation of this work is Annabel Brett’s.

⁵¹ Summenhart, *Septipertitum opus*, Tract 1, Q. 8, Gviii v.

⁵² Brett, *Liberty, Right, and Nature*, 41.

⁵³ Francisco de Vitoria, *Comentarios a la secunda secundae de Santo Tomás*, edited by V. Beltrán de Heredia (Salamanca, 1934), 62, 1, 6. Here and below translation of this work is Annabel Brett’s.

terms. Secondly, dominium is defined “more widely” in a legal sense as property, but this is still not equivalent to right. Rights are held by those creatures who are capable of receiving injury, but restitution is not only due in the case of goods taken from a proprietor. Dominion, as a right is “the faculty of using an object as one personally sees fit.”⁵⁴ As a result, Vitoria posits a third sense of dominium, which addresses the will of the *dominus* as that which determines a right to something, beyond superiority or ownership. Aquinas had maintained that every person was *dominus* of their own acts, “they have dominion of their actions through free choice,”⁵⁵ and “through this man is owner of other things.”⁵⁶ To the contrary, irrationals act by necessity, and since animals lack the freedom to control their actions, juridically speaking, they could not suffer injury [*inuria*]. In this sense irrationals could not experience injustice; they could not suffer a wrong and therefore could not have a right. What is more, they could not have dominion, since “[t]here is no dominion that is not founded in a right.”⁵⁷

Yet Aquinas also wrote, “law [...] is the ground of right.”⁵⁸ Crucially, Vitoria reinterprets what was an objective definition along the lines of subjective right: “[Aquinas] says therefore that right is that which is licit in accordance with the laws. And so we use the word when we speak. For we say, ‘I have not the right of doing this, that is, it is not licit for me; or again, ‘I use my right,’ that is, it is licit.”⁵⁹ As Tierney shows, Vitoria is treating a right as a kind of license to act within the framework of law, and was in this way relying on a concept of permissive law: “for Vitoria permissive law defined an area of free choice where a person was not commanded or forbidden to act in a certain way but could say, ‘I use my right’.”⁶⁰ Furthermore, Vitoria adapts Aquinas’ argument to a Gersonian theory of power, stating that “*ius* is a power or faculty pertaining to anyone in accordance with the law.”⁶¹ Tierney suggests that this is merely a slight misquotation of Summenhart who, following Gerson, wrote of a power or faculty “in accordance with right reason” or “in according with primal justice.”⁶² However, this slight change in the thought of power has significant ramifications, since we are now to understand the fundamental right of humanity through its freedom, not as a power according to right reason, but rather as power in accordance with law since “[w]hoever has a faculty in accordance with the laws has a right.”⁶³

Since Aristotle, and according to Christian doctrine, it had become commonplace to state

⁵⁴ Vitoria, *Comentarios*, 62, 1, 29.

⁵⁵ Aquinas, *Opera Omnia* vol. 2, 610.

⁵⁶ Aquinas, *Opera Omnia* vol. 3, 560.

⁵⁷ Francisco de Vitoria, *De justitia*, in V. Beltrán de Heredia (ed.), *Comentarios a la segunda segunda de Santo Tomás* (Salamanca, 1934), 2.2ae.62.1, 64. Here and below translation of this work is Brian Tierney’s.

⁵⁸ Aquinas quoted in Tierney, *The Idea of Natural Rights*, 259.

⁵⁹ Vitoria, *De justitia*, 2.2ae.62.1, 64.

⁶⁰ Tierney, *The Idea of Natural Rights*, 259.

⁶¹ Vitoria, *De justitia*, 2.2ae.62.1, 64.

⁶² *Ibid.*

⁶³ *Ibid.*

that lesser creatures existed for the sake of more perfect ones, and insofar as the human was the most perfect it had “right and dominion” over all. Vitoria gave a natural law argument in support of this, stating that “it is according to natural law that man conserves himself in being [...]. But this can not be without the other creatures, therefore, it has the right to use them all.”⁶⁴ Moreover, “dominion of things did not belong only to the human race as community; rather each individual person was owner of everything, so that he could use or abuse it at will.”⁶⁵ The obvious question follows: how was everything divided such that private property had emerged from this state of total use? Following Gratian, Vitoria asserts that division is a result of human law. But since natural law makes every individual an owner of everything, the institution of private property would deprive a person of their natural right. However, Vitoria notes, this would not be the case if the natural law ordaining the community of property “was not a precept binding for all time but only a kind of permissive law.”⁶⁶ What Vitoria is suggesting, is that the proper use of a person’s right to claim property constitutes the law. Moreover, it is a principle of natural law, says Vitoria, that an original division should meet with the agreement of all people [*in consilio*], that is, given the question of how the division was to be made, the will of the majority should prevail. Significantly, this need not be formal consent, but only virtual consent [*consensu virtuali*], “so that when one person began to cultivate a piece of land others would tacitly recognize his claim to it,” or as Vitoria put it, it is consent expressed “by deeds rather than by words.”⁶⁷ This is how the *ius gentium* [law of nations] was formed. The nations of the world did not need to meet together to consent explicitly to its principles, since they derive from the natural application of human rights. In other words, as the rational division of property, licit use of power outlines the contours of a law that expresses the will of the people.

Grotius

Like Vitoria, Hugo Grotius agreed with Cicero that “by nature nothing is private,” and even states that this is the “first law of nations.”⁶⁸ Grotius notes that in his time, the term *dominium* connotes possession of something *proprium*, and refers to exclusive ownership, while the word *commune* means ownership by a group. The same terms, he writes, applied to the primordial condition of humanity when no private property existed. The word *commune*, at that “early age” was nothing but an antonym of *proprium*, and *dominium* denoted the power of not unjustly using something common. *Dominium*, in this early sense, was use “of fact” and not by law. Moreover, according to the original grant of the world to humanity, everyone could take possession of what they needed, and “to have made use of Things that were then in common, and to have consumed

⁶⁴ *Ibid.*, 73.

⁶⁵ Tierney, *The Idea of Natural Rights*, 263.

⁶⁶ *Ibid.*, 264.

⁶⁷ Vitoria quoted in Tierney, *The Idea of Natural Rights*, 264.

⁶⁸ Hugo Grotius, *The Free Sea*, edited by David Armitage, and translated by Richard Hakluyt (Indianapolis: Liberty Fund, 2004), 21.

them, as far as Nature required, had been the Right of the first Possessor.”⁶⁹ Such a right of possession followed, Grotius thought, from the fact that consumables such as “food and drink” diminished through use, and as a result the limit of a possessor’s needs would entail making these consumables unavailable to others. In other words, the thing used becomes “part of the very substance of the user,”⁷⁰ leading to exclusive possession. Grotius borrowed from the decretals of Pope John XXII, *Ad conditorem* and *Quia quorundum*, where the thesis was advanced that this form of use was inseparable from ownership. Exercising one’s right to possession, in relation to the necessities of survival and the pursuit of self-interest, involved a correlative duty to abstain from exercising this right in regards to the possessions of others.

Grotius then argued that, by a logical process, ownership was extended from things that are consumed in use to things, such as clothes and other movables, which are not entirely consumed in use but by use become less fit for future use. Further, because of this development, it was inevitable that not even “all immovable things—to wit, fields—could not remain undivided,”⁷¹ since, even if land itself is not consumed, it is nevertheless bound up with subsequent consumption, as for example arable lands are used to produce food, and there is not enough land for indiscriminate use by everyone. Recognition of the ultimate inseparability of use and *prioprietas* led to the establishment of law imitating nature, and decreeing that ownership is acquired through occupation. In the ‘Prolegomena’ to *De iure praedae*, Grotius advances the precept of the law of nature defining “private occupation”:

*It shall be permissible to acquire for oneself, and to retain, those things which are useful for life. The latter precept, indeed, we shall interpret with Cicero as an admission that each individual may, without violating the precepts of nature, prefer to see acquired for himself rather than for another, that which is important for the conduct of life ... However, since God bestowed these gifts upon the human race, not upon individual men, and since such gifts could be turned to use only through acquisition of possession by individuals, it necessarily followed that τὸ ἐσφτερισμένον, “what had been seized as his own” by each person should become the property of that person. Such seizure is called *possessio* [the act of taking possession], the forerunner of *usus* [use], and subsequently of *dominium* [ownership].⁷²*

And from this arises the precept, “[l]et no one seize possession of that which has been taken into the possession of another.”⁷³ In *De iure belli* Grotius clarifies that the introduction of private property is not the result of “a mere act of will” since “one could not know what things another wished to have, in order to abstain from them—and besides, several might desire the same thing.” Private property, then, arises from the recognition of the inseparability of use and ownership, from “a

⁶⁹ Hugo Grotius, *The Rights of War and Peace*, vol. 1, edited by Richard Tuck (Indianapolis, IN: Liberty Fund, 2005), 184.

⁷⁰ Tierney, *The Idea of Natural Rights*, 331.

⁷¹ Grotius, *The Free Sea*, 22.

⁷² Hugo Grotius, *Commentary on the Law of Prize and Booty*, edited with an Introduction by Martine Julia van Ittersum (Indianapolis: Liberty Fund, 2006), 23-24.

⁷³ *Ibid.*, 27.

certain Compact and Agreement, either expressly, as by a Division; or else tacitly, as by Seizure."⁷⁴ As in Vitoria, the right of first occupancy appears to lead to consensus.

In the final stage of his argument, Grotius states that the open sea cannot be occupied both because of its vastness and because it was inherently suited to the common use of all humanity. The sea is fundamentally different from the land, incapable of ownership due to the impossibility of "corporeal possession." The sea will always remain common to all of humanity, in a "state of nature," since "neither the people nor any private man can have any property in the sea."⁷⁵ Grotius uses this final argument to mount a defense of Dutch imperialism in the East Indies. At the time, the Dutch East India Company was at odds with the Spanish and the Portuguese, who had made claims to monopoly of trade and navigation in the Indian Ocean. The dispute, according to Grotius, surrounded the question of "whether the huge and vast sea be the addition of one kingdom."⁷⁶ Straumann notes that Spanish and Portuguese claims to control over the Indian Ocean were based on the same legal titles that justified territorial acquisitions in their overseas colonies, that is title of papal donation, title of discovery, and title of occupation, which for Grotius' purposes "had to be undermined in favor of an alternative doctrine of sources."⁷⁷ These sources, as Straumann observes, are effectively Roman law as it was re-interpreted by the Spanish Thomists (such as Vitoria), based on the connection between the law of nature, deducible from right reason, and the law of nations, regard as the "positive" product of human agreement. In particular, the way in which Grotius derives norms and their formal origin is "strongly reminiscent of the way Cicero treats of 'nature' rather than Roman law as a normative repository." For Grotius, acting solely in the pursuit of self-interest is not only morally wrong but also legally wrong in the state of nature that, in a Ciceronian tradition, provides for rules with the status of valid legal claims.⁷⁸

Cicero is known to have defended Roman imperial conquest, and provided, according to Straumann, "what probably is the first extant philosophical justification of the Roman empire," grounded in two concepts: the Stoic notion of natural law, and the Roman notion of just war.⁷⁹ Both Straumann⁸⁰ and Van Ittersum⁸¹ have argued convincingly, and against somewhat more optimistic reading of Grotius, that his use of Stoic notions went a long way towards a justification

⁷⁴ Grotius, *The Rights of War and Peace*, vol. 2, 426-7.

⁷⁵ Grotius, *The Free Sea*, 32.

⁷⁶ Grotius, *The Free Sea*, 7.

⁷⁷ Benjamin Straumann, "'Ancient Caesarian Lawyers' in a State of Nature: Roman Tradition and Natural Rights in Hugo Grotius's 'De iure praedae'," *Political Theory*, vol. 34, no. 3 (June 2006), 333.

⁷⁸ *Ibid.*, 334-7.

⁷⁹ *Ibid.*, 338.

⁸⁰ Benjamin Straumann, "Oikeiosis and Appetitus Societatis: Hugo Grotius' Ciceronian Argument for Natural Law and Just War," *Grotiana* vols. 24-26 (2003-2004), 41-66; Straumann, "'Ancient Caesarian Lawyers' in a State of Nature."

⁸¹ Martine Julia van Ittersum, "The Wise Man Is Never Merely a Private Citizen: The Roman Stoa in Hugo Grotius' *De Jure Praedae* (1604-1608)," *History of European Ideas* vol. 36, no. 1 (2010), 1-18.

of imperialism and colonialism. In particular, the notion of the fellowship of humankind or “that world community, commended [...] by the Stoics”⁸² was fundamental to his assertion that war against those obstructing Dutch trade in the East Indies does not represent a contradiction of natural law. Inasmuch as goods such as the high seas proceeded originally from nature, and were produced for common use and remained in that “primeval state” in which things were held in common, they belonged to all of humanity. Grotius’ adoption of the *ius gentium* as derived but distinct from natural law allowed him to extend the reach of the norms of private law from the realm of humanity in general to the relations between peoples.

In order to achieve this he appeals to a notion of subjective right:

Now add the fact that the sea is not only said by the jurists to be common by the law of nations, but without any addition it is said to be of the right of nations. In these passages ‘right’ can not mean a norm of justice, but a moral power over a thing as when we say ‘this thing is of my right, that is, I have ownership over it or use or something similar.’⁸³

Grotius defines a subjective right as “a moral Quality annexed to the Person, enabling him to have, or do, something justly,”⁸⁴ which, as for Gerson, Summenhart, and Vitoria before him, meant a power [*potestas*] over oneself, which orients moral relations with others. Significantly, such a right accords with more than just the right “to acquire for oneself and to retain those things which are useful for life.” It is also permissible “to defend one’s own life and to shun that which threatens to prove injurious.”⁸⁵ Extrapolating from the right of self-defense, Grotius argues that transgression of natural law merits punishment of two kinds:

The first kind of punishment has as its aim the correction of one individual; the second kind is aimed at the correction of all other persons, in addition to that one. The attainment of these two objectives leads to a third: universal security. For if all persons conduct themselves aright, it necessarily follows that no one will suffer wrongly.⁸⁶

Grotius follows Seneca, who had argued that the ultimate aim of punishment is “universal security,” and argues that transgressors of the natural law (such as the Portuguese) should be punished for the sake of the entire human race. By associating the conduct of all with universal security Grotius transforms moral duty into an enforceable legal norm.

Cicero and Grotius’ appropriation of appropriation

The centrality of the notion of self-preservation in Grotius’ thought has been noted by many

⁸² Grotius, *De Jure Praedae*, 39.

⁸³ Grotius, *The Free Sea*, 107.

⁸⁴ Grotius, *The Rights of War and Peace*, vol. 1, 138; italics removed.

⁸⁵ Grotius, *Commentary on the Law of Prize and Booty*, 23.

⁸⁶ *Ibid.*, 32.

scholars. Richard Tuck, for example, has argued that self-preservation served as the minimal core of Grotius' conception of moral conduct.⁸⁷ There is ample evidence to suggest that Grotius took the notion of self-preservation from the Stoics, and in particular from Cicero's discussion of *oikeiosis* in the third book of *On Ends*. *Oikeiosis* is a difficult term to translate, but its meaning is perhaps best expressed by "appropriation." Cicero has Cato present the entire system of Stoic ethics, starting with an explanation of *oikeiosis*. An animal's first impulse, as soon as it is born, Cato says, is to take care to preserve itself. An animal "favours its constitution and whatever preserves its constitution, whereas it recoils from its destruction and whatever appears to promote its destruction."⁸⁸ The development of a human being, like other animals, begins with its concern for what belongs to it, as it is appropriated and commended to itself. Against the Epicurean view, as Annas points out, the Stoics believe that the newly born infant is directed to its self-preservation before pleasure affects it in any way; it is directed not towards pleasure, but towards its own good, and "to explain the appropriateness of an animal's or baby's responses we have to assume that the animal or baby is bringing to the situation some conception of the kind of thing it is, not merely reacting to particular encounters with pleasure and pain."⁸⁹ The objects which living beings naturally pursue are those that accord with nature and are good for them, such as health, wealth, strength, and other bodily capacities. They are "the primary object of desire," or "the primary objects in accordance with nature." Whatever accords with nature is worthy of selection, which is called an "appropriate action [*kathêkon*], starting with the preservation of oneself within one's constitution.

It is through the use of reason that one learns that certain things are good for them, and over time selection becomes stable and continuous. In this way, one begins to see an order or "concordance" in the things that one ought to do, "one then values that concordance much more highly than those first objects of affection."⁹⁰ The growing "consistency" of selection through reason soon comes to be praised on its own account, and for the Stoics is thought to be the supreme good, since reason is the only good to be sought in virtue of its own power, whereas none of the primary objects of nature are sought on their own account, but only insofar as they accord with nature. Reason is itself in accordance with nature, and results in what are called "right actions" or "rightly performed actions [*katorthômata*]" which are the measure of virtue [*honestum*]. Moral action, then, is a natural development from the initial appropriate action of self-preservation [*oikeiosis*] to the appearance of right reason [*recta ratio*]. To act morally is to live consistently and harmoniously with nature, which is for the Stoics the final aim [*telos*]. It is not that one abandons appropriate actions in favour of right actions, but that one becomes indifferent to the primary objects of nature since they form no part of the supreme good, even while

⁸⁷ Richard Tuck, "Grotius, Carneades and Hobbes," *Grotius* vol. 2 (1997), 263–82.

⁸⁸ Cicero, *On Moral Ends*, edited by Julia Annas, and translated by Raphael Woolf (Cambridge: Cambridge University Press, 2001), 70.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*, 72.

maintaining a preference for these things [*adiaphora proegmena*] over others since they make self-preservation possible.

Up to now Cato has only described what Julia Annas has called “personal *oikeiosis*,” which is an individual’s becoming appropriate to itself, which leads to reason in accordance with nature. There is also a process of “social *oikeiosis*,” which is not a separate process but an extension of the first, and which leads to an account of the naturalness of justice. Initially it appears as though any account of justice in relation to a natural law that emerges from an initial act of self-preservation would quickly be undermined by a criterion of personal advantage. But Cato goes on to describe the way in which *oikeiosis* includes care for others. Starting with the assumption that parent’s care for their offspring is natural and instinctual, the Stoics trace the development of human society. Just as parents consider their children to be their own, belonging to them, there emerges a natural sympathy between human beings insofar as they understand each other to be parts of the same community of reason. This can be thought, Cato suggests, in the same way as we think of the parts of the human body becoming appropriated by an individual through personal *oikeiosis*. If the power of reason serves an individual in its becoming appropriate to itself and the development of morality, how much more can a community of rational agents bring about situations when living according to nature is possible. In other words, insofar as humans are rational, they think of themselves as parts of a moral community rather than primarily as promoters of their own interests. To the extent that the demands of this moral community have the kind of force that law has, the Stoics can be thought of expounding a doctrine of “natural law.” If what is natural in human beings commends them to other humans through the power of their rational faculty, virtuous conduct can be understood as natural.

The problems the Dutch were facing in the East Indies and Grotius’ concern with universal security and the conduct of all demand an answer to the question of “whether ‘tis ever lawful to make war.”⁹¹ This question Grotius states, is to be examined through natural law, and he refers to Cicero’s argument that “there are two sorts of principals,” some that go before, the first impressions relating to the primary objects of nature, and “others that come after, but ought to be the Rule of our Actions, preferable to the former [i.e. the first Impressions of Nature].”⁹² And, like Cicero, he derives the second from the first in a more or less continuous fashion, emphasizing the naturalness of right reason in humans and their innate capacity for moral action or “propriety.” In fact, there is a sense in which Grotius collapses social *oikeiosis* into personal *oikeiosis*, seemingly suggesting that society itself is among the primary natural objects. He writes:

Man is indeed an Animal, but one of a very high Order, and that excels all the other Species of Animals much more than they differ from one another; as the many Actions proper only to Mankind sufficiently demonstrate. Now amongst the Things peculiar to Man, is his Desire of Society, that is, a certain Inclination to live with those of his own Kind, not in any Manner whatever, but peaceably, and in a Community regulated according to the best of his

⁹¹ Grotius, *The Rights of War and Peace*, vol. 1, 180.

⁹² *Ibid.*

Understanding; which Disposition the Stoicks [*sic*] termed Oikeiosis. Therefore the Saying, that every Creature is led by Nature to seek its own private Advantage, expressed thus universally, must not be granted.⁹³

This “desire of society,” Grotius suggests, is present from birth, and it is only as adults that humans, “being capable of acting in the same Manner with respect to Things that are alike,” develop “a Faculty of knowing and acting, according to some general Principles” by means of which they might fulfill their desire. More even than Cicero, Grotius derives right action from appropriate action, since “sociability” or the “Care of maintaining Society in a Manner conformable to the Light of human Understanding,” which satisfies a desire emerging from the first impression of nature, is itself

the Fountain of Right, properly so called; to which belongs the Abstaining from that which is another’s, and the Restitution of what we have of another’s, or of the Profit we have made by it, the Obligation of fulfilling Promises, the Reparation of a Damage done through our own Default, and the Merit of Punishment among Men.⁹⁴

It is with this in mind that Grotius is able to argue for war’s agreement with natural law. When the question is raised as to whether war is necessarily repugnant to a reasonable and social nature, Grotius replies that among the first impressions of nature there is nothing repugnant to war, “all Things rather favour it” since the aim of war, as the preservation of life or the securing things useful to life, “is very agreeable to those first Motions of Nature [...] since Nature has given to every Animal Strength to defend and help itself.”⁹⁵ As Straumann points out, this view of war “is absolutely in line with the criteria for the Stoic *kathêkon*.”⁹⁶ However, for the Stoics, actions only accord with natural law when they are virtuous. Initially, Grotius has shown that war is appropriate since it aids self-preservation, and as merely appropriate action it should be irrelevant with respect to virtue. Yet it is also clear that war is justified by any obstruction of the satisfaction of an individual’s desire for society, since sociability is the “fountain” of those very rights Grotius tells us the impediment of which provides the just causes of war. In Stoic terms, war as *kathêkonta* is nothing more than a special case of *kathêkonta*. In war, sociability internalizes a regulatory mechanism that for Vitoria was merely virtual—the guarantor of consensus, so to speak.

The primary object of desire that is sociability, derived from the role that property plays in self-preservation, is from the outset the common measure of virtue and the rule of human actions, the means and the end of moral conduct. As in Vitoria, to promote one’s own interests is always already to promote the interests of others, and the Grotian desire for society, beginning from an impulse to self-preservation, is identical to the desire for regulated community. Universal security

⁹³ Ibid., 80-1; italics removed.

⁹⁴ Ibid., 86; italics removed.

⁹⁵ Ibid., 183.

⁹⁶ Straumann, “*Oikeiosis* and *Appetitus Societatis*,” 63.

is in this sense the highest virtue, derived from a rationality that is indistinguishable from the distribution of the social as moral and legal conduct. Individual power, inseparable from communal rights as it was conceived by Gerson, becomes with Grotius the power of subjects to guarantee the regularity and maintenance of society, realized in war. Ultimately, to protect the universal desire of society, is to govern the right to property by regulating the “Care of maintaining Society,” which according to Grotius, is inseparable from individuals’ care for themselves. What is apparent is that the right, which for Gerson had connected individual power with a form of counter-conduct, becomes for Grotius a justification for war in order that this same right be guaranteed through the regulation of the conduct of all. In other words, Grotius leaves us with a principle of ethical transcendence: to take one’s proper place in society is to mirror the desire of every other subject.

***Oikeiosis* in the early Stoics**

Grotius’ use of Stoic *oikeiosis* relies on Cicero’s account, but the account of the early Stoics was somewhat different. As Paul Vander Waerdt has shown, the formula that law is right reason as applied to conduct is understood quite different by the Stoics than it was by the later natural law tradition. He argues that the Stoics deny that natural law can be summed up in a code of moral rules, as for example is offered by Aquinas’ elaborate code of precepts based upon God’s eternal law or Grotius’ general principles. To understand the way in which right reason applies to conduct for the Stoics, then, we must resist the idea that they adhered to a rule-following model of natural law, where moral conduct is prescribed by a specific set of rules corresponding to the natural hierarchy of human impulses. Chrysippus, for instance, recognizes the particular class of actions which accord with nature, the perfectly virtuous actions or *katorthômata* performed according to right reason by the Stoic sage, who by definition was the only human capable of performing them, as opposed to merely appropriate actions or *kathêkonta* performed by ordinary moral progressors. Nature, it is thought, prescribes *katorthômata* alone, while it proscribes all action that falls short of the standard of the sage’s rational activity. However, this does not mean that such actions admit of codification. They are not a distinct class of action because they admit of a different external description but only as a result of a difference in motivation, and the *kathêkonta* of ordinary agents become *katorthômata* when performed by the sage, “whose perfectly rational and consistent disposition guarantees the moral infallibility of all his actions.”⁹⁷ Natural law is isomorphic with the sage’s right reason, which is not constituted by normative rules with substantive content, but by the sage’s intentions emerging from their rational disposition with regard to certain situations. *Katorthômata* are “entirely circumstance dependent” which is evidenced by the fact that certain circumstances “may require justified exception to *kathêkonta*,” such that no final set of moral rules can guide performance in every circumstance. What’s important to keep in mind here, is that such an exception is never justified by content external to

⁹⁷ Paul A. Vander Waerdt, “Zeno’s Republic and the Origins of Natural Law,” in Paul A. Vander Waerdt (ed.), *The Socratic Movement* (Ithaca, NY: Cornell University Press, 1994), 275.

the very situations that the sages themselves in. As Vander Waerdt argues, the early Stoics held “a dispositional rather than a rule following model of natural law, and a correspondingly different account of the content of the moral conduct prescribed by it.” Natural law, then, does not prescribe determinate actions but a certain rational disposition with which one is to act, which is to say, “the perfectly rational and consistent disposition which enables the sage to apprehend and act in accordance with the provident order of nature.”⁹⁸

If the early Stoic usage of natural law has these implications, it also leads to a vision of justice, which in typical Stoic fashion is one that advocates a universal world-state or *cosmopolis*. Plutarch, in his well-known account of Zeno’s *Republic*, writes:

The much-admired Republic of Zeno, the founder of the Stoic sect, is aimed at this one main point, that we should not dwell in cities or peoples, each one marked out by its own principles of justice, but we should regard all human beings as our fellow members of the populace and fellow-citizens, and there should be one way of life and order; like that of a herd grazing together and nurtured by a common law [*koinos nomos*]. Zeno wrote this, picturing as it were a dream or image of a philosopher’s well-regulated regime.⁹⁹

In line with Stoic doctrine, there is an emphasis on a single order that sets the standard of living together according to nature. In this sense, the *koinos nomos* can be translated either as “common pasture” or “common law,” and it is assumed that this is the equivalent of natural law, as understood in early Stoic philosophy. However, there is some question as to what is meant in this case by common, given the regard to “all human beings” as citizens of the “well-regulated regime.” There is evidence to suggest that Zeno agreed with Chrysippus in holding that only sages are capable of performing *katorthômata*, and in this way would find the majority of humanity incapable of living in accordance with the *koinos nomos*. For this reason, “all human beings” should be understood to refer to all those capable of living according to the common law, that is, those with the sage’s right reason. In other words, only the wise are really human [*anthropoid*],¹⁰⁰ and common means common not to all of humanity “but rather to those who perfectly embody human nature.”¹⁰¹

There is also the sense that human beings share the *koinos nomos* by virtue of their natural capacity to act in accordance with right reason, even if the actualization of that capacity in a universal regime is only a “dream or image.” For, even if the sage is “rarer than the Ethiopian phoenix,”¹⁰² surely it is possible for any human to become a sage, however unlikely. It is this sense that Cicero adapts early Stoic doctrine to support the novel thesis that all mature human beings belong to the domain of natural law. Antiochus had argued against Chrysippean

⁹⁸ Vander Waerdt, “Zeno’s *Republic* and the Origins of Natural Law,” 275-6.

⁹⁹ Plutarch, *De virt. Alex*, 329a-b.

¹⁰⁰ Cf. John Sellars, “Stoic Cosmopolitanism and Zeno’s *Republic*,” *History of Political Thought*, vol. 28, no. 1 (2007), 15; Vander Waerdt, “Zeno’s *Republic* and the Origins of Natural Law,” 283n41.

¹⁰¹ Vander Waerdt, “Zeno’s *Republic* and the Origins of Natural Law,” 283.

¹⁰² Alexander of Aphrodesias, *On Fate*, 199.14-18.

psychology, which seemed to him to associate virtue with a kind of mental monism and devalue the body and its worldly needs as exemplified by *kathêkonta*. Cicero appears to follow the Antiochean teaching by reinterpreting the formula that law is right reason as applied to conduct such that natural law enjoins *kathêkonta* rather than *katorthômata*. In other words, “natural law is the prescription not strictly of right reason, which only the sage possesses, but of the rationality in which all human beings share.”¹⁰³ Natural law becomes a standard of conduct attainable by all moral progressors, and “the strict early Stoic standard that only *katorthomata*, actions performed by an agent who possesses the sage’s right reason, accord with natural law is now relaxed, and the basis is laid for the conception in which natural law is specifiable in a code of moral rules.”¹⁰⁴

***Oikeiosis* as a principal of ethical immanence**

Given the differences between the Ciceronian version of *oikeiosis*, and that of the early Stoics, it is worth considering more carefully the way in which the term was initially understood by the Stoics. In an essay on “Appropriation,” Daniel Heller-Roazen calls attention to a reflexive expression used in Stoic works, *oikeiousthai pros heauton*, which designates the movement by which a living being becomes related to itself and comes to be appropriated to itself. He points out that this expression belongs to the set of grammatical forms that developed after the Delphic injunction to “know yourself” that flourished in the classical Greek period. However, following Simon Pembroke, he argues that the verb *oikeiousthai*, from which is derived *oikeiosis*, should be construed with a dative or a proposition rather than with an accusative, such that what “becomes proper” in the expression is always an indirect object. He also calls attention to the fact that Herwig Görgemmanns has shown that the verb, despite its passive meaning, is never accompanied by any mention of an agent in the usual sense. The reason for this, is that “[i]n this act of becoming related, the ‘someone’ or ‘something’ to which one grows familiar can hardly be distinguished from the subject as such.”¹⁰⁵

Diogenes in *Lives of Eminent Philosophers* wrote the following with regard to *oikeiosis*:

They say that the first impulse that an animal has is to preserve itself, because nature makes it proper to itself from the outset, as Chrysippus says in the first book of his work *On Ends*. He says that the first thing that belongs [*proton oikeion*] is its own constitution and its awareness of it.¹⁰⁶

So while *oikeiosis* constitutes that first impulse common to all living beings that is self-preservation, this is because from the outset they find themselves assigned to themselves, insofar

¹⁰³ Paul A. Vander Waerdt, *Philosophical Influence on Roman Jurisprudence?: The Case of Stoicism and Natural Law*, in *Aufstieg und Niedergang der Römischen Welt*, Vol.2, pt.36, 7 (Berlin, New York: W. de Gruyter, 1993), 4872.

¹⁰⁴ *Ibid.*, 4855.

¹⁰⁵ Daniel Heller-Roazen, *The Inner Touch: Archaeology of a Sensation* (New York; Cambridge, Mass: Zone Books, 2009), 106-7.

¹⁰⁶ Diogenes Laertius, *Lives of Eminent Philosophers*, Translated by R.D. Hicks (Cambridge, MA: Harvard University Press, 1950), 7.85.

as the first thing that belongs to them is their awareness of their innate constitution. The impulse to self-preservation, then, is the effect of the living being sensing the very constitution to which it belongs. Given the way that Heller-Roazen understands the verb *oikeiousthai*, that is, as bearing on an indirect object that cannot be construed as an agent in any common sense of the term, he inquires into two key terms supposedly central to Chryssipus' understanding of *oikeiosis*: "awareness [*sunaisthesis, sensus*]" and "constitution [*sustasis, consitutio*]. Certainly it is a matter of the attention shown to the self by itself, "to whose cultivation [the Stoics] would most famously also turn their explorations of the 'care of the self [*heautou epimelesthai*],"¹⁰⁷ but it is not immediately clear just how one is to understand the structure of this attention.

"Constitution" is understood more or less unproblematically by Seneca as "the ruling faculty disposed in a certain way towards the body,"¹⁰⁸ and here there are obvious parallels with the natural law tradition of the sixteenth century. A number of scholars, including Anthony Long, George Kerferd, Harris Rackham, and Giselle Striker, have translated or interpreted "awareness" as "consciousness," and Heller-Roazen, for his part, says it is "sensation," which is the focus of his work. However, when Seneca writes that "all animals have a sense of their constitution," he seems to be referring to something like knowledge, since he points out that "all animals understand the definition of their constitution rather than the constitution itself."¹⁰⁹ Such knowledge must apply to animals, irrational according to the Stoics, and so cannot have the rational sense of knowledge as it would otherwise be present in Stoic works. Instead, it is perhaps better to interpret "sense of their constitution" in the way that Brad Inwood does, that is, as a *directedness* of animals towards their own disposition. From this perspective, Seneca writes: "An animal has a primary attachment to itself; for there must be something to which other things can be referred."¹¹⁰ Crucially, Seneca suggests at this point that the "awareness" of his own constitution is nothing other than that "care of myself" that comes before everything.

And yet it has already been established that *oikeiosis* is an indirect relation, complicating things further. Heller-Roazen's analysis becomes particularly helpful here. He suggests that Seneca's care of the self, that comes before everything, suggests nothing less than that the care in question "is before" that thing that is "the self." This is a thesis that seems "by all accounts to also have been that of Chrysippus." And yet, Alexander of Aphrodisias, Heller-Roazen notes, introduces a crucial distinction: on the one hand, some Stoics believe that "[what] the animal senses as the first thing that belongs is nothing other than itself"; on the other hand, other Stoics, "instead, seeking to give a more elegant and precise definition, say that from the moment of birth we are appropriated to our constitution and that which preserves it." This difference between "self" and "constitution" is clear. There is a difference at the heart of the living being, "a

¹⁰⁷ Heller-Roazen, *The Inner Touch*, 113.

¹⁰⁸ Seneca, *Seneca: Selected Philosophical Letters*, translated by Brad Inwood (Oxford; New York: Oxford University Press, 2007), 121, 10; translation modified.

¹⁰⁹ *Ibid.*, 121, 9-11; translation modified.

¹¹⁰ *Ibid.*, 121.17.

difference without which it could not come to be itself: the difference between itself and its constitution." That which the animal comes to be assigned and to which it must adapt itself, that is, its constitution, is "that element with the animal with which it never altogether coincides." *Oikeiosis*, then, is the process in which every living being, to be and to preserve itself, must care for; "that which each being, rational or not, incessantly senses and never knows."¹¹¹ The content of care is not given as a body or a self, but is the very constitution of the life of the animal.

From this perspective, *oikeiosis* as a harmonization with things and with oneself, is an unending process of change, which cannot be delimited by a formula with a fixed and definitive content. Despite there being an initial movement which all living beings share, it is only humans who can discover harmony within the world, but this cannot be thought of as some kind of meaning, given in the divine or by law. It is rather an effect of adapting to circumstance, a kind of balance constantly renewed—"the Sage's equilibrium."¹¹² The only fixed rule of wisdom and virtue is to live without fixed rules, since there can be no preconceived idea of the self which gives rise to a projection of prescriptions and force the adoption of a certain position that constitutes "oneself." The only truth to which the subject must accommodate its actions in order to conduct itself is an openness to possibilities of conduct, which cannot be generalized in code, but can only accede to what Francois Jullien calls "globality."¹¹³ If the self forms a moral unity, the purpose of this unity is not to subsume the variety of possible conducts in a general and codifiable form, but to allow them to communicate from within. The directedness of the self toward itself, which is ultimately an indirect relation, does not accord with a given model but only a variety of models, since the totality of ethical decision reappears in each moment of conducting oneself. This is nothing less than what the Stoics meant by living in accordance with nature.

Conclusion: *Oikeiosis* as (counter-)conduct

Oikeiosis can only be thought as the occupation of a space that cannot be reduced to codification and the juridical sphere, and in this sense must be thought of as the very "soul" of counter-conduct and Foucaultian "spirituality." *Oikeiosis*, in opposition to *homoiosis*, always functions in

¹¹¹ Heller-Roazen, *The Inner Touch*, 114-5.

¹¹² Francois Jullien, *Detour and Access: Strategies of Meaning in China and Greece*, translated by Sophie Hawkes (New York: MIT Press, 2004), 240. Jullien's analysis of indirect language in his comparison of Greek thought with Chinese thought is very close to the difference between the Platonic and juridical models and the Stoic model that is being outlined here. It is important to emphasize that, for Jullien, the "Sage's equilibrium" is nothing less than a harmonization within constant change, which is precisely the source of its constant equilibrium.

¹¹³ Jullien positions "globality" as the immanent regulatory principle of the Sage's work, the unity of which always proceeds from "the totalization of the immanent in the world." That the source of its unity is not external to the world, Jullien suggests, determines the form of its "universality." He writes: "While the word as definition strives for universality, the word as indication proceeds from universality. In one case, universality constitutes the aim (telos), in the other, the source. [...] Generality can be defined, globality cannot. Instead, one becomes aware of, realizes. Definition causes one to know, modulation brings about realization." (Ibid., 247)

the mode of the "etho-poetic."¹¹⁴ *Oikeiosis*, as a mode of action that is "moral," is never reducible to "an act or series of acts conforming to a rule, a law, or a value."¹¹⁵ From within *oikeiosis*, counter-conduct cannot be differentiated from conduct in a very real sense, since "a rule of conduct is one thing; the conduct that may be measured by this rule is another." Given a code of action or a mode of relating to oneself "there are different ways to 'conduct oneself' morally, different ways for the acting individual to operate, not just as an agent, but as an ethical subject of this action."¹¹⁶ Natural law theory effectively incorporated a number of these moral experiments in such a way that it led to the juridical codification of conduct and the universalization of its subject, but the constitution of "another conduct" always lay waiting within it.

Oikeiosis neatly encapsulates Foucault's primary concerns in relation to the problem of care of the self. Firstly, in relation to "determination of the ethical substance," the content of every moral struggle results from a certain form of self-mastery. But this content will always result from vigilance and struggle, and "contradictory movements of the soul" will be the prime material of moral practice. Secondly, the way in which individuals relate to rules and regulation and recognize their obligation to put them into practice has to do with "the mode of subjection." Regulation, in *oikeiosis*, is totally immanent, and its only content is given in formulations according to the regularity of context, situation, and circumstance. Thirdly, the forms of "elaboration of ethical work [*travail éthique*]," always result from an attempt to transform oneself into the ethical subject of one's behavior, and in this way, and in this way only, to make truth the determinant of one's right action. Finally, and perhaps most importantly, the *telos* of the ethical subject, as indicated in *oikeiosis*, is always a certain mode of being characteristic of the ethical subject, a moral conduct that is always also counter-conduct, in which it realizes the very form of its self-activity.¹¹⁷ Taken together, these different factors render *oikeiosis* indistinguishable from a veritable *ecology* of conduct. Ultimately, *oikeiosis* can be understood as providing the conceptual foundation for a "principle of ethical immanence," operating throughout Foucault's so-called "critique of the subject."

A principle of ethical transcendence, on the other hand, places its main emphasis on the code and its capacity to adjust to every possible circumstance, since for it the content of moral and political struggle is given in advance. Yet perhaps what is most telling about ethical transcendence is that because of its mode of regulation, in accordance to such a principle "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," even leading to war in extreme cases. Under

¹¹⁴ "*Ethopoiein* means making *ethos*, producing *ethos*, changing, transforming *ethos*, the individual's way of being, his mode of existence. *Ethopoios* is something that possesses the quality of transforming an individual's mode of being. [...] We will keep more or less to the meaning found in Plutarch, that is to say: producing *ethos*, forming *ethos* (*ethopoiein*); capable of forming *ethos* (*ethopoios*); formation of *ethos* (*Ethopoia*)" (Foucault, *The Hermeneutics of the Subject*, 237).

¹¹⁵ Foucault, *The Use of Pleasure*, 28.

¹¹⁶ *Ibid.*, 26.

¹¹⁷ *Ibid.*, 26-8.

these conditions, subjectivation occurs in a juridical form, “where 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.”¹¹⁸ In this way, conducting oneself and being conducted are to two correlative and inseparable aspects of the direction of the subject towards itself.

Foucault notes that the problem of obedience is “at the center” of his discussion of counter-conduct.¹¹⁹ However, even if for Stoicism the figure of the sage acts as “a sort of regulating principle of behavior,” a kind of ideal that guides the behavior of others, “the most important thing about its aim is to lead to a stage at which one no longer needs a director and is able to conduct oneself and be the sovereign director of oneself.”¹²⁰ In the movement of *oikeiosis*, one is guided by natural prescriptions, but this ultimately leads to a phase in which, because of one’s mastery, one no longer needs to be conducted. In relation to a principle of ethical transcendence, to the contrary, “one always needs to be conducted, even and especially when one conducts.” When the possibility of conducting oneself is subsumed under a code, obedience is not transitional. There is not a period of life during which one obeys followed by a period in which one no longer has to obey, and in the sense “[o]bedience is not a transitional period, it is a state [...] in which one must remain until the end of one’s life and with regard to anyone.”¹²¹ In a society founded on a code of conduct, the government of self is always government through others, especially insofar as they govern themselves.

In such a society, what does obedience produce? Foucault’s response is clear: “obedience produces obedience.” If one is to obey, it is not for an external objective, happiness or health, for example. One obeys in order to bring one’s actions in line with the code, or in other words, “[o]ne obeys to become obedient, in order to produce a state of obedience, a state of obedience so permanent and definitive that it subsists even where there is not exactly anyone that one has to obey and even before anyone has formulated an order.”¹²² From this perspective, governing oneself is only minimally a directedness toward oneself, and is primarily directedness toward, and by, the figure of the other. When directing oneself, the other’s will is always there. Foucault writes:

Obedience is and must be a way of being, prior to any order, more fundamental than any situation of command and, consequently, the state of obedience in a way anticipates relationships with the other person. Even before the other is present and gives you an order, you are already in a state of obedience and what direction has to produce is obedience. Or let us say again that obedience is at once the condition for direction to function and its end. Obedience and direction must therefore coincide, or rather there is a circularity of obedience and direction.

¹¹⁸ Foucault, *The Use of Pleasure*, 30.

¹¹⁹ Foucault, *Security, Territory, Population*, 200.

¹²⁰ Michel Foucault, *On the Government of the Living: Lectures at the Collège de France, 1979-80* (New York: Palgrave Macmillan, 2014), 267.

¹²¹ Foucault, *On the Government of the Living*, 268.

¹²² Foucault, *On the Government of the Living*, 270.

If there is direction it is of course because one is obedient.¹²³

What is significant here in relation to the notion of counter-conduct is that, from the point of view of subjectivity that directs itself obediently, in order to care for oneself and by extension others, a break with the code of conduct is always merely passive: not conducting oneself properly, or *misconduct*. One's appropriation of oneself is always in the service of entering into a state of proper conduct.

Foucault's notion of counter-conduct has "the sole advantage of allowing reference to the active sense of the word 'conduct' — counter-conduct in the sense of struggle against the processes implemented for conducting others."¹²⁴ When Foucault refers to a "critical ontology of ourselves," it is this active sense of counter-conduct that he has in mind: "an attitude, an ethos, a philosophical life in which the critique of what we are is at one and the same time the historical analysis of the limits imposed on us and an experiment with the possibility of going beyond them."¹²⁵ In this sense, the "principal objective" of Foucault's critique of governmentality is "to refuse what we are." However, such a refusal is always double, since "[w]e have to promote new forms of subjectivity while refusing the type of individuality that has been imposed on us for several centuries."¹²⁶ Such a refusal does not occur by becoming other, or by withdrawal and passivity, but by opening to the possibility of other forms of conducting oneself, and thereby grasping the means of producing oneself. There is no other form of oneself, towards which one is directed in refusal, no hero or dissident. This is the effect of rendering "the autonomous sphere of counter-conduct" visible: not positing an autonomy that in being "counter" is essentially other than one's own, but to analyze the components in the way in which one acts in the global field of power relations, "making it possible to pick out the dimension or component of counter-conduct that may well be found in fact in delinquents, mad people, and patients."¹²⁷ What is "counter," then, is an openness to a varied and productive domain of conducts.

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¹²³ Foucault, *On the Government of the Living*, 271.

¹²⁴ Foucault, *Security, Territory, Population*, 201.

¹²⁵ Michel Foucault, "What Is Enlightenment?" in Paul Rabinow (ed.), *Ethics: Subjectivity and Truth. Essential Works of Michel Foucault 1954-1984, Volume 1* (London: Penguin, 2000), 319.

¹²⁶ Michel Foucault, "The Subject and Power," in Paul Rabinow (ed.), *Ethics: Subjectivity and Truth. Essential Works of Michel Foucault 1954-1984, Volume 3* (London: Penguin, 2000), 208.

¹²⁷ Foucault, *Security, Territory, Population*, 202.