

## Law and Sovereignty in Spinoza's Politics

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In the final chapter of his *Tractatus Theologico-Politicus*<sup>1</sup> Spinoza examines the limits of state power. Because sovereigns cannot control the minds of their subjects, they need to accommodate themselves to the fact that they are unable to prevent citizens from responding in their own emotional styles to the situations in which they find themselves, or from thinking and judging as they please.<sup>2</sup> Coercive as the state apparatus may be, it will not be able to stop them forming their own opinions; and since opinions vary as much as tastes, any state is bound to contain an ineliminable groundswell of diverse affects and judgements. Furthermore, because humans are in general no better at controlling their tongues than their thoughts,<sup>3</sup> any attempt to police the expression of ideas will run a high risk of failure, so that the most the law can achieve is to impose a level of uniformity on what people *do*. Wise sovereigns will recognise that they are not in a position to force their subjects to hold or express particular points of view. However, since the purpose of the state is to encourage liberty rather than oppression<sup>4</sup>, they will also realise that this is not a particularly damaging restriction. Their task is to guarantee freedom and security by devising laws that the inhabitants of a polity are capable of obeying. Since a set of dispositions that Spinoza classifies as belonging to the imagination ensure that humans are usually unable to change their own views simply in order to make them conform to the law, sovereigns the world over will have to face up to this fact. If they are wise, they will do so by limiting the scope of their statutes; if they are less wise, they will discover the hard way that decrees designed to curb the expression of beliefs are largely ineffective.

This conclusion brings to the fore a vital aspect of Spinoza's philosophical position. Since sovereignty is limited by more or less invariable features of imagination, effective legislation is bound to be a matter of negotiation between sovereigns and their subjects, and will reflect a local consensus as to what is tolerable. The inherently diversified power of citizens therefore has an impetus of its own, which cannot be entirely repressed and is forever open to change. Spinoza's fluid image of political power has recently been explored by a sequence of outstanding writers, who have drawn from his work a conception of politics that speaks to many of the concerns of contemporary feminism. By emphasising his insistence on the embodied character of all our relationships, they have found in this seventeenth-century philosopher a way to view sexual difference as a fundamental yet variable dimension of politics; a way to theorise the ineradicability of politically significant differences of feeling and opinion; a way to understand the central role of local narratives and symbols in the construction of individual and collective identity; a way

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<sup>1</sup> All references to 'The Theologico-Political Treatise' (hereafter TTP) in *Spinoza: Complete Works* ed. Michael L. Morgan and trans. Samuel Shirley (Hackett, 2002), pp. 387-583.

<sup>2</sup> TTP, ch. 20, 566-7.

<sup>3</sup> TTP, ch. 20, 566.

<sup>4</sup> TTP, ch. 20, 567.

to conceive the social dimensions of affect; and a way to view politics as a pragmatic enterprise, shaped by history and circumstance.<sup>5</sup>

At the heart of this constellation of interpretations lies a concern with the role of imagination in creating consensual relations between rulers and citizens. Yet, as a number of its advocates have pointed out,<sup>6</sup> Spinoza's commitment to this outlook is equivocal. As well as sketching an image of politics as a set of mutually acceptable compromises, he is also a steely defender of an uncompromising version of absolute sovereignty, and holds that an effective sovereign, whether an individual monarch or an oligarchic or democratic assembly, must be the sole legitimate maker and interpreter of law.<sup>7</sup> Sovereigns must have the power to determine what kinds of dissent amount to sedition and are therefore punishable, as well as the power to make citizens obey laws they believe to be wrong.<sup>8</sup> They must therefore be able to determine what freedom consists in, and may rightfully punish those whose opposition they regard as seditious. While they may modify or reinterpret the law to accommodate the changing judgements and circumstances of their subjects, they also specify the limits of negotiation; and when they refuse to respond to criticism, citizens remain bound to obey.

What should we make of this tension in Spinoza's work between the analysis of sovereignty and a more consensual image of politics? Those who emphasise consensus have pointed out, with excellent reason, that Spinoza does his best to soften the authoritarian implications of his conception of sovereign power by showing that it is not incompatible with a society built around negotiation and commonality. Developing a view held by his influential predecessor, Thomas Hobbes, Spinoza offers two familiar, reconciling arguments.<sup>9</sup> The first claims that absolute sovereignty is a necessary condition of freedom and security, so that unless the sovereign possesses enough power to make, interpret and enforce the law, chaos threatens. The concentration of legal power in its hands is therefore vital to the structure of the state. However, since any half-way competent sovereign will do its best to create conditions in which citizens obey the law willingly, its ability to limit negotiation will in practice be determined by the ability of citizens to resist it. Sovereigns who try to define

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<sup>5</sup> These interpretations are greatly indebted to Gilles Deleuze. His *Expressionism in Philosophy: Spinoza*, (published in French in 1968 and in English in 1990) and *Spinoza: Practical Philosophy* (published in French in 1983 and in English in 1988) have had an enormous influence, as has Louis Althusser's discussion of Spinoza as a theorist of ideology. Some of the most important examinations and elaborations of the themes identified above, not always directly applied to feminism, are to be found in Etienne Balibar, *Spinoza and Politics* trans. Peter Snowdon (Verso, 1998) and *Masses, Classes, Ideas* (Routledge, 1994)); Moira Gatens and Genevieve Lloyd, *Collective Imaginings: Spinoza Past and Present* (Routledge, 1999); Warren Montag, *Bodies, Masses, Power. Spinoza and his Contemporaries* (Verso, 1999); and Gillian Howie, *Deleuze and Spinoza: Aura of Expressionism* (Palgrave Macmillan, 2002).

<sup>6</sup> See for example Balibar, 'Spinoza, politique et communication' *Cahiers Philosophiques*, 1989, p. 37; Montag, *Bodies, Masses, Power*, p. 23; Gatens and Lloyd, *Collective Imaginings*, p. ...

<sup>7</sup> TTP, ch. 19, 557-8.

<sup>8</sup> TTP, ch. 20, 568.

<sup>9</sup> TTP, ch. 20, 569-70.

sedition in ways that subjects are likely to oppose will simply undermine their own authority and hasten their own demise, so that politics will in practice rest on consensus. Moving on to the second argument, Spinoza emphasises the advantages of a democratic constitution in which the sovereign is the people. When citizens make the law, they cannot be coerced into obeying it by a sovereign who stands apart from them, and will themselves set the limits of negotiation by deciding what constitutes sedition. Insofar as the inhabitants of a democracy retain this power, sovereignty will operate by popular consensus, and the formal opposition between the powers of sovereign and citizens will dissolve.

Insofar as these passages offer a kind of apology for the apparent dangers of absolute government, they seem to diminish the force and role of this theme within the overall argument of the *Tractatus Theologico-Politicus*. The weight of Spinoza's view then seems to rest with his account of a politics of compromise, made possible by the imaginary ideas and narratives through which collective identities are created. Nevertheless, the explanation and vindication of an uncompromised form of sovereignty is one of the guiding threads of Spinoza's political thought, and the suggestion that he is not deeply committed to it sits oddly with his text. To get a fuller understanding of its relationship to consensus and negotiation, we need to ask why he stands up so firmly for the powers of the sovereign, and to consider exactly what he is defending when he does so. As I shall show in the first part of this chapter, Spinoza's analysis of sovereignty is both radical and controversial. It contains what was for his contemporaries a novel account of the unlimited powers of human rulers, and by challenging a deeply-ingrained conception of the forces by which such powers are contained, it offers what would have been an unfamiliar image of politics as a nakedly human enterprise. A sensitivity to this dimension of his argument does not immediately resolve the tension from which we began. However, as I shall propose in the final section, it presents this tension in a new light. It allows us to see how Spinoza's commitments to both absolute sovereignty and negotiation arise out of his conception of imagination, and reflect a much deeper complexity within his philosophy. In addition, it suggests that the hint of anxiety with which Spinoza defends the sovereign's power is about more than the familiar problem of avoiding tyranny.

To present day readers, the claim that the human sovereign is the only lawmaker, and thus the only source of legal obligation, may seem obvious and largely uncontentious; but for most of Spinoza's seventeenth-century contemporaries it would barely have made sense. As they mainly saw the matter, the laws created by human beings are only one of several, complementary systems of legal decrees, and in the *Tractatus Theologico-Politicus* Spinoza attempts to convince his readers that there is an important sense in which this view is mistaken. Although he couches his arguments in terms that would have been familiar, and concedes as much as possible to his opponents, the substance of his claims is dramatically at odds with some of their most dearly-held beliefs, and offers an image of the law that many of them would have found difficult or impossible to accept.

Spinoza's account of law is organised around a tripartite distinction between natural, divine and human law. As well as the civil laws made by human sovereigns, there is a law of nature consisting of moral precepts ordained by God and accessible through reason, and a divine law revealed by the deity and recorded in the Bible. On

the whole, Spinoza's audience would have taken it for granted that human beings are bound by laws of all three types. God issues decrees that we are obliged to obey, and reveals them through both sacred texts and nature; and while human laws may reinforce divine commands, they may also conflict with them. Against this prevailing current, Spinoza argues that the only real laws are those made by human beings, and thus that all legal duties are created by human institutions. One of his reasons for holding this virtually unheard of position is the Hobbesian conviction that, as long as there are multiple sources of legal authority, and therefore multiple systems of law binding the members of a single community, the power of a human sovereign will be compromised. 'We have seen that the one essential feature in the formation of a state was that all power to make laws should be vested in the entire citizen body, or in a number of citizens, or in one man. For since there is considerable diversity in the free judgement of men, each believing that he alone knows best, and since it is impossible that all should think alike and speak with one voice, peaceful existence could not be achieved unless every man surrendered his right to act just as he thought fit.'<sup>10</sup> But his analysis also raises the possibility that sovereigns will be handicapped if citizens are able to appeal to laws made by a non-human lawmaker, so that even the edicts of God may limit and undermine their authority. In order to guarantee that the sovereign's decrees are absolute - or rather, absolutely absolute - one must therefore show that what are described as the natural and the divine law do not in fact impose legal obligations on citizens, and cannot conflict with legislation imposed by sovereigns.

Defending this position was an uphill task, and Spinoza could hardly have failed to realise that each step of his argument would run into fierce opposition. Although one of his claims - that what is described as the law of nature is not really a law after all - had already been put forward by Thomas Hobbes, it nevertheless flew in the face of a radical political tradition, according to which natural law provides a basis for criticising the civil law of the state.<sup>11</sup> To deny the legal status of the law of nature was to deprive oneself of a crucial political resource, and to lock oneself into a situation where there was no counterweight to the law of the state. Spinoza's position therefore swept away a means of opposing tyranny, and threatened to leave citizens exposed to the worst excesses of delinquent sovereigns.

Establishing the second step of the argument (to the effect that we are not bound by the law revealed in the Bible) was also extremely demanding. It constituted a direct challenge to Christians and Jews who were convinced that Scripture contains laws imposed on humanity by God, and questioned the beliefs of the many theological experts of each faith who regarded the Ten Commandments as obligatory. To add insult to injury, it also promised to undermine the assumption that religious functionaries of one sort or another were uniquely well-equipped to interpret the biblical law, and therefore possessed a special kind of authority that should be respected within the state.

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<sup>10</sup> TTP, ch. 20, 567.

<sup>11</sup> See Quentin Skinner, 'From the state of princes to the person of the state' in *Visions of Politics vol II: Renaissance Virtues* (Cambridge University Press, 2002), 368-413.

Spinoza's arguments against his numerous and diverse opponents are developed throughout the *Tractatus Theologico-Politicus* and are often mixed in with discussion of topics other than sovereignty. In this chapter I shall not attempt to do justice to their complexity, or to the rhetorical subtlety with which they are advanced. Instead, I shall concentrate on a single strand of his discussion: the attempt to establish that the only laws binding the citizens of a seventeenth-century state are those made by its sovereign. This is, as far as I can see, the first attempt in the history of European philosophy to offer an account of law as an entirely human construction.

As a first step, Spinoza needs to discredit the view that humans are obliged to obey the law of nature. By reasoning, so a ubiquitous version of this position goes, we can come to understand a set of precepts about what we should and should not do, which have been imposed on us by a law-making creator, and which we are therefore obliged to follow. As we have just seen, this conception of the character and force of natural law had already been questioned by Hobbes, both in *De Cive* and in *Leviathan*, and it is overwhelmingly likely that Spinoza was influenced by his analysis.<sup>12</sup> Hobbes's interpretation of the status of natural law hinges on the claim that a law in the strict sense of the term is a command. 'Law is not advice (*consilium*) but command (*mandatum*)'. It derives 'from one who has power over those whom he instructs', and generates obligations, so that 'to do what one is instructed by law is a matter of duty.'<sup>13</sup> Applying this definition to the law of nature, Hobbes goes on to separate the traditional claim that these laws are made by God from the equally traditional claim that they govern natural things. If we consider them as made by God, Hobbes allows, they may indeed be laws or commands. If, however, we consider them as 'proceeding from nature' we can see that rational investigation of the regularities governing the natural world does not yield commands, but only what Hobbes describes as theorems or dictates of reason. 'What we call the laws of nature are nothing other than certain conclusions, understood by reason, on what is to be done and not to be done; and a law, properly and precisely speaking, is an utterance by one who by right commands others to do or not to do. Hence, properly speaking, the natural laws are not laws, insofar as they proceed from nature.'<sup>14</sup>

The first of the conclusions to which correct reasoning leads us is 'to seek peace when it can be had; when it cannot, to look for aid in war'<sup>15</sup>; and because this and other dictates of the natural law teach us what is good for us, they are rightly regarded as moral rules. Hobbes therefore agrees with what he takes to be the generally shared view that 'the natural law is the same as the moral law.'<sup>16</sup> However,

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<sup>12</sup> For a crisp summary of the complex relationship between Spinoza and Hobbes, see Theo Verbeek, *Spinoza's Theologico-Political Treatise. Exploring the Will of God* (Ashgate 2003), 10-11.

<sup>13</sup> Thomas Hobbes, *On the Citizen* ed. Richard Tuck (Cambridge University Press, 1998), 153-4.

<sup>14</sup> *On the Citizen*, 56. Compare 'These dictates of Reason, men use to call by the name of Lawes, but improperly: for they are but Conclusions or Theoremes concerning what conduceth to the conservation and defence of themselves; whereas Law, properly is the word of him that, by right hath command over others.' Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge University Press, 1996), 111.

<sup>15</sup> *On the Citizen*, 34.

<sup>16</sup> *On the Citizen*, 55.

so his account implies, insofar as the moral law ‘proceeds from nature’ it does not consist of laws, but of theorems about our conservation or defence. It tells us what it is good for us to do, but it does not command or oblige us to do it.

The account of natural law contained in the TTP takes over some of these conclusions. Like Hobbes, Spinoza claims that ‘the word “law” is simply used to mean a command which men can either obey or disobey.’<sup>17</sup> Moreover, he draws on a view of nature as a closed system of causal laws (to which Hobbes is also sympathetic) to develop an interpretation of the law of nature that runs parallel to the one we have so far discussed. When people talk about laws of nature they are appealing to a metaphorical<sup>18</sup> sense of law, according to which things are said to be governed by laws when they act for a fixed and determined reason.<sup>19</sup> For example, ‘the fact that all bodies, on colliding with smaller bodies, lose as much of their own motion as they impart, is a universal law governing all bodies and follows from nature’s necessity. Similarly, the fact that a man, in remembering one thing, forthwith calls to mind another like it, or which he has seen along with it, is a law that necessarily follows from the nature of man.’<sup>20</sup> Reasoning teaches us that the behaviour of humans and other natural objects conforms to natural laws in this sense of the term, and also enables us to see that the laws in question are eternal and immutable. However, if this is the case, it makes no sense to think of them as edicts that can be obeyed or disobeyed, since we have no choice but to be governed by them. Because the natural world is deterministic, the language of command cannot get a grip, and the regularities that reasoning reveals to us cannot be laws understood as commands.

Spinoza’s examples draw attention to his view that the natural law is all-encompassing, and extends beyond the moral recommendations with which Hobbes is primarily concerned. As we investigate nature, we acquire knowledge of a variety of kinds of natural laws, of which those concerning morality or human good are only a subset. An understanding of human good and harm, and of our own supreme good, is therefore only one of the fruits of rational enquiry. However, despite this difference in emphasis, Hobbes and Spinoza agree that rational philosophical enquiry yields truths (not commands), and allows us to formulate recommendations (not orders that we are obliged to obey). Coming to understand the supreme good by means of natural reason is therefore not a matter of recognising laws that are already in place. Rather, philosophical investigation provides us with insights into our own condition, and we may draw on these, if we wish, when we create laws in the strict or narrow sense of the term.

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<sup>17</sup> TTP, ch. 4, 427. In the Latin original, ‘...per legem nihil aliud intelligitur quam mandatum, quod homines et perficere et negligere possunt ...’ All Latin references are to *Spinoza. Oeuvres*, vol. III, ed. Pierre Francois Moreau (Presses Universitaire de France, 1999), 182.

<sup>18</sup> TTP, ch. 4, 427, translation modified. ‘Verum enimvero quoniam nomen legis per translationem ad res naturales applicatur videtur ...’, Moreau ed., 182.

<sup>19</sup> TTP, ch.4, 426, translation modified. ‘...*una eademque certa ac determinata ratione agunt.*’ Moreau ed., 180.

<sup>20</sup> TTP, ch. 4, 426.

So far, I have presented Spinoza as endorsing Hobbes's view of natural law. There is, however, one aspect of his metaphysical position that is not matched by anything in Hobbes, which provides him with a further argument against the claim that laws of nature are divine commands. Among the insights we can arrive at through rational philosophical enquiry is the view that nature and God are one and the same, and thus that, the more we learn about nature, the more we learn about God. As he puts it, 'the whole of our knowledge, that is our supreme good, not merely depends on our knowledge of God but consists entirely therein,' so that 'we acquire a greater and more perfect knowledge of God as we gain more knowledge of natural phenomena.'<sup>21</sup> Once we appreciate that this is the case, we are able to recognise the immutable laws of nature as the workings of God's mind, and to shake off an anthropomorphic conception of God as a king or ruler who issues commands. This argument both opens up a sense in which natural laws are divine, and simultaneously reveals that a true idea of the deity is incompatible with a conception of him as a legislator. It therefore confirms the claim that the law of nature is not a law in the sense of a set of commands.

Spinoza's deeply heterodox conception of God also enables him to provide a novel explication of the relationship between natural, moral and divine law. By reasoning, he claims, we can come to see that, unless we have an understanding of the natural world including ourselves, we will be incapable of working out either what ends are most beneficial to us or how to set about achieving them. This insight in turn enables us to infer that our supreme good, and the goal for which we should above all strive, is understanding itself. If we then consider the status of the precept 'The way for humans to achieve their supreme good is to pursue understanding' we find that, insofar as it is an immutable truth about nature, it is a natural law; but insofar as it concerns human good, it is simultaneously a moral law. So the ultimate directive of the moral law (which coincides with the law of nature) tells us to pursue an understanding of nature, including our own. Furthermore, Spinoza continues, since nature and God are one and the same, this recommendation can equivalently be expressed as 'Love God' – that is to say, love God by devoting yourself to understanding him. Reformulating the precept reveals that the object of the moral law is God, and that it is therefore appropriate to describe the moral law as divine, since it is simultaneously about the good for human beings and about the deity.<sup>22</sup> The recommendation, 'Pursue understanding', which sums up both the natural and moral laws, is therefore equivalent to the key precept of the divine law, 'Love God.' Merging the three types of legislation in this fashion allows Spinoza to apply his account of the status of the natural and moral laws to their divine counterpart, and to conclude that the divine law is not strictly speaking a law at all. Since, as we have already seen, God is not the kind of being who issues commands, loving him cannot be a matter of obeying his decrees, and the divine law can therefore be a law only in a metaphorical sense. Once again, it offers us a set of recommendations that are in fact for our good, but does not oblige us to follow them.

It remains to consider how knowledge of the injunctions that Spinoza describes as constituting the divine law can be turned into laws in the proper sense of the term, that is to say, into commands. How can a recommendation that tells us how

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<sup>21</sup> TTP, ch. 4, 428.

<sup>22</sup> TTP, ch. 4, 428.

to achieve our own good become a law that we are obliged to obey? Before he can address this question, Spinoza needs to engineer a compromise with his own conception of nature as a closed causal system. Philosophical enquiry tells us, he insists, that all natural events, including human actions, are determined by their causes, and that what we regard as contingency is simply an effect of our ignorance. But in that case, a strictly philosophical account of nature will allow no room for the idea that human beings can choose whether or not to obey commands, and no room for laws conceived as commands that can be obeyed or disobeyed. Instead, antecedent causes will determine everything that people do, including the way they understand and respond to laws. Spinoza concedes this point. '[I] grant that all things are determined by the universal laws of nature to exist and to act in accordance with a definite and determined reason.'<sup>23</sup> But he immediately goes on to argue that we are usually unable to make much use of this insight in non-philosophical contexts. Because 'generalisations concerning fate and the interconnection of causes can be of no service to us in forming and ordering our thoughts concerning particular things', and because we have no knowledge of 'the way things are in actual fact ordered and connected'<sup>24</sup>, we are for practical purposes justified in viewing events as contingent, and explaining some of them by an appeal to human agreement or decision.<sup>25</sup>

This transition from a strictly rational conception of nature to the more familiar outlook on the world that Spinoza attributes to human imagination enables him to accommodate both the idea that people can choose whether or not to issue commands, and the idea that they can choose whether or not to obey them. It thus makes room for our ordinary notion of a law, and once that space has been opened up, Spinoza is free to provide a new definition. A law, he explains, is 'a rule of conduct, which men lay down for themselves or others for some end.'<sup>26</sup> So in order to turn an understanding of what is metaphorically described as the moral or divine law into a law in this narrower sense of the term, some human agent must lay down the relevant claims as rules of conduct. And if we add to this the background assumption that a law is a command, we can introduce the further stipulation that the agent in question must possess enough power to be capable of issuing orders that others will obey.

Although he does not particularly draw attention to it, Spinoza's explicit provision that laws are laid down by human beings is highly significant. As we have seen, God is not in his view the kind of being who is capable of issuing commands (though we may still imagine him as doing so). Only human agents, whether individual or collective, can impose rules of conduct on one another. In fact, as

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<sup>23</sup> TTP, 426, translation modified. 'Et quamvis absolute concedam omnia ex legibus universalibus naturae determinari ad existendum et operandum certa ac determinata ratione...', Moreau ed., 180.

<sup>24</sup> TTP, ch. 4, 426-7.

<sup>25</sup> TTP, ch. 4, 426. Translation modified. 'Quia homo, quatenus pars est naturae, eatenus partem potentiae naturae constituit; quae igitur ex necessitate naturae humanae sequuntur, hoc est, ex natura ipsa, quatenus eam per naturam humanam determinatam concipimus, ea, etiamsi necessario, sequuntur tamen ab humana potentia, quare sanctionem istarum legum ex hominum placito pendere optime dici potest ...' Moreau ed., 182.

<sup>26</sup> TTP, ch. 4, 427. '...ratio vivendi, quam homo sibi vel aliis ob aliquem finem praescribit.' Moreau ed., 182.

Spinoza goes on to explain, they can make laws of two different kinds. On the one hand, they can create what he calls human laws, or rules of conduct designed to safeguard life and the state. On the other hand, they can make what he calls divine laws that are concerned with the supreme good, namely the knowledge and love of God.<sup>27</sup> So for the divine law to become a law in the ordinary sense of the term, it has to be legislated by a human agent and imposed by human power. As Spinoza will go on to explain in more detail, the divine law may be realised by a wise sovereign who sees how to translate its recommendations into specific decrees that subjects are capable of obeying; and there is also, in his view, a derivative sense in which a wise individual may legislate the divine law by willingly obeying the sovereign's commands. In both cases, however, the law is a human creation and consists entirely of human decrees.

Spinoza's contemporaries would on the whole have been deeply out of sympathy with the view that the divine law can be made binding only via the medium of human legislation, but they would not necessarily have been particularly troubled by his case for this conclusion, as I have so far reconstructed it. The majority would have had a further argument up their sleeves, to the effect that the divine law has a force quite independent of human activity, and would confidently have assumed that this could be used to rebut the heterodox aspects of Spinoza's position. Central to their outlook was the conviction that the Bible contains the word of God and reveals the commands he has imposed on us. It is clear from Scripture that we are obliged to obey his laws under threat of divine punishment, so that even if the law of nature does not consist of commands, the revealed law certainly does. This view is defended by even so radically secular a figure as Thomas Hobbes. In both *De Cive* and *Leviathan* he draws a sharp distinction between the laws of nature insofar as they proceed from nature (when, as we have seen, they are not laws in the proper sense) and the same laws insofar as 'they have been legislated by God in the Holy Scriptures.' In the latter case, '...they are very properly called by the name of laws; for Holy Scripture is the utterance of God, who issues commands in all things by the highest right.'<sup>28</sup> Hobbes's position is an uncomfortable one. If Scripture gives us access to divine laws that we are obliged to obey, the Bible appears to be a source of legal authority that is independent of sovereigns and may restrict or oppose their edicts. Moreover, in a society where biblical revelation is taken seriously, such a division of authority may well become a source of faction, and may thus have destructive political consequences. Hobbes is undoubtedly aware that this is a danger, but because he holds that the revealed law is a set of commands, he has no systematic way of dealing with it, and the authority of his sovereign is consequently limited.

It is possible that Spinoza came to appreciate this difficulty through studying Hobbes's work; but whatever his motivation, he offers a dramatic solution. Pursuing the Hobbesian line of thought on which he had already embarked, he argues that what the Bible represents as divine commands are not in fact laws made by God, and therefore do not bind us. Therefore, so he is finally able to conclude, neither reason nor revelation give us access to divine laws in the narrow sense of the term, and in

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<sup>27</sup> TTP, ch. 4, 427.

<sup>28</sup> *On the Citizen*, 66-7. Compare 'But yet if we consider the same Theoremes, as delivered in the word of God, that by right commandeth all things; then are they properly called Lawes.' Tuck ed. *Leviathan*, 111.

fact there *are* no divine laws of a kind that can form a counterweight to the legal authority of sovereigns.

This stretch of Spinoza's discussion treads on dangerous ground, and he begins concessively by allowing that the Mosaic Law 'can be termed the law of God, since we believe it to have been sanctioned by prophetic insight.' At first glance, this claim seems to imply that Moses did indeed articulate laws made by a deity, and to saddle Spinoza with Hobbes's problem; but when we look more carefully at his analysis of prophecy we find that he is taking a different route. Prophets, he explains, are not people of exceptional intellectual ability, and should therefore not be expected to provide philosophical insights into the nature of the divine law or the supreme human good. However, they do possess outstanding imaginative gifts; they are able to make connections, and grasp the significance of situations, in ways that elude the rest of us. Furthermore, because they express their insights in the language of imagination – in stories, images and metaphors – prophecies reflect individual experience. For example, a prophet who is a soldier may present what is revealed to him in terms of battles or defeats, while one who is a farmer may appeal to the cycle of the seasons, nurture or decay. As Spinoza puts it, each sees God as he is wont to imagine him.<sup>29</sup>

Given that this is what prophets are like, we should not be surprised if their revelations conflict with a philosophical understanding of nature, or with a philosophical conception of God. And in fact it is obvious from the Bible that the Old Testament prophets, along with other key figures, often failed to understand the true nature of the deity. For example, we can see from the conversation between God and Adam, as it is narrated in *Genesis*, that even the first man did not appreciate that the law of nature is entirely determined. If he had realised this, he would have understood that it was not simply his own will that caused him to eat the apple offered to him by Eve, and would not have described his action as a choice.<sup>30</sup> However, we can also see that the narrative represents the situation as Adam imagined it, or to put the point differently, as it was revealed to him. He imagined God as a being who commanded him to act in a certain way and gave him the option of obeying or disobeying. In short, he conceived of God as a lawmaker; and the same applies to the prophets, including Moses, who imagined that God gave him a set of commandments and told him how to impose them on the citizens of the ancient state of Israel.<sup>31</sup>

Spinoza's glosses on scripture provide an explanation of the nature of divine law. When the prophets describe themselves as articulating laws decreed by God they are interpreting a situation they only partly understand. Although they sincerely believe that they are communicating decrees made by a deity for human beings, there *is* no deity of the kind they imagine, and they themselves are the true authors of the law. Just as individuals who possess great intellectual gifts can grasp the content of the divine law by philosophical means, so prophets can come to appreciate its rules by imagination. But whereas a philosopher who understands it will recognise that it is not a law in the strict sense of the term, the prophets erroneously imagined it as a set of divine commands that humans are under an obligation to follow. In fact, however,

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<sup>29</sup> TTP, ch. 2, 408.

<sup>30</sup> TTP, ch. 2, 410; ch. 4, 430.

<sup>31</sup> TTP, ch. 2, 411-13. Ch. 4, 431.

what is known as the divine law merely identifies our supreme good and recommends us to pursue it. To become a law that fits Spinoza's definition ( 'a rule of conduct laid down by men, for themselves or others, for some end') it must be interpreted and legislated by a human sovereign.

Prophets, Spinoza tells us, are interpreters<sup>32</sup> who are able to articulate the divine law in a guise that makes it accessible to particular communities; and despite his insistence that the ability to prophesy no longer exists,<sup>33</sup> he himself takes on a prophetic role. Like the prophets of the Bible, he explains how the divine law can be lived; but whereas they had presented this law as a set of commands, Spinoza unmasks their error and shows how they arrived at such a mistaken impression. Rather as Moses used the insights revealed to him in order to encourage the Jews in ways of life that fostered their good, *the Tractatus Theologico-Politicus* offers to do something similar for the inhabitants of seventeenth-century Holland, by discrediting a conception of law that legitimates a range of harmful and superstitious practices and putting a less destructive one in its place. However, Spinoza is cautious about the status of his own recommendations. As he wryly points out, the authority possessed by ancient prophets enabled them to compromise the power of sovereigns, and made them a nuisance to rulers;<sup>34</sup> and although he emphatically disclaims any such authority for himself,<sup>35</sup> his interpretation of law nevertheless has several politically contentious features.

To persuade his readers of his view, Spinoza needs to undercut the belief that the Ten Commandments and the New Testament injunctions to 'Love God' and 'Love your neighbour' are decrees imposed by God. In taking a stand on this matter he was entering into a sequence of debates between Calvinist theologians, between rabbis, and sometimes between representatives of both camps,<sup>36</sup> about the status of the central tenets of the Mosaic law. He was challenging those authorities, whether Christian or Jewish, who regarded at least some Old Testament commandments as obligatory, and differentiating his position from that of non-predestinarian Christians who believed that the only way to gain salvation was to obey the law taught by Jesus Christ. Spinoza approaches this fraught discussion by arguing that a correct reading of the Old Testament shows that the Ten Commandments were part of an elaborate legal code imposed by Moses when he became the ruler of the Jews. Although he and his people believed these laws to be divine decrees, and regarded themselves as bound by God to obey them, they were in fact civil laws designed to guarantee the safety and survival of the state.<sup>37</sup> The obligation to adhere to them therefore derived not from God but from Moses, whose sovereign power enabled him to enforce legislation through threats and punishments. Moreover, when the kingdom collapsed, its civil law collapsed with it and ceased to be binding, so that nowadays the Ten Commandments are only law in jurisdictions where the sovereign makes them so.

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<sup>32</sup> TTP, ch. 1, 394.

<sup>33</sup> TTP, ch. 19, 565.

<sup>34</sup> TTP, ch. 18, 553-4.

<sup>35</sup> TTP, ch.20, 572.

<sup>36</sup> See Yosef Kaplan, *From Christianity to Judaism : the story of Isaac Orobio de Castro*, trans. Raphael Loewe (Oxford University Press, 1989)

<sup>37</sup> TTP, ch. 5, 436.

Turning to the laws supposedly taught by Jesus Christ, Spinoza solves his problem in a different fashion. Unlike Moses, who saw how the divine law applied to the predicament of the Jews, and expressed his insight in a set of civil laws that was exceptionally effective in maintaining a historically specific state, Christ was able to understand the tenets of the divine law in their universal or philosophical form. As we have seen, these tenets are not laws, but recommendations about how to achieve the supreme human good. So Christ was not a lawmaker, and if he occasionally presented his insights as commands, this was simply a concession to the intellectual limitations of his audience.<sup>38</sup> The New Testament therefore does not contain anything that purports to be a divine law, and presents no challenge to the rule of earthly sovereigns.

Spinoza has now put in place two sets of arguments, each designed to undercut a particular conception of the laws made and enforced by God. The first, which appeals to our capacity for philosophical understanding, claims to show that, although reason gives us access to what are called laws of nature and to what is called the divine law, it also enables us to see that these are not commands. Instead, the natural and divine laws consist of truths and recommendations, which possess no legal status and do not impose any legal obligations. The second set of arguments then aims to discredit the widespread seventeenth-century view that a number of divine commands are recorded in Scripture. It counters this position by claiming that the law-making God described in the Bible is the fruit of imagination. The prophets and their peoples may have conceived God as a legislator who would reward the obedient and punish sinners; but no such being in fact exists, and the laws attributed to him were ordained and enforced by human beings.

Taken together, these conclusions have far-reaching implications. If an infinite being such as God cannot be a lawmaker, and if the only finite creatures capable of making law are humans, all law must be a human creation. As a claim about what Spinoza carefully describes as human law, this is of course uncontroversial, but as a claim about the moral or divine law it accords humanity a novel and powerful role. Rather than being something ready-made that we can discover and to which we must submit, law is always something we have to construct by means of reason and imagination. This turn in Spinoza's work marks an important moment in the history of early-modern philosophy, at which the idea that moral and political life is shaped and limited by divine commands is sloughed off. Legislation is now entirely up to the sovereigns of human communities, who must translate the capacities and circumstances of their peoples into effective commands.

The claim that all laws are made by human beings does not immediately imply that lawmaking power need be invested in a single sovereign; as Spinoza is all too well aware, it could for example be divided between an authority in charge of making secular laws and another in charge of religious legislation. However, because he is convinced that such a system is bound to produce faction and conflict, and will eventually threaten the peacefulness and even the existence of the state, Spinoza favours a form of sovereignty that is doubly absolute in facing neither divine nor human competition. There are therefore two senses in which sovereigns have a free hand: they can in principle make any laws they choose; and since there is no divine

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<sup>38</sup> TTP, ch. 4, 431-2.

law for them to disobey, they are not constrained by any threat of divine punishment other than the possibility that, if they use their power cruelly or unjustly, they may come to a bad end.

To appreciate Spinoza's position, we need to recognise that this exceptionally stark analysis of sovereignty is what he basically means to defend. Only human sovereigns can make law, and all legal order whatsoever derives from them. This conclusion cuts through a long and tangled series of early-modern debates and stands at one end of a spectrum of opinion. It was therefore bound to excite criticism, and it is not surprising that, at the end of the *Tractatus Theologico-Politicus*, Spinoza is careful to fend off the accusation that nothing prevents his untrammelled rulers from turning into tyrants. There is, however, a further dimension of his position that brings with it a more metaphysical reason for disquiet, and perhaps anxiety, about the status of the laws made by sovereigns. To sustain his account of politics, Spinoza has to accord real force to civil legislation, since it is now the sole source of political order. Yet, if law is to be effective, a number of conditions must be met, among them the basic requirements that sovereigns are able to understand themselves as issuing commands, and citizens to conceive of themselves as obeying freely. As we have seen, Spinoza has identified a sense in which these self-conceptions, on which the idea of law rests, are the fruit of imagination, since the conviction that humans are capable of commanding and obeying is a consequence of our inability to understand the multiple causes that determine our actions. For practical purposes, this imaginary perspective is the only one available to us, and insofar as it enables us to represent ourselves as loci of power, it is undoubtedly productive. However, although we cannot overcome the limitation inherent in this way of imagining ourselves, we are nevertheless capable of understanding the nature of its shortcomings. Like Spinoza himself, we can appreciate that, from a philosophical point of view, law embodies a misconception about our own capacities. Thus construed, it appears as doubly human: the self-understandings on which law rests are the fruit of an unavoidable yet inadequate perspective deriving from human imagination; and it is an entirely human construction. Without imagination there would therefore be no law, and no politics.

It is easy to see why this analysis might have shaken the confidence of Spinoza's contemporaries. The sovereign, previously subject to the law of God, now appears as a fragile and isolated entity whose task is to create law in the face of a series of challenges: from its subjects; from a lack of the kind of quasi-prophetic imagination that will enable it to make its commands acceptable; and from the recognition that the legal framework on which its power rests is ultimately a kind of illusion. Whereas the traditional picture had portrayed God as the pre-eminent lawmaker, and had represented human sovereigns as small-scale inheritors of his legislative power, Spinoza shatters this image. God does not issue commands and, but for imagination, what humans inherit is his incapacity to do so.

Insofar as this dramatically more exposed conception of sovereignty is rooted in imagination, the tension between consensual government and sovereign power from which we began is not a tension between imagination and something else. Instead, it is a tension between imagination's more and less malleable features. While the identities that we construct for ourselves alter with individual and collective experience, there is something peculiarly immovable about our sense that some of our actions are voluntary, and thus about those aspects of our political practices that

depend on it. As one of these, law is in some ways a resilient notion, capable of functioning as the organising category of political life. However, as I have sought to show, Spinoza simultaneously undercuts its authority by making it the creation of a human sovereign. If we now consider why he places such emphasis on the absoluteness of sovereignty, this fragility may be part of the answer. Political order consists in the law made by an inherently precarious sovereign who is, as we have found, challenged from many directions. The absoluteness of sovereign power therefore serves, in Spinoza's eyes, not so much as a vehicle for tyranny, but more as a condition of the kind of government that can protect citizens and promote their liberty.