

**THE QUESTION OF ORDERING:
CREATIVITY AND LIMITATION IN POLITICAL
COMMUNITIES**

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Abstract

This thesis is an enquiry into political ordering under its four core attributes: the state, sovereignty, law, and politics. It advocates analysing ordering as a process, rather than 'order' as a static given, and introduces an interactive model of ordering, which takes into account both the creative and the limiting thrusts in political communities. This thesis is informed by the theories of Benedict Spinoza and Carl Schmitt.

The first chapter is dedicated to assessing the current debate around the four core concepts: the state, sovereignty, law, and politics. Although it is not aimed at providing a full and definitive account of the scholarly debate, some major trends in current political and legal thinking are overviewed. This exposition subsequently serves as both the context and the impetus for the dynamic model of ordering, constructed in the final chapter.

The following two chapters are dedicated to the theories of Spinoza and Schmitt. In Spinoza's case, some metaphysical preconditions have to be explored beforehand: immanent causality, striving to persevere in existence, and the right as power doctrine. The thesis then moves to the role of the state, sovereignty, law, and politics as tools for ensuring communal cohesion despite a general lack of reason and for joint progression towards reason. As for Schmitt, the thesis first delves into his emphasis on the fallen nature of humans, based on his religious convictions. The state, sovereignty, law, and politics are then analysed as parts of an effort to establish order where actually there can be none (since human existence is groundless), necessitating order-qua-theology. Thus, Spinoza and Schmitt both oppose and complement each other.

Lastly, the final chapter proposes an interactive model of ordering as perpetual process by revisiting the four core elements from a Spinozist-Schmittian perspective. This model postulates ordering as animated by constant tension between and reciprocal reproduction of the constitutive and the constituted thrusts, both of them being creative and limiting in different respects. In this model, groundlessness is seen as the basic condition which is, nevertheless, constantly counterbalanced by a need for quasi-religious belief in a quasi-objective given, e.g. Spinoza's reason. Communal life is, therefore, constantly caught in-between these two poles. Consequently, ordering-as-process is claimed to be the only way in which anything common can be posited.

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Abbreviations

Abbreviations used for the works of Spinoza:

<i>Improvement</i>	On the Improvement of Understanding
<i>Principles</i>	The Principles of Descartes Philosophy
ST	Short Treatise on God, Man, and his Well-Being
TP	A Political Treatise (<i>Tractatus Politicus</i>)
TTP	Theological-Political Treatise (<i>Tractatus Theologico-Politicus</i>) ¹

(Full bibliographic records for the works are provided in the Bibliography)

Notation used for Spinoza's *Ethics* is as follows:

p – proposition,

c – corollary,

s – scholium,

d – definition,

a – axiom,

app – appendix,

pref – preface,

dem – demonstration,

lem – lemma.

Roman numbers indicate parts of the book (e.g. I refers to Part One).

¹ Abbreviation of the Latin, rather than English, titles of the Political Treatise and the Theological-Political Treatise is more widely used in the literature, and this convention is followed in the thesis.

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Introduction

This is a thesis about political ordering. It advocates ordering as a process, rather than order as an established thing, as the relevant level of analysis of communal human life. To that end, the final chapter of the thesis introduces a dynamic model of ordering that is characterised by perpetual movement between the constitutive and the constituted elements of a political community's² life. In essence, it is claimed, although the constitutive and the constituted can be separated conceptually, in practical terms they are inseparable: one is being constantly reproduced, remoulded, and reshaped by the other while at the same time reciprocally affecting the other. This reciprocal and simultaneous determination, then, forms the essence of the process of ordering and keeps that process in a state of perpetual movement. Ordering itself is seen here as composed of several core parts: its framework, comprising the state³ and sovereignty, and its content, comprising law and politics. In order to analyse the core elements and conceptualise ordering as process, the ideas of Benedict (Baruch) Spinoza and Carl Schmitt are employed (for reasons outlined below). The process of ordering is, therefore, revealed in the dynamic between the ideas of these two thinkers.

Arguably, the question of authority and ordering has never been straightforward. In fact, disagreements over who has the ultimate power, what its source is, what constraints are necessary and/or natural etc. have animated political thought since its very inception. However, the modern condition is pronouncedly different: as will be seen in the first chapter, not only political communities are torn between the universal and the particular, between demands beyond and within their borders, but also the borders themselves have become less clear. Furthermore, the political public has become simultaneously more empowered and more disengaged, more active and more cynical about any form of authority (and 'the authorities' in general) – that is the context, the precondition, and, to a large extent, the substance of the question of

² The term 'political community' is used to stress the difference between the state, which is an element of ordering, and something that both underlies and constitutes the entire endeavour of ordering (i.e. the body of people). It is roughly synonymous with 'the nation' or 'the people' but, in the author's view, allows to better express the non-essentialist nature of this collective body and is free from connotations of something primordial.

³ The position of the state in today's increasingly globalised world is admitted to be a precarious one. Hence, later on in the thesis, the state is usually taken for a *principle* that it stands for rather than a particular *essence*.

ordering as it applies to the conditions of today. And yet, these changes in political landscape and subjectivity are yet to be fully explored. Hence, this thesis is also an exploration of human communal life under both its prevalent (largely stable throughout time) and specifically modern attributes, simultaneously shedding new light on communal life (providing a representation and an analysis of it) and offering normative prescriptions for how it is to be conducted, of course, with specific reference to ordering.

Ordering and the Conceptual Apparatus

A crucial question must be asked: how can political order be produced and sustained, especially in modern pluralist democratic societies when no authority can be taken for granted and globalisation is threatening the very presence of integrated communities? The answer to that question, in fact, has to start with a negation: order, as such, is not possible under the circumstances described. Instead, one has to delve into ordering as a process. The very choice of terms here indicates a critical opposition: order, as something established and – actually or seemingly – natural, and ordering as a constant process in which any status quo is only temporary and negotiable. This is not to say that either one or the other is present or that they are in some way interchangeable. In fact, as argued in this thesis, one always lives under a particular order which must always represent something more than it actually is – e.g. a rational, natural or some other ideal – to be acceptable or, at least, bearable. After all, it would be terribly difficult to live under instituted contingency (as, it is claimed here, we do) and be conscious of the fact. Hence, there must be some sort of drive towards finality and false conclusion – an emphasis on order as singular and factual. And yet, this thesis endeavours to show that order as such cannot be the relevant level of analysis because the most it can actually aspire to is being a temporary interim conclusion of the process of ordering. Hence, an analysis of order would concentrate on an effect whilst ignoring the conditions that have produced and will ultimately overturn that effect. Meanwhile, political ordering, understood in the widest sense possible, refers to the establishment of rules and norms under which the common life is to be lived. That, in fact, is the ultimate issue that life in any political community boils down to. Those rules, however, are not permanent (or otherwise there would be no ordering but

just order). Rather, as it will be shown in this thesis, they are constantly renegotiated between the constitutive and the constituted elements of ordering (as they are defined below). The same applies to exclusion: the presence of rules already implies exclusion or sanctioning of those who do not comply, and the fact that ordering refers to political communities indicates that the application of rules is also based on inclusion and exclusion, i.e. membership and non-membership. This inclusion-exclusion relation will be shown to be a crucial element of the necessarily political character of human ordering. However, ordering being a process, this inclusion-exclusion, just as the corresponding rules, cannot be permanent: they are only momentary snapshots of constant movement. In short, as will be demonstrated, ‘ordering’ still contains a reference to order in its root – order is an ever elusive aspiration, just like the infinite intellect of God is for Spinoza; and yet, since ordering is a process that always stumbles upon inconclusive outcomes, it simultaneously contains the kernel of Schmitt’s groundless decisionism which cannot boast any incontestable telos.

Next, one has to move to the two thrusts that are going to play a crucial role throughout the thesis: the constitutive and the constituted,⁴ which roughly correspond to the elements referred to in the thesis title: creativity and limitation. However, neither thrust has an exclusive relation to either creativity or limitation. Hence, it would also be erroneous to refer to one of the thrusts as active and to the other as passive: both are active, shaping the actual temporal manifestation of ordering accordingly, and passive in the sense of limiting the effect the opposing thrust can have. The constitutive thrust is bottom-up, as expressed through sovereignty and politics, referring to the political community’s creation of ever new forms of itself, shaping its institutional and symbolic expressions accordingly. But once a momentary snapshot of the political community is established as its authoritative expression (e.g. through the establishment of a new or amended constitution, a plebiscite, an election, regime change through revolution and so on), the constitutive immediately passes into

⁴ The distinction between the constitutive and constituted powers has received considerable attention in the recent literature. Several notable examples (although the terms themselves are not always completely explicit) include: Agamben (1998, 2005, 2011), Barshack (2006), Connolly (2005), Drake (2010), Hardt and Negri (2000, 2004, 2009), Honig (2009), Loughlin (2010), Mouffe (1993, 2000, 2002, 2005), Negri (1999, 2008 and most other writings), Rancière (1999, 2009, 2010), rua Wall (2012), Spång (2014), Tully (2008), Wenman (2013), and others. Shukaitis (2009) even stresses the necessary transition from the constitutive to the constituted and back again, somewhat similar to one proposed in the final chapter of the thesis. However, for him such transition implies a radical break and unavoidable weakness of radical imagination rather than being part of a process of ordering.

the constituted. Such transmutation happens because the political community constantly moves on, leaving any established form behind almost at the moment of its establishment. The constituted, then, refers to the quest for order rather than ordering, i.e. is symptomatic of the quest for stability (although, it has to be stressed again, stability is not only limiting but also creative, shaping the constitutive accordingly). The constituted is top-down, represented in this thesis by the state and law: it is the thrust in which the institutional-symbolic representation maintains its own illusion of finality, usually upholding the community as it once was but sometimes also establishing a community where previously there was none. To an extent, one could see this as a privileged default position: an entrenched structure of power and resources. Nevertheless, as will be demonstrated throughout the thesis, the constituted always rests on a precarious foundation and is relevant only as long as it manages to maintain its grip on the constitutive. On the other hand, it will be seen that the constitutive also depends on the constituted because the latter lends it at least some form and definition. The community – the substance of the constitutive – cannot exist if it is amorphous; instead, it defines itself and is to be defined in relation to the constituted. As a result, there is constant interdependence and movement between one and the other – that is one of the central claims of the thesis, directly leading to understanding ordering as progress.

Ordering, understood as a process, might, at first, seem primarily Spinozist (some kind of immanent self-creation or self-reproduction) but there is a sense of a process in Schmitt as well. Not only is the essence of his sovereign decision its authoritative nature in performing temporary stabilising actions but also entire history was, for Schmitt, a continuous movement towards Last Judgement and an unfolding of the redemptive struggle between the agents of Christ and the agents of Antichrist. In fact, as it will be shown, even when Schmitt writes about *stasis*, it is not the opposite of *kinesis*. In fact, as it will be argued in Chapters 3 and 4, *stasis*, understood as movement and plurality within a seemingly unitary entity is crucial in understanding Schmitt's political theology. Hence, the two authors only represent different faces of ordering-as-process. But in order to understand ordering effectively, one unavoidably has to read both simultaneously, seeing any present situation as permanently moving between the two theories.

Ordering, inasmuch as it refers to human activity, is presumed to always be political. This is so because human ordering is always partial, there always is a could-have-been-otherwise clause attached. Ordering is about choices and preferences – and political activity is understood in this thesis as a process of deciding on preferences and struggling to institute (or uphold) a chosen principle as the ordering principle of a community. There is, of course, also natural ordering, as studied in natural sciences, but the latter is not the object of this thesis. Also left out is the issue of non-human animals. Although the philosophical and scientific debate as to whether or, perhaps, to what extent characteristics previously used solely to define human action are extendable to other beings is certainly interesting, the analysis of ordering here is limited to its political and human aspect for the sake of clarity and focus but also due to the limitations set upon a thesis-length study. It is also not immaterial that neither Spinoza nor Schmitt were particularly interested in non-human animals and, therefore, the expansion of scope to other living beings would be very difficult.

Next, the process of ordering, as already indicated, is analysed through its four core elements: the state, sovereignty, law, and politics. Here another clarification might be useful: whether these are analysed as concepts *in themselves* or as concepts *of* the relevant referents. In fact, under a perspective adopted here, the question is seen as immaterial: one looks at both simultaneously. This approach could be called a reverse Platonist – or, perhaps, slightly Kantian – one: what can be known are only concepts or ideas of things and, therefore, when we talk about a thing, we only talk about our concept or idea of that thing. Things-in-themselves remain in themselves. This is not to say that ‘reality’ is completely created through words and definitions only: the actual experiences of living do limit the field of possibilities; however, such field is never completely closed either. Again, it is not the intention of this thesis to delve into the natural world and analyse the applicability of this outlook to natural objects but only to the social-political world. And in the social-political world, there is a two-way relationship between concepts and things, processes, or practices: on the one hand, elements of the social-political world actively shape our experience (and, thus, concepts) of them, while, on the other, these elements are limited, enabled, and shaped by the relevant concepts held by the individuals participating in them. For example, the concept of the state is affected by the actual practices of living in an entity referred to as ‘the state’, while such experience-based idea can then serve as a normative

criterion for what is ascribed to ‘the state’. Hence, the constitutive-constituted dynamic is manifest here as well.

Certainly, the process of ordering can be studied under many different aspects and attributes. However, the four abovementioned ones are seen as crucial, representing both the structural and the dynamic aspects of ordering: the state, sovereignty, law, and politics. The state and sovereignty provide a broad outline of the political community within which ordering takes place (a kind of exoskeleton) – hence, they constitute the framework of ordering, providing the latter with form (sovereignty) and structure to maintain that form (state). Meanwhile, politics and law provide ordering with content and give substance to it. Moreover, the first element in each pair refers to the constituted and the second one – to the constitutive side, thus giving insight into the constitutive-constituted tension *within* those elements as well.

Hereby, the presumed answer to the question of ordering begins to take shape. Firstly, ordering, as a process, is a movement between established arrangements of order and their challengers that, once victorious, solidify into new political orders themselves, thus signalling a constant creative and limiting, constitutive and constituted, interplay in which inclusions and exclusions, although crucial, are always only temporary. Nevertheless, the openness that characterises such model does not advance to the cognitive level, at least not usually: and this is, as it will be demonstrated, the domain of political theology that masks the tragic underpinnings of ordering, i.e. the constant need to choose between the equally groundless options of order-as-it-is and order-as-it-is-to-be by positing one of the alternatives as something more than it actually is – otherwise, communal life would become unbearable. And due to that groundlessness, the process of ordering is going to continue in a circular motion from the constitutive to the constituted to the constitutive and so forth. Not only contingency, temporary stabilisation, ever-renewed contestation, and belief are crucial in understanding ordering in general and the state, sovereignty, law, and politics in particular – they are, in fact, the defining features of political entities, and to aspire for more would only imply the cessation of a political community’s power and right to self-determination.

Spinoza and Schmitt: Not at all Incompatible

The choice of Spinoza and Schmitt necessitates some grounding. The two authors belong to very different historical periods, profess different outlooks, and their agendas differ significantly. More often than not, they are seen as incompatible, even diametrically opposed, and therefore any serious scholarly engagement with the two, especially with a view to constructing a model that includes both is as yet lacking. Nevertheless, there are apt reasons for analysing them together, especially since the model of ordering to be developed in this thesis rests not on a dialectic synthesis of the two theories but on a productive tension that constantly reactivates the question of ordering while still resisting final conclusion – a process of continuous reproduction. When read together in this way, the two authors can be seen as exposing the blind spots in one another's writings but, nevertheless, are insufficient on their own. In fact, that is the first substantial reason for reading Spinoza and Schmitt and doing so simultaneously: by permanently holding one another in tension and constantly coming on top of each other (e.g. Schmittian groundlessness being superseded by Spinoza's emphasis on the rationality of order, which is ultimately undone by that same underlying groundlessness, only to be replaced by yet another quest for stability through supposed rationality and so on), they reveal the paradigmatic process of ordering as constant struggle between stability and contestability. This revelation, however, is not something internal to a reading of Spinoza and Schmitt. In other words, the process of ordering is not analysed in this particular manner because of the thesis being based on these particular authors; instead, the authors have been chosen because they complement the analysis, enriching the model of ordering as process with crucial insights into the drives behind the perpetuation of ordering, adding a historical perspective (by representing different historical periods), and manifesting very different outlooks.

Of course, there also are Spinoza's and Schmitt's contributions to understanding political ordering and its elements that further justify the selection of these particular authors. Crucially, for Spinoza, ordering is an instance of indistinction between collective and personal *conatus*. The state, therefore, refers to a collective striving for satisfaction but is also simultaneously an aggregation of individual strivings. Correspondingly, sovereignty is all about control of that indistinction, and law is seen

as a prosthetic device that directs all strivings towards greater perfection. Moreover, it is important to note Spinoza's emphasis on political association as natural, which is based on everything partaking in one substance. In contrast, for Schmitt, the state is primarily about substantive content – ideas – that are only subsequently institutionalised. Hence, whereas Spinoza theorises about agreement in nature and everybody's objective best interest, Schmitt is about contestation on a groundless terrain. Any unity exists only because the political community has chosen to unite and established that unity through a sovereign decision. That is the tragic choice of politics, which confers significantly more agency upon the political community than Spinoza would allow (in fact, for Spinoza there can hardly be political choice as such, since he denies the existence of free will). Schmitt strengthens the contestation at the heart of politics even further through his friend-enemy distinction and the primacy of the political (and yet, one has to not that for Schmitt enmity refers to the existence of a specific political community, whereas Spinoza's political enemy is also an enemy of the universal standard of reason). Then, for Schmitt, sovereignty, as a borderline concept, is more existential than it is for Spinoza: in Schmitt's theory, it refers to fundamental groundless decisions, whereas Spinoza sees it as a natural occurrence – a means of translating everybody's objective best interest into political practice. And law, for Schmitt, can only be about a momentary codification of a particular political community's existence rather than promoting some objective ideal. Hence, Schmitt shows the groundlessness of ordering that cannot be seen, whereas Spinoza shows what must be seen.

Moreover, Spinoza and Schmitt, instead of remaining merely particular instances in the history of ideas, have inspired some significant strands of current political thinking – a fact that adds further relevance of an analysis of their thinking in relation to political ordering. Indeed, the reputations of Spinoza and Schmitt have increased quite rapidly during the last several decades after a prolonged period of neglect, during which they were viewed as too scandalous or inadequate (or both). However, they have come to influence rather different strands of thought. Schmitt came to signify irresolvable political struggle, irreconcilable tension within any community (especially in various critiques of liberalism), the unavoidability of ultimate, usually arbitrary, decisions (in some currents of critical legal theory) and a longing for a multipolar world order (in critical international relations theory). Spinoza, meanwhile,

has become topical among theorists of radical democracy and, generally, those who emphasise the primacy of the constitutive power, signifying the fullness, incessant creativity and self-sufficiency of political community. To some extent, this difference is embraced. However, contrary to mainstream approaches (fixity and certainty in the case of Schmitt, fullness of self-creation in Spinoza), both are considered to be theorists of inadequacy or deficit of existence, and that provides for a common ground of analysis. For both of them, political life is about striving to achieve an absent fullness, and reading both as referring to the same issue but, nevertheless, holding one another in perpetual tension helps to elucidate different strategies of dealing with that core deficit: the constitutive and the constituted ones. Hence, a productive tension is set up.

Nevertheless, the strategy adopted in this thesis is not to delve into particular traditions of interpreting Spinoza and Schmitt. Although secondary literature is undoubtedly valuable, the aim here is to return to the sources, i.e. the writings of Spinoza and Schmitt themselves, hereby enjoying the benefit of some critical distance from current theoretical debates and thus being able to take the broader picture into account. It is, in fact, this broader picture of overarching principles that is seen to most significantly contribute to the analysis of the process of ordering. Also, the objective is not to provide some explicit corrections to today's interpretations of Spinoza and Schmitt (although critical engagement with particular elements of such interpretations is a necessary part of the analysis) but, rather, to reflect upon the broader framework of top-down and bottom-up approaches as being not opposed to one another but, rather, constantly interacting with one another and setting the process of ordering in perpetual motion and, through that, to present an outlook that simultaneously accommodates creativity and limitation in political communities,

Then, there are the circumstances of their writing. Both Weimar Germany of Schmitt's time and the Dutch provinces of Spinoza's time were experiencing instability and upheaval which can always be traced in the background of Schmitt's and Spinoza's theories. To a significant extent, their writings were attempts to ameliorate the status quo and to provide for more stable and better-organised political life. Certainly, different contexts and different outlooks led them to develop theories that are very difficult to think of simultaneously but, notably, signify the breadth of

possibilities of how to deal with relatively similar challenges. Also, Spinoza and Schmitt have lived through what could be seen as different ends of a distinct period of political ordering. At the time of Spinoza's writing, the Westphalian state reached its full recognition. Meanwhile, Schmitt's writing stretches the two world wars and beyond – the period when the state clearly started to decline. Here again a potential for establishing a productive tension between the two theories is ripe.

In fact, the tension between groundlessness and belief in a singular order – one reflected in the Schmittian and Spinozist theories – is central to today's world. On the one hand, there is a notable – and increasing – scepticism about any grand narratives and ultimate truths, at least in the West. On the other hand, there is always the need for *some* form of belief: an awareness of living under mere contingency would be hardly, if at all, bearable. For this reason, one needs a framework that is both non-essentialist and capable of providing certainty at the same time. Hence, Spinoza and Schmitt not only biographically and thematically represent the different thrusts of ordering but also contribute, when considered simultaneously, to the integration of what would otherwise be contradictory trends of today's life.

Finally, it is crucial that the theory of ordering is not internal to a specific perspective but, instead, can be built *across* such perspectives. With this in mind, simultaneous reading of Spinoza and Schmitt, as it is developed in the last chapter, reveals one more inner tension in the dynamic of ordering. Spinoza is here read as a 'hyperrationalist', someone who radicalised the Enlightenment rationalist tradition even further, especially as manifested by his *Ethics* – essentially, an effort to deduce both natural and moral philosophy through the geometrical method. Spinoza's is a completely mechanistic universe, fully determined by the relations of cause and effect, by which even God-qua-Nature was bound and, most importantly, ordered according to absolute reason towards which both individuals and communities must aspire. Schmitt, meanwhile, was someone who strove to reintroduce theological thinking into politics, and his ideas have deep religious (specifically, Roman Catholic) undertones. That left Schmitt both asserting the primacy of belief over knowledge and manifesting deep scepticism about the human condition more generally. This bipolar presence, it will be shown, displays the breadth of the spectrum of ordering and allows one to grasp the perpetual movement that characterises any particular political community. Hence, it is

beyond doubt that Spinoza and Schmitt professed very different outlooks. That difference, however, is a crucial contribution to the overall argument: even such different positions – in fact, it must be stressed, precisely *because* they are so different – allow for a framework of a continuous reproduction of ordering where groundlessness and the need for (and presence of) particular standards not only coexist but also complement one another.

There is, admittedly, a potential issue as to the faithfulness of reading as the interpretations of Spinoza and Schmitt, especially in the final chapter, are not always entirely conventional. Most notably, Schmitt is seen to manifest a form of weak immanence whereas Spinoza is argued to have been concerned with stability and limitation of the infinite creativity of the multitude through an ultimate standard (reason). In other words, Spinoza is usually seen as a representative of the constitutive and Schmitt of the constituted.⁵ At first sight, therefore, it might appear that the interaction between the two authors is based on Spinoza who has been Schmittianised and Schmitt who has been Spinozised. That, however, is not the case: as the thesis demonstrates, especially through the discussion of their views on sovereignty and politics and the metaphysical preconditions thereof, such interpretation is simply a logical consequence of the ideas and thrusts already inherent in Spinoza's and Schmitt's writings. And such reconsideration only adds more impetus to reading the two authors together.

The Structure of the Thesis

This thesis, as already indicated, is centred on the four crucial aspects of political ordering: the state, sovereignty, law, and politics as conceived through a perspective informed by Spinoza and Schmitt, allowing an interactive model of political ordering to be formulated in the final chapter. The first part of this thesis assesses the current state of the debate around the four concepts, followed by an analysis of both the

⁵ Among other representatives of the above interpretations, one could include, for example, Balibar (1997, 1998), Curley (1969, 1988), Deleuze (1988), Del Lucchese (2009) Gatens and Lloyd (2002), Hampshire (1978, 2005), Negri (2004, 2008, 2010 and his other writings) for Spinoza and Agamben (1998), Balakrishnan (2000), Bates (2006), Bendersky (1983), Gross (2007), Kelly (2003), Kennedy (2004), Marder (2010), Dyzenhaus (1999a), Salter (2012) for Schmitt. Notably, several other authors, e.g. Meier (1998, 2006) or Ojakangas (2006), take a more nuanced stance on Schmitt's supposed preference for the constituted.

Spinozist and the Schmittian accounts of ordering, and finally, providing a model of ordering as process. The present author's stance is that both the themes and the authors on whose writings the present research is based have to be accorded due respect. Of course, a degree of subjectivity through the framing of the question, selection of issues and viewpoints as well as prioritising some passages in the relevant writings over others is both unavoidable and necessary. Some subtleties of tone in presenting different viewpoints will, almost certainly, betray the present author's position as well, either intentionally or unintentionally. However, it is intentional that, in the first three chapters, the author takes a step back, only providing commentary and guidance where necessary for the integrity of the thesis. The fourth chapter, meanwhile, is intended to bring all the voices together into a theory of ordering through extensive authorial intervention.

The first chapter investigates some of the existing literature on the state, sovereignty, law, and politics. It is not aimed at providing a full and definitive account of the scholarly debate but rather at giving an overview of some major trends. Generally, most of the theories outlined view sovereignty and the state as either doomed or, at least, undergoing significant change, with only a minority seeing major continuities with the past. Meanwhile, the theories of law and politics are presented in three clusters that see them either as shaped by occasional interruptions of everyday monotony, as engaging in a quest for stability and fixity, or as the site of perpetual struggle between deep-seated agendas and commitments. Such exposition not only helps to set up the problem of ordering as a process involving conflicting demands and thrusts but also reveals the partiality of the existing literature: although the major theories are not seen as incorrect in their entirety, they only reveal an aspect or one side of the whole complex process of ordering.

The second chapter is dedicated to the analysis of Spinoza. First of all, some basic issues of his natural and metaphysical philosophy have to be looked at. Crucially, this part of Spinoza's thought underlies and informs his political philosophy and, therefore, cannot be ignored. Only subsequently can Spinoza's political theory proper be analysed. Here, the two basic pairs – state and sovereignty, law and politics – are again paramount. Most importantly, the role of the state in ensuring communal cohesion and joint progression towards greater reason has to be elucidated. Crucially,

Spinoza made the state a core point of reference, which allows all other political elements to flourish. Sovereignty, meanwhile, acts as the highest authority, unlimited and unchecked in principle but limited in practice by the right as power doctrine. Then, Spinoza's understanding of law is important. By being a human convention only, law is a flexible and yet absolutely vital and authoritative tool of making humans act as if they were reasonable. Finally, politics, despite being curtailed by Spinoza's overreliance on reason, is a crucial way of ensuring the interrelationship between the multitude and the authorities or – in the case of democracy – constant immanent movement towards ever sounder reason.

After that, an analysis of Schmitt's writings is provided. First, as in Spinoza, some metaphysical preconditions have to be enquired into. Then, the analysis moves to the state as the ultimate institutional-spatial locus of politics and its role in expressing and upholding the political community. Closely related to and even presupposed by the state is the concept of the political and the corresponding division between friends and enemies which animates political life and helps to define both the community and the individual. This division, coupled with the groundless nature of human existence, necessitates sovereignty as the ability to decide and establish order. Sovereignty, however, is far from straightforward and, therefore, the problems of where sovereignty lies, who is sovereign when conflicting demands arise, and the relationship between sovereignty and the tragic will have to be looked at. Then, the nature of law, as the expression of the political community's will and existence, contingent and mutable on the one hand, and necessitating quasi-religious belief on the other, is paramount. After all, Schmitt's ultimate concern was prevention of chaos, and law was a crucial tool for that. Finally, politics for Schmitt is the essence of communal existence, the expression of a community's lack of finality and closure. Political struggle would then only cease with the end of time.

Lastly, the final chapter will revisit the four core elements of ordering from a Spinozist-Schmittian perspective with a view to producing an interactive model in which the constitutive and the constituted, represented, at various instances, by Spinoza and Schmitt, are holding each other in permanent tension while any status quo is only temporary and caught in the midst of a circular motion from the constitutive to the constituted, then back to the constitutive and so forth. The deficit of

existence, as evidenced in the preceding discussion, is the drive for this constant change, always putting individuals in-between the tragic moment of political risk and the quasi-theological structure of belief, thus simultaneously implying creativity in inventing ever new forms of ordering as well as limitation to such open-ended drive. It is argued that Spinoza and Schmitt, when read simultaneously but not in a synthesis, can provide an essential toolkit for conceptualising this movement. And that constant movement of continuous reproduction is at the heart of ordering.

1. The Four Elements of Ordering

The tensions and transformations revealed in this chapter constitute the context, the preconditions, and the substance of the question of ordering. As already indicated, throughout this thesis, ordering is being analysed under its four core elements: the state, sovereignty, law, and politics that, between themselves, constitute the framework (the state and sovereignty) and the content (law and politics) of the process of ordering. The first step towards rethinking these four concepts is to evaluate the current state of the discourse surrounding them. It is not the aim of this chapter to provide an exhaustive outline of the entire debate. Instead, some key strands of thought, indicative of the *spectrum* of standpoints will be discussed. An attempt will be made to identify the key trends, or clusters of approaches, tentative as they may be. None of these theories and their groupings are to be discarded as completely incorrect and without use but, equally, neither is seen as adequate on its own. Instead, all are to be seen as partial, i.e. referring to some crucial aspect of ordering and yet missing the broader picture; nevertheless, the revelations of each still contribute to a theory of ordering through both the claims and the omissions of the particular standpoints. Hence, the chapter not only constitutes a preparatory ground for the Spinozist and Schmittian readings of ordering but will also inform the theory of ordering proposed in the final chapter.

This chapter consists of four parts, each dedicated to one of the core concepts. First of all, the state – the institutional structure that upholds the political community as a particular entity – is looked at, and the core issue is the ongoing transformation of the global system. Quite naturally, then, the theories of the state can be grouped under three main banners: those seeing the state as obsolete, those seeing the state as surviving with some major changes, and those postulating the prevalence of the state more or less as it is. The same also applies to the second part, dedicated to an analysis of the current discourse on sovereignty. This correspondence comes as no surprise as these two concepts have traditionally been closely linked together. The three approaches to the state and sovereignty have clear implications to the analysis of ordering. If both the state, as the exoskeleton of the political community and of the latter's own process of ordering, and sovereignty, as an act through which a particular shape of that exoskeleton is established, are to become irrelevant, replaced by some

form of global humanity and/or global democracy, the entire process of ordering would lose its shape, no longer referring to a political community but rather to some amorphous and inertic universalist entity. Political communities then would no longer be able to fully determine themselves, being rendered subservient to global normativity. On the other hand, prevalence of the state and sovereignty in their earlier rigid forms, while certainly preserving a political community's right to determine its own process of ordering, would ignore the increasingly important interplay between local, translocal, and global norms, rendering any future analysis inadequate. In fact, the tension between those different approaches helps, in the final chapter, to construct a fuzzier, more dispersed model of political ordering which, nevertheless, is still concrete enough to act as a basic principle of communal life.

The third part of the chapter looks at the different approaches to law – the instituted content of ordering and, perhaps, the clearest expression of a political community's self-determination. Again, three different clusters of ideas can be identified: law in context, law in itself, and law as secondary. All of those theories represent different ways of stabilising the content of ordering and, especially the first two, serve to provide their unique strategies to legitimise these temporary stabilisations. Theories of law in itself could be called true theologies of law, whence it suffices that law is as it is for it to hold ultimate normative value. Such theories leave the process of ordering moderately open, since even the fundamental norms can change, causing an overhaul of the entire system but, nevertheless, there is a strong element of limitation as well. Then, theories of law in context tend to see in law an expression of some higher value, thus seemingly conferring permanence upon present arrangements or, at least, setting forth an ultimate telos independent of the political community that particular laws relate to. Such theories tend to aspire towards order rather than ordering, severely limiting the creative role of the political community. Finally, theories of law as secondary, i.e. subservient to other processes and conditions within society, albeit coming much closer than others to revealing the contingent and power-laden nature of law, tend to, especially in the more critical approaches, instil a certain aura of helplessness, thus diminishing the drive for change. Hence, such theories are, in a way, less open than those preferring law in itself. The same tripartite division also applies to the discussion on politics in part four of the chapter. The three main groups of ideas, in this case, are the following: politics-as-consent, politics-as-dissent, and

politics as occasional. Politics-as-consent and politics-as-dissent represent two radically opposed thrusts in ordering: a drive towards limitation and stability (i.e. order) and unleashing of the creative potential of the political community at the expense of stability, respectively. The process of ordering is, hence, caught between finality and openness. Theories of politics as occasional, meanwhile, do show the structural obstacles that obstruct the free flow of the process of ordering while unduly limiting the principle of ordering itself by relegating real political action to the margins.

1.1. The Framework: State and Sovereignty

Sovereignty and the state are closely interrelated concepts that, according to the Westphalian understanding, constitute two sides of the same coin. They also represent different sides of the framework of political ordering, referring to the constitutive (sovereignty) and the constituted (the state) elements of it. Nevertheless, the current role and importance of both have become increasingly debatable. Therefore, in order to answer the question of ordering, one first needs to dwell into the current debate around sovereignty and the state, teasing out the main currents of thought on both concepts. That is especially the case because the state and sovereignty are seen to represent principles paramount to the very question of political ordering. Only when that stage is set, a Spinozist-Schmittian intervention into the question of ordering is possible.

1.1.1. The Fading Away of the State?

Admittedly, a general theory of the state seems hardly, if at all, possible to derive (see e.g. Lister and Marsh 2006). Still, there seems to be an agreement that the state is undergoing significant changes in the wake of globalisation, increasing interdependence, migration, advances in communication technologies, and other developments that characterise today's world. Increasing cooperation is now necessary in such areas as international commerce, environmental issues, human rights, global health challenges etc. (see e.g. Trachtman 2013: 253). However, the

degree of those changes is far from clear. The state has traditionally been seen as forming ‘a scheme of intelligibility’, providing an authoritative interpretation of how things are to be perceived, simultaneously being an idea and its embodiment, a body, and a work constantly in progress, provider of both freedom and belonging (Loughlin 2010: 208). Clearly, the standard definition remains that of Max Weber: ‘the state is a community enjoying a monopoly of legitimate power over a certain territory’ (Weber 1991: 78). The problem is that the exact nature and content of the community is far from self-evident. Moreover, it appears that, in the modern world, the state monopoly of legitimate power is, if not truly broken, severely challenged while the importance of territory has, arguably, declined with globalisation and the advent of cyberspace. Generally, three different degrees of suggested change can be identified: first, the state as generally maintaining its essential characteristics; second, the state as surviving but changing significantly; finally, the state as becoming increasingly irrelevant.

Claiming the State’s Survival

For some at least, one of the ‘most salient and enduring features’ of the state is its ability to survive constant historical and political changes (Chernilo 2007: 160-161). Regardless of the constraints on the actual exercise of ultimate authority, the state is still seen by some as ‘the supreme law-making and enforcing agency for society’, ‘responsible for determining the rules which govern all power relations in society’, thus being ‘the site of intense struggle’ to control ultimate meaning (Beetham 2013: 121). As such, ‘the state to a great extent retains its central position in selecting and legitimating policy goals’ (Peters and Pierre 2006: 219). The state remains a ‘structure of intelligibility’: a system of meanings which ‘collectively embody the various judgments that the citizens of the state have made about how things really are’ (Steinberger 2004: 13). It stems from the people, describes the people, and also exists for the people, arranging their diverse worldviews in an orderly and intelligible manner. Essentially, there is something more to the state than territory, military might, or even population: an idea (Steinberger 2004: 13-14). And therein the power of the state is said to reside.

Even though cooperation and interdependency are on the rise, the state is still, for adherents of this perspective at least, rather firmly ‘in the driver’s seat’ and able to stand its ground. Furthermore, the argument goes, there is clearly no *demos* at the international level, hence global decision-making processes lack transparency and are made on a technocratic rather than political level, leaving the state the only truly legitimate and representative body (Sørensen 2006: 196). From a normative perspective, the survival of the state might be seen as a crucial counterbalance to the rising international normativity: the state, by being a concrete body representing a political community with its values and its own political choices, must check the abstract and essentially empty international community (Kalpokas 2015). And, despite all the talk about globalisation and production of a single global order, there has, arguably, never been a single-speed globalisation and the changes are not identical in all countries (Ukpere 2014). Clearly, these theories do put forward an important point: the need for a bounded structure of intelligibility and a core idea that provides structure for fidelity and orientation. As will be argued throughout the thesis, humans, being incapable of achieving absolute fullness and self-identity, cannot achieve global universality either. In fact, it will be demonstrated, universality as such is impossible but is, rather, a sign of a particularity posing as something more than it is or can be. Hence, the state represents a crucial principle of humanity’s fragmentation and of particular groups being true representatives of their own identities and interests. Nevertheless, whether the state will retain its current form is a completely different matter.

As is clear from the length of this overview, state-centric theories are in a minority. Nevertheless, they do express several crucial features that contribute to the principle of division, seen in this thesis as necessary: a uniting idea, an expression of humanity’s diversity, a body of a *demos*, and a counterbalance to the global uniformity of ordering.

The Changing Nature of the State

The second perspective presumes that the state will change significantly, sometimes even beyond recognition, but, nevertheless, retain some important function. Clearly,

the role of states as independent actors has been constrained. Hence, significant transformations have to take place in order to adapt to the new, globalised, environment (see e.g. Marks 2000: 76; Tierney 2006: 3), in which the state's functions have been increasingly integrated into international regimes (Capps 2006: 73). Whereas traditionally state governments had exclusive power and authority within their territories, currently emphasis is on a mixture of local, national, and international levels, involving not only governments but also non-governmental organisations, international institutions, and other non-state bodies (Sørensen 2006: 194), supposedly leading to a 'global polity' (Ougaard and Higgott 2002), even though we are not there yet. However, there might still be a caveat: certainly, the effect of globalisation and proliferation of norms has not been the same for the internationally dominant states, which are often the creators of norms, and for the weaker states, which are usually consumers of both global norms and culture.

Internal matters of states have, according to many, become matters of international concern – clearly, states can no longer claim a monopoly of independent action (Schermers 2002: 186). The state is no longer the sole guarantor of rights – in fact, it now occupies a subservient position, with the international human rights regime taking centre stage, breaking up the traditional citizenship-rights nexus (Rosenau 1997: 282; Sørensen 2006: 197). Even more so, usually, the picture is one of a world of states that only have rights as a reward for good behaviour, granted from outside (Tesón, 2014: 394). States, still being important in ordering their respective populations, are seen to have become tools for either implementing global strategies locally or achieving global ends. Under the former view, the state has a crucial role in implementing and guaranteeing human rights within their borders (Alston and Macdonald 2008: 84-85). But this function has to be strictly controlled: after all, it is argued, the global community has reached a point when 'a violation of right in *one* part of the world is felt *everywhere*' (Alston and Macdonald 2008: 86-87). Nevertheless, the model of ordering proposed in this thesis suggests that the above position misses a crucial point: the state is not a body in and of itself but, rather, a collective body of a political community. And, although such communities cannot be imagined to lead completely monadic existences, they equally cannot be seen as supervised by an absent centre. If some common normative universe is to be

imagined, it would be characterised by free exchange of particularities rather than by dominance of a single particularity that poses as universality.

Definitely, the new communications technologies allow for instant global connections, bringing forth grievances and enabling global rallying even behind causes that are both geographically and culturally remote for the supporters (Wenman 2009: 115). The state, therefore, remains a structure devoid of its exclusivity and dignity, struggling to maintain at least the appearance of its governmental apparatus and craving for clearly defined borders (Brown 2010: 24). In addition, the state is seen as hardly remaining the unitary integrated actor it once was. National and political identity has indeed been weakened by globalisation and migration, making it increasingly difficult to create a strong communal framework within state borders and calling into question the established practices of membership within a state (Benhabib 2004: 4; Khan 2012: 149). The unity and identity of the state is often challenged by the presence of migrants with different traditions, cultures, languages, and lifestyles, putting in doubt the nature of the society that the state purports to embody (Castles, de Haas and Miller 2014: 18-20). Even within the traditional populations, demands for secession, autonomy, and greater recognition are on the rise, leading to further fragmentation (Castells 1998; Sørensen 2006). The state is also significantly affected by the movements of the 'native' population, both within and outside borders. In fact, it '*permanently* faces crises that threaten to undermine its alleged homogeneity and severe its supposed unity' (Chernilo 2007: 160). Thus, the current processes of globalisation are seen to challenge the traditional assumption of the state as 'the container of social process' and the presumption of the national and the global as two opposed levels (Sassen 2007: 1). A particular territory, although formally still delimited by state borders, is becoming increasingly 'denationalised' and destabilised, thus losing its importance as an exclusive point of reference (Sassen 1997: 61). Since some of the crucial objections to such approaches will be laid out at a later stage, it perhaps suffices to indicate that far from signalling an end to the existence of decisive groupings, such changes in fact call for reinterpretation of formal and informal relations and for a more fluid understanding of the state and membership in a political community.

The ties that once linked the members of a state and simultaneously excluded them from other political communities are being challenged in a globalising world of increased transnational bonding of individuals and prevalence of universal or regional normative structures (Linklater 1998: 114) as well as international material and cultural flows and links (Benhabib 2004: 4). Generally, the state is no longer an equivocal centre of politics and power or a body that guarantees the collective good – instead, one can observe ‘a hollowing out of the state, decreasing legitimacy for collective solutions, and a marketisation of the state itself’ (Pierre 2000: 2). Real power, instead, is seen as exerted through a multi-level of governance where different authorities – from local to supranational – interact (and compete) in decision-making (Smith 2006: 32). Because of this increasing global interdependence, one is urged to ‘[s]top imagining the international system as a system of states’: although the state still remains an important actor, it is ‘disaggregated’ and better described through its parts, with those parts participating in networks of their own, creating a globe of crisscrossing connections that are deemed to be both more effective and more just than the earlier state-centred system (Slaughter 2004: 5-7, 31-33, 263). Such interconnectedness, supposedly, ‘could create a genuine global rule of law without centralized global institutions’ (Slaughter 2004: 261). However, while the formal state structure is indeed being hollowed out in favour of transnational institutions and networks (as it will be argued later, this also necessitates embracing a more fluid understanding of sovereignty), the primacy of interacting autonomous governmental bodies has to be resisted due to being premised on relegation of the political community and primacy of autonomous bureaucratic structures that no longer bear any relation to a *demos*. In line with the fluid interrelatedness advocated in the final chapter, a more adequate (and normatively preferable) form of global interconnectedness would be one between particular *demoi* (or parts of them), participating in free exchange of norms and ideas, although without prejudice to the internal decisive capacity of such communities.

Discarding the State

Under the third, and most radical, perspective, the future of the state has become increasingly uncertain, with some even asserting ‘the imminent demise of the state’, at

least in the sense we know it (Wissenburg 2009: 1). The future states are to be nothing more than ‘faceless institutions and organizations attributing or delegating rights within communities and territories’ through impersonal bureaucratic procedures (Wissenburg 2009: 2). Moreover, traditional notions of solidarity are seen to have expanded from bounded communities to, potentially, global society where ‘the broadest inclusion possible’ is the aim; such solidarity supposedly connects people across places and, therefore, traditional (including state-level) communities become things of the past (Coicaud 2008: 3-4). The state, for these authors at least, is not only incapable of sustaining itself but also undesirable: it is said to only entrench hierarchy, exert control and violence, and create false divisions not only between communities but also in individual life (Charlesworth and Chinkin 2000). Even if there still is a particular role for states to play, it is perceived as completely subservient to a global telos. States, as long as they are democratic, are said to lead towards a more democratic global system and, in fact, global democracy (Peters 2009a: 265). But then again, the ultimate source of authority is in the people and, therefore, it would be illogical for people to be dependent on states as intermediaries – instead, they should be able to participate in international democracy directly (Peters 2009a: 265-266). Hence, states, having brought about international democracy, would have exhausted themselves (Peters 2009a: 298).

Humans, seen by the proponents of the post-statist approach as finally breaking free from the institutional structures that had previously subsumed and ordered them, are supposed to themselves now take centre stage (see, for example, Kaldor, 2007 and 2012; Martin and Owen 2010; Stahn and Melber, 2014). Consequently, human security becomes a fundamental priority of a modern state in both foreign and domestic policy – that includes not only the security of a state’s own citizens but also that of the entire humanity (Axworthy, 2012: 4-5). As a result, the state cannot remain a viable object of defence any longer; instead, proponents of such a view would see it merely as an instrumental institution designed to facilitate human security (Weiss, 2012: 26). States are not even perceived as the makers of international law: the latter would no longer be strictly *international* law but rather ‘humanity’s law’, of which ‘the status of the human’ is the cornerstone (Teitel 2011: 32). However, the above emphasis on universal humanity and universal democracy once again misses the relevant level of analysis. As it will be shown in the subsequent discussion of Spinoza

and, especially, Schmitt, one unavoidably must search for particular communities and their own modes of ordering. A drive for universality is, it will be argued, a quest for an impossible fullness, an attempt to cover the deficit of existence that lies at the heart of human subjectivity. Such imaginary finality might be necessary politically in order to rally support. At an analytical level, however, one must not succumb to the allure of some particular group, which tries to solidify its cause by reinforcing it with some added universalist dignity.

Identities and lived environments no longer necessarily coincide and political loyalties become dispersed. In such an environment cosmopolitan norms ‘create a universe of meaning, values, and social relations that had not existed before’ (Benhabib 2006: 72). As states fall into disarray and gradually dissolve, shared sensibility and a feeling of common belonging are said to take hold, paving way for global citizenship and global belonging. Moreover, it is claimed that the very nature of selfhood has changed, increasingly precluding stable and guaranteed identities pegged to a state-structure. The modern subject is often presented as liquid, lacking shape and form, devoid of any guidelines and benchmarks, lacking pre-given attributes and consumed by ever-increasing speed and expansion (Bauman, 2000) or weak, fragmented and in a constant need to reinvent itself in a world of risk (Beck, 1992). No longer are people seen as bound by territorial patterns of control, thus paving way for increased pluralisation, freedom, and ability to choose one’s self on a global scale: in essence, for world citizenship (Beck, 1999). Even local or national problems, then, are increasingly acquiring an international dimension, being addressed through global movements: the new level of politics would then be cosmopolitan activism or ‘global domestic politics’ (Beck, 2012). Nevertheless, as it will be shown, such an approach would, just as well, concentrate on an imaginary closure only, locating the process of ordering on the wrong (integrated global) level.

Others would replace the state as supreme authority and representative of the people with an ‘all-affected principle’: those affected by an institution or phenomenon would be able to address their justice claims directly, independently of their territorial belonging (Fraser 2010: 24). Especially in the modern world, stakeholders are not necessarily limited to particular states but may be dispersed regionally or globally and, therefore, solutions to problems require global participation – one only needs to

consider environmental issues, global businesses, natural disasters, or human rights violations (Archibugi 2004: 443-444). After all, the theory goes, one's ability to live a good life is no longer wholly dependent on the state and, therefore, the state should not claim exclusivity. In a similar fashion, some deliberative democrats would suggest that not state borders but deliberative networks are crucial, and those have become increasingly transnational, shifting the locus of power itself (Dryzek 2002: 6-7). Internally as well, formal state structure is often seen as outdated or not up to standard. Still others, although proceeding from different premises, also reach a similar conclusion: modern communications media, and especially social networks, build communities that transcend state boundaries; although unstable and fleeting, organised around certain issues and grievances only, these communities, nevertheless, expand a state's citizenry across the globe (Stefanidis et al 2013: 116-117).

The above arguments definitely have some value: human identities have become more fluid, especially since today's environment is characterised by fast-paced change and ever-increasing connectivity (physical, informational, and online), while at least some issues clearly accumulate global, or at least regional, interest. In fact, the very nature of being affected might need to be enhanced to include not only a direct physical stake but also an emotional stake, i.e. affection through being exposed to information. At the very least, the principle of bounded communities is imbued with fluidity: whatever combination a particular identity acquires at a particular moment (and the state still is an element of identity: a state of citizenship, a state of residence, or a state of affection), is a decisive one when it matters. That, essentially, is a way of reconciling modern fluidity with the potential for political action (the latter, as argued in this thesis, being about the ability to choose and not to merely float around).

Some of the proposed ways forward include 'autonomous movement' of the multitude, 'new geography' characterised by 'productive flows of bodies', cooperation across entire humanity, collective existence, communicative networks etc. (Hardt and Negri 2000: 397-402). As a result, denial of the very distinction between native and non-native is not inconceivable. In fact, then, 'once the territorial dimension of citizenship is shattered by globalization, it becomes a cosmopolitan project' (Negri 2008: 118). The territorial dimension is, accordingly, being replaced by the global movement and creative potentiality of an (almost) indefinable multitude

(Negri 2008: 169). For others as well, ‘human life is based on and in movement’ which characterises ‘life as potential’ (Thrift 2008: 5). Certainly, a fixed and bounded state, requiring stability and fidelity, is very much at odds with this outlook. After all, the general mood is that the world has entered a kind of ‘postnational’ stage (see e.g. Habermas 2001; Pensky 2008; Krisch 2010). This also corresponds to a plurality or legal orders which co-exist and overlap, delimiting plural and overlapping legal spaces and communities (Lindahl 2013: 102). Quite explicitly, this outlook is one of unbounded constitutive power, without the referent of the constituted. And yet, arguably, moderation is needed. Although movements and flows are vital in today’s world, they do not take place in a single political community but, instead, between and within them. These communities may no longer strictly coincide with state borders and the market of identifications has indeed expanded beyond the state. As for the fictional nature of the state, that is nothing new either. In fact, the state has always been, first and foremost, an embodiment of a political community rather than an artefact in and of itself. As it remains to be seen throughout this thesis, changes in today’s world have merely brought more diversity and fluidity into the principle of division rather than fundamentally challenging the premises of ordering.

In the light of the broader assertions of this thesis, it is not absolutely crucial that the state as we know it survives. What *is* important is the survival of the principle that the state represents: one of political division and distinction. In essence, there needs to be a particular referent of ordering (the political community), distinguishable from other collective bodies and the wider context. It might be suggested, however, that what the competing theories of the state indicate is not a challenge to the process of ordering but merely a potential sign of multiplication of the loci of ordering: political communities may be expressed and upheld not necessarily by states only but also by other collective bodies, as long as the latter are not universal. And yet, at least one trend – the drive for automatic ascription of universal norms without the political community itself being able to choose – is a worrying one. As it is argued throughout the thesis, the constitutive and the constituted must permanently hold one another in tension; however, the aforementioned universalist drive clearly indicates something completely different, i.e. the primacy of the constituted. After all, as long as political borders and the bounds of humanity do not correspond (and it is argued here that it is impossible for them to correspond), any conflict can be solved by political means;

meanwhile, once a common telos of humanity is presupposed and global normativity embraced, the dissenter not only becomes a political enemy (to use a Schmittian term) – in fact, the enemy loses the status of being human or, at least, membership in universal humanity.

1.1.2. The Indeterminate Fate of Sovereignty

Traditionally, sovereignty has been understood as the ultimate power to decide on the form of a political entity, initially signalling absolute power of the monarch and then self-determination of the political community and such; on the international sphere, it has come to denote a threshold beyond which no outside interference is acceptable. However, the modern world, arguably, is changing at a faster pace than ever before, and ultimate political authority, legitimacy of any ordering power, and the (perceived or real) democratic deficit at both national and supranational levels have increasingly become objects of concern. As ever, there are both those who regret change and those who feel that the changes are not radical enough, with innumerable positions in-between.

In what follows, some of the dominant theories will be outlined, with reformulation of sovereignty being left for the last chapter. Nevertheless, what is analysed here carries enormous weight for the entire thesis: after all, ordering, as defined here, refers to a political community's continuous act of self-determination through interplay between its own constitutive thrust and the constituted counterpart which, just as well, refers to that particular community only. Just like the state represents the principle of division, sovereignty refers to self-determination. Hence, it is crucial that sovereignty prevails, albeit in a somewhat modified form. Here, again, one encounters a certain anti-globalist inclination of the thesis, although the final chapter attempts, among other things, to provide some reconciliation between sovereignty and the globalising world environment.

Doing Away with Sovereignty

More often than not, sovereignty has a bad name in contemporary political and legal thought. Taken to the extreme, the very tenets of sovereignty may be seen as

‘necessarily unjust, as they allegedly imply a power to abuse people with impunity’ (Endicott 2010: 245). As a result, a weakening or demise of sovereignty is often welcomed. The general presumption appears to be, then, that ‘the rules of international law, based on the principles of sovereign equality, non-intervention, self-determination, and domestic jurisdiction are anachronistic today, as is the frame of an international society of sovereign states’ (Cohen 2012: vii). Instead a new, law-based global community ‘with its own sense of identity, values, vision, and solidarity’ is supposedly taking root (Kritsiotis 1997: 409). Furthermore, the sovereignty-state nexus is perceived to be losing its privileged position vis-à-vis non-state actors, the latter playing an ever more important role in global politics and normativity (McCorquodale 2011: 424). In fact, some would easily trace the roots of non-state actor sovereignty within conventional sovereignty itself (see, notably, Barkan 2013). Inclusion of various movements and organisations is seen as a progressive move towards opening up new spaces for politics and freedom (Chandler 2007: 151).

It is, then, not surprising that one is led to think of sovereignty as, for example, ‘organised hypocrisy’, a fiction sustained by the powerful states for their own sake (Krasner 1999; Krasner 2010) or as a discursive construction rather than an objective entity or quality (Malmvig 2006; Troper 2010: 133-134). In such rendering, sovereignty becomes ‘some metaphysical or, better, theological conception of absolute identity’, no longer compatible with the modern world (Bates, 2012: 4). If one takes such view, sovereignty only ever came about because ‘a certain configuration of power has brought some variable features of a way of life [...] appear to be “necessary”, or “natural”, and [...] universal’ (Guardiola-Rivera 2010: 187-188). And yet, these theories are only partly correct. What they succeed in identifying, is the void at the heart of sovereignty: it cannot be what it is supposed to be. Sovereignty as a completely objective essence is impossible; rather, it is about temporal fixity established through power relations. Even its connection with the state and the simultaneous exclusion of non-state actors might be contingent. But, instead of being a weakness of sovereignty, that lack of objectivity is, as it will be argued, the source of its adaptability.

Sovereignty is, not uncommonly, reduced to ‘a legal concept [...] in international law’ rather than a specific quality of an entity (Peters 2009b: 184). This, in turn, implies

that both the external façade of the state *and* the internal developments within the state are legally determinable from outside, i.e. by the external corpus of international law. Moreover, real exercise of sovereignty is seen as doubly limited: from outside by international law and from inside by individual rights or claims for self-determination by parts of the population (Stauffen 2010: 172). In other words, sovereignty as control and autonomous exercise of power has given way to responsibility towards both the national and the international community (Focarelli 2008: 194).

State sovereignty is made contingent upon certain presumptions of ‘a good state’ and, therefore, any rights and privileges that are associated with sovereignty must be those and only those that are needed in order to reach that *raison d’être* of sovereignty (Besson 2006: 160, Endicott 2010: 254). Sovereignty then becomes dependent on the maintenance of ‘universal standards of global citizenship and responsibility’ (Toumayan, 2014: 11-12; see also Ramos 2013: 3), and the universal international community is, allegedly, tasked with protecting and upholding the universal norms by all necessary means (McLoughlin, 2012: 142). Correspondingly, if previously the state only needed validation from within (its own people), then currently its (il)legitimacy, it is claimed, must be decided from outside (Tesón, 2014: 393). This is especially visible in the postulations of human rights that universally exist (or at least should exist) as an ‘unforced world consensus’ in which people learn to understand and admire their differences (Taylor 2011: 122-123). Similarly, perceived progression towards a world of well-ordered peoples that in essence have nothing to quarrel about and only have to submit to ideals of abstract justice and liberal values has been influential (see e.g. Rawls 1999), with the implication that ‘well-ordered’ peoples have the duty to exercise benevolent correction vis-à-vis the less fortunate ones (Rawls 1999: 5-6, 126). Sovereignty, even in the popular sense, is being left with instrumental value only: ‘it is valuable and democratic precisely insofar as it promotes freedom and equality’ (Goodhart 2011: 1055). Consequently, even popular legitimation by the political community is conceived as inferior not only to substantive international standard but also to more technical international norms, regulations, and directives (Müller 2008: 20-22). In essence, the outside determines what order and disorder, legitimate use of force and oppression, good and bad governance are (Drayton, 2013: 226-227).

The above more than clearly demonstrates a crucial flaw in many of today's theories of sovereignty: preoccupation with the external element of sovereignty, i.e. its façade. In fact, sovereignty cannot be reduced to a legally definable concept or an agent for implementing global norms. After all, one of the implications of ordering as defined in this thesis is that it is about the internal self-determination of a political community: if ordering is a process in which the constitutive and the constituted (the latter itself always being tied with a particular constitutive rather than something global) are in perpetual movement, being affected and affecting each other in turn, then the only legitimate source of norms is the permanent creative interplay between those two poles. The alternative to such internal normativity is not some universal freedom guaranteed by an 'international community' but, rather, global dominance of a single particularity that presents itself as universality (see Kalpokas 2015). Definitely, sovereignty is similar in that it can only reflect one particularity at a time. And yet only by mistaking the façade for essence can the theories above perceive sovereignty as a universally repressive attribute. And only the same mistake can allow for sovereignty to be seen as a stable concept – rather, as this thesis suggests, sovereignty is an attribute that can, potentially, be arrogated by any power.

Cosmopolitan democrats, meanwhile, attempt to apply democratic norms and procedures to the global system. For them, democracy transcends borders and becomes the only legitimate source of power both nationally and internationally, channelling constitutive power from the local level directly to the global (see e.g. Archibugi 2012), the domestic-foreign boundary gradually becoming irrelevant (Rosenau 1998: 49-50). In the post-sovereign world, citizens would be able to participate in several transnational and/or subnational projects across different political arenas without the need to give preference to any of them, live under several political authorities simultaneously and shed away exclusionary identities, identifying with humanity instead (Linklater 1998: 130-132) and thus advancing towards a 'global civil society' (Köhler 1998). After all, according to cosmopolitans, 'there are values which everyone in the world ought to accept, whatever their personal interests or community' – or, at least, 'all reasonable people' would do so (Thompson 1998: 191-192). As Held (2006, 2010a, 2010b) maintains, political communities no longer have exclusivity of bonding, integration and loyalty, but rather, attention has shifted to

individual human beings, universal human rights, and moral concern, based on what is common to human beings globally.

Deliberative theorists, on the other hand, see a plethora of overlapping and interconnecting public spheres, from local to international and global, involving international bodies, governmental institutions, political parties, nongovernmental organisations, pressure groups, and various other participants (Johnstone 2011: 19). In this sense, once again, exclusive sovereign authority of the state is challenged by introducing channels for concerns and decisions that either do not involve the state or treat it as only one of many actors. Sovereign authority itself, then, becomes dispersed and context-dependent. After all, ‘the growing interdependencies of a world society’ puts in question the adequacy of the national, territorially bound, level of action (Habermas 2001: 70). Instead, a level of ‘world politics’ is said to be emerging, presenting a ‘dynamic picture of interferences and interactions *between* political processes that persist at national, international, and global levels’ through new channels of communication and new ‘international negotiating systems’, thus changing international relations into ‘world domestic policy’ (Habermas 2001: 109-111). Global deliberation would then be based on ‘*universal moral respect and egalitarian reciprocity*’ and thus be entirely inclusive (Benhabib 2004: 13).

Both cosmopolitan and deliberative theorists share important insights about the interconnected nature of today’s world. Even a defence of sovereignty cannot ignore this trend. Nevertheless, as will be argued in the final chapter, while this interconnectedness might be challenging for states, it is not necessarily so for sovereignty. In fact, today’s world should be seen as a peculiar mixture of local, translocal, and global concerns. Certainly, this market is not a free one: some concerns, ideas, and norms have more power than others as they represent the particularities of more powerful groups, thus making ideal deliberation not feasible. Nevertheless, an exchange of ideas must be presumed to be taking place on a global scale. As a result, these ideas must be seen to be impacting on the local and translocal concerns (that, in turn, can, and often do, influence the global ones). And yet, it is the sovereign power and responsibility of the political communities to decide on their internal and external form that acts as a gatekeeper, managing the symbolic border between the outside and the inside. As a result, the cosmopolitan ideal is not realistic:

instead of a single normative universe, one should see a pluriverse with some of its elements overlapping and some diverging widely – that, as remains to be seen, is an implication of ordering as process. But even in the case of overlap, one cannot expect some kind of general will. A pluriverse is only a proper pluriverse when it is characterised by a multiplicity of partial centres.

Still, the power of the global community might not be enough to tackle the vestiges of sovereignty and, therefore, constitutionalisation of international law is offered as a solution (see e.g. Benhabib 2006: 72). It is claimed that, since international cooperation is only going to increase and become more complex, international legal regulation must develop accordingly, with greater emphasis and more resources being placed on international institutional and legal regimes (Trachtman 2013: 253-254). While for some, global constitutionalism appears to be a goal to be achieved through a broad cross-cultural coalition of states, non-state institutions, and civil society associations (Johnston 2005: 27), for others, it is already reality, resting on an enlightened rule of law (see e.g. Paulus 2009). Under a more rigid positivist view, all obligatory norms are inscribed in precisely defined documents and treaties, perceiving the ‘constitution of the international community’ as a concrete and perfectly definable entity – the UN Charter – with no international law existing *beside* it (see Fassbender 2009: 53-54, 181). Yet for others, such emphasis on one document and one legal regime is ungrounded. For them, although constitutionalisation of international law, at the expense of the national level, is a fact, the global order is too fragmented for a single constitution and, instead, there exist ‘partial constitutions’ in different areas, such as international trade, environmental issues, international criminal law etc. (Walter 2008: 138, 140-141). The international constitution, according to this view, is rather to be seen as a matrix of norms, documents, and regimes that enable or constrain certain actions or support international processes (Trachtman 2013: 286). Nevertheless, the primacy of the international level is asserted, with national constitutions becoming only partial ones (Walter 2008: 142). And yet, this view encounters the same problem as the overly legalistic attempts to define sovereignty discussed earlier: only the external aspect of sovereignty is taken into account, thus leading to a dangerous attempt to force something amorphous to suddenly assume a form. Instead, it is argued in this thesis that sovereignty should be more adequately understood as a floating attribute.

Sovereignty's Sustained Relevance

Even the empirically observable fact that (almost) any sovereign authority of today is limited both internally and externally to the extent that one could speak about 'earned' and conditional sovereignty (see e.g. Elden 2006) does not provide any clarity as to the nature and extent of this crucial aspect of ordering. Crucially, to believe in a global community would require presuming a community without overarching authority (i.e. without sovereignty) and thus without any prescribed direction of movement, including protection of rights, so dear to the advocates of that community – after all, imposition of one particular agenda from the plurality of voices would signal imposition of a particularity as universality and, therefore, a sovereign act par excellence, i.e. a return of something the notion of global community was to exclude (Bartelson 2010: 87). The only real ordering sphere for the international community would be managerial governance, devoid of any politics. Therefore, sovereignty is often advocated as a democratic alternative to the bureaucratic-scientific management of the globalised world (Koskenniemi 2011). Arguably, the emphasis on externally imposed rights regimes does not empower people but denigrates them, making them 'objects of "protection" or charity but rarely [...] masters of their own lives' (Koskenniemi 2011: 68). Furthermore, the pretensions to universality attached to those claims are highly debatable: after all, '[c]laims to humanity are always infected by the particularity of the speaker' (Koskenniemi 2012: 3). Indeed, more legalisation could easily end up meaning more managerial-technocratic distance from any concerns of the people although, admittedly, purely political considerations cannot provide a full answer either (Savage 2007). In addition, it is claimed, the emphasis on international law rather than on state autonomy only serves neo-colonial interests of the powerful states (Anghie 2006). If this view is accepted, then sovereignty might, in line with the overall argument of this thesis, be an answer to international hegemonic projects, concentrating instead on responsibility for and answerability to the self (rather than others).

Crucially, efforts directed against sovereignty are also efforts directed against political agency and the relationship between power and responsibility for having it (Bickerton, Cunliffe and Gourevitch 2007: 1). As long as the political community is responsible

for itself and for the management of its own affairs, it can be held accountable; but when ultimate normative authority belongs somewhere outside, the moral opening of could-have-done-otherwise disappears (Beckerton, Cunliffe and Gourevitch 2007: 11). Instead of preventative sovereignty as responsibility, sovereignty as supremacy carries a much more metaphysical responsibility but also is the only formulation at least potentially subject to ethics, since the authorship of an act in question belongs to the sovereign state and does not have to be countersigned by the international community (Cunliffe 2007: 39). Internally as well, sovereignty offers societies ‘a stable, recognized source of power that makes it possible to hold to account someone, an individual or a group of individuals, as responsible for particular political decisions’ (Cunliffe 2007: 40). And, no less importantly, preservation of sovereignty prevents possible abuse of international normativity – after all, as Ayoob (2002: 81) puts it, ‘those who define human rights and decree that they have been violated also decide when and where intervention to protect such rights should and must take place’. Thus, at least until moral disagreement persists on the global level, sovereignty as a tense standoff between incompatible ideas might even be a moral imperative: acceptance of the status and self-determination of a political community even if that status seems unacceptable from one’s own standpoint (Roth 2008: 161). And, since the theory put forward in this thesis presupposes human existence as groundless (as per *both* Spinoza and Schmitt), disagreement and the resulting standoff can only be presumed to prevail indefinitely. In fact, this standoff also reinforces what in the final chapter will be referred to as the tragic nature of politics.

Furthermore, there would also be those who see prevalence, if not even strengthening, of sovereignty through a permanent state of exception and emergency politics, leading to ‘total regulation’ and ‘total regulate-ability’ of life, ‘total politization of all human existence’ (Berkmanas 2010: 117). Clearly, since sovereignty represents the political will and the political identity of a certain community, it is not something that could be easily subsumed under the authority and discipline of international norms (Walker 2008: 27). The current order is, thus, not ‘post-sovereign’, since ‘sovereignty plays a genuine part in the current changes of legal and political practices in international relations’ (Adler-Nissen and Gammeltoft-Hansen 2008: 209). After all, even those critical of sovereignty are sometimes willing to admit that, contingent or not, it is likely to prevail as long as it is in the interest of the core actors – and those interests

often stem from the pre-modern world of (almost) uncontested sovereignty (Krasner 2010: 108).

Others would instead argue for a proliferation of different forms of sovereignty thus reflecting the current political-economic fragmentation (see e.g. Agnew 2009). After all, sovereignty might have an equivocal nature, combining the deplored tendency ‘to claim immunity for criminal behavior, to oppress those with less power, to maintain power over life and death or to make the friend/enemy distinction’ and the favourably received attribute of ‘cooperation with others in order to exist and [...] self-determination of free individuals’ (Stauffer 2010: 167). The hope would be, then, to transform sovereignty minimising the former and maximising the latter. For example, sovereignty can be seen as no longer residing in singular individuals, institutions, or even the people-qua-sovereign but rather in the procedures of decision-making. For example, ‘effective deliberation’ (see e.g. Dryzek 2002: 2) might be one such procedure qua locus and essence of (democratic) sovereignty. A different way of thinking would involve embracing ‘disaggregated’ sovereignty, located not in the state as a unitary body but in its institutions, interacting with their counterparts internationally and globally (Slaughter 2004: 267). Such attempts, however, yet again are based on an inherent flaw: by conceiving sovereignty in purely formal terms, their proponents deprive political communities of any agency, relying instead on institutions and processes. And yet, agency and self-determination are precisely the qualities to be defended, as it is done in this thesis.

Another way forward might involve separation of sovereignty and the state. According to this view, while the fate of the state lies in balance, sovereignty draws strength from new areas, primarily political economy and religious fundamentalism (Brown 2010: 23). After all, evidence of collective self-identification of people as ‘citizens of the world’ is lacking and, therefore, rallying around ethnic, religious, or any other bounded identities is more than likely (Miller 2013: 163). Another candidate to become the new referent for sovereignty would be the political – struggle for decision, finality, and closure wherever there is conflict, disagreement, and indeterminacy – in other words, an essential corollary to the incomplete and contestable nature of any social structures (Lipping 2010: 190). In other words, wherever there is fundamental political conflict, there also must be sovereignty, be it

on the state level or anywhere else. Others still would pursue less radical modifications of the state-sovereignty nexus, suggesting an expansion of entities formally considered sovereign to include various non-state actors without completely jeopardising the Westphalian idea (Walker 2008: 21, 30). As a result, the current phase of sovereignty's development might be a 'late phase' but certainly not a 'terminal phase' (Walker 2008: 31).

The disentanglement of sovereignty is, clearly, a crucial step forward in understanding today's world. The idea of sovereignty must indeed be expanded to include not only states but other actors as well. Also, the crucial importance of ideas as unifying referents must be emphasised. In fact, whatever manages to gather a community and make it decide for itself on its internal and external form, has become a necessarily political phenomenon and has assumed, at least for the time being, sovereign authority. Instead of challenging sovereignty, such transformation should only be seen as part of its adaptability. In fact, the final chapter develops a Spinozist-Schmittian interpretation of sovereignty as an attribute that can be arrogated by different actors in different proportions at different times. Such interpretation not only helps to better understand current practices – in fact, it also holds significant normative value, helping maintain plurality in the context of strengthening universalist tendencies.

1.2. The Content: Law and Politics

As it will be shown below, the content of ordering – law and politics – seems to be more secure than its framework – at least the continued relevance of both law and politics is not commonly questioned. And yet, the nature of these concepts is hotly contested. Here, again, core issues in the debates around the two concepts will be outlined and some basic tendencies elucidated. Certainly, law and politics are not always thought of as immediate counterparts (as opposed to the state-sovereignty nexus) and, therefore, are characterised by very different and distinct traditions of theorising. Nevertheless, this section does attempt to bring some of that otherwise disparate thinking together in order to open up a common space for confronting the question of ordering.

1.2.1. The Contested Nature of Law

Quite broadly, most theories of law could be grouped into three clusters according to their views on the (in)dependence of law, on the possibility of an objective and stable guarantor of order. The first cluster is of theories that analyse law in itself and treat it as more or less independent, notably, legal positivism and formalism. The second cluster comprises of theories of law in context: interpretivism, natural law theories, sociological, pragmatist, and economic theories of law. Theories in this cluster all employ some external criterion: political morality, economic rationality, societal norms, transcendent commands of reason, some sort of temporary paradigm of truth etc. Finally, the third cluster is that of theories that treat law as secondary to other considerations, notably, legal realism and critical theories of law. Deliberative theories, arguably, share traits with all three categories.

What these theories represent are different ways of looking at the origin and purpose of law, which, in turn, means different ways of ensuring stability of the status quo, i.e. stabilising the content of ordering. Since law is here taken to refer to the constituted side of the content of ordering, a discussion of theories of law also reveals different strategies that the constituted power employs to justify a particular instance of ordering that prevails at a particular moment.

Law in Itself

In essence, for positivists, law is what a legitimately authoritative body creates according to applicable norms of validity (Summers 2000: 117-118), the content of law being independent of non-legal values, such as morality. Hence, the positivist outlook on law ‘is morally neutral and has no justificatory aims’, making ‘no claim to identify the point or purpose of law and legal practices as such’ (Hart 1994: 240, 248). There often is an overlap across legal systems but only because certain norms (the prohibition of violence, murder, theft etc.) are crucial if humans are to live in societies – but there is nothing more than that bare necessity in this overlap (Hart 2003: 83-84). One legal rule is dependent on another, higher, one and so on until the supreme rule, governing the inclusion/exclusion of norms in a given legal system, is reached: Hart’s rule of recognition or Kelsen’s *Grundnorm*. This norm is not created by any authority

– lawmaking only follows it – but simply *is* and, by merely *being*, conditions the entire legal order, rendering all other principles valid or invalid (Kelsen 1999: 116-117). And yet, the *Grundnorm* is not unchangeable itself: once a radical shift happens in a society (e.g. from authoritarianism to democracy), the basic norm changes, since a new ordering principle must be presupposed for the new status quo (Kelsen 1999: 118).

Since lawmaking is a human activity and humans are fallible, law can easily fall short of moral perfection or even be patently immoral; nevertheless, as long as a law exists, both it and the institutions it creates are legitimate (Raz 2009: 4). Consequently, legal norms and decisions are necessarily legally binding, even if they are immoral (Raz 2009: 4-5). And, since law differs across times and cultures, a unified concept of law, let alone any prescriptive criteria of its content, are impossible to formulate (Raz 2009: 32) – rather, law is what it is. And yet, a back door for morality is not shut, at least by some positivists: law, by establishing what is deemed to be a project of a good society, still serves a moral end; moreover, normative validity (as opposed to bare legal validity) does require a conflation of legal and moral demands (Raz 2009: 178, 189). And since, even for most positivists, legal norms do contain a penumbra of uncertainty, some scope for interaction with non-legal norms is still present, although no *necessary* connections are allowed (Hart 1994: 251-252, 268). Moreover, there is no point in looking at international normativity: law is a law of a certain territory and ‘[i]ts contents can be uniquely ascertained by an objective method’ through ‘objectively verifiable facts’ (Kelsen 1999: 49).

In fact, those of a formalist persuasion are the most radical in asserting that the law is purely internally rational, intelligible, and coherent; the legal sphere is, for them, hermetical and matters of the meaning of law can only be solved from and within it (Weintrib 2003: 326). On many other issues, formalism is perfectly in line with positivism and, without gross overstatement, could be called its radicalised form. Again, the presence of the norm is purely dependent on a decision of a relevant authority and the (im)morality of law is immaterial from a legal standpoint (Weintrib 2003: 327). As well, just like Kelsen’s legal system can ultimately be reduced to the *Grundnorm*, for the formalists the intelligibility of a legal norm depends on another

legal norm and so on until an immanently intelligible core norm is reached (Weinrib 2003: 331-332).

The problem with both the formalist and the positivist affirmation of ‘pure’ and independent law is its disconnection from the political community. Although, as it remains to be seen, they are not the only ones to commit this error, theirs is a true legal theology: one has to believe in the presence of law, and only through such belief the entire legal system can be validated. Such reading of law clearly privileges the constituted, providing an impetus for upholding the status quo. And yet, the positivist and formalist accounts of law cannot be easily discarded as inadequate. In fact, they are crucial parts of legal thinking precisely because they refer to an aspiration of the constituted. After all, as it will be argued later, there has to be some fixity that temporarily stabilises the protean change of the political community and expresses the content of its sovereign decision on its own form. As (it still remains to be seen) any content of a sovereign decision must accrue some added dignity by passing as something more than it actually is – i.e. as fullness that overcomes the groundlessness of existence – such objectification of the status quo is a necessary illusion.

Law in Context

Meanwhile, most interpretive approaches to law would assert that a single correct interpretation could be found if only the general legal principles are interpreted according to proper standards (Kratchowil 2001: 44). Following a premise, strongly biased towards common law systems, ‘the rule does not exist before the case has been decided’ and, therefore, matters of principle are the determinants of the decision (Dworkin 2003a: 55). And in hard cases, when more than one strongly viable interpretation is available, it must be asked which of them ‘shows the community’s structure and institutions and decisions – its public standards as a whole – in a better light from the standpoint of political morality’ (Dworkin 1986: 256, 411). In other words, any decision must conform to ‘some comprehensive theory of general principles and policies’ (Dworkin 2003b: 151) and must ‘show the best route to a better future’ (Dworkin 1986: 413). In Dworkin’s case, this is a rights-based morality, in which individual rights are seen as trumps, defeating any other considerations

(Dworkin 1977: xi). As a result, law is not seen as ‘pure’ or absolutely independent – when the letter of law reaches its limits, legal practice becomes a moral exercise. This, admittedly, has put some other supporters of law as interpretation at unease – for them, interpretation is purely internal to statute (see e.g. Sunstein 1998). Yet other interpretive approaches tend to take a more open-ended view on single correct answers: for them, such objectivity is primarily a matter of convention, an agreement on the conditions of a correct answer (see e.g. Patterson 2001). As will be seen later on in the thesis, such interpretivist claims also serve to reinforce the constituted.

The demise of sovereignty, discussed above, has also brought about a new interest in natural law, based on human reason as capable of discerning the natural content and purpose of law (Swiffen 2011: 76-77). Such products of rationality and logic would only lead towards the common good and a fully flourishing society (Murphy 2001). Natural law generally posits a very clear relation of law and morality: the essence of law includes the idea of the moral and is dependent on it (Feinberg 2003: 3). Consequently, certain rights and values are proclaimed as simply existing without the need for further justification and are impossible to be derogated from. In contrast to various culture-specific norms, ‘true morality’ is then seen as a universal guiding principle even if it is not (as yet) recognised in a particular society (Feinberg 2003: 38-39). And this morality is accessible if rationally deduced from ‘correct’ and ‘genuine’ moral principles that are themselves so self-evident that they simply cannot be doubted by a rational individual (Feinberg 2003: 51-52, 54-55).

Fuller and Finnis are, perhaps, the most important exponents of the natural law tradition. Fuller’s, however, is a more procedural theory of natural law: instead of determining the content of law, he sets out to show its necessary attributes: they must be promulgated, non-retroactive, sufficiently general, non-contradictory, clear, they should not require the impossible, and be constant through time; also, official action must correspond with the declared rule (see, generally, McLeod 2012: 98-101). If at least one of those conditions is totally violated, a law ceases to be a law and there can be no moral obligation to obey it (Fuller 1969: 39). Moreover, since morality is essential ‘to make the best use of our short lives’ (Fuller 1969: 17), law must also contain a moral kernel. As such, law has a double bond with morality: it must be moral in itself and it must lean on morality for support (Fuller 2003: 99). Meanwhile,

Finnis proceeds from an Augustinian maxim that the core principles of natural law are the distinction between good and bad and cannot in themselves be inferred or derived but, rather, '[t]he basic forms of good grasped by practical understanding are what is good for human beings with the nature they have' (Finnis 1980: 34). This nature is not deduced but experienced from inside, allowing one to determine 'the general form of good' by 'a simple act of non-inferential understanding' (Finnis 1980: 34). Contrary to Fuller, Finnis establishes requirements for the *content* of law: it must provide what he sees as the basic goods, needed for humans to flourish: decent life, play, aesthetic satisfaction, sufficient knowledge, the opportunity to lead sociable lives, practical reasonableness, and some form of religion (Finnis 1980: 85-90). And yet, those goods are not moral goals by themselves: they are such only insofar as they are products of practical reasonableness (Finnis 1980: 102-103), which itself includes neutrality, possessing a coherent life plan, fidelity to the common good etc.

Both the interpretivist and natural law traditions, again, are organised around the core principle of belief but, contrary to the positivists and the formalists, it is a belief in an external criterion which, in turn, conditions the content of law. In other words, it is as if the rule of recognition or the *Grundnorm* were taken outside of law and positioned in the place of a transcendent lawgiver. In terms of ordering, such theories restrain the political community by depriving it of its creative capacity and self-determination. In terms of providing the necessary constituted illusion that stabilises political life through belief, the interpretivists and, especially, the natural law theorists provide an exceptionally strong grounding: whereas even a *Grundnorm* can change in the light of fundamental transformations within the political community, natural law always remains an objective given. On the other hand, such theories also provide for a means of criticism not present in positivism or formalism: whereas in the latter two traditions it suffices that laws are internally coherent, both interpretivism and natural law offer an external standard against which the quality of the legal system can be measured, thus providing a banner for the constitutive as well. Nevertheless, as long as laws can be shown to conform to that substantive standard, the interpretivist and natural law traditions allow for the status quo to acquire added dignity conveyed through a transcendent ideal, thus favouring the constituted and serving a necessary but, as will be shown in the final chapter, partial function.

In addition, law can be seen as an institutionalised corpus of social norms: since humans are, fundamentally, norm-users and need predictability and mutual intelligibility in their interactions, law provides a clear and stable framework (MacCormick 2007: 20). Law is thus a solution to the challenges of coordination but simultaneously defines persons that fall within its jurisdiction, and promotes some reasonable concept of the common good (MacCormick 2007: 303-304). Law enables citizens and institutions to do certain things, entitles to certain rights and privileges, and protects from interference but simultaneously controls a person's behaviour and subjects him/her to routinised procedures (see e.g. Cotterrell 1995: 4-5). Law is, under this approach, produced in response to particular circumstances and pressures – 'an aspect of society, not an autonomous force acting on it' (Cotterrell 1995: 8). If law is moral, then that morality emanates from communal relations that are moral per se; moral and legal responsibilities are, therefore, intertwined (Cotterrell 2006: 164). Law helps to 'fix and maintain "common sense" understandings of the nature of society and societal relationships in general' but is unable to produce such understandings independently – law only codifies underlying assumptions (Cotterrell 1995: 8).

Others, in a somewhat similar fashion, see the linkage between law and community in a chain-like fashion. First, there is a normative point, integrating different positions; it then delimits the inside and the outside and thus creates a community of the 'we', which is both normatively and spatially bounded (Lindahl 2013: 76). Such law is 'ubiquitous' because 'its sources are to be found in all instances and contexts of people's association with each other without anyone being able to prescribe in advance where it will emerge' (Melissaris 2009: 152). Beliefs of various societal groups must matter in making law: pretending to ignore them only means giving priority to the dominant set of values (Calabresi 1985: 116). Communal norms and the reactions they condition in relation to certain acts can easily be seen as providing the basis for legal regulation which no amount of rationalisation can hide or displace (see, generally, Nussbaum 2004).

Meanwhile, pragmatists reject any questions of 'what *the law* ought to be' in favour of asking '*what our concept* of law ought to be' (Coleman 2001: 3-4). This is only natural given the pragmatist rejection of ultimate unchangeable truths and their interest in how the prevailing paradigms of truth come about and operate. According

to the pragmatists, some form of ‘common sense’ must be preserved even if openness of interpretation is presupposed. Clearly, the frame of reference that conditions one’s beliefs can change rapidly but at the same time even the (in)ability to prove a certain claim does not necessarily imply its incorrectness (Posner 1995: 5-6). Instead, the real question should be what beliefs are justified by social needs (Posner 2003: 181). Law is, in fact, only a matter of a dominant paradigm (as defined in Kuhn 1962). Therefore, again, it has to lean on external criteria for support. One of the most influential strategies in this respect has been the alignment of law and economics, with the latter’s doctrines of ‘decision under uncertainty, transaction costs, cost-benefit analysis, risk aversion, and positive and negative externalities’ serving as an explanatory framework (Posner 2011: xxii). Thus, economic rationality and rational choice theory are seen as potent analytical tools for understanding law as well as public and personal choices in legal contexts (Posner 2011: 4). Here, again, some useful insights are present. Pragmatists correctly identify the precarious – if not outright groundless – foundation of law (it being a convention, susceptible to changes in paradigm) and its role in bringing some kind of order in a community where widespread differences of deeply held beliefs prevail. Once again, this can refer to a more dynamic, constitutive-friendly account of law. Nevertheless, with introduction of external criteria, such as economic rationality or social needs, selective limitation becomes apparent – after all, these are not value-neutral concepts.

Law as Secondary

Meanwhile, moving to the third cluster of ideas, legal realists would assert that the boundaries of legal concepts are not clear-cut and, therefore, it is impossible to derive judicial decisions from rules themselves; rather, various idiosyncratic factors are at play (Kratchowil 2001: 44). Not least, the power to enforce a certain statute is crucial, for norms that are not observed remain empty (Holmes 2003[1897]: 10-11). Crucially, law, for the realists, is directed towards particular social ends and must be treated as such and not as a value-neutral body; both law and society are permanently changing and, therefore, reinterpretation is needed, value judgements are unavoidable, and universalist aspirations of legal norms are untenable (McLeod 2012: 137). Law is indeterminate in a sense that legal reasons and arguments cannot provide justification

for a single unique outcome: more than one decision is possible (Leiter 2007: 39). Although realists tend to disagree among themselves on which criteria exactly should be paramount, they are in unison in rejecting standard positive sources of law (see, generally, Schauer 2013: 754-756). Rather than proceeding from general rules and reasoning abstractly, judges 'reach decisions based on what they think would be fair on the facts of the case' (Leiter 2007: 22). This does not mean that decisions are completely arbitrary: since judges live in a society, their decisions do fall into broad sociological patterns; also a common body of law as well as the need to justify decisions do limit the field of possible decisions (Leiter 2007: 30), although the system is still open-ended. In fact, realists do identify some crucial qualities of law: it being value-laden, lacking universality, and necessarily open to interpretation. Here, the foundation of law is even more precarious than in the pragmatist case. And yet, the realists arguably overstress this dynamism: after all, even something (almost or completely) groundless does not necessarily have to be unstable. Hence, what is lacking is an account of how and by whom dominant interpretations (and statutes of the civil law tradition) are formulated.

Critical legal scholars, in turn, stress the abundance of contradictions among rules and principles that preclude a singular correct decision and embrace ambiguity, which means that decisions can be made only through interference of something external to the legal system (Kratchowil 2001: 44): power. Law is a tool for those in power to maintain their privileged position (McLeod 2012: 156). Indeed, '[p]ower relations are law', provided that the dominant groups are able to present their privileged position in a cloud of legality – in fact, 'law is everything that succeeds in calling itself law' (Douzinas and Gearey 2005: 9). Although for critical scholars there is a connection between law and values, those values are imposed by the dominant groups and reflect the dominant ideology, sustaining the subjection of others (Douzinas and Gearey 2005: 8-9). Law is, essentially, a prize up for grabs. This often involves a somewhat romanticised view of human nature: if it was not for the oppressive structures, a fairer, more reciprocal society where humans are not alienated would be possible (Tushnet 2011: 293). Law is seen as enabling the state 'to maintain the legitimacy of collective powerlessness through the authoritarian control of public consciousness' (Gabel and Harris 1983: 411). In essence, '[l]egal forms and practices are political products that arise from the struggles of conflicting social groups that possess very disparate

resources of wealth, power, status, knowledge, access to armed force, and organizational capability' (Gordon 1984: 101). But law, in turn, not only structures and orders society but also provides meaning for the very definitions of order and disorder, virtue and vice etc. – the power of law is less in physical coercion than in the determination of the conditions for societal existence and its own application (Gordon 1984: 109; Halliday and Morgan 2013: 3).

Critical scholars provide an important input into the theory of law by emphasising power relations as determinant of what law is and how it is interpreted. Power over law is, essentially, the power to set and enforce norms, and any norms are always partial and refer to the views and interests of those who are able to establish them. And yet, the typical critical theory fallacy of seeing power in exclusively negative terms is also visible. Contrary to that point of view, power, as seen in this thesis, does have positive properties. First of all, when located in the constituted (dismissed as oppressive by critical legal scholars), power allows for stability and prognostication, helping the political community know itself by giving it a snapshot of its own form and shape at a certain moment in time. After all, some order must exist and any order is unavoidably implicated with power relations. Moreover, critical theorists tend to underappreciate the political community itself, seeing it as a blind submissive flock rather than an actor in its own right, possessing its own power. Any law that exists can only exist because of a conflation of the constituted and the constitutive powers, and both these powers are, in turn, affected by the existence of law.

Deliberation

Finally (in terms of this overview only), law can also be seen as a result of deliberation, allowing people, in principle at least, to be governed by norms of their own making and drawing legitimacy from general agreement and 'logical deduction from reasonable principles and uncontroversial assumptions about how the world is and works' (Shiffman 2004: 89). The best-known account here is provided by Habermas (1996), for whom emphasis is, as ever, on argumentation and rational discourse: legal judgements are products of justification and free flow of arguments where the most reasonable one gains acceptance. In fact, the valid argument must not

only be accepted but ‘must be able to prove its worth against any future objections that might actually be raised’ (Habermas 1996: 35; see also Habermas 2003: 247). In a sense, this is not far removed from the more modest interpretivist approaches: the meaning of law is open for interpretation. However, those interpretations are to coalesce, through communication, into rational agreement. Any striving towards a common understanding must, therefore, be based not on belief or conviction but on reasons only, thus making reasoning (legal or any other) a rather hermetic linguistic exercise structured around the rules of logic. As such, deliberation does bring the questions of form and content of law to relative closure: ‘Under the assumption of approximately ideal conditions, all available arguments are taken into consideration and all relevant objections are exhausted. Therefore, a discursively reached agreement entitles us to take a proposition to be true’ (Habermas 2003: 257). However, such closure is always only relative because, should new evidence become available, the previous agreement might be dislodged. In a similar fashion, ‘a democratic people, which considers itself bound by certain norms and principles, engages in iterative acts by reappropriating and reinterpreting these’, being a subject and an author simultaneously (Benhabib 2006: 49). This is especially the case when a democratic community faces new challenges or when predominant patterns of thought change. But communication also facilitates the acceptance – legitimation – of law and determination of its exact meaning (van Hoecke 2002: 203-205). Public justification, the need to give reasons, and the necessity for those reasons to pass public scrutiny are clearly signs of a norm-making activity.

Certainly, deliberative theorists correctly identify law as an interpersonal product, arising from interactions within the relevant community. Law indeed should be seen as reflecting prevalent patterns rather than some transcendent essence. And yet, patterns do not necessarily denote agreement. In fact, emphasis on agreement is one more way to imbue law with added dignity of something more than law itself: by presenting the status quo as something that everybody (or, at least, all rational members of the community) must have agreed upon, the quasi-religious structure of belief in the source of law is objectivised and further entrenched as a normative principle. Law, as it will be argued in the final chapter from a Spinozist-Schmittian perspective, should be seen as a snapshot of positions within a conflictual field rather than an agreement.

1.2.2. The Ungraspable Core of Politics

Quite broadly, politics can be defined as an activity ‘in which purposive individuals interact, respond to incentives and constraints, and take instrumental decisions to promote their respective individual or collective objectives’ (Austen-Smith 2005: 427). One can definitely problematise this definition by questioning the exact nature of ‘purposive’, ‘individual’, ‘incentives and constraints’, ‘instrumental decisions’, and/or ‘objectives’ – all of them can be unpacked and twisted, made anything but self-evident. However, the basic structure of the definition seems appropriate: people react in a way at least partly conditioned by their environment to further some goals that they have or imagine to have; and since those goals can be, and often are, mutually exclusive, politics is also about managing that mutual exclusion. However, the ways in which this management is addressed differ significantly. Quite broadly, one could isolate three core trends: politics-as-consent, politics-as-dissent, and politics as occasional. In addition, there are some theories that stand in the middle between consent and dissent since they are concerned with transition from one to the other.

Politics-as-consent

For the theorists who emphasise politics-as-consent, ‘compromise, shabby or smart, is certainly the normal, and often the most desirable, condition’ (Hampshire 1999: 39). Or, to put it even more strongly, ‘[p]olitics is an art of unification; from many, it makes one’ (Walzer 1992: 66). The thrust to determine fixed rules, in turn, presupposes that if only correct procedures were set, conflict would be avoided.

Most notably in the consensual trend of thought, deliberative democrats would emphasise communication and justification: ‘the decisions must be justified in terms those who are subject to them can accept’ (Johnstone 2011: 16). Through deliberation, specific interests are turned into common ones as parties become more informed about the spectrum of opinions (Benhabib 1996). This, clearly, requires openness and detachment: one’s position must be amendable and generally subservient to the common good and the perspective of the ‘we’ (Habermas 1988). By participating in

joint deliberation, the speakers achieve ‘an intersubjectively shared lifeworld, thereby securing at the same time the horizon within which everyone can refer to one and the same objective world’ (Habermas 1998: 315). This deliberation must, in turn, be based on rational discourse and impartial values, i.e. reach beyond self-interested statements and not be self-serving (Johnstone 2001: 17). In fact, even though at the first stage of deliberation parties may start with their own particular wills and interests, the need for further and further justification and argumentation would lead everybody to coalesce around an objective value-neutral programme (Habermas 1996: 164-165). What is more, equal standing and equal voice of the participants is crucial (Cohen 1997: 74; Johnstone 2011: 18), thus prioritising public sphere as the locus of discussion and contestation over state institutions (Dryzek 2002: 163). Such egalitarian approach, it is said, ‘allows for dissent and for voices from the margins’ (Dryzek 2002: 169). And yet, a strictly Habermasian approach would put more emphasis on rationality, meaning that groups that are not able to formulate their arguments according to accepted norms of rationality tend to be sidelined. In fact, if a norm is discursively established as being worthy of recognition, even the refusal of the world to ‘play along’ cannot deny its validity (Habermas 2003: 258). However, other, more lenient, approaches acknowledge that even the most democratic state cannot feasibly accommodate all differences and all possible subject positions – some citizens will always find themselves living in systems that are at odds with their basic values (Gutmann 2003: 209-210). A more feasible strategy would then be to keep open the channels of deliberation that would set – and renegotiate as appropriate – the conditions of living together (Gutmann 2003: 210-211). In this sense, ‘[d]eliberation is not only a means to an end, but also a means of deciding what means are morally required to pursue our ends’ (Gutmann and Thompson 1996: 4). In essence, deliberation would then be seen as morally valuable on its own.

A noteworthy insight by the deliberative tradition is, once again, the openness for interpretation and interpersonal nature of the element in question, this time – of politics. Also, deliberation implies that politics is a continuous process, which is in line with the overall argument of this thesis. And yet, again, the emphasis on agreement limits the constitutive potential of the political community and minimises the likelihood of disruptive change that would challenge the status quo. Once the

conditions for and the nature of agreement are established, the arbitrary conditions that have led to a given arrangement are solidified and power relations are hidden.

Another strategy for politics-as-consent would be to search for a supposedly value neutral position, in which ‘institutionalised fairness in procedures for the resolution of [...] conflicts’ suffices (Hampshire 1999: 77). Most notably, for Rawls (1971: 53), ‘each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others’. This equality is definitely directly related with the nature of the Rawlsian social contract and the veil of ignorance, the latter being deliberately constructed in such a way that the negotiating parties do not have any other rational option than to agree with the equal treatment of all reasonable positions (presuming that rationality is, indeed, singular as Rawls thinks). The reasoning leading to this is simple: ‘[s]ince each desires to protect his interests, his capacity to advance his conception of the good, no one has a reason to acquiesce in an enduring loss for himself in order to bring about a greater net balance of satisfaction’ (Rawls 1971: 13). Although within the limits of reasonability, individual conceptions of personal good are expected to differ, it is not the case for conceptions of right (Rawls 1971: 393); hence, a Rawlsian citizen still has to acknowledge certain duties. After all, the presence of unconditional principles in such system is hardly surprising: ‘[i]t suffices to show that the parties in the original position would agree to principles defining the natural duties which as formulated hold unconditionally’ (Rawls 1971: 100). As a result, despite outward plurality, Rawlsian politics is still a matter of singular (and even predefined) agreement, supporting what is seen in this thesis as the constituted.

Furthermore, there is always the possibility of calling upon a higher third to mediate. Historically, this could have been God, but in secular politics that is usually some conception of morality. Even though a degree of conflict is present in such theories, ultimately there can only be one ‘correct’ morality and, therefore, politics would lead to agreement if only the ‘real’ norms could be established. ‘Good life’ and ‘good society’ would then be objectively determinable qualities, meaning that only societies organised in certain ways can produce ‘real’ well-being (Gorski et al. 2012: 10). Emphasis would often also be on virtues, ‘understood as those dispositions which will not only sustain practices and enable us to achieve the goods internal to practices, but

will also sustain us in the relevant kind of quest for the good' (Macintyre 2007: 219). Those are not individual virtues but something that only has full force when related to a collective (Macintyre 2007: 220-221). Virtue, as a criterion for choice, it is claimed, can only be present in tradition (Macintyre 2007: 202) and, therefore, such politics is clearly embedded in a quasi-objective moral consensus within a community – i.e. that community's constituted aspect.

The two above accounts, although very different in their premises, do nevertheless illustrate the importance of a central organising principle to bring the field of possible options together and establish a singular order out of the different possibilities. This supposedly rational or virtuous organising principle is *ex post facto* transformed into something more than itself – into a transcendent quality that has to be believed in and can only operate via this structure of belief. Evidently, both approaches do favour the constituted dimension, providing the status quo with added dignity. Hence, as it will be argued later on in the thesis, a counterbalance is needed, destabilising the ordering axis and introducing contestability into the account of political ordering – after all, to reiterate, ordering is a process involving two parts, not just dominance of one. Although it is important that both those contesting and preserving the present order *believe* in the ultimate importance and correctness of the viewpoint they promote, it is even more vital that neither of them gets entrenched in the process of ordering to the extent that it becomes seemingly unmovable.

Intermediary Positions

As already indicated, the work of Ernesto Laclau (partly with Chantal Mouffe) could be seen as being in the middle between politics-as-consent and politics-as-dissent. Although pluralistic in essence and agenda, his work also sheds light on the drive for and essence of stability or, in his own terms, hegemonic articulations. The premise is that there is no such thing as 'society', at least as long as it designates an integrated totality: every such totality is necessarily incomplete (Laclau and Mouffe 2001: 111). In fact, it is only discursively that any centre can be established, meanings fixed, and stability created (Laclau and Mouffe 2001: 112). This is what opens up space for hegemony – aggregation and articulation of empty signifiers by one antagonistic force

against another, creating temporary condensations of meaning (Laclau and Mouffe 2001: 136-139, 142-143). Any identity, either as challenge or as allegiance to the status quo, therefore, requires real otherness which is equally constitutive of the self (Laclau 2007: 3, 27). But the absent fullness at the centre of the self and the community also operates as a political black hole, pulling various meanings towards itself: it has no form and essence of its own but has to be hegemonically filled with meaning, whence 'a particular content becomes the signifier of the absent communitarian fullness' and thus the particularity of one group is presented as the universality of the whole (Laclau 2007: 42-44, 71; Laclau 2000: 85). But that reference to universality, albeit a false one, is crucial for politics since without it no common ground and no struggle would exist, only an aggregation of closed particularities that cannot designate a common sphere (Laclau 2007: 60-61). After all, the messiness of the world must be hidden behind the appearance of universal consent, albeit, in contrast to the pure politics-as-consent approaches outlined above, this consent is an artificial and unstable one.

Similarly, even though finality and decisiveness may be the goal towards which politics aspires, this can be seen as an elusive goal, constantly plagued by 'contingency, indeterminacy, and plurality', leaving one with 'partial, temporary, and disintegrating arrangements, even when they are not immediately visible as such' (Freeden 2013: 22). This view would posit any politics-as-consent approach as superficial, dealing with appearances only. Decision (which is always to be overturned by another decision) is, consequently, a fundamental attribute of politics and something that both individuals and societies are always under pressure to make (Freeden 2013: 23). Broadly speaking, then, the domain of the political includes power, arrogating a decision on boundaries, allocations (both material and symbolic), and policies, mobilising support, and staking a claim to illusionary stability, or contesting the above (Freeden 2013: 34-35). All politics is, then, underpinned by indeterminacy and contestability, requiring authoritative decisions to mask those unstable underpinnings (Freeden 2013: 73).

Arguably, there are significant similarities between the latter two approaches and one adopted in this thesis. The drive behind politics and decision is a lack of grounding which, nevertheless, needs to be filled with particular content. Laclau is certainly

correct in also enquiring into how the content of a particular political decision is maintained, especially concentrating on hegemonic articulations and the added dignity that they confer upon the existing order. And yet, there needs to be more emphasis on the creative side of politics, i.e. the constitutive ability to challenge or subvert the status quo, thus ensuring that change is possible. Freeden, meanwhile, manifests a completely opposite problem: by postulating a bare decision that has to be made, he for the most part ignores the subjective and structural reasons why a particular decision is upheld.

Politics-as-Dissent

For others, though, even if politics is about something that is in common, that ‘common’ is still full of internal incommensurabilities and cannot be reduced to some union (Nancy 2010: 50-51). Among the adherents of politics-as-dissent, many could be heard calling for ‘a (post)humanist politics with agonistic intent’ (Honig 2010: 1). The ‘(post)humanism’ refers to people not being seen as uniform rational machines, while simultaneously maintaining the humanist emphasis on the importance and dignity of the human being. The aim, thus, should be to reintroduce the ‘vitality in the self that exceeds all orderings’ (Honig 1993: 39) and, to that end, agonism stresses an irreducible conflictual element at the heart of societies, rejecting any mediation via pre-set principles, seeing pluralism as the very condition of identity (Wenman 2013: 29-30). In such a way, agonism might be seen as accommodating ‘post-secular’ politics of conviction without the need of (supposedly) rational homogenisation (see, generally, Wenman 2014). As Tully (2008: 144) puts it, ‘agonism refers to any form of reciprocal interplay or interaction that disputation takes’. Thus agonism is, crucially, about citizen participation, ‘having a say’ on and negotiating the conditions of the exercise of power in a dialogic form (Tully 2008: 145-146). In fact, participation in such dialogues is seen to constitute the very essence of citizenship and civic bonds (Tully 2008: 146-147, 312-313). In a somewhat similar manner, Connolly (2011) sees the world in a constant flow of becoming, in which every instance of stability is elusive. Naturally, then, politics can only be an intermingling of various subject positions, beliefs, and passions so that everyone is simultaneously ‘friend and rival’ (Connolly 2011: 177). Yet, this attitude does not lead to pure relativity since

partisanship is crucial to democratic politics – after all, the founding of the political order is an ever-present process (Connolly 2005: 131, 134). Mouffe, meanwhile, proposes a renewal of the conflictual domain of ‘us’ and ‘them’, ‘friend’ and ‘enemy’ (Mouffe 1993: 2-4; Mouffe 2002: 1-7). Drawing on Schmitt, she strives to revive the existential nature of this core division, albeit in a reduced form: the ‘enemy’ or, rather, an adversary is, for her, an opponent in an agonistic game, somebody to be engaged with, but simultaneously also a constitutive part of the self and, therefore, not somebody to be destroyed (Mouffe 2002: 8-10). In such a way, it is claimed, politics is revived but without the destructive potential usually associated with enmity. It is, then, not common essence, but common concern, common participation in the agonistic struggle of the political community that provides the unifying bond of active citizens (Mouffe 1993: 67-70). And yet, there is a rather paradoxical limit to that pluralism: one has to first accept the fact of multiplicity and the ethics of plurality and open contestation, which are themselves seen as non-contestable (Mouffe 2005: 31).

Undoubtedly, the agonists offer crucial insights by opening up the political process, perceiving it as a conflictual and tragic domain in which any fixities are artificial. Crucially, any status quo must be open for questioning and amendment while membership in the political community is determined through participation – this, indeed, points to revitalisation of politics as a high stakes game and signals the primacy of the constitutive thrust, constant innovation, and creativity that define the process of ordering. Hence, the political community is truly a protean entity, constantly shifting its form and always in the midst of self-determination. And yet, such unrestricted dynamism also calls for criticism: in order to be viable, a political community needs some stability, some form that it and others can refer to. And the case for stability is clearly undervalued by the agonists. In fact, living with contingency only (and with consciousness of such contingency) would be unbearable. As a result, a counterbalance has to be introduced – constituted fixity, a belief in the status quo through something more than it is by itself. As will be argued in the final chapter, such addition does not neutralise the conflictual nature of politics – rather, it only increases the stakes by attributive autonomous purposive action to both the constitutive and the constituted sides.

In a rather similar way, pragmatists would reject any ‘metaphysical realism about ethical and political value’, refusing to acknowledge any arrangement as necessarily good (Festenstein 1997: 4). But this also brings a certain ethical imperative: one’s own beliefs cannot be held as the ultimate criterion of truth but, rather, must be open for revision – this, in turn, opens a new space for coexistence (Festenstein 1997: 191). Characteristically, Rorty pictures a society of ‘liberal ironists’, in which ‘one is content to call “true” (or “right” or “just”) whatever the outcome of undistorted communication happens to be’ (Rorty 1989: 67). The ironists are constantly doubtful about their own views, do not expect their own standpoints to be or to become self-evident and thus completely fixed, do not expect to have privileged access to truth or at least to hold views that could pass as neutral and objective (Rorty 1989: 73-74). In short, then, any status quo is what happens to be held as one at a certain time – and nothing more. Clearly, the realisation of the impossibility to adjudicate between value claims and the contingent nature of prevalent beliefs are crucial insights. Any political ordering is, indeed, a construct rather than reflection of some essence. Nevertheless, the pragmatists, just as the agonists, only see one layer of the process: constitutive contestation and the necessity of permanent change. In fact, the pragmatists of the Rortian type go even further than the agonists: while for the latter, despite the partiality of beliefs, politics is still a high-stakes game (because those who happen to hold certain beliefs, hold them strongly), the former cannot be absolutely serious about their beliefs. On the one hand, this contributes to what will later be analysed as the tragic nature of politics – unavoidably having to choose between equally groundless demands and consciousness of such groundlessness; on the other hand, without an overall signifying structure that holds meaning in place (or, alternatively, has to be opposed), one is tempted to see politics as a leisurely game rather than one involving questions of the political community’s mode of existence.

Next, for rational choice theorists, ‘people get involved in politics in order to further their own personal objectives’ (Laver 1997: 1) and do so according to ‘their beliefs concerning the opportunities for action available to them’ (Parsons 2005: 10). But, since those objectives tend to diverge, political action becomes a complex war of position, in which costs, benefits, and probabilities are carefully weighed. And, since action takes place under conditions of scarcity (this includes money, time, effort, and other resources), the struggle becomes yet more intense (Parsons 2005: 11). To some

extent, the inclusion of rational choice under the politics-as-dissent category could seem paradoxical because rational choice games are about reaching more or less stable equilibria in which collective action problems are solved through strategic decisions and political means in the most efficient way possible (Laver 1997: 153). And yet, any equilibrium is conditional (Laver 1997: 155) and as soon as the private desires of individuals change or other, more effective, solutions are envisaged, new equilibria are poised to be found. Of course, some of the premises of this theory, especially its reliance on conventional economic rationality, have been questioned. Perhaps the most interesting has been the suggestion to include commitment into any calculi, thus encompassing wider agendas than pure self-interest (see e.g. Sen 1992: 135-137). However, the fundamental precept is the same: constant competition produces politics-as-struggle. In fact, the emphasis on competition and politics as a way to further own goals is very much in line with the overall argument of the thesis. And yet, challenge must be mounted against the supposed neutrality of economic thinking and rational calculation. Even the inclusion of commitment is not enough to ameliorate that. Criteria for choice must be seen as part of the game of politics itself: in fact, the control of such criteria, the ability to define what is rational constitutes the core of political struggle. Once a particular interpretation prevails, it becomes an object of belief, i.e. something more than itself – a standard of rationality. It is, of course, always open to challenge by alternative interpretations but does enjoy the privileged position of the constituted stabiliser, altering cost-benefit analyses not only of adherents but also of competitors. But here again an important observation has to be made: if it was purely for cost-benefit analyses, the dominant standard could remain unchallenged (the odds may simply not be favourable enough). There has to be something more: an element of belief, not only among the supporters of the status quo but also among the challengers – and here is where commitment kicks back in. This element of belief in some ultimate truth is capable of rewriting the perceived odds in a way that might be incomprehensible to an outside observer, thus opening even seemingly stable premises for questioning.

Often, politics is also seen as concerning recognition, establishment of a favourable image in the eyes of the others and of the self – indeed a mirroring process between the self and society (Taylor 1992: 25). And, since ultimate criteria to judge the relative value of different standpoints are unavailable (Taylor 1992: 73), images and different

versions of those images are likely to be shifting constantly and indefinitely. To that end, one might imagine ‘a complex, many-levelled struggle, intellectual, spiritual, and political’ (Taylor 1991: 120) – struggle as a lived experience, defining both the commonality of the group and helping constitute the authenticity of one another (Taylor 2011). This struggle leads to shared social imaginaries which, in turn, define both personal and group agency (Taylor 2004: 23, 189). Or, from a group-oriented perspective, politics must be about embracing the right and opportunity collectively to participate in decision-making, to have a voice and a veto on particular conceptions of social and political life, as opposed to blanket calls for universal inclusion and citizenship (Young 2003: 235-236). This constant innovation in which individuals or groups proceed to further their own interpretations of common existence and entitlements is part of the process of participation rather than a ready-made determination. Nevertheless, it must also be stressed that this creative participation is an open-ended process without non-negotiable criteria – something not always acknowledged by the theorists in question. But, as is stressed in this thesis, it is crucial to keep in mind that those group or individual strivings must always coalesce around a symbolic centre since otherwise they would go astray and the political community disintegrate. Some would be striving to uphold the status quo and some would attempt to replace it but the important thing that the referent is the same, either positively or negatively.

Occasional Politics

Finally, the third possible perspective is that of politics as occasional, as something that ‘ruptures or tears in the ruling distributions of sensing and making sense’ (Väliaho 2014: 128), an ‘opportune moment that ruptures the monotony and repetitiveness of chronological time’ (Hardt and Negri, 2009: 165). In other words, real political activity only takes place in dramatic and exceptional circumstances (Barshack 2006: 186). Rancière is a very clear exponent of this view. For him, politics ‘is the configuration of a specific space, the framing of a particular sphere of experience, of objects posited as common and as partaking to a common decision, of subjects recognized as capable of designating these objects and putting forward arguments about them’ (Rancière 2009: 24). In short, politics is about what constitutes

the common and who is able to designate the common. Real politics happens when the usual designations are challenged, when those previously deprived of meaningful existence and speech take on the status quo aiming to introduce new subjects, objects, and experiences into the common (Rancière 2009: 24-25). Politics is thus action on the part of those who otherwise do not count (Rancière 1999: 123). Everything else is merely *police*: perpetuation of the status quo whence seemingly no void is present; politics, meanwhile, is the return of the void – imposition of dissensus where there previously appeared to be a consensus (Rancière 2010: 36-38, 42). To be sure, Rancière's core insight is the emphasis on inclusion and challenge to the dominant modes of meaning and sensibility. Politics indeed is about generation of something new. And yet, as will be argued in the final chapter, this element of innovation must refer to a constant creative process rather than singular flashes.

In a somewhat similar fashion, Agamben traces two theologies at work in the ordering of political communities: the political theology of sovereignty and the economic theology of governmentality (Agamben 2011: 1; see also Agamben 2009: 13). Thus, the mystique of the omnipresent all-powerful God and his actual plan for human history is mediated by the two theological aspects: abstract power above and governmental management below (Dean 2013: 176). In this way, 'the Kingdom of providence legitimates and founds the Government of fate, and the latter guarantees the order that the former had established and renders it operative' (Agamben 2011: 129). This separation, then, accounts for the removal of the political dimension and ties in well with Agamben's earlier work the exception as the only real political moment and the camp as the modern paradigm (Agamben 1998). Essentially, '[t]he only political action [...] is that which severs the nexus between violence and law' (Agamben 1998: 88). But when the state of exception becomes the rule, the (concentration) camp becomes the paradigm for modern life (Agamben 1998: 168-169). Exceptional measures and exceptional ordering for the sake of the state are normalised and thus bare life, instead of the qualified political life, becomes norm. What prevails then is an 'apparatus' which 'realizes a pure activity of governance devoid of any foundation in being' (Agamben 2009: 11). Consequently, real politics must be truly exceptional, which is rather clear particularly in relation to sovereignty as the ability to establish the result of the political process.

A common problem with the theories of occasional politics is that they take appearance for reality. In other words, politics is in its truly most visible form at times of fundamental change, when questions of the form and shape of the political community, inclusion and exclusion, are decided – at the moment of sovereign decision. What these theories do not appreciate is the fact that the sovereign power does not appear like *Deus ex machina* to overcome the *aporiae* of politics. That an exception is looming and that any change is about to happen signals that politics had been taking place in the background. Hence, politics is seen in this thesis an everyday occurrence, from giving the status quo tacit consent or challenging the constituted through some minor deviation to outright support or challenge. The scale might differ but not the presence of politics as such. Again, a Spinozist-Schmittian reading-as-movement in the final chapter will reveal the permanent dynamic at the heart of politics.

Epilogue: The Question of Ordering

If there ever was a straightforward answer to the question of ordering (although perhaps there never was one), now is certainly not the time. None of the four elements is stable or uncontested enough for a durable and widely acceptable definition to be formulated. Nevertheless, there still are certain core trends in the contemporary debate that can be elucidated. First of all, in terms of the framework of ordering – the state and sovereignty – rapid changes in the global environment have provoked three forms of reaction, differing by the scale of acknowledged impact: there are those who say that the state and sovereignty are still viable in their traditional forms, those who call for significant transformation, and finally, those who no longer see the need and purpose for either.

Those seeing the fate of the state in a favourable light, still treat it as the supreme norm-making authority, both the site of a struggle for and the guarantor of ultimate meaning, an idea itself and simultaneously an expression of it. And sovereignty for them is the guarantor of that idea and of politics, as well as enabler of real responsibility. The state is, then, the only embodiment of a *demos*. The national *demos* should not, the argument goes, need any validation from outside or some form of

patronising protection. Rather, the political community should be responsible for itself and that only happens through sovereignty. Hence, the state is seen as the only expression of norms and values that are particular to a certain society. After all, any global universality would only be seen as disguised particularity. This position clearly resonates with some of the arguments put forward in this thesis. First of all, the state is seen as embodying the principle of distinction, i.e. of there being a possibility to distinguish between particular political communities, conscious of their own presence, and capable of some sort of institutional embodiment. This embodiment is still capable of acting as a structure of intelligibility – an exoskeleton which provides the community with its form. And yet, the argument put forward in this thesis is somewhat more nuanced, as it takes into account the ever-increasing internationalisation of the previously state-centred system. Hence, the state's function as a structure of intelligibility is not an uncontested one, and to better understand this change, one also has to refer to the increasingly floating nature of sovereignty as outlined below.

Meanwhile, the argument for significant change is based on many state functions being increasingly integrated into their global equivalents or made dependent on them to the extent that the global might already be replacing the national, thus leading to global participation. Furthermore, the rise of international normativity impedes the states' capacity to decide, with some of these norms not even requiring the consent of the states themselves. Consequently, state borders have opened up, with internal matters becoming an object of global concern. The state is clearly left devoid of dignity and exclusivity, reacting to the world and no longer shaping it. Sovereignty would thus only be preserved in a disaggregated way. The state is also no longer seen as a singular body or a structure of intelligibility. Sovereignty could then be seen in 'network' terms, flowing within and between different levels and bodies through multiple interconnections. While generally supporting the added fluidity of sovereignty, this thesis manifests scepticism regarding global integration. Indeed, the model of ordering proposed in the final chapter necessitates concrete, rather than abstract, referents: institutional structures through which political communities tell themselves what they actually are. The state in such model is an entity of and for the political community instead of being a separate structure, which often acts against the latter's interests. What one needs to take on board, though, is the emphasis on

increased competition, whereby global normativity is competing with that of the political community as expressed through the state. There is a significant degree of interaction between the two levels, and the state also has a gate-keeping function: it signifies the border between what the political community considers to be part of its own normative universe, and what is deemed to be outside it. Here, the Schmittian emphasis on the borderline between us and them, the own and the alien (essentially, therefore, friends and enemies) and the Spinozist notion of the state as an aggregate body determining a particular community's collective proceeding towards ever greater perfection are especially relevant. In both cases, one can clearly see the principle of distinction in action: particular communities with their own normativity (which might be, to a greater or lesser extent, overlapping with some international structures of normativity), rather than universality. The inside-outside relation, showcased by the presence of the state, also clearly refers to sovereignty, which for Schmitt is, literally, a borderline concept. And, if sovereignty is seen, as it is in the final chapter of this thesis, to be a floating attribute to be arrogated in various proportions by the state and non-state structures competing for the status of the ultimate norm-making authority, quasi-objective particularity of an established order and permanent competition (which is an unavoidable corollary of groundlessness) can be combined.

The third camp sees the state as superfluous while sovereignty is accused of standing for unaccountability, arbitrary power, and an unfeasible drive for exclusivity. Transnational solidarity is seen as strong enough to ultimately supersede any bounded identities, leading to universal inclusion. In this context, sovereignty is a thing of the past. It is being replaced by an international community and global democracy. All that, it is said, only further exposes the fact that sovereignty is deception only. Certainly, since human identity itself is seen as fractured and fragmented, no collective body can define it any more. Sovereignty, unsurprisingly, only remains as something ascribed by the global community, based on responsibility, and contingent upon the fulfilment of international requirements. Concurrently, any problem-solving is taken up by transnational networks of individuals or institutions while the global level would become the new dimension of identification – people, it is claimed, can now live under different, often competing and/or overlapping authorities simultaneously. All of that is even further underscored by projects for global constitutionalism, urging for ever greater global integration. The model of ordering

developed in the final chapter openly challenges such propositions. Although identities are perhaps indeed more fractured and less stable than ever before, they are still seen to be in need of a particular referent and of particular power to establish and uphold them. As already indicated, the Spinozist-Schmittian movement is, crucially, about competing particularities that cannot be fully incorporated into some form of global normativity.

Then, in terms of the content of ordering, law and politics seem to be no less driven apart by competing outlooks and interpretations. However, there is also some common ground between the approaches towards these two concepts. Once again, three core patterns are identifiable: 1) theories of an independent domain of law and of occasional politics both portray seamlessly operating systems that normally do not involve a great degree of creativity and innovation, 2) theories of law in context and of politics-as-consent end up coalescing around some ultimate criterion, while 3) theories of law as a secondary phenomenon and of politics-as-dissent strongly reject any ultimate fixity.

In terms of legal theory, the occasionalist trend is clearly embodied by positivism and formalism. Both reject any outside prescriptions – for example, moral ones – and instead rely on an incessant progression of rules and norms, whence one is grounded in another, which is grounded in still other and so on until the ultimate point of reference is achieved: *Grundnorm*, the rule of recognition, or some decision that has established an order. Only in exceptional circumstances, can the *Grundnorm* change. In a similar manner, seeing politics as occasional involves drawing a very clear line between everyday proceedings within an established paradigm and fundamental events that resist the mould and only become apparent in exceptional circumstances. Politics is about challenges to the status quo when impersonal objectification is shattered in an instance of exception. It is claimed in this thesis that both the legal and the political occasionalists err in only looking at the most visible manifestations of change, leaving latent processes unnoticed and limiting the agency of actors. In fact, by focusing on the status quo and the structures upholding it and seeing change as exceptional, these theories ignore the permanent tensions that motivate change in the first place. In fact, although for Spinoza some norm of ultimate reason always exists, it can only be constantly approximated. As for Schmitt, his well-known debate with

Kelsen leaves no doubt: as will be shown later, any emphasis on stable orders can only ignore their groundlessness and the permanent dynamic of the political community that underlies any sovereign decision on order.

Next, on the legal side of the dependence/consensus trend, interpretivists strive for a single correct reading of law which best corresponds with a supposedly reasonably uncontroversial moral agenda. Similarly, natural lawyers coalesce around ultimate truths derived by reason as logically necessary. Certainly, these norms are non-derogable, applicable across time and contexts. In a broadly similar way, for the pragmatists, the core criterion is what, in given circumstances, works as the most effective reflection of what law is. In terms of politics, meanwhile, perhaps the most straightforward example of consent is formulated by the deliberative theorists for whom politics is about striving for agreement through a process of equal unhindered communication. Other theorists, meanwhile, would lean towards some prefixed criterion, either a particular conception of justice or virtues that are embedded in tradition and thus enable a person to lead a 'good life'. Nevertheless, ordering, on all accounts, would be a one-directional process with final agreement and consent in mind. While this approach clearly favours the constituted, this thesis seeks to also introduce a constitutive counterbalance. In fact, from the perspective of the thesis, the emphasis on agreement and ultimate criteria can only be a strategy for legitimization of a particular instance of ordering – a particular structure of belief (a manifestation of political theology) that masks the groundlessness of any status quo. In short, this perspective shows ordering as it must look like (but not as it is).

Finally, for the theorists who see law as ancillary, there always are some other, higher, stakes. For the realists, legal decisions are ultimately dependent on the wider political, social, economic etc. context. For critical legal scholars, meanwhile, law only seeks to symbolically end discourse and manage the inclusion/exclusion that prevails within the system. Correspondingly, the politics-as-dissent theorists treat the political struggle as expression of and competition between underlying identities and concerns. Among them, agonists put the strongest emphasis on perpetual struggle as the core attribute of politics with no final unity in sight. Rather similarly, the pragmatists reject any ultimate certainty for openness of multiple positions while for rational choice theorists, politics is about constantly making decisions in order to maximise

favourable outcomes. Contrary to the trend above, this camp downplays the role of constituted stability: its emphasis is on groundlessness, and groundlessness without belief, as it is argued in this thesis, cannot provide the basis for political life. Essentially, then, the above approaches present ordering as it is but cannot look like, and the model of ordering as process, i.e. continuous circular movement between contestation (groundlessness) and stability (belief) is intended to rectify this partiality.

As this (again, non-exhaustive) outline indicates, although there are some roughly converging trends as far as the framework (the state and sovereignty) and content (law and politics) of ordering are concerned, significant differences are evident not only between but also within those trends. This is why the analysis will now turn to Spinoza and Schmitt and their interpretations of political ordering, intending to expand the conceptual apparatus. Although neither of them can provide *the* answer when considered individually and they do not come together in a neat synthesis, reading them together in the final chapter allows setting up a creative tension which helps accommodate disparate approaches. After all, if the above outline has provided *some* answer, it is that a synthesis of approaches *cannot* be an answer.

2. Spinoza: The Immanent Politics of State and Law

In order to provide a Spinozist-Schmittian model of ordering, the thesis now has to move to interpretation of the respective authors' theories, beginning (in temporal order) with Spinoza. Starting with some core presuppositions of Spinoza's philosophy, this chapter then concentrates on the two summands of ordering: institutional/formal aspect (the state and sovereignty) and content (law and politics), as conceptualised in Spinoza's writings. Indeed, there is continuity within all major aspects of Spinoza's philosophy. As a result, both the need for the state, sovereignty, law, and politics and their characteristics are determined by his natural and metaphysical thought as well as by his theory of knowledge.

Certainly, it is impossible to provide a full account of Spinoza's philosophy in this chapter. However, some of the key themes deserve special attention. First, in terms of basic preconditions, affective capacity and immanent causality, the paramount importance of desire, and the *conatus* principle will have to be elucidated. Transitioning into the social level, imagination as the basis for organic self-creation of the multitude will have to be analysed. Then, the focus will shift on the state and its order as upholding community and making people act as if they were rational, sovereignty and the instable balance of power that it establishes (as well as the right as power doctrine), law as a prosthetic device compensating for the inability of (most) humans to live in accordance with sound reason, and the interrelationship between politics, reason, and the general will. Finally, differences between the three forms of government that Spinoza analyses – monarchy, aristocracy, and democracy – and Spinozist democracy's danger of implosion deserve special attention. All these issues will be of paramount importance whilst formulating a Spinozist-Schmittian account of ordering as process in the final chapter.

In essence, this chapter aims to provide an interpretation of Spinoza's philosophy insofar as it pertains to the question of ordering. Hence, not all aspects of his thought are discussed, and those that are, are analysed to different degrees. It turns out that, although Spinoza himself never used the term 'ordering' in the sense accorded to it in this thesis, he nevertheless made important contributions to understanding the elements of ordering and, through them, is vital to the dynamic model proposed later on in the thesis.

2.1. Life between Desire and Reason

The key to Spinoza's politics lies in his natural philosophy and his metaphysics, both of which are seemingly amalgamated into one another. Spinoza clearly was a typical seventeenth century thinker in the sense that his outlook was based on natural philosophy and reason. However, unlike many of his contemporaries, Spinoza saw nature in metaphysical and, occasionally, even mystical terms. And since, for Spinoza, there are no other laws (in the sense of stable unquestionable rules) than the laws of nature, his natural and metaphysical thought also permeates his political philosophy. Indeed, there is no human realm fundamentally distinct from nature and, therefore, the basic principles of nature underpin the core characteristics of human life in both its individual and social forms. As a result, the entire corpus of Spinoza's philosophy has to be read simultaneously. This section lays the ground for further enquiry into Spinoza's ideas on the state, sovereignty, law, and politics by concentrating on three major preconditions without which any explication of Spinoza's political philosophy is futile: immanent causality, the drive behind any human activity, and the possibility of humans agreeing with one another.

Substance and the Nature of God

As the first step towards understanding the basis of Spinoza's philosophy, one has to delve into his understanding of substance, particularly because of the role it plays in understanding causality and commonality. Substance for Spinoza is 'that which is in itself and is conceived through itself, that is, that which does not need the concept of another thing, from which concept it might be formed' (*Ethics* Id3). At the fundamental level, there is no division in the world (e.g. between mind and body, God and nature), and everything equally partakes in the same substance. Clearly, then, 'each part belongs to the nature of the substance, and, without it, can neither be nor be conceived' (*Correspondence*, Letter XV). In fact, substance, God, and nature are one and the same, with particular things being only different manifestations. God is, then, 'an absolutely infinite entity, that is, a substance consisting of infinite number of attributes' (*Ethics* Id6) outside which there is nothing at all (ST, 30). Since God has no

outside, there can be no higher will and no mind external to nature and all natural objects. Spinoza's God, being the substance which underpins the entire world, can no longer be the external transcendent creator and ruler of the universe. Spinoza's God is, therefore, the immanent cause of all things (*Ethics* Ip18): 'all he produces is within himself, and not outside him, because there is nothing outside him' (ST, 41). The effect of an immanent cause is and remains in it 'no less than the cause remains in itself' and also has a crucial aspect of equality, since the cause is equally close everywhere and the result is no longer an image or likeness of anything (Deleuze 1990: 172-173, 180).

Wolfson (1934: 319-322), in his thought-provoking but often forgotten analysis of Spinoza's immanent causality, traces the Aristotelian and medieval roots of the distinction between internal (immanent) and external (transient) cause, whence the former is inseparable from its effect and, therefore, the whole is in its parts as the genus in the species. However, especially in the medieval tradition, an immanent cause is not the opposite of a transcendent one, since the latter also meant 'logically greater and more general' (Wolfson 1934: 322). Hence, contrary to pantheistic interpretations of Spinoza, God would not be strictly present in all things; rather, it is the other way round: *things* are contained within God as the human species is part of the animal kingdom. This means that God (the sum or the whole) is logically distinct from all particular things (Wolfson 1934: 323-325). Although illuminating, this interpretation still fails to appreciate the radicalism of Spinoza's proposition. After all, since there is only one substance, all the attributes and modes are necessary aspects of it and (contra Wolfson) form a certain totality; moreover, that which has all things in itself, also exists through these things. Thus a two-way relationship is formed, which is necessary for true inseparability of cause and effect. Politically, then, immanent causality is not only a process of organic creation but also of containment of parts within the whole, which, as it will later be seen, could be rather forceful.

Debate about the precise meaning of immanence notwithstanding, the very introduction of such principle was, as Kordela (2007: 31) notes, radical: what was once thought of as the first and independent cause now becomes 'a cause that is itself the effect of its own effects and does not exist but in its own effects'. This change of metaphysical orientation has profound implications for social and political

organisation: there can no longer be an outside decision, a miraculous *fiat* that establishes something out of nothing (the latter being Schmitt's preferred causation), or any higher ordering which exists independently and separately from humans, nor can government be justified by a divine mandate. All order, law, and will must, then, emanate from within the political community but, as seen above, also contained within it.

The doctrine of God as an immanent cause follows directly from Spinoza's philosophy and from his radicalisation of the Judeo-Christian tradition or, as for example, Hampshire (1978) would argue, from simply bringing the religious tradition to its logical conclusions. Keeping in line with scholastic and orthodox theological arguments of God as an entity that possesses infinite attributes, Spinoza merely radicalises the definition by equating God with nature (Hampshire 1978: 39-40). This equation also has roots in Spinoza's denial of the separation of body and mind. For Spinoza, extension (the spatial aspect) and idea (the mental aspect) are only two expressions of the same thing (*Ethics* IIp10s). Although there is a distinction between the creative *natura naturans* and the created *natura naturata*, it is not a clear-cut one because the created is always inherent in the creator (*Ethics* Ip29s) – God is the cause of all things, but an immanent one. There are clear implications to Spinoza's political theory: as will become evident in the subsequent discussion, the constitutive and the constituted elements, just like *natura naturans* and *natura naturata*, are neither strictly separate (because the created is always in the creator) nor absolutely identical (although there are clear differences in the degree of this identity between, for example, monarchy and democracy). The simultaneous thinking of the one and the many, unity and plurality enables Spinoza not only to allow for a multitude's organic self-organisation into a state but also to retain the former as a creative force even after the formation of the state – albeit, as will be seen later, not without significant restrictions.

Although things cannot be said to be created or directly ruled if God is an immanent cause, there is still a causal link, since there is nothing contingent in nature; rather, 'all things have been determined by the necessity of the divine nature to exist and operate in a certain way' (*Ethics* Ip29). This is also fundamental to the understanding of human nature, especially with regards to free will. It clearly follows that will cannot

be free in such world ‘but can only be called a necessary cause’ (*Ethics* Ip32). Will is, in fact, ‘only a certain mode of thinking’ and needs a cause which, in turn, needs another cause and so forth (*Ethics* Ip32s). The affective capacity of things is crucial to Spinoza: in fact, ‘[n]othing exists from which some effect does not follow’ (*Ethics* Ip36). Indeed, any particular thing is inextricably associated with all other parts of nature and constantly affected by them; Spinoza’s universe is, therefore, one of constant change and ‘infinite variations’ caused by permanent interaction between things (*Correspondence*, Letter XV). The capacity to affect other things is thus the essence of existence. And if there is no free will, only infinite causal links, then there can also be no final ends, at least in nature. Indeed, as Forsyth (1972: 10) stresses, to act for an end is a sign of imperfection because it indicates some deficit of existence whereas God (or Nature) can only be perfect. That people sometimes perceive nature as acting towards a certain end, is a gross misconception whereby people impute nature with their own inclinations; rather, final causes are merely human inventions (*Ethics* IA) – after all, humans are, crucially, imperfect. These inclinations themselves are, however, also causally determined.

Human Nature: The Primacy of Desire

Regarding human nature, it must be stressed in advance that Spinoza strongly rejects any universal idea of a human being. Definitely, as it will be shown, humans share some basic preconditions, such as the primacy of desire and the faculty of reason (the latter often serving as a criterion of perfection); however, particularities do outweigh the similarities since any being is only an imperfect manifestation of substance. The discussion below has several crucial implications for the model of ordering. First of all, the necessarily imperfect and desire-ridden human nature is the basic precondition of any organisation and, hence, ordering; then, *conatus* refers to the central drive of both individuals and groups; and thirdly, Spinoza’s equation of right, power, and virtue plays a crucial role in managing the process of ordering and attributing the impetus for a particular snapshot of ordering.

The core term in understanding Spinoza’s theorisation of a human person (or, indeed, of each thing) is the hardly translatable *conatus*, endeavour to persevere in being or

existence (*Ethics* IIIp6), which is ‘nothing other than the actual essence of the thing’ (*Ethics* IIIp7). Here Spinoza’s inseparable triad of perfection, power, and reality must be kept in mind. Reality and perfection are essentially one and the same thing for Spinoza (*Ethics* IId6). The more a particular thing has reality, or existence, the more it has power and the more perfect it is, the more it has reality and power, etc. (*Ethics* Ip11s). What is crucial socially and politically, ‘every natural thing has by nature as much right, as it has power to exist and operate’ (TP, 292). *Conatus* is, therefore, a perpetual striving to persevere in perfection, reality, and power simultaneously: the more a thing or a person strives towards persevering in existence, the more reality (s)he has and the more (s)he approximates the infinite reality and perfection of God; simultaneously, the more (s)he is real and perfect, the more power and right (s)he has. Indeed, as Garrett (2002: 127) observes, *conatus* provides unified explanatory power to Spinoza’s theory: it is a motivational power in psychology, a starting point in political theory (because it underlies motivation, power, and right), and the ultimate criterion in moral theory (because it helps equate power with virtue).

Conatus is clearly related to having final ends and is, therefore, a sign of imperfection in finite things: to strive for something is to be imperfect, i.e. try to fill a deficit of existence. Since particular things are necessarily imperfect (only God is perfect), this deficit is unavoidably insatiable: whatever degree of reality, perfection, and power is achieved, it is never enough. From this constant deficit Spinoza also deduces a pessimistic view of human nature: because any status quo, by definition, cannot be enough, humans are inclined towards envy and hatred (*Ethics* IIIp55s). Some (see, e.g. Balibar 1998: 107) would object to the interpretation of *conatus* as deficit, instead seeing in it something ‘essentially positive’. This is also partly the reason why the term ‘deficit’ was chosen, rather than the much more loaded ‘lack’. Nevertheless, ‘deficit’ still denotes a form of inadequacy, referring to the fact that, whereas God is the only perfect essence, no particular thing can reach that ideal. The fact that the existence of each particular thing has to be preserved and even increased presupposes an individual which is not sufficient in itself and not identical to itself in the sense that its ideal image – its perfect state of existence – exceeds any actual state of that individual. This constitutive deficit is definitely positive in the sense of producing an active striving rather than crumbling the individual under the burden of its own deficiency but humans, nevertheless, remain centred on a void, an absence.

Conatus is never an abstract striving – it is always a desire for something. This striving is, however, fundamentally anti-essentialist, since any object can become an embodiment of deficit, resulting in a transformation of *conatus* into a striving for that thing (see e.g. Hampshire 1978: 133). And yet, since the striving to eliminate the deficit is constant, no object can provide access to an absent fullness and thus *conatus* is also about constant displacement of striving. As far as *conatus* pertains to both mind and body, it becomes appetite and, when it is conscious, desire. Consequently, appetite and desire are ‘nothing other than the actual essence of the thing’ (*Ethics* IIIp9s). In effect, whatever a person does, (s)he does out of desire. And what one desires or loves is something more than the thing itself – a thing as it ought to be according to one’s imagination (ST, 73-74).

Clearly, desire considered in itself, cannot form the basis of social bonds since not only different people could be affected differently by the same thing but even the same person can have varying experience of a single object at different times (*Ethics* IIIp51). Nevertheless, it is impossible to free oneself from desire: because human beings are by nature weak, it would be impossible to survive without the longing to unite oneself with something (ST, 78-79). There are, however, some things more worthy to be loved and desired than others. Ideally, a person should love, above all, ‘eternal and infinite’ things, since they are unchanging and bring only joy (*Improvement*, 5) and, because these things can only be grasped by reason and not through the prism of desire, love for eternal things can lead to human association. This is what Spinoza calls ‘intellectual love of God’ (*Ethics* Vp32c) or, simply, love of absolute reason. Strauss (1997) clearly errs in ascribing to Spinoza an absolute distinction between reason and passion/desire: instead, they are both present in everyone, only to a different degree. And yet, Spinoza, admittedly, did not have much hope that most people would be able to achieve the goal of loving reason above everything, at least unaided by the state and its law.

Desire is also crucial in understanding Spinoza’s equation of power, virtue, and right. Crucially, an individual’s power corresponds to his/her degree of perfection, hence, to the degree of his/her reality (see e.g. Garrett, 2008: 13). Since every person’s right ‘extends as far as his power and desire extend’ (TTP, 11), whatever a person does, is done by supreme natural right because nature ‘forbids nothing but what no one wishes

or is able to do' (TP, 294; TTP, 197). Therefore, any action in order to satisfy one's desire and persevere in existence is right *per se*, if not having in mind 'the true interest and preservation of mankind' then at least with regards to nature (TP, 294). As a result, Spinoza equates power and virtue (*Ethics* IVd8): desire – the essence of any individual – is a never-ending striving for pleasure, hence striving to persevere in being, and ultimately striving to extend one's power and virtue. This, it must be noted, requires self-sufficiency because 'we act as something occurs either in us or outside us of which we are the adequate cause' (*Ethics* IIIId2), an adequate cause here meaning 'that whose effect can be clearly and distinctly perceived through itself' (*Ethics* IIIId1). As a result, only the affections that a person is the adequate cause of are actions, while otherwise they are passions, i.e. lead to passivity (*Ethics* IIIId3). Actions, however, must be based on an adequate idea (*Ethics* IIId3) and the majority's inability to think adequately is the source of inconstancy and discrepancy. This is why an external structure to impose norms – the state – is needed: if people are generally not capable of thinking adequately and following the guidance of sound reason, then at least they have to be made to act and live *as if* they were capable of doing so. Hence, ordering is about collectively doing something that is impossible individually.

The Illusion of Free Will

As already indicated, there cannot be free will in Spinoza's philosophy. Indeed, 'human beings think themselves to be free in so far as they are conscious of their volitions and of their appetite' and mistake it for the primary cause of their action (*Ethics* IVpref). For Spinoza, the human perception of the world is unavoidably relational and relative. It is clear that the body is able to be affected by and perceive very many things, as is the mind (*Ethics* IIId14). However, since this perception is primarily a bodily one, there is no unhindered access to the thing in itself: on the contrary, 'the ideas that we have of external bodies indicate the constitution of our bodies rather than the nature of external bodies' (*Ethics* IIId16c2). Such illusory freedom, clearly, can only lead to discrepancy and conflict, and can only be ameliorated through collective ordering.

Freedom, for Spinoza, means being determined by one's own nature and by nothing else (*Ethics* Id7). This applies not only physically but also, and most importantly, intellectually: it is 'a firm reality which our understanding acquires through direct union with God, so that it can bring forth ideas in itself, and effects outside itself' (ST, 148-149). Freedom, as the term is used in common parlance, in this case consists of falsity and ignorance only. Parkinson (1975: 24) offers a useful distinction: if freedom is understood in terms of causes, then no one could be called free (see *Ethics* Ip17c2); meanwhile, if freedom is understood as consciousness of reasons for an act and awareness of its inevitability, anybody could become free. In Spinoza's universe, where constant interaction is the norm, freedom is, first and foremost, the ability to consciously and without hindrance follow the causal chain which determines one's actions. This distinction also has significant influence on Spinozist politics: only somebody who has consciously internalised the political order and understands its internal necessity and rationality is able to actively partake in a political community and be an adequate member of it. Meanwhile, somebody who merely does what is required without giving it much thought, lacks adequate knowledge of the political order and its necessity and is simply acted upon. As a result, such person cannot be considered a citizen in the full sense of the term but, rather, a subject.

The above also offers a new path to emancipation: one can become free simply by acquiring adequate knowledge even if otherwise one's situation remains completely unchanged (Scruton 1986: 82) – at least some consolation for the outwardly oppressed. Clearly, in Spinoza's philosophy, knowledge – and only knowledge – sets one free. However, a new limitation on autonomous action is simultaneously imposed: not only are humans causally determined to be as they are and to act as they do, but adequate knowledge and employment of reason also show the necessity of a single form of thinking and being, all other standpoints becoming inadequate and irrational. This is why, for example, Gatens and Lloyd (2002: 3) are completely mistaken when suggesting that in Spinoza 'the flourishing of human difference, diversity and experimentation become the norm'. Instead, social and political existence must follow a clear path determined by the norms of sound reason, providing a limiting thrust to the process of ordering.

Although people seek, or imagine themselves to seek, final ends, they only do what is determined by God or Nature (*Ethics* Ip26). God or Nature, however, knows no end; therefore, paradoxically, humans are determined towards an end by that which has no end. And yet, this is perfectly plausible keeping in mind that Spinoza's God is 'the immanent but not the transitive cause of all things' (*Ethics* Ip18): the will of God comes into being only through its own effects and, whatever the action taken, it has always already been willed and decided by God (see e.g. Kordela, 2007: 18), thus adding extra dignity to the process of ordering. The subject is, therefore, a place where things happen, the causal chains and interactions of nature are played out against one another but not an autonomous self-sufficient actor. Politically, then, one cannot speak about individual or collective political will as some sort of objective given or an autonomous faculty. Insofar as it exists (and it must exist for any political process to be meaningful and purposeful), it is a complex set of interactions without any centre or essential content. And politics cannot be an autonomous sphere because any societal processes, decisions, or deliberations already add to the set of causal chains that affect the content of the will. Any political order is, therefore, always already a product of its own effects. This is where the circle closes: in the human domain, just like in the natural world, the logic of immanence prevails.

The Morality of the Void

The human ability to formulate universal – or at least universalisable – concepts has to be considered next, especially as it relates to morality. Here the void at the centre of human subjectivity and the general purposelessness of nature are once again of crucial importance. The understanding of a human person as primarily driven by desire not only has deep-rooted implications to the understanding of human agency but has clear ethical and metaphysical implications as well. Notably, it helps Spinoza disentangle the good from any universal essence: as Spinoza himself puts it, 'we do not endeavour, will, seek after, or desire something because we judge it to be good, but on the contrary we judge something to be good because we endeavour, will, seek after, or desire it' (*Ethics* IIIp9s).

For Spinoza, something that helps to achieve the desired thing is considered to be good; therefore, utility is another criterion of goodness but, nonetheless no more universal than mere pleasure or desire because the same object might be good (useful) towards achieving some things and bad (hindrance) towards achieving other things (*Principles*, 133-134). Being good, then, is nothing else than the ability to satisfy desire thus leading to pleasure or even directly causing it. Similarly, perfection is no longer a universal quality but merely correspondence to a person's own individual idea of a thing, presumably, closely interlinked with a person's desire (*Ethics* IVpref). The same applies to any final causes that humans attribute to things: these causes are nothing else than human appetites (*Ethics* IVpref). Here pleasure leads mind to greater perfection while pain, on the contrary, leads to a lesser perfection (*Ethics* IIIp11s). This distinction is what grounds human judgement. For Spinoza, desire is not only an urge but also a source of active striving by which 'we endeavour to promote the coming into existence of everything that we imagine to lead to pleasure' and, conversely, seek to destroy whatever we judge to lead to pain (*Ethics* IIIp28). It would not be an exaggeration to say that people love, hate, or desire not the things themselves but the mental images of those things that, to a greater or lesser extent, correspond to reality – again, this is why, in the final chapter, ordering is seen as fundamentally relating to appearance, objects passing for more than they are or can be. Certainly, people tend to differ to the extent that their judgements are based on emotions, especially since the things expected to cause pleasure or pain are nothing else but products of imagination (*Ethics* IIIp51s). For Spinoza, 'men can be discrepant in nature insofar as they are harassed by emotions which are passions, and to that extent one and the same man is variable and inconstant' (*Ethics* IVp33) because these emotions are impossible to explain through the essence of the affected person. Still, remedy is available: 'an emotion which is a passion ceases to be a passion as soon as we form a clear and distinct idea of it' (*Ethics*, Vp3). This is where the question of power kicks in. If a human association is to strive for what it desires collectively, unanimity of the aforementioned mental images has to always already have been established. Regardless of whether this is done by one person, a collective body, or the community as a whole, this is where political power is at play the most.

This power, however, cannot be arbitrary or contradict the interests of the people (although, in fact, there is, ideally, only one interest and pleasure – proceeding

towards ever sounder reason). After all, self-interest is, for Spinoza, so strong and impossible to overcome that ‘it may be included among the eternal truths’: it is in human nature that people will not act ‘except from fear of a greater ill or hope of a greater good’ (TTP 198). Since the existence of a successful state, it will be shown, depends on the support of its citizens, a prescription for an effective political process is clear: it must, ultimately, be about the production of desired things and destruction of despised ones (or, to put it more straightforwardly, production of pleasure and destruction of pain). Hence, Spinozist politics is, in essence, management of desire with a view to further collective proceeding towards pleasure, power, and perfection (all three being one and the same).

Spinoza does admit that, despite his relativisation of the categories ‘good’ and ‘bad’, they must be kept in order to maintain meaningful existence. What is more, Part IV seems to even introduce a quasi-objective criterion of distinguishing between the two: ‘good’ is ‘that which we know with certainty to be useful to us’ (*Ethics* IVd1), namely, something which brings a person closer to becoming an ‘exemplar of human nature’ (*Ethics* IVpref). However, these two notions are still inextricably related to affects: ‘[t]he knowledge of good and bad is simply the emotion of pleasure or pain, in so far as we are conscious of it’ (*Ethics* IVp8). Here it must be remembered that power and virtue for Spinoza is one and the same. But power is also perfection (and therefore reality) and perfection is at the core of being an ‘exemplar of human nature.’ Thus again, as with ‘good’ and ‘bad’, a quasi-objective notion of perfection is introduced. Crucially, ‘the more each person endeavours to look for what is useful to him, that is, to preserve in his being, and is able to this, the more he is endowed with virtue’ (*Ethics* IVp20) and, more particularly, ‘to act absolutely in accordance with virtue is simply to act, live, and preserve one’s being (these three mean the same) in accordance with the guidance of reason, and on the basis of looking for what is useful to oneself’ (*Ethics* IVp24). Such is the path to greater perfection, virtue, and power – in short, reality. This also introduces the possibility to normatively evaluate humans as beings ‘good’ or ‘bad’, more perfect or less perfect: whereas the good person follows the commands of reason and loves other human beings, thus actively partaking in the nature of God, the bad, or wicked, person, although acting from his/her nature no less than the good one, is merely a ‘tool’, lacking perfection and power (*Correspondence*, Letter XXXII). Far from being a tribute to conventional morality, this distinction

clearly follows from the wider context of Spinoza's thought: love of reason, leading to perfection, reality, and power, is a core criterion of the good life. Therefore, it is natural that if human association is concerned with the good life (and it must be), then it must be concerned with reason. This is a fundamental prescription of Spinoza's political theory.

And yet, the human subject, by definition being imperfect, can only strive to approximate the infinite intellect of God. The same applies to desire – neither a human being is able to satisfy one's desire fully (because then (s)he would become a perfect being – in essence, God) nor any degree of satisfaction is realistically possible without cooperation because there simply are too many individuals, each driven by their own *conatus*. As a result, an institutional structure of reason and management of desire, which establishes collective proceeding towards greater perfection, is crucial. Political ordering is, therefore, both based on reason and leading towards reason – aiming to bring forth something that is its own cause. The same applies to desire: the state is about the management and collective satisfaction of desire, which, in turn, is a precondition for the establishment of a state. Here again one returns to the politics of immanence.

Knowledge: From Automata of Desire to Social Beings

Since reason and adequate knowledge are universal, there can be no discrepancies between free individuals who follow the commands of reason. Reason shows the necessity of all things (*Ethics* IIp44) by revealing the causal chain leading to any given situation. Thus someone who possesses adequate knowledge is immune to doubt (*Ethics* IIp43). Politically, however, this understanding of necessity could be used to legitimise any *status quo* as necessary and, therefore, right. And, since every person, who abides by reason's commands, must agree with one another, the observance of any *status quo* must be universal. As with immanence, there is no outside in Spinoza's social and political world.

For Spinoza, knowledge is an effective remedy against passion and inconstancy, which allows seeing things from an atemporal absolute perspective *sub specie aeternitatis*, i.e. from the perspective of God or Nature itself (for a more detailed

discussion, see e.g. Nadler 2006: 174); therefore, a theory of knowledge becomes crucial. In *Ethics*, Spinoza defines three kinds of knowledge, two of which are adequate. The first kind is opinion or imagination, which only involves sensory experience and associations arising in one's mind. Consequently, this kind of knowledge is 'mutilated, confused, and without intellectual order' (*Ethics* IIp40s2); therefore, it cannot lead to common understanding. The second kind of knowledge is one proceeding from 'common notions and adequate ideas of things' (*Ethics* IIp40s2), because that which is common can only be understood adequately (*Ethics* IIp38). This also has an important social dimension: humans can agree in nature because there are ideas common to all of them. This form of knowledge is what Spinoza understands by 'reason' and involves comprehending a thing's properties and causal chains determining it (Nadler 2006: 180). The highest, third, form of knowledge, meanwhile, is intuitive knowledge which 'proceeds from an adequate idea of the formal essence of some of the attributes of God to an adequate knowledge of the essence of things' (*Ethics* IIp40s2). However, there can only be a never-ending approximation because otherwise *conatus* will cease and the person will exist no more. And yet, Spinoza has to admit that many, if not most, people are ignorant and even the educated ones, who are, for the most part, capable of employing the faculty of reason, are not always able to think reasonably. Consequently, there cannot be a rigid essentialist separation into two opposing camps: those who are reasonable and those who are not. Instead, there is at least some degree of fluidity between the two (Montag 1999: 28-29). Therefore, although humans clearly possess the seed of common understanding – following Spinoza's assertion that since common traits and qualities of things must be understood adequately, humans must possess some common notions (*Ethics* IIp38c) – actual agreement can be difficult to reach. As a result, a clear normative structure, which could guide individuals in their communal existence and common proceeding towards greater reason, is necessary. And this necessitates a political-institutional structure – the state – which would uphold the already existing norms and create new ones – all of this, of course, based on adequate knowledge, hence, with freedom-quarreason in mind.

Absolute discrepancy is imaginable only when 'people are deemed to live under the government of nature alone' because 'the power of living on the basis of sound reason' was denied to people by nature and, therefore, needs to be acquired (TTP,

196). This is first and foremost because nature (contrary to human wishful thinking) is not bound by human reason, power, and interest, the latter being directed ‘at the true interest and conservation of humans’ (TTP, 197). Interestingly, Spinoza did acknowledge a telos of perfection to human reason which is but an expression of substance (hence, of something that has no telos) under the attribute of thought. A possible explanation for this paradox is the presence of a benchmark for thought – the infinite intellect of God – and the absence of such ultimate criterion for the Nature as a whole. As a result, human societies, insofar as they are the products of ever more perfect reason, can progressively develop (although, since only God is perfect, such development always remains only an approximation) and are, therefore, different from nature as a whole, which is perfect already. The true function of politics is, in this case, the production of such order, which progressively approximates the infinite intellect of God. Consequently, politics and reason are inextricably intertwined.

Next, although imagination is, according to Spinoza, far from a source of adequate knowledge due to being more related to affections rather than to understanding, it still is necessary for a community, at least insofar as individual imaginings correspond with those of others. Indeed, collective imaginings, being based on emotions, provide especially strong bonds. As Spinoza sees it, the mind easily contains ‘images’, i.e. the ideas of things not actually present, which, in turn, are basis for imagination (*Ethics* IIp17s), which then shows things that could be. However, whereas adequate knowledge has a clear social dimension, uniting people under a common worldview and leading to joint perfection, imagination has both a social dimension in that it adds perspective to human existence, helping inspire and forge relations that are as yet nonexistent, and an anti-social one because it leads to divergent volitions. Consequently, political ordering plays a crucial role in strengthening the aggregating function of imagination by imputing the population with common images and always keeping the interpretations of such images in check.

2.2. The Framework: State and Sovereignty

The second part of this chapter will concentrate on the institutional/framework aspect of political ordering, i.e. the questions of the state and sovereignty. Beginning with the

dynamics of human communities and emphasising the natural need to associate and live according to the commands of reason, the real focus of this part is on what Spinoza holds to be the most important structure in ensuring not only common life according to reason but also collective proceeding towards even greater reason – the state – and its sometimes complicated relationship with the multitude, i.e. the body of citizens which gives the state its shape and form. No less crucially, the inseparability of the state and reason also has to be explored. In fact, reason will be seen as a *conditio sine qua non* of the state and the only (albeit extremely strong) real backing for any authority it can have on its citizens. Finally, the location and nature of sovereignty will have to be analysed, particularly concentrating on the limitations Spinoza puts on sovereign power and the problematic of democracy. As it is to be shown here and in the final chapter, Spinoza's approach is primarily of a limiting nature, providing support for the constituted side of the process of ordering.

Agreement and Social Bonds

A core difference between the premises of Spinoza's state and, for example, Hobbes' is that whereas Hobbes proceeds from reason – whence it is reasonable for humans to associate and therefore they do so, pursuing reasonable arrangements (see e.g. *Leviathan*, 188; *De Cive*, 22) – Spinoza proceeds from unreason, i.e. although it is reasonable for humans to associate, their actual association is unintentional, caused by desires, interactions of all kinds, and, ultimately, mutually developed understandings (see e.g. Curley 1988: 124). Thus, as Umphrey (1976: 48) notes, the state, albeit artificial, cannot be unnatural – it is reached by organic self-association. Indeed, if one of Hobbes' treatises on politics is entitled *De Cive*, one could properly entitle Spinoza's political endeavour *De Natura*, for while the former is concerned with autonomous political subjects, the latter is heavily dependent on the order of nature. Indeed, the state does not even create anything: it only 'make[s] fluid relations fixed and reliable' (Duff 1903: 275). But these relations are always already organically developed as social fictions through a shared history of interactions and still continue to develop through incessant intermingling of affects and emotions even after a state is set up (Gatens and Lloyd 2002: 90, 95). The state, then, is always a work in progress, a constant effort to capture and stabilise a snapshot of natural history. To some extent,

as will be shown in the following chapters, Spinoza shares this understanding with Schmitt.

Since the essence of a person has already been identified as desire, it seems perfectly natural that the essence of the social bonds that unite people should also be found in desire. This desire, first and foremost, is in the other: not only ‘if we imagine someone to love or desire or hate something we ourselves love, desire, or hate, by that very fact we shall love etc. the thing more steadfastly’ (*Ethics* IIIp31) but also ‘the good which each person who follows virtue seeks for himself he also desires for all other men’ – of course, provided that one has attained sufficient strength of intellect, or ‘knowledge of God’ (*Ethics* IVp37). What is more, there is an intrinsic attraction towards those who are similar to us, which is crucial to the formation of social bonds: ‘[w]hen we love a thing which is like ourselves, we endeavour as far as we can to bring about that it loves us in return’ (*Ethics* IIIp37). It is thus far possible to agree with Deleuze’s reading of Spinoza that there is an inextricable relationality at the heart of any body, either individual or social as its ‘interior is only a selected exterior and exterior, a projected interior’ (Deleuze 1988: 125). Although Hampshire (2005: xxxiv) may not be entirely correct in stating that natural interactions among humans take place in the context of Hobbesian strife (because of the actual lack of power in Spinoza’s state of nature), he nonetheless correctly stresses that this constant interaction allows for at least some uncertainty and unpredictability in Spinoza’s world because of the many ways in which humans can be affected by the same stimuli.

Indeed, commonality is the result of sedimented traces of past interactions and constant current encounters, creating what today would be called a ‘social imaginary’, and this intersubjective bond holds the political community together (see Gatens and Lloyd 2002: 39). In this way, the imaginary bonds of similarity become criteria in and for themselves. Also, because to a rational person there is nothing more useful than other rational people, ‘individual striving passes naturally over into a general striving to live with others according to the guidance of reason (Gatens and Lloyd 2002: 33). Crucially, in order for reason to prevail, it is a must that humans leave the natural condition and form a society (in the form of a semi-explicit social contract in the TTP or quasi-organically in the TP) and start living under ‘laws which moderate and restrain desires’ (TTP, 73). However, even if this be the case, it is an attribute of a

well-ordered state that people obey its laws more in hope to obtain something they desire than out of fear of punishment (TTP, 73).

Forming a society is, notably, about strength in numbers. As Spinoza sees it, all natural life is a never-ending struggle between an infinite number of things, each possessing its own *conatus*, even more challenging because ‘there exists no particular thing in the universe such that there does not exist another thing which is more powerful than it’ (*Ethics* IVa). Indeed, any person’s power to preserve oneself is dwarfed by external powers (*Ethics* IVp3). As a result, individuals, considered by themselves, can, strictly speaking, have neither right nor power because ‘so long as the natural power of man is determined by every individual, and belongs to everyone, so long it is a nonentity, existing in opinion rather than in fact’ (TP, 296). In practice, right to things or right to act exists only when many people combine their power (and therefore right), i.e. in a community (TP, 296-297). Also, people obviously differ in their skills and abilities needed to sustain and preserve themselves; and yet it is futile to expect much cooperation and mutual assistance in the natural state. In a clearly Hobbesian manner, Spinoza holds that those unable to organise themselves ‘lead wretched and brutish lives’ (TTP, 72). There can be, then, only one conclusion: it is rational for people to associate in order to live more safely because ‘if (for example) two individuals of the same nature are joined with each other, they constitute an individual which is twice as powerful as either’ (*Ethics* IVp18s) and, correspondingly, has twice as much right (TP, 296).

Quite clearly, the qualification ‘of the same nature’ is a vital one because if humans differ in nature, they are ‘naturally enemies’ and even the greatest enemies possible since humans are the most dangerous of all creatures (TP, 296). According to Spinoza, individuals tend to agree in nature only (but necessarily) when they are guided by sound reason and ground their actions and judgements in adequate knowledge. It is only then that individuals are useful to one another, even though everyone only seeks what is best for him/herself (and one *always* seeks what is best for oneself because of *conatus* as power and reality). After all, as long as humans agree in nature, they have common aims even when following individual motivations. Even though Spinoza has to admit that humans rarely live according to reason by themselves, they are at the same time unable to endure solitary existence; what is more, they are very often taught

by experience that mutual help is of considerable benefit (*Ethics* IVp35s). As a result, ‘there exists in nature no particular thing that is more useful to a man than a man who lives in accordance with the guidance of reason’ (*Ethics* IVp35c1). Not surprisingly, then, Spinoza strikes a balance between the Hobbesian underpinnings of his theory and the Aristotelian view of humans as social, or political, animals (*Ethics* IVp35s), although humans are social, most people are simply unaware of that and must be made social by the state or, rather, the state must make them act as if they consciously understood the need to socialise. In this way, political authority is not some alien force that a person must be protected from but rather a citizen’s ‘best friend’ which helps one to find and maintain his/her better self.

The Organic Self-Creation of the Multitude

Spinoza’s view of the constitution of a commonwealth is a clearly contractarian one in the *Theological-Political Treatise*, but rather less so in the *Political Treatise*. As the contractarian doctrine goes, the state of nature is described by ‘hostility, hatred, anger and deceit’, pervaded by fear and anxiety, and incongruous with the development of reason (TTP, 197). In order to leave this hostile existence, people had to associate, by mutual consent relinquishing their absolute right to all things (a right which, strictly speaking, never even existed because nobody had sufficient power) and agreeing to follow the commands of reason instead of desire or, rather, to desire according to reason. However, Spinoza does not necessarily imagine a single act of association, a single contract. Rather, it is an organic association, which develops in small steps over time. A distinct corporate entity is formed, which possesses its own *conatus* and, therefore, has its own absolute right to self-preservation (see e.g. Scruton 1986: 102-103). This continuous development, as Levene (2004: 144) notes, is the only plausible way out of a paradox, whence humans need other humans in order to become rational and yet cannot establish a well-ordered community if they are not rational already. There clearly are, however, two necessary conditions: firstly, people have to be aware of the benefit of association in order to form a community voluntarily and, secondly, this association must be (or at least appear as) the best possible. Otherwise, as soon as the conditions that induced the establishment of a commonwealth are removed, the contract fails because nobody is bound by it anymore (TP, 307).

In order to better understand the multitude-state relationship, it is useful to employ Spinoza's distinction between definitions of created and uncreated things, which he presents in detail in his *On the Improvement of the Understanding*, even though Spinoza himself does not employ it directly when discussing political questions. Clearly, the state is a created thing: although it is natural for humans to associate, the state and its law are prosthetic devices that enable people to associate in an orderly manner under the guidance of reason. The multitude itself is not something natural, primordial, and uncreated; rather it is formed through human association, either spontaneously or artificially induced. However, in the context of state – multitude relations, the latter is clearly prior. The definition of a created thing, i.e. the state, should therefore 'comprehend the proximate cause'; all traits of the created thing, if not related to other causes, must be deductible from the proximate cause (*Improvement*, 35-36). In this case, the state must reflect the political community in such a way that the former could be effectively explained through the latter. The community, then, is not only a constitutive but, most importantly, the formative part of the state. A core element of such association is the community understood as the multitude. If traditionally the multitude had been perceived as formless multiplicity which is 'inorganic, inconstant, and undisciplined' and opposed to the integrated 'people' (Del Lucchese 2009: 119), Spinoza in part inverts this tradition displaying the creative power of the multitude as an active constitutive element which resists total unification and tyranny (see Del Lucchese 2009: 130-131; Levene 2004: 147). However, even for Spinoza himself, the multitude remained indefinable and difficult to grasp (*Correspondence*, Letter XXXIX).

Because the multitude is a contradictory and internally divided power, the point of departure for any effective order must be the acknowledgement of the primacy of passions (which, if left unchecked, lead to discord) and, therefore, development of effective strategies to deal with them (Levene 2004: 145). Society as an institution then should have the power (and the monopoly of it) to determine the principles of rationality and rational organisation and to enforce them, thus instituting a common way of life among its members. Correspondingly, if a human association fails, it is not because of the wickedness of the individuals that comprise it *per se* (because people are by nature weak and wicked anyway) but due to the deficiencies of the association itself (TP, 313). Quite clearly, the establishment of a human association is a process of

the transformation of the multitude: one of self-limitation and self-organisation (Balibar, 1998: 120). The process of self-limitation is especially important since it helps to bring together the intermingled and often contrary desires of the multitude under the umbrella of what could in today's terms would be called identification. This limitation is an alternative, affective, path to similarity, complementing that based on reason. These two ways of achieving similarity are neither mutually exclusive nor do they lead to different kinds of communities, one inferior and the other superior (for a characteristic example of such misinterpretation, see Strauss 1997). Rather, both are present in all communities, only to a varying degree. However achieved, this similarity subsequently serves as the basis for the state's normative-legal structure, which then can be enforced. Crucially, in a human community 'no one does anything rightfully, save what he does in accordance with the general decree or consent' (TP, 298). Similarly, then, the political community has both the power and right to compel its members to act in accordance with its own decrees (TP, 297). This is why postulations of an ideal inclusivity of the multitude (see e.g. Hardt and Negri 2009: 43) are to be treated with caution: the multitude is inclusive only as long as it is apolitical. Once a political community is formed, the multitude becomes a bounded entity.

State of Reason and Reason of State

It has already been shown that humans are relational individuals: as summarised by Deleuze (1988: 123), 'a body affects other bodies, or is affected by other bodies; it is this capacity for affecting and being affected that also defines a body and its individuality' to the extent that an individual's very existence is based on being conceivable and intelligible to others (see e.g. Della Rocca 2008: 36). Since one's individuality is dependent on one's surroundings, human association is crucial. As it has also become evident, humans wilfully seek and contribute to only those relations that promise the greatest good and are inclined to withdraw their support as soon as this perception of greatest benefit disappears. This is of fundamental importance in the formation of any human association and, ultimately, the state. Indeed, 'any agreement can have force only if it is in our interest, and when it is not in our interest, the agreement fails and remains void' (TTP, 199). And yet, human liability to passions

renders such support problematic. The state must, therefore, constantly maintain the foundational agreement by both rational persuasion and force. The need of force is clearly lamentable for Spinoza but it is a fact of life: if humans were perfectly reasonable, they would acknowledge the fundamental importance of the state and would wilfully abide by its laws. However, not everyone is led by reason's guidance and thus the state must be protected by any means necessary (TTP, 199). In fact, humans are so easily distracted that often there is no room left for reason and force is the sole remedy. On the other hand, for Spinoza (and, it will be shown later, for Schmitt), the ability of the state and the sovereign authority to exercise its function fully, i.e. to completely eliminate conflict and strife, would really mean the end of politics and history (see e.g. Balibar 1998: 66). It is the relative inadequacy of any order that underlies the process of ordering.

Still, Spinoza rarely fails to stress that 'the capricious mind of the multitude [...] is governed not by reason but by passion alone, it is precipitate in everything, and very easily corrupted by greed or good living. Each person thinks he alone knows everything and wants everything done in his way' (TTP, 210). And yet, if only humans were aware of the benefits of 'mutual friendship' and 'shared society', enmity and harmful intentions would be easily overcome (*Ethics* Vp10dem). It is crucial, then, that authority is for nothing else than for the common benefit of all and exercises some sort of a civilising mission. It has also to be kept in mind that those who lead (or aspire to lead) and make others desire the same things that they desire out of reason's command, are acting 'humanely and benevolently' (*Ethics* IVp37s1). In other words, it is right to subject others as long as it is done for the sake of reason. The commonwealth itself is specifically designed to tackle acts that are against the commands of reason. Thus, true reason can only be effectively followed under dominion, and it is a task for the commonwealth to make people rational (see e.g. Levene, 2004: 165), that is, 'fit for citizenship' (TP, 313). Foreshadowing some of the utilitarian doctrines, Spinoza states that a good social order has to be the most conducive to the development of reason 'by the greatest number with the least difficulty and danger' (*Improvement*, 6-7). As a result, the ideal dominion is ordered according to the dictates of sound reason (TP, 298-299) since in that case, strictly speaking, nobody even has to obey – only to follow their true interest (TTP, 201),

presupposing that this true interest is always already known. It clearly follows, then, that the laws of such a state would be stable and unquestionable.

Spinoza clearly states that a free person and somebody who is not free differ neither in appearance nor in their actions – the only difference being the latter acts out of fear while the former follows reason, i.e. s/he understands the unavoidable necessity of what s/he does (*Ethics* IVp66s). Therefore, at least as far as the state issues reasonable commands, a reasonable person remains free. As Rosen (1987: 465) accurately sums up, the voice of state authority is the voice of reason and to contradict authorities would mean to contradict oneself and act against one's own interests. In this way, Spinoza manages not to separate the power of the state and personal freedom – in essence, they become one and the same thing. Therefore, reason provides for the crucial integrity, unity, and strength of the commonwealth. This is the point at which Spinoza clearly conflates the state of reason with the reason of state. The fusion of reason and state only strengthens the anti-utopian character of Spinoza's thinking, in a peculiar way bringing him close to Leibniz: if, for the latter, the absoluteness of God means that the actual world is the best of all that could have been created, for Spinoza it is the *only* one that is possible at all (see generally Phemister, 2006: 195-196). Whatever the framing, in both cases the present world is unavoidable. Both are equally conservative, implying that it is futile even to attempt imagining a different world where a different standard of rationality would prevail.

The Nature of Citizenship

In a Spinozist society, only a person who has internalised the common order – 'he who gives other men what is due because he knows the rationale of laws and understands their necessity' (TTP, 58) – can truly be called just. Spinoza clearly stresses that fear alone is ineffective: when people are forced to do what they do not want to, they not only 'have no interest or necessity for doing what they do' but also 'cannot help but rejoice when their ruler suffers pain or loss, even if this involves them in great suffering themselves; they cannot help but wish him every calamity and inflict it themselves when they can' (TTP, 73). A clear conclusion is, then, that 'those exert the greatest power who reign in the hearts and minds of their subjects' and,

although hearts and minds are difficult to control, the sovereign still ‘has various ways to ensure that a very large part of the people believes, loves, hates, etc. what the sovereign wants them to’ (TTP, 209-210).

Citizenship, for Spinoza, is something artificial: people have to be made citizens but are not born such (TTP, 313). Only after the overarching ethos of the state, i.e. a symbolic order with which all citizens can actively identify and partake in, is created, a truly well-organised polity which commands the greatest degree of obedience can function properly. It is especially so because while it is relatively simple for a state to control the outward behaviour of its citizens, it is much more difficult to do so with their minds ‘[f]or no one can transfer to another person his natural right, or ability, to think freely and make his own judgements about any matter whatsoever, and cannot be compelled to do so’ (TTP, 250). This is because human opinion is based on imagination which itself draws on experience – and, as Balibar (1998: 29) stresses, it is impossible that people have absolutely identical experiences throughout their lives. However, once the overarching symbolic order, the ethos of state, is created, freedom and natural ability to think freely can only be directed towards the supreme good, i.e. the development of reason and striving for what is most useful. Spinoza partly reinstates freedom in declaring that the piety or impiety of human faith should be judged by their obedience or disobedience rather than by the truth or falsity of their doctrines (TTP, 182). And yet again, this statement necessitates qualification: adequate knowledge of God’s essence cannot be doubted rationally. Hence, necessary uniformity is introduced through the back door.

Clearly, people must partake in a common substance in order to become equal members of the commonwealth. Spinoza sees rights as necessarily political in that they can only be achieved through collective effort, which itself necessitates belonging to a common *demos* by combining power and will. Applying the right as power doctrine, real rights arise only when people have combined their power to claim and defend them (TP, 297). Indeed, for Spinoza, citizens, first of all as bearers or rights, are made by the state. Since individuals, considered separately, are of unequal power and this power itself varies throughout life, and right and power are the same, then equality becomes possible only due to some balancing act which can only come with the state (see e.g. Balibar, 1998: 59-60).

Spinoza clearly renders internal pluralism problematic, leaving legitimate plurality only beyond the borders of the commonwealth. A decision taken by a political community must be a decision taken by all and for all, always already expressing the general will, including the true will and interest of those who had (mistakenly) opposed the decision (TTP, 253). Consent, then, is given not to a specific decision as such but to the abstract general will regardless of the content of that will. As it will be subsequently shown, law for Spinoza clearly has an immanent nature since the general will which it expresses is always already present and manifests itself only through its own effects. Crucially, when members of the commonwealth are guided as if by one mind and have common rights (and unified power), such group surpasses any individual in right (and power) infinitely. Therefore, a person must do everything in his/her power to follow the reason enshrined in law or else face the state's coercive power which, the theory goes, always acts for that person's own good even if (s)he does not understand that. Dissent from reason is, then, not a political act but rather a deviation that has to be corrected.

The Location of Sovereignty

In Spinoza, it sometimes appears that the state acquires a life of its own. There is an apparent paradox: the state needs virtuous subjects who are constant in their inclinations, even though experience shows that people, both the rulers and the ruled, are rarely such (TTP, 210). It is, therefore, the role of the state to ensure constancy and virtue. But it turns out, then, that the state in and of itself is ensuring its survival quasi-independently from its citizens. This paradox, however, can be mediated: although it is true that Spinoza seems sometimes to view the state as an end in itself, it is such only insofar as it is a tool to further the natural human ability and need to associate and to promote the pursuit of reason. Another thing to bear in mind is that personal freedom and political liberty are very different things for Spinoza (for a more detailed discussion, see Prokhovnik: 2004, 204). Spinoza was clearly concerned with personal freedoms, including freedom of consciousness and, to some extent, freedom of speech. Therefore, when he writes about liberty as being the aim of the state, Spinoza means personal freedoms and the development of reason. But on the political side, the state is the ultimate guarantor of whatever freedoms there are and all citizens

are dependent on it. This is probably the key to the division of liberty in Spinoza's politics: individuals can have their personal liberty to think and do whatever is not contrary to the interest of all because they still retain their own (very limited) power and, consequently, right; but they cannot do anything against the community not only because they are thus harming themselves but also because their power and right, compared with that of the community, is non-existent.

It is, then, up to the state to uphold certain political liberties that are beneficial to its citizens. The state also cannot overly limit the liberties of its citizens, since by doing so it would weaken its constitutive parts, and, therefore, itself. As Prokhovnik (2004: 211) insightfully notes, a core notion in understanding Spinoza's politics is that of proportion: liberty is proportional to power, the power of the state is proportional to that of the multitude etc. Therefore, Spinoza's socio-political world appears less paradoxical when one takes into account a very tentative equilibrium of power and right that exists at all levels. This equilibrium between the sovereign authority's power and that of the multitude also means that the sovereign authority has the right to decide only as long as it possesses the power to enforce the decisions, which in turn means that any sovereign must do what is in the multitude's best interest, since acting otherwise would lead to self-destruction. Peculiarly, Spinoza arrives at a theory of limited state/sovereign power without alluding to natural law (in fact, denying its very existence) or any universal normative structure whatsoever. Instead, the balance of power (and right) is crucial.

In Spinozist politics, the crucial tension lies between the ever-present and ever-changing constitutive power of the multitude and a higher ordering power that guides it. In essence, '[t]his right, which is determined by the power of the multitude, is generally called Dominion. And, speaking generally, he holds dominion, to whom are entrusted by common consent the affairs of the state' (TP, 297). The sovereign authority is the 'mind' and the guiding force, having the monopoly of right to decide on the questions of the good and the bad, what is and what is not to be done as well as to make and interpret laws (TP, 309). Consequently, the sovereign power cannot be claimed to be bound by its own laws, except for the sake of self-preservation whence the power of the authorities is checked by the power of the multitude (TP, 312-313). Once the laws become such that the majority is no longer able to obey them or if the

sovereign authority acts against good laws in such a way that good order of the state is threatened, there is a possibility of the multitude claiming its own power and right against the sovereign. In fact, since bad laws weaken a state, it is not impossible (although highly unlikely, since the state, as a collective entity embodied in the sovereign, possesses its own *conatus*) that the state legislates itself out of existence by merely passing bad laws (see generally Belaief 1971: 22-24). Rather unexpectedly, then, the right as power doctrine, instead of removing any critical tool for evaluating and opposing an oppressive regime, turns out to be an effective limiting clause – at least as long as the multitude and the sovereign authority have any distance between them, i.e. until democracy takes hold.

As ever, dominion can rest either in the whole of society (democracy), when all power is held collegially and people are subject only to themselves, in which case obedience is not needed, or in part of society, be it a group of individuals (aristocracy) or one person only (monarchy); in the latter case, however, the one who holds the dominion must be (or pose as) somebody extraordinary (TTP, 73). What Spinoza appears to have been really interested in is the set of conditions and institutional arrangements that could make any of the three systems work best. Spinoza clearly stresses the primacy of the constitutive power of the multitude and there evidently is a very clear imperative of popular sovereignty underlying any form of government. One could, then, speak of a proto-democratic kernel in Spinoza's conceptualisation of monarchy and aristocracy but not necessarily about full-fledged advocacy of the democratic regime.

There is, definitely, one clear tendency in Spinoza: monarchy, aristocracy, and democracy appear to form a progression of immanence. Monarchy is the least immanent form of government because its laws do not emanate directly from the political community and are promulgated as if from outside, even if they must reflect the will of the community; but the laws are not the sole product of the king either (thus the king too is not an immanent cause) because he is obliged to seek advice and thus his power to decide is bounded (TP, 327). Secondly, an aristocratic council is seen by Spinoza as immune to any debilitation, change of mind and spirit, and (since it is large enough not to be led astray by the passions of a few) able to follow the dictates of reason; being able to reflect the will of all but not just of one or few, it not

only does not need any advice whatsoever but enjoys dominion which is almost absolute (TP, 346-247). Finally, even though Spinoza died having barely started the chapter on democracy in his *Political Treatise*, it is still clear from what is available that democracy is ‘the perfectly absolute dominion’ (TP, 385), thus implying the highest degree of immanent causality, when the political community is able to produce laws by and from itself with absolute self-sufficiency and, once a decision is taken (clearly this is done without any mediation), it is always already reflecting the will, the shape, and the interest of the multitude that are themselves only available through the laws thus produced. Clearly, ‘absolute dominion’ here is to be understood in terms of power and right (see e.g. Hallett 1962: 189): the democratic state has *summa potestas* in the fullest sense of the term. Sovereign power is the more absolute the more it follows the requirements of the citizens (Duff 1903: 284), i.e. does what is always already willed, acting more as a medium than as a source of command. In democracy, of course, there is a complete overlap between the will and the power: whatever a democratic power does is always already willed by the people themselves. Clearly, democracy is closest to Spinoza’s definition of freedom: there is no outside authority and every action and decision is, in essence, self-caused (while in monarchy and aristocracy they are mediated). Consequently, democracy is also a form of government where the most absolute transfer of power (and right) takes place, especially because it is not strictly seen as transfer but more as coming together (see e.g. Sacksteder 1975: 134). It also has to be kept in mind that ‘the more united the community is, the less will any of its members wish to claim rights against it’ (Harris, 1973: 188) and democracy is more united and closely-knit than any other form of government. Here, more than ever, the transcendence-like aspect of immanence is clear: all parts are contained within the sum and are, strictly speaking, held *under* the sum. Because of the fluidity of human social existence, the preservation of the totality requires submission, presumably forceful if necessary, even under the logic of immanence, since all parts must be contained within the totality at all cost.

Spinoza’s insights about proportionality and balance as well as the different degrees of immanence in the three forms of government contain a paradox when read together. Obviously, Spinoza wanted both the power of government and the power of the multitude to be limited and, thus, saw them as mutually interdependent and balancing one another. And yet, the same principle is rendered irrelevant in democracy where

the multitude and the sovereign coincide. Spinoza would have clearly thought that the multitude would not act against itself and that any decision taken by such a large group of people must be reasonable because, while a few can be corrupted, the entire community cannot – a view that is not necessarily sustainable. Indeed, the question of outside will return to haunt both Spinozist and Schmittian interpretations of ordering.

Power, Law, and Winning Hearts and Minds

It clearly follows that Spinoza's sovereign (either a monarch or the aristocratic council, or the whole multitude) holds the total right (and power) of judgement. The sovereign power is the sole interpreter and defender of all law, civil and sacred alike, and has exclusive authority to decide on justness and piety (TTP, 11). Spinoza does admit that the sovereign can do wrong at least in one sense, i.e. by sinning against God or Nature (TTP 205). The state itself, in theory at least, could be seen as capable of wrongdoing: it does wrong when acting against the dictates of reason but not because it then harms citizens directly (because apart from the state there is no law and thus no measure of harm); rather, the harm is indirect because a state that acts contrary to reason ultimately causes its own downfall and the downfall of the state is the greatest wrong it can inflict on its citizens (TP, 310). This, however, does not hinder the sovereign's natural right, which is infinitely superior to that of his subjects', and, therefore, his ultimate authority. Consequently, 'no one can act against the sovereign's decisions without prejudicing his authority,' even though 'they can think and judge and, consequently, also speak without any restriction, provided they merely speak or teach by way of reason alone' (TTP, 252). The latter statement could, at first sight, seem to be a strong affirmation of freedom of thought and freedom of speech. Evidently, Spinoza maintains that not only liberty must be granted to the people in the commonwealth but also its suppression is dangerous to the integrity of the whole political body (TTP, 11). But it must be remembered that freedom in Spinoza is relative anyway: unless a person is guided by reason, one does not really choose what to think or do. But the judgements of the sovereign are just as well, in ideal circumstances at least, based on sound reason. Therefore, the better the state is ordered, the more this affirmation of freedom slips into mere tautology. Indeed, 'the more a man is guided by reason, that is, the more he is free, the more constantly he

will keep the laws of the commonwealth, and execute the commands of the sovereign authority, whose subject he is' (TP, 303). And yet, it has to also be kept in mind that reason is, in essence, immanent and thus must constantly be re-found, even though Spinoza himself would probably have disagreed with this conclusion, implying (*Ethics* IIp43) the possibility of ultimate knowledge: 'just as light manifests both itself and the darkness, so truth is the standard both of itself and of falsity'. By such truth Spinoza understands statements that show the world in its true meaning as a flash of light or suddenly bring sense to a disparate collection of experience bringing all fragments together (see, generally, Saw 1972: 162-163). Of course, this is more easily demonstrable in geometry or physics than in social life – indeed, in the final chapter this allegedly self-evident nature of truth and reason will be analysed in terms of quasi-theological faith.

There is only very limited amount of natural right left within the state: because of the direct link between right as power and reality, a person must retain at least some power so as not to nullify his/her reality (TTP, 11), which, when read in the context of Spinoza's philosophy, appears to amount to little more than a safeguard against tyrannical government that strays away from the guidance of reason. Spinoza clearly states that it is impossible to strip people of their power to such an extent that 'they could undertake nothing in the future without the consent of the holders of sovereign power' (TTP 209). A citizen must submit to the demands of the sovereign following one's own volition. The subjects, therefore, simultaneously act themselves and are acted upon by the sovereign power. In this act, the core of Spinozistic civic life is thus revealed: it is a conflation, virtually a point of indistinction, between the personal and the communal, the personal will and the will of the sovereign.

While rule by fear captivates the body only and can only last as long as fear prevails, the captivation of mind is more permanent and more effective (TP, 295). Stable and lasting dominion is, then, one based on ideological and symbolic dominance rather than overt intimidation – 'soft' rather than 'hard' control of the subjects. In a sense, then, the state outsources the necessary emotions to its citizens who, in turn, become automata, loving or hating 'owing to the power of the state alone' (TTP 2010). This statement, shocking as it might seem at first, must be seen through the lens of Spinoza's causally determined universe. Since free will is, for the most part, an

illusion anyway, the relevant question becomes one of effective cause. The ultimate cause is, undoubtedly, God or Nature. Humans are determined by that cause to socialise but none of them (or almost none, with the exception of the enlightened few) are able to do this by themselves. This is where the state steps in by bringing people together and, at least partly, substituting the bondage of passions with reason. Quite clearly, this is not the same as to impute reason itself: usually people merely act *as if* they were reasonable. Meanwhile, constant drive towards pleasure is likely to be a permanent undermining force; indeed, the multitude 'is governed not by reason but by passion alone, it is precipitate in everything, and very easily corrupted by greed or good living' while each person judges by him/herself according to his/her personal interest rather than with the communal good in mind (TTP 210). Thus the best Spinoza is able to count on is prosthetic reason – the reason of state. Here again, the progression of immanence, evident in Spinoza's characterisation of state forms, comes as no surprise: whereas in a monarchy exceptional power, will, and charisma are needed to establish the reason of state and acquire the necessary ideological and symbolic dominance, in the case of democracy reason comes from within and is always already manifest in the dominant ideology.

Sovereignty, Power, and Politics

From the fact that the people's minds are much less prone to control than their tongues follows that no state can ever be completely stable and secure (TTP, 250) – there is always room for a centre of opposition to develop. Although this unavoidable heterogeneity is, from Spinoza's perspective, a failing and a sign of human weakness (since it leads to instability), it is, nevertheless, a fact of life (TTP, 251). It is also a sign that nobody surrenders his/her power to the state absolutely. Moreover, depriving people of the right to think and speak freely not only would undermine trust – an essential element of the state – but would also be futile since it would be impossible for people not to resist (TTP, 255). Spinoza does attempt to strike a compromise here by stating that everyone is free to think and speak as they wish and yet cannot act against the sovereign – if someone judges a law or any other decision to be contrary to sound reason, (s)he can report this to the sovereign authority but is not him/herself allowed to do anything about it (TTP, 252-253). In this very limited respect, it is not

completely unfounded to see in Spinoza an advocate of the freedom of speech and freedom of conscience, although a very unwilling one. And yet, as indicated earlier, the better the state is organised, the more Spinoza's concessions to personal freedoms slip to tautology, thus contributing to the constituted side of ordering.

As has already been established, for Spinoza, subjugation is least likely in democracy (TTP, 251) since democracy is a rule of the popular will according to the logic of immanence: whatever is decided is the will of all and being subjected to one's own decision does not constitute oppression (although the reading developed in this thesis suggests that the actual effect would be the opposite). Crucially, Spinoza, possibly due to his rationalism, fails to account for other forms of subjugation that are enabled by such line of thinking: ideological dominance, whence concrete standards replace the human ability to decide. In this way, contrary to Spinoza's expressed intention, human beings *are* turned to automata, barely nodding to the always already existing general will. A crucial question, as always, remains: who decides on the content of the general will? Although this will be the crucial question of politics for Schmitt, for Spinoza that is not the case. In Spinoza's democracy, such decision is not political because it is a decision taken without contestation. Any contestation does not even become an attribute of the public enemy, as it is the case for Schmitt. Rather, it becomes an attribute of the unreasonable and is, consequently, discarded from legitimate discourse. Decision, therefore, does not even come across as such – the general will is more found than decided upon. Reason is simply 'out there', in God-qua-Nature, and can only be discovered.

As is clear from the above, Spinoza's claim that the state cannot turn people into 'beasts or automata' by overtly subjecting them to some form of authority (TTP, 252) is inherently problematic. As demonstrated, the only way out of this is, for Spinoza, to acknowledge that when automatically enacting state laws that are themselves an incarnation of reason humans are not automata – instead they are almost free if they follow those laws blindly and approximate true freedom if they are conscious of the internal reasonableness of such laws. Indeed, it is the purpose of the state to let people 'develop in their own ways', i.e. the ultimate telos is freedom (TTP, 252) as well as security of life (TP, 313). But, contrary to, for example, Smith's (2003: 144-145) interpretation, freedom should not be seen as empowerment, at least politically; rather,

political empowerment can only be a side effect of the general increase of the power of acting through the rule of reason. It is the role of the state to ensure the most favourable conditions for the exercise of reason but this simultaneously makes the state a guardian of what the state itself is. Again, a significant degree of tautology is present.

Sovereign power is, in turn, legitimated by the very fact of the sovereign possessing the power – it is, as Scruton (1986: 101) states, self-legitimizing. This circular legitimation rests on the assumption that, since the sovereign has a certain amount of power, everybody must have agreed to the fact; if the people had not agreed to it, they would have retained some power to themselves, which they evidently have not (TTP, 200). Of course, as noted above, a crucial qualification of sovereignty lies in Spinoza's right as power doctrine: the sovereign's right extends only as far as the sovereign's power does. Consequently, once the balance of power within the state changes, so does the localisation of sovereign right (TTP, 200-201). Therefore, the sovereign power is under double determination by the multitude. On the one hand, the sovereign's power is the combined power of the entire multitude but, on the other hand, political change is enabled in a standoff between the sovereign and the multitude. In Spinoza's universe governed by reason, once such change takes place, something that has supposedly always already existed but had been unreasonably denied has been brought into being. Admittedly, this scheme of change is somewhat complicated in democracy, the most absolute and immanent form of state, because such balance of power would require at least the possibility of the multitude being internally divided and in conflict with itself. Indeed, the conceptualisation of democratic political change will benefit from the later discussion of Schmitt's usage of *stasis*. For Spinoza, meanwhile, democratic change appears to be problematic, although it is impossible to know for sure without the chapter on democracy itself.

This standoff between the two core units of the state, the sovereign and the multitude, is stable until both powers remain only potential and refrain from becoming actual. When they do, however, the result is discord and, possibly, violence. As a result, the art of statecraft is to maintain the balance between the two and, no less importantly, between their potential interests and demands. And yet, this balance, as Prokhovnik (2004: 230) insightfully reads it, is not a compromise between extremes but

equilibrium as suspended movement within a relationship which is still full of tension. Therefore, in Spinoza's model of politics, both an ideologically repressive state and a state which allows a strong ideological centre of opposition to develop are posed to instability (see Balibar 1998: 29). Contrary to Hardt and Negri (2004: 221), positive opinion on revolts, revolutions, and refusal to recognise authority cannot be read into Spinoza's theory; rather, Spinoza appears to have emphasised stability (even if characterised by a certain tension) and denied sudden forceful change, save but in the most extreme circumstances characterised by absence of reason on the part of state authorities. Everything else should be seen as sedition guided by non-reason.

2.3. The Mechanism: Law and Politics

This part of the chapter is dedicated to the analysis of the content of political ordering: law and politics. For Spinoza, there are two ways in which order can be imposed. One of them is religion, which appeals to pre-rational qualities but can still make people act as if they were guided by reason, provided that it is carefully crafted. For the most part, however, Spinoza sees religion as being about superstition and promotion of an anthropocentric worldview that has nothing to do with the real order of nature. And yet, some form of theological thinking is unavoidable in any political community. The distinguishing factor between political theologies is the balance between superstition and the liberty to collectively proceed towards greater reason. Needless to argue, the more the state allows for the latter, the better it is organised.

The second way to impose order is through law, which is, in essence, direct imposition of the dictates of reason. Law is needed due to the lamentable fact that not all humans are capable of living their lives according to reason. In this sense, it is very much a prosthetic device: it functions as a substitute for reason, making people act as if they were reasonable. As such, it makes people free (because reason is freedom) and harmonises human behaviour (because reasonable individuals necessarily agree with one another). In other words, law and reason are inseparable or, ideally, overlap almost completely (just like in the case of reason and the state). However, a paradox is also worth noting: due to its approximation to reason, law is both internal to a political

community (because it is the product of that community) and external (because the ultimate standard for reason is the infinite intellect of God).

Finally, in terms of politics, reason again is a defining characteristic: indeed, it could even be argued that imposition of reason was more important to Spinoza than imposition of the popular will. And yet, democracy and democratic politics present a curious amalgamation of will, power, and reason because the will to establish the state and the law, the power to do so, and the collective proceeding towards greater reason coincide. As a result, the opportunities and dangers created by such politics of self-referential immanence have to be explored. In fact, change is brought about through constant tension between the multitude and the sovereign authority. However, this tension is possible only between the two as integrated powers: further division and additional tensions (e.g. within the multitude) only contribute to sedition and discord and therefore are dangerous. Also, reason cannot be internally contradictory and, therefore, there can only be one standard for adequacy of a claim. As a result, those who propose an alternative will simply stray away from reason. Therefore, the function of a public enemy or, rather, an enemy of reason also must be analysed in order to fully understand the force of Spinoza's politics. In relation to the overall argument of this thesis, Spinoza is read as a theorist who, for the most part, provides legitimacy to the constituted. Indeed, the way politics and law are presented is more likely to contribute to limitation rather than creativity.

Frameworks for Order: Religion and Law

As Prokhovnik (2004: 170-171) correctly notes, Spinoza's aim in the *Theological-Political Treatise* is to separate theology and reason, the first being concerned with obedience and piety, the second with wisdom and truth. Although they are interconnected and the religious component is somewhat dependent on the political one (because religion can flourish only in a suitable political context), there indeed is a line of separation between them, at least in Spinoza's writings. From the wider context of Spinoza's work, it is evident that the two even should be kept separate because their union in the form of some political theology is a clear pathway to ignorance and oppression, especially because it 'intertwines the political and

theological implications of fear, and simultaneously opposes piety and peace' (James 2012: 20). This is true at least as far as religion in the conventional sense is concerned; meanwhile, Spinoza's own understanding of religion, as an intellectual contemplation of God, can only lead to freedom. However, this contemplation is not meant to be universally achievable. Therefore, one is only left with religion as belief rather than knowledge.

Religions prevail because of the failure of humans to know themselves and their environment adequately (Doueihi, 2010: 63). Since humans are by nature ignorant of the causes of their volitions, they tend to see nature not as a cause but as a means. It is from this misconception that an idea of some power that had created all nature for human enjoyment arises (*Ethics* IA). Blinded by desire, people thought of various ways of worshipping God so that nature would be more favourable to them than to others, in turn sinking into prejudice and superstition (*Ethics* IA). For Spinoza, fear is the source of superstitions of various kinds – it 'is the root from which superstition is born, maintained and nourished' (TTP, 4). According to him, it is when things go wrong that people tend to seek guidance wherever possible and by whomever possible, and interpret the signs imagined in nature as if they corresponded to the situation people find themselves in (TTP, 3). For Spinoza, 'the revelation of God can only be established by the wisdom of the doctrine, not by miracles, or in other words by ignorance' (*Correspondence*, Letter XXI). Similar reasoning also applies to prophecy. It follows from Spinoza's natural philosophy that prophets cannot have witnessed miracles that are abundant in their prophesies – they only had 'a more vivid power of imagination' (TTP, 27). This is not to say that prophesies are untrue or deceitful. These are stories finely tuned so as to fit their audiences. And they are also vital in teaching those unable to reason how to act by themselves. Spinoza's position here is clearly opposite to Schmitt's who, it remains to be seen, grounds the entire order, religious as well as legal, on the miracle-exception. In fact, there can be neither miracles nor exceptions in Spinoza's philosophy, both natural and political (for a discussion, see e.g. Strauss 2002: 176). Nevertheless, as it will be seen in the final chapter, Spinoza unwittingly captures crucial aspects of political theology, manifesting them in his own thinking.

Law, meanwhile, is, ideally at least, based on reason. First, however, Spinoza gets rid of all natural law (as a lawyer rather than a physicist would understand it) by employing his right as power doctrine. Obviously, as Miller (2012: 222) stresses, there can be no higher law, command, or will, either divine or natural if God (or Nature) has no will. In Spinoza's view, there are no natural norms or prescriptions, rather, power and right are coextensive (TP, 292) and everything one does, (s)he does by natural right. To put it even more radically, 'the law and ordinance of nature <...> forbids nothing but what no one wishes or is able to do' (TP, 294). As Hampshire (1978: 147-148) notes, to impose any external law or purpose would mean to imply a creator external from the creation, which would be contrary to Spinoza's philosophy of immanence. For Spinoza, there is no 'original' freedom or natural 'rights'; rather, individual rights are inherently political and their very existence and content reflect the distribution of power within a political community at a particular time (see Levene 2004: 144-145). And yet, Spinoza does retain some standard: ultimately, all rights, duties, and freedoms should be dispensed under the commands of reason, hence still preserving some normativity.

Nevertheless, a slightly more relativist reading of Spinoza's law is possible, seeing the dictates of reason as principles to be applied on a case-by-case basis and thus more like orientations or maxims rather than universal and predetermined prescriptions (see e.g. Rasmussen and Den Uyl 2012: 251). Contrary to, for example, Smith (2003: 144-145), it must be stressed that law, for Spinoza, does not necessarily have to possess a moral content. Something akin to conventional moral norms could be achieved through good laws and the application of reason but this kind of morality is more of a side effect than an essence. Therefore, for Spinoza (like, it will be shown, for Schmitt) there is no necessary essence and no transcendent guarantor of law (see e.g. Vardoulakis 2012: 135-136); however, unlike Schmitt, there still is a necessary ideal – sound reason, which allows the capable person to decipher a situation and find an adequate solution. Once again, the essence of humans lies outside (therefore, law is not subjective and cannot be imposed arbitrarily) but simultaneously it can only be established by humans because nature is indifferent in this respect (therefore, law is not a closed and autonomous sphere). Law, in essence, arises at the point of indistinction between outside and inside. In other words, law too operates under the logic of immanence.

Since all nature conforms to the same laws, no science can be different from another (Umphrey. 1976: 45). This is why law, physics, and mathematics are so inextricably combined in Spinoza's statecraft. In effect, for Spinoza, there are two kinds of law: natural law-qua-physics (universal and unchangeable) and civil law of the state (particular and always evolving). Although, for example, Belaief (1971: 67) sees moral law as the third distinct kind of law, such further divisions are superfluous. The moral element is already part of state law due to the ideal of human development towards a reason-led existence: essentially, morality, as law, is about application of reason. To some extent, it could even be argued that state law is the *only* kind of law in the strict sense, while everything else is only description of natural phenomena that cannot be different from what they are and lack any aim or prescription whatsoever. It can then be said that all law in the sense of prescriptive rules is, for Spinoza, human convention only. Similarly, as Del Lucchese (2009: 33) claims, there is no universal common good towards which law should aspire and/or lead: rather, there are common goods particular to each political community that are determined by a sovereign authority (and yet, one should not forget that the main telos must be reason, even though it can be approached in different ways). In theory, this could be seen as empowering since the common good is formulated from an accumulation of the interests of all (Del Lucchese, 2009: 36-37). However, in practice, political power is especially strengthened in this way because when a transcendent dimension is removed and replaced with immanent causation from within the political community itself, there is no more distance left between the people and the articulated good and, therefore, any basis for political struggle is eliminated.

Justness and Law / Justness of Law

Balibar (1997) makes an important observation regarding human law in Spinoza: especially in the *Theological-Political Treatise* (but, one could also add, implicitly in the *Political Treatise*), there is a three-stage progression: (1) a selected right (as power, not as something innate) (2) through the pact establishing a commonwealth is (3) transformed into law thus translating the power of individuals to the power of the sovereign. This translation clearly happens according to the logic of immanence: a right comes into being only through its own effects (not only because people have the

power and right to something only after it becomes law but also because law has always already determined the content of the right in the first place). Therefore, as Belaief (1971: 25-26) notes, law becomes valid only through its efficacy, i.e. through being obeyed, and not through procedure. If a commandment is not obeyed, it simply ceases to be (see Duff, 1903: 327). Spinoza is, in fact, an ally of Schmitt in the struggle against strict legality and for legitimacy.

Human law is a prosthetic device: a substitute for human reason. This substitute is needed because, according to Spinoza, most humans are unable to make good use of their reason; as a matter of fact, 'the multitude are incapable of grasping sublime conceptions' (*Correspondence*, Letter XXXII). The function of law, then, is to make people free without requiring them to be reasonable. And yet, despite its synthetic nature, law, at least in the sense of a set of fundamental principles that ground the political community, is crucial to any human association. Indeed, 'the constitution is the soul of a dominion. Therefore, if it is preserved, so is a dominion' (TP, 383). The function of law is to harmonise and orchestrate human behaviour: it makes all people within a community act in the same way, determined by either necessity or reason (TTP, 57). It is the latter kind of law that is the most important here. Although the need to associate may be determined by nature, to surrender natural right and to enter into an agreement with other people whereby one's actions become determined by a common set of rules is a human decision and has to be analysed as such (TTP, 57-58). Law-making is a purposeful activity since a law is a rule prescribed with a certain end in mind, which for most people is set or imposed by others, more capable of employing the faculty of reason. One can suspect that if all people were as capable as the intellectual elite, there would be no need for law anymore and, consequently, no need for a state. However, there is hardly any evidence that Spinoza would have thought this to be achievable. Instead, Spinoza holds, people are in need of laws because they are driven by and judge according to their sensual desires and passions (TTP, 72-73).

Spinoza firmly states that there can be no sin before there is law (TTP, 196) and, consequently, the essence of being just is following the law as laid out by the sovereign authority (TTP, 253). In essence, as Kashap (1972: 334) notes, only with the promulgation of laws an evaluative framework of 'could have done otherwise' is

created; although causation is not removed (i.e. people are no more 'free' to choose one action over another), at least an alternative is provided. Hence, as Saw (1972: 146) argues, laws can also act as manmade interventions into causal chains: blames and rewards, as well as the very existence of prescriptions can act as artificial causes for action and, despite their artificiality, operate in the same way as natural ones. Since it is law (or, more precisely, the commonwealth which produces law) that introduces the notions of 'good' and 'bad', 'sin' and 'virtue' into human existence, humans cannot be judged outside the state. Indeed, in the natural state people do everything with a sovereign right and this includes both a philosopher's conscious following of reason according to his/her knowledge of God and a common person's life driven by desire and appetite (TTP, 196). In the natural state they are both equal, even though only the philosopher follows his/her true interests and is thereby free. The only factors that determine their right to do things are their desire and the power to satisfy it. Law, then, has to reverse this order of 'anything goes' and introduce the primacy of reason, thus prescribing a correct way of life.

As already shown, a human association becomes a commonwealth only through its ability to pass laws and the power to preserve itself (i.e. to coerce). Law is, then, 'a rule for living which a man prescribes to himself for some purpose' (TTP, 58). The crucial issue is that this purpose, from Spinoza's point of view, is visible only to some, while the majority of the population is ignorant – this is why coercion is a necessary element of the commonwealth. Not surprisingly, then, 'the essence of law is taken to be a rule of life prescribed to men by command of another' (TTP, 58). However, what is crucial at this point is the paradoxical nature of law: its exteriority – since it lies with somebody who knows the true purpose – combined with interiority, whence the law is directed at furthering one's own interest and true potential. The state, then, as Balibar (1998: 26) notices, 'is the *supposed* author of all actions that conform to the law.' Natural right does not cease in the commonwealth; rather, everyone still strives for his/her own interest. The crucial difference is that once a commonwealth is formed, the interests of its members coalesce into common ones; consequently, judgement also needs to become common – citizens need to be guided as if by one mind (TP, 302). The individual right to decide is forfeited for the sake of the common will. After all, because of human weakness, the freedom to decide is not only politically dangerous but also contrary to reason (TP, 303). By counteracting that

danger, the state not only necessarily does good but it also contributes to freedom by making the necessities of reason apparent through its legal structure. The state and its law are thus made the ultimate points of reference for a human community which is to live together harmoniously and according to the dictates of sound reason.

Politics and the Progression of Immanence

Definitely, Balibar (1998: 70-71) correctly stresses that the common will is not static: although democracy necessitates a unanimous multitude, this unanimity still is a praxis rather than a stable given (something similar will also be encountered in Schmitt's *stasiology*). On the other hand, as Kolakowski (1979: 290-291) notes, extra stability is provided by the fact that Spinoza was more preoccupied with creating 'a system of reason' rather than a system where the popular will always prevails, presumably because, for him, the commands of reason were the real will and interest of the people, even if the people themselves did not know that. Spinoza's treatment of prophecy, especially in relation to politics, is illustrative. While an order based on prophetic revelation is dictatorial and jeopardises freedom, a truly political order is based on reason and, therefore, freedom (for a critical comparison, see e.g. Scruton, 1986: 97-99). However, two reservations have to be made. First, this distinction may not be that radical in reality because the always already existing will must be somehow articulated and promulgated as law, and this can only be done through a quasi-prophetic medium of some sort. Secondly, monarchy, then, paradoxically is the least prophetic order because of the need to explain the relation between the source and the law (and the degree of alienation between the two is the highest in monarchy) while democracy, due to its immediacy, is the most prophetic order of all. Also, proceeding along the progression of immanence, with regards to law, the king must be restrained and, therefore, 'it is in no way repugnant to experience, for laws to be so firmly fixed, that not the king himself can abolish them' (TP, 327). Meanwhile, in a democracy, it appears (although it is impossible to know definitely) that there would be no restraint and no limit to lawmaking potential.

In a democratic state, people remain free because they are governed by themselves; and yet, they still need an outside point of reference – the law – to know what their

will and true interest is (TTP, 73). In this case, the law is simultaneously inside and outside, while society is both the immanent cause of law and itself constituted by law since the law establishes the community's always already existent, albeit latent, form. In this way, the democratic sovereign power 'is bound by no law and everybody is obliged to obey it in all things' (TTP, 200). Also, the democratic sovereign avoids another limitation. For Spinoza, it is crucial that the supreme authority's power is 'limited, indeed, by the power [...] of the multitude' (TP, 301). While this easily holds for monarchy and aristocracy, where the sovereign is forced to make only such decisions that would not antagonise the multitude, in democracy the sovereign and the multitude coincide. As a result, any checks and balances are removed and the power of the multitude/sovereign becomes absolute (at least as far as absolute unhindered power is possible in Spinoza's universe). This power, however, must come with the elimination of difference in the political sphere whence any decision is a decision of all and any deviation from it is an act of enmity. In essence, the political dimension is removed because politics can only arise from a surplus of meaning, i.e. from the multitude's non-identity to itself. Therefore, although those who interpret 'most absolute' as 'most stable' (see e.g. Negri 2004; Balibar 1998) are not mistaken, this stability is achieved only because of an always already present will of all, which does not necessarily go hand in hand with the kind of freedom these same authors advocate. The difference between the forms of government is instead the following: whereas monarchy and aristocracy are in danger of explosion, i.e. destruction through internal opposition and conflict, democracy is in danger of implosion, i.e. self-destruction of self-referential absolute immanence whereby the crushing force of uniformity is imposed by the multitude upon itself by the creation of total absolute order and the loss of all political capacity. In fact, the more immediate is the merger of the will and of the power behind it, the more absolute the dominion is but absolute should be read not only as stable but also as total.

Spinoza stresses that '[a]n enemy is someone who lives outside a state in the sense that he does not recognise the authority of the state' and that consequently 'a state's right against someone who does not recognise its authority by any agreement is the same as its right against someone who actively damages it' (TTP, 204). Spinoza widens the definition of the enemy even further in the *Political Treatise*: 'those who are without fear or hope are so far independent, they are, therefore, enemies of the

dominion, and may lawfully be coerced by force' (TP, 304). Deviation, independence from the common will is, therefore, enmity. This is a logical conclusion from Spinoza's entire political order: as stressed by Balibar (1998: 25), the state must always possess absolute authority or else there would be no sovereignty whatsoever; whoever challenges that becomes an enemy. The enemy is not only someone who lives outside the borders of the state: one can be an enemy when living inside the state simply by refusing to recognise the general will and the ensuing law. In even stronger terms, Spinoza stipulates that 'unless we wish to be enemies of government and act against reason, which urges us to defend the government with all our strength, we are obliged to carry out absolutely all the commands of the sovereign power, however absurd they may be' (TTP, 200). In fact, carrying out absurd commands still is a lesser evil than the dissolution of the state (TP, 303). Spinoza here hints at a form of political theology in the fact that a contract or, indeed, any other societal agreement can only be imagined after the political community is formed and sovereignty instituted – i.e. only retrospectively – but nevertheless has to be believed in. Faith here precedes and grounds the doctrine. This faith, however, takes the form of the knowledge of an immanent God. Lack of faith, it transpires, is no less a sin in politics than in religion.

Spinoza tends to essentialise the enemy. While it will be shown that Schmitt's enemy is mostly contingent and attribution of the enemy status depends on political alignment, Spinoza tends to conflate the political enemy with the enemy of reason. And yet, whereas Schmitt's enemy is an existential one, somebody who has to be fought against and destroyed, Spinoza is much more lenient, especially as far as the 'internal' enemy, i.e. someone who dissents from public law, is concerned. From Spinoza's point of view, outright liquidation of opposition is counter-productive since it undermines the government in the eyes of its own people thus diminishing its power and, consequently, right (TTP, 251). And yet, the perception of danger caused by the enemy and the need for his/her relegation to the status of an outcast (with regards to both politics and reason) never really withers. But, whereas, for Schmitt, the enemy simply exists and has to be combated as such, for Spinoza, some form of brotherly correction, forceful as it might be, is needed – after all, even if the enemy suffers some harm while being brought back to the path of sound reason, this is, allegedly, only for his/her own benefit. Nevertheless, Schmitt acknowledges the dignity of the enemy and requires the struggle to take place on equal grounds, whereas, for Spinoza, the one

who needs to be ‘corrected’ clearly is not of equal standing and can have no dignity, especially as far as democracy is concerned. Spinoza’s politics, especially democratic politics, is clearly politics without an outside, politics menaced by the danger of implosion. As it will be shown in the final chapter, ordering as process is only possible when a Schmittian counterweight is introduced.

Epilogue: The Question of Ordering

Ordering, for Spinoza, is about the management of a point of indistinction between collective and personal *conatus* and never-ending effort to approximate the most perfect thing – God or Nature. In fact, the *conatus* of the state is both collective and personal: simultaneously a collective striving for satisfaction and fulfilment and the personal strivings that coalesce into it. Politics happens at the moment of this indistinction as a process of negotiation between both. Sovereignty is about the control of this indistinction or who is able to conduct the management of the private/public nexus. And law is about setting norms so that this collective-personal striving leads towards greater reason, no matter if the majority of the community is conscious about it or not. The state, meanwhile, could be taken to refer to the institutional structure – the exoskeleton – within which the aforementioned processes take place. All of these qualities are significant to the theory of ordering since they the motivational force and urgency behind the political community’s perpetual remoulding of itself and its simultaneous ability to retain at least some shape and form.

Crucially, Spinoza sees everything as partaking in a single substance, which is expressed through various attributes and modes. This has two underlying effects which are, however, not always explicit: first, it presupposes an underlying commonality, thus making association natural; secondly, there is no outside. The outside is lacking both metaphysically – because God is an immanent cause and everything partakes in a single substance – and politically – because the political community is self-sufficient and all signification is contained within itself. This political self-containment is twofold: both an empirical reality (self-determination of the political community as the presence of the general will) and an aspiration

(constant, and sometimes forceful, attempt to prevent an inside-outside relationship from developing, i.e. a constant striving to keep the community integrated). In both ways, a sudden decision establishing order is impossible – all ordering must come from within the community. For Spinoza, there is a constant creative interplay: the creative force (*natura naturans*) and the created reality (*natura naturata*) cannot be separate in a universe of immanent causality but they are also never fully identical. Transposed to the political world, this means that a permanent tension between the constitutive and the constituted never really ceases and is the source of ordering, even though the degree of identity (and, therefore, the amount of creation) varies between different forms of government. This tension is, of course, the driving force behind ordering being a permanent process. But it is also an antidote to theories of closure, whether in the form of dominant international norms or natural, just, or moral preconditions to lawmaking, or politics that presupposes some form of consent.

Because human (and any other) beings are necessarily imperfect, Spinoza places *conatus*, or striving to persevere in existence, as their essence. *Conatus* denotes the presence of a permanent insatiable deficit, which needs to be filled and yet is impossible to fill. The most an individual can do once a goal is attained is to direct his/her desire for fullness and self-sufficiency towards something else. As a result, desire is the central motivating force. This is also where Spinoza's equation of reality, power and perfection kicks in. Reality-qua-existence is the goal of *conatus*. The more real something or somebody is, the more it (or he or she) approximates the ultimate perfection of God. And such reality-perfection can only mean power. *Conatus*, therefore, acts as both a motivating force in Spinoza's psychology and a key towards establishing fixed criteria in his moral theory: the ultimate striving for existence/reality/perfection/power is the striving towards sound reason and, therefore, all human actions and qualities can be evaluated against the standard of sound reason. This is Spinoza's back door for a prescriptive moral theory or, in fact, a tool for imputing a significant degree of constitutive stability. In this way, Spinoza demonstrates how the introduction of a (supposedly) objective criterion (reason) allows one to direct even an abstract striving towards some constituted order.

The primacy of desire also means that humans strive, first and foremost, towards something that is, or appears to be, capable of bringing pleasure and, vice versa, they

seek to avoid and destroy things that seem to cause pain. However, insofar as this striving is not based on adequate knowledge (and very often people are unable to think adequately), it leads to discrepancy among humans and inconstancy of their relations. And even true knowledge alone cannot direct humans single-handedly – it has to be supplemented by emotion or established through an institutional structure (the two often go hand in hand). This is where human association and, ultimately, the state become necessary – to ensure that people follow the commands of reason, whether they want it or not. And because a person led by reason is a free person, the ultimate telos of a state is, according to Spinoza, freedom. Self-determination, then, is simultaneously personal and collective. But there is, however, only a single path this self-determination could take – a path along the lines of reason. In such a scenario, the state of reason and the reason of state coincide. Such quasi-objectivisation is, of course, the ultimate goal of the constituted and the high point of any established order in the process of continuous reproduction.

The state, although a created artefact, is natural in the sense that it embodies and facilitates the innate human need to associate and is formed through constant interactions and, ultimately, common notions that are to be upheld. The state is also strengthened by the social dynamics of desire: common objects of love and common objects of hate. Indeed, because of the human need to associate and to strive towards sound reason as a community, bonds of friendship and enmity are formed that are equally important in maintaining the state. The need to associate is made even more pressing by the fact that individual power and right are so dwarfed by the surrounding world that it is rendered almost non-existent – only when people combine their power one could talk about effective right. However, since the majority of people do not understand this, the role of the state is also to make people to either understand the value of association or at least act as if they understood it. Consequently, a political community must have a monopoly on establishing what sound reason is and ensuring that the commands of reason are followed. In effect, law then becomes prosthesis for reason while citizens, understood as bearers of rights, are created by the state. This is, of course, a fundamentally state-centric position and one at odds with many of the current theories of state. And yet, Spinoza's emphasis on the natural need to associate is something to be upheld as belonging to the stabilising constituted part of the process of ordering.

The core element of the state, for Spinoza, is the multitude – a creative force almost impossible to grasp and define. It is the source of perpetual movement and the driving force behind political change, thus precluding the state itself from being static. This creative power, however, is channelled through and ordered by an institutional structure – the state – since otherwise any organised association would be impossible. Although the state is a substitute for human inability to live, think, and act in common under the guidance of reason, it also bears crucial similarities with the multitude that had formed it. In fact, it is, simultaneously, an imprint and a mould of the multitude. Nevertheless, this creative drive and collective power-as-right are crucial: since there is no creator outside the creation itself, there is no natural law or natural right (with the exception of the laws of physics) as well and, consequently, all law is fundamentally a human creation. There is no sin and, therefore, no judgement beyond the state. But a caveat is clear: because any outside (as the higher creative/ordering force) is removed and all norms are just expressions of always already existent will of all, political authority is made absolute – it becomes the embodiment of everybody's true interest and political strife is eliminated as seditious. The citizens must be guided as if by one mind, while to act against the will of the aggregate body of the entire citizenry (as expressed in its laws) is to act against oneself. To the extent that Spinoza prescribes freedom as the ideal telos of the state, he has only personal freedoms in mind. Political freedom here only includes understanding the rationality of demands and conscious observation of them. Anyone who does not comply and recognise the ultimate ordering of the state becomes an enemy not only of the state but also of reason and has to be fought against. And yet, the citizens cannot be left entirely powerless: a tyrannical sovereign would meet the end either by revolt (because living in such state would no longer be in the best interest of everybody) or by draining the power of the state from within (because the stronger the multitude, the stronger the state is and vice versa). As a result, Spinoza manages to arrive at a theory of limited sovereign power without recourse to natural law, moral theory, or any other precondition except for a simple balancing act. Nevertheless, Spinoza's is a theory very much oriented towards the constituted. The emphasis on rationality, a singular common good that everybody should strive for, and the automatic stigmatisation of those who do not submit to the common ordering principle are clear signs of the primacy of a stable set of signifiers that have acquired a privileged position. These ordering principles are no longer contestable – they simply have to be believed in. The

final chapter will add a Schmittian counterbalance to such thinking: groundlessness where any particular status quo is arbitrary. But such a take on the state and its order is precisely the object of criticism for those postulating, or at least calling for, a rethink or even the discarding of the state. This thesis, therefore, also demonstrates that such a rethink is both necessary and possible but from a position internal to the state. Indeed, one does not need to challenge the state as a structure or as a principle. Instead, one needs to counterbalance the constituted state-centrism with the constitutive groundlessness and uncertainty, which is always behind any supposed stability.

Finally, in Spinoza's discussion of the three main forms of government – namely, monarchy, aristocracy, and democracy – there is a clear progression of immanence: from a straightforward separation of the sovereign and the multitude in monarchy to absolute immanence in democracy, whence the constitutive and the constituted are indistinguishable. Therefore, Spinoza's democracy is the most absolute, the most total form of government for which there is no outside: everything must be subsumed under the totality and whatever will there is must be the unanimous general will. Presumably, this unanimity must be achieved by all necessary means. Because the sovereign and the multitude coincide, any checks and balances are removed. Therefore, one could say that whereas monarchy and, to a slightly lesser degree, aristocracy are in danger of explosion (an antagonised multitude tearing the state apparatus apart), democracy is in danger of implosion (absolute power pulling the entire community into a single point of singularity). In either case, however, political life is a point of indistinction between the own and the outside will, between the individual and the community. It is entirely plausible that if Spinoza had lived to complete the chapter on democracy in the *Political Treatise*, he would have found a way to translate his critique of anthropocentrism into democratic politics, even though the characterisation of democracy as a perfectly absolute dominion does raise reasonable doubts about it. As a result, one of the themes of the last chapter will be an injection of outside into this self-referential system of self-sufficient democracy.

The last point to be made is that Spinoza's political theory is apt with paradoxes: for example, politics is simultaneously about the multitude and the state, the importance of constitutive will and primacy of reason, continuous creation and there being no

outside, the position of citizens as simultaneously creators of and created by the state, the position of law both inside and outside the political community etc. Notably, the first element of each pairing refers to the constitutive drive while the second one denotes a stabilising, limiting function. However, in all cases Spinoza's political theory is also about balance and constant interplay between the two elements of each pairing. Indeed, ordering, for Spinoza, is first and foremost, an interactive process. And yet, the constant need to approximate the infinite intellect and perfect existence of God means that teleology is unavoidable, at least in communal life. Thus, political ordering is, ultimately, constant effort to bridge the gap between the private-public *conatus* and the ideal of God or Nature. The last chapter of this thesis will be dedicated to radicalising this interplay by introducing unavoidable indeterminacy, derived from Schmitt.

3. Schmitt: The Theological Existentialism of the Borderline

Arguably, Schmittian politics is a cross-breed of (sometimes even quasi-Spinozist) immanence, quasi-Kantian transcendentalism of shared subjectivity, and religious transcendence. As a result, three very different ways of ordering coalesce into a rather complicated mix. Nevertheless, the crucial notion, as will be shown, is the groundlessness of social existence. Hence, any meaning that is present at a certain time must have always already created the conditions of its own existence (immanent causation). But here Schmitt also introduces an element of belief. In his view, in order not to descend into chaos, immanence must be treated politically as if it were transcendence. Whatever the result of immanent causation is, it must be an object of belief in very much the same way as divine commandments are. And that is not all: ultimately, norm-making also takes place horizontally, across the political community, because Schmitt is concerned with the common way of being, which is invented and developed by all members simultaneously. This scheme of groundless ordering will significantly contribute to the constitutive part of the model developed in the final chapter.

For Schmitt, every political community has its own mode of existence, which is limited by the borders of that community – and this is why the state, as a spatial-political body, is important for Schmitt (although, it remains to be seen, not absolutely crucial). This limitation also implies another border – between ‘us’ and ‘them,’ ‘friends’ and ‘enemies’. But certain borders are present even within the political community itself. Since the common mode of existence is constantly developing and changing, divisions between the old and the new, between law as a transposition of a political community’s Being and non-law (or, potentially, not-yet-law), between those who tend to side with one or the other (thus creating potential for internal enmity) are, if not constantly then at least potentially, present. Schmitt’s solution to this division is sovereignty as a borderline concept, which occupies the groundless terrain between one side and the other and provides an authoritative decision on what belongs to the political community and what does not. Consequently, then, politics is a constant and central condition of human life, and not only of meaningful or virtuous life, but of any life. All of these traits are crucial parts of the dynamic model of ordering introduced in the final chapter.

3.1. A Community of the Fallen

If one had to name a single point of departure – a sort of Big Bang – from which Schmitt's entire intellectual endeavour flows, that would be the Biblical narrative of the Fall and, then, the killing of Abel (Schmitt 1950). The effect of this narrative is twofold: first, it points to the weakness and depravity of humans, their inability to lead self-sufficient and truly moral lives. From this follows the need for a political community and strong government – compensatory elements that would restrict the naturally evil nature of humans and impute order into what would otherwise be universal fratricidal enmity. Secondly, being banished from Eden, humans no longer have access to absolute certainty and, thus, any order is necessarily groundless. However, *some* order must necessarily exist, especially if one embraces communal living as a remedy. Therefore, at some point, there must be a decision that brings peace and stability – at least temporarily. It is this need to decide that grounds Schmittian politics and (what is only rarely analysed) morality.

Then, one needs to take a closer look at the community to which the notions of the state, sovereignty, law, and politics apply. Here, the questions of homogeneity and possible grounds for unity, the necessarily political nature of human association, and the very possibility of presence of the people have to be considered. It will be argued here that on all these counts Schmitt is less of an essentialist than is commonly thought. After all, the kernel of radical indeterminacy, caused by the Original Sin, is ever-present. These basic preconditions of Schmitt's political and legal thinking are going to inform all the major claims in the remaining parts of this chapter. They will also be found to underlie the dynamic side of the process of ordering in the final chapter.

Emptiness and Depravity

Through the narrative of the Original Sin, Schmitt presupposes a certain deficit at the heart of subjectivity, not at all dissimilar from one found in Spinoza's theory. However, while Spinoza can still presuppose an ideal (reason) thus avoiding complete

groundlessness, Schmitt does not envisage any necessary content. In order to understand the significance of the deficit, Schmitt's Catholicism must be taken seriously. For him, humans could have enjoyed plenitude and universal agreement if Adam and Eve had not committed the Original Sin. Contradiction, confusion and violence prevail in each generation because humans have lost their privilege of being in a spiritual union with God, especially as read in Genesis 3:15 (*I will put enmity between thy seed and her seed*). Indeed, Schmitt traces violence and hostility to the Original Sin but not directly from Adam and Eve's decision to eat the fruit of the Tree of Knowledge of Good and Evil but from Cain's murder of Abel, seen in this context as a punishment for the sin (Schmitt 1950: 89). The entire human history is, then, seen as continuous repetition of this story of brotherly conflict, in fact, existential conflict between those who put one another's existence in question (Schmitt 1950: 89-90). To imagine a world devoid of hostility, a world of all friends and no enemies is, therefore, an attempt to avoid responsibility for the Original Sin (Slomp 2009: 18-19). The only universal truth that remains in this world is universal disagreement which is seen to persist until the end of time. As a result, the need to choose between incompatible but equally groundless demands becomes the substance of (political) life and the ensuing distinction between 'us' and 'them' turns to an ever-recurring reality. Politics and social life are ways of managing this disagreement. But this collective dimension is only able to displace conflict, containing it within one's own group and channelling it against the other.

However, even between fellow members of one's own group and, indeed, within one's self, constant turmoil must persist because no way of being can ever fill the void of non-existent grounding. Consequently, humans are constantly torn between multiple conflicting demands. Here Schmitt turns not to the Bible but, rather, to literature and, more precisely, Hamlet. For him, Hamlet is a paradigmatic figure, torn between radically conflicting demands without any chance of mediation and compromise because there is no higher point of reference to act as an arbiter (Schmitt 2006: 53). Only an authentic existential decision would do. And that, as is well known, leads Hamlet to a tragic conclusion. Indeed, Rowan (2011: 150) comes across something very important when he notes that '[t]hroughout his work Schmitt repeatedly presents indeterminacy as an ontological condition on the one hand, on the other, ceaselessly attempts to bring this indeterminacy to a close by grounding order

in some form of authentic legitimacy'. Crucially, all of the key issues to be considered later in the chapter must be read in the light of this fundamental tension between the absence of grounding and the persistent necessity of some normativity and certainty. This is also why, for Schmitt, political struggle can only end when this world ends. Read in this light, Schmitt becomes a non-essentialist *par excellence*. And if such view is accepted, ordering can certainly only be a process.

The existential and normative deficit and the depravity of human beings, which (as will subsequently be shown) does not allow them to lead independent lives, act together to necessitate imposition of (any) order. There is a constant need to determine 'what is' (because, in essence, there exists everything and nothing), to condense something 'out of the spatial and legal vacuum' (Marder 2010: 18). It is a sign of human lack of self-sufficiency that they constantly need to refer elsewhere for affirmation of their identity, either positively, through recognition by others, or negatively, by negation of something radically different. Both pathways towards self-definition are necessary and usually simultaneous. This is the reason why Schmitt was preoccupied with questions of friendship and enmity. But, even then, the human condition is such that an objective, exhaustive and neutral definition of the self is impossible. Rather, it is only possible to know what manifests itself at a given moment in time. Consequently, the self can only be recognised through being, through its own mode of existence and that of his/her friends and enemies. This is another manifestation of immanent causality in Schmitt: the political subject, which is part of the order, is the creator of that order, which itself reflects the subject's always already existing mode of being.

And yet, the power of ideas cannot be underestimated. Whenever a decision is made or a new order is instituted, 'a substantive principle of justice will nevertheless have to be presupposed' or else the entire system collapses (Schmitt 2004a: 28). Any political act must have legitimacy in the eyes of those it affects, and legitimacy can only be based on appeal to shared ideas that are seen as natural and universal. This, of course, leaves any authority in a paradoxical situation: there can be no purely natural and universal norms (due to ontological groundlessness) and yet there must be. Social and political life must, therefore, be based on an absent fullness, something that is socially created and maintained. And yet, very differently from Spinoza, an ideal of perfect

existence (Spinoza's God or Nature) cannot be presupposed. As a result, where Spinoza sees organic natural striving for perfection and fullness, Schmitt can only imply an arbitrary fullness.

Decision and Morality

It is a popular misconception to perceive Schmitt as a political nihilist who rejects any substantial ethical standards and moral concerns in favour of bare power and radical enmity (see e.g. Hirst 1999: 8; Müller 2003: 249). Instead, an absolute decision that relates to existential matters and leaves no space for shirking necessarily involves a moral dimension. The sovereign decision, insofar as it is intimately related to a particular political community, is never completely abstract, and never indicates any random order without any relation to those concerned. Rather, the decision is necessarily conditioned by the available socio-cultural environment, i.e. a particular nation's way of being, which underlies laws and fills them with substance (see e.g. Pan 2009: 58). This is where the Schmittian dynamic connects with the limiting aspect of ordering.

Needless to say, the constant need to choose between incommensurable yet groundless demands also involves the tragic. If a decision is unavoidable, never allowing the subject to remain a mere spectator, and yet there is no guidance as to the ultimate truth, then the tragic element comes into play. Risk is the ultimate attribute of decision: one could lose everything or win salvation (Schmitt 2007b: 28). In such moments, when everything is at stake, one is left alone to his/her own means. And yet, as Meier (1998: 11, 14) contends in his reading of Schmitt, tragedy is what a moral person must long for: the decision between incommensurable Either-Or affirms the moral aspect of politics. The answers to the questions of what is right and moral, how life should be lived are to be found nowhere else than in the political decision itself (Meier 1998: 41-42). As Schmitt lays out in *Hamlet or Hecuba*, the tragic is something irrevocable, impossible to feign, and absolutely authentic: 'no mortal can imagine it, no genius can invent it' (Schmitt 2006: 39). There cannot be a rational justification – only an act of faith in a groundless *fiat* (Meier 2006: 30), thus only making the tragic more pertinent.

Of course, there must be a necessary limit to reintroduction of morality into Schmittian politics: even if there is morality within groups, it cannot be stretched universally. Consequently, the distinction between universal and particular must be maintained: morality applies to the inside – i.e. friends – only. From this perspective, one cannot expect friends and enemies to share the same moral categories; hence, one cannot fight the other on moral grounds. And yet, the weight of decision cannot be underestimated as morality is far from being relativised completely: the fact that there is no universal morality does not mean that Good and Evil can be placed on a continuum; instead, they are incommensurable and require the full force of decision which is unavoidably tragic: deciding the undecidable, choosing among incommensurable options without authoritative guidance as to which choice is correct, possibly because neither of them is. And yet, whatever the decision, the divine will (the will of God or of the people-qua-God) is always already present in and caused by its own effects. The final chapter of this thesis provides a more extensive account of such model.

Unity and Homogeneity

At the core of Schmitt's understanding of political community, but especially of community as a precondition for a democratic state, lies the principle of identity and homogeneity, better understood as self-identity of a people as a political unity (Schmitt 2000b: 299; Schmitt 2008: 255). Such homogeneous unity is able to guarantee justice and reasonableness for itself; what is more, it is the *source* of this justice and reasonableness (Schmitt 2004a: 24). Whatever such unity wills, is necessarily just and true. Such truth is qualitatively different from a liberal one, at least as liberalism is seen by Schmitt: for the liberals, truth is a function of a constant competition between various opinions or a point of equilibrium among them (Schmitt 2000a: 35-36), while according to a Schmittian understanding of democracy, truth is always present in the political coexistence of the people and is above internal strife. Schmitt's own theory is based on tension between the inside and the outside of the political community, those who partake in a general will and those who do not. Such tension is highly unstable, prone to constant conflict, and thus has an existential quality.

To reiterate, Schmitt sees homogeneity as central to democracy. This also has significant implications to the treatment of individuals and groups. A core principle of democracy based on homogeneity is ‘that not only are equals equal but unequals will not be treated equally’; as a result, democracy needs ‘first homogeneity and second – if the need arises – elimination or eradication of heterogeneity’ (Schmitt 2000a: 9). Keeping in mind Schmitt’s political allegiance, such statement legitimately sounds alarming. However, its real meaning requires more effort to be unpacked. First of all, as stressed by Balakrishnan (2000: 71), for Schmitt, there can be numerous grounds for unity and homogeneity and no one dimension can permanently describe it. Language, history, traditions, or common political goals: all of these are important but still do not form an exhaustive list. In Schmitt’s view, a historical trend of commonality and a conscious will to uphold such commonality, which naturally leads to common goals, is the defining feature (Schmitt 2008a: 262). Furthermore, there are numerous ways in which unity and homogeneity can develop: from above (i.e. through power) and from below (i.e. from pre-existing homogeneity), ‘through enduring association and compromise between social groups or through an equilibrium achieved somehow by some other means between such groups’, unity originating from within or resting on external pressure only, ‘unity by force and unity by consensus’ (Schmitt 1999a: 201-202). Also, identity and homogeneity can only be approximated; effectively, the state is complex and ‘internally pluralist’, a unity of ‘social multiplicity’ (Schmitt 1999a: 201). It is clear that such homogeneity reflects not an actual legal, political, or sociological reality but merely an act of identification, that is, a conscious will to belong to a community (Schmitt 2000a: 26-27). Thus, although Balakrishnan (2000: 71) is correct in arguing that, for Schmitt, democracy was ‘essentially a nationalist phenomenon’, nationalism should be understood in a civic sense.

In respect to political unity, Schmitt’s ideal was the Roman Catholic *complexio oppositorum* (combination of opposites), a spiritual community of the entire Christendom that ‘succeeded in constituting and sustaining configuration of historical and social reality’ despite the actual rich diversity of that community (Schmitt 1996: 8). In Schmitt’s view, this offers a crucial lesson: retaining the unity of identification and faith in the face of actual multiplicity and heterogeneity (Schmitt 1996: 8). This notion (see, generally, Shapiro 2008: 26-30), describes a unity of opposing elements

that is not achieved through reason, logic, or any other mediating tool but ensues from a catechetic unity whereby all of the opposites are equally present in God; it therefore involves a unity of emotive attachments, a reproduction of this unity on the rhetorical and symbolic plains, and a provision of an embodiment of it. In the domain of politics, the state becomes the unit of highest relevance and the highest imperative of fidelity. But it can only become so as the embodiment of the *complexio oppositorum* if the political community has already achieved political consciousness. In this process, the representative person or institution is invested with ‘a special dignity, because the representative of a noble value cannot be without value’ (Schmitt 1996: 21). This added dignity of something more than itself will be crucial in the final chapter to provide a temporary stabilising element of ordering.

The inclusiveness of the political community must also be stressed – or at least inclusiveness of a certain kind. Following from the previous argument, homogeneity and heterogeneity are, first and foremost, political concepts. Therefore, the elimination of heterogeneity, even if it happens, also needs to be political. This elimination, as it will be subsequently seen, refers to the sovereign decision that establishes the otherwise latent will of the people and restores unity where otherwise internal strife had persisted and possibly threatened the political body itself. Therefore, for a political community to be viable, not only internal inclusion is necessary, but so is also the exclusion and refutation of those who threaten democracy and the homogeneity that lies at its core (Schmitt 2000a: 9). As homogeneity can only be approximated, this striving for unity and integrity is endless, and so is the political struggle that it animates. Striving for unity, therefore, has to be a necessary precondition and driving force of Schmitt’s entire political and legal theory.

But unity always also implies otherness against which it is defined. In some instances, that otherness might refer to something internal – the internal enemy – but, in a normal situation, it mostly refers to someone who is outside the political community, i.e. not member of the state. This question of inclusion-exclusion is not an abstract one: it is about the *substance* of equality: rights within the state, such as universal suffrage, cannot be attributed to any person simply as a person but only to someone who partakes in a common substance; anything else would end up depriving equality of its meaning (Schmitt 2000a: 9-11). It is not a question of the *human* value of each

and every individual (and Schmitt openly acknowledges this value) but one of *political* characteristic (Schmitt 2000a: 9). Therefore, although there are areas where an outsider might be treated equally, these are not political areas (Schmitt 2008a: 258). The institute of citizenship is an obvious example of a gate-keeping procedure that draws a distinction between the equal ones inside and the unequal ones outside. However, from a Schmittian perspective, a formal requirement of possessing a fixed and institutionalised attribute (e.g. citizenship) would not be enough. What matters is the existential feeling of belonging together, common existence, and common consciousness.

The true presence of the political people is the presence of it as an assembled public (Schmitt 2000b: 298). The public is a way around a fundamental flaw in the concept of representation: only something absent can be represented and yet the people must always be present. The public, for Schmitt, is substantively different from the abstract liberal public sphere. The public is always potentially or actually present and assembled; it is always concrete, conscious, and capable of political action, not only of opinion and chatter. If such consciousness and purposiveness is present, every assembled public is at least potentially a political entity (Schmitt 2008a: 272). Such public is more than the sum of individuals, and its opinion is not the sum of private opinions, formed individually: rather, the public and its opinion is a constantly evolving common being that develops itself in the public sphere (Schmitt 2000b: 298). The people never shed the status of the constituent power and still remain a power above the law.

What the above illustrates are some of the key preconditions to political ordering. Indeed, Schmitt's entire oeuvre stems from certain religious underpinnings, especially as concerning the fallen nature of humanity and the ensuing groundlessness of existence. Therefore, living in political communities, with their specific modes of ordering, is both a necessity and a way around that groundlessness – it allows setting at least temporary certainties, thus masking the tragic nature of life but without falling to some kind of essentialism. Having established these premises, the analysis now has to move to the four key elements of ordering.

3.2. The Framework: State and Sovereignty

State and sovereignty, as one might expect, are closely linked in Schmitt's theory: the state is the locus where the sovereign power to decide is played out but simultaneously the state would be nothing but formless matter if there was no sovereignty to shape and mould it. As such, they are closely intertwined in Schmitt's thought.

The state, as can be inferred from the preceding analysis, is the body of a conscious political community. This common consciousness is what allows the transference of the common mode of existence into the structure of the state, the latter then acting as a sort of exoskeleton, which then upholds the form of the political community. As an embodiment of Being, the state becomes a central element of Schmitt's theory. And yet, there must be something prior that the existence of the state presupposes: the political. The political is the possibility of the community to distinguish between friends and enemies and the willingness to engage in an existential struggle against the enemies. That, of course, is the communal consciousness taken to the extreme: if a community understands itself as a collective 'we', it must also presume something that is 'not-we'. And the state is, then, a spatial-political embodiment of the 'us-them' distinction, in terms of both external and internal enemies. It is, however, argued that the friend-enemy distinction is not as straightforward as it is often thought to be and is, instead, based on a complex network of affirmation and negation. Nevertheless, all this places the state in a position of the locus of ordering.

Sovereignty, meanwhile, is simultaneously a tool for stability and for change in Schmitt: it can both preserve the status quo and radically change it, depending on who, in the end, has the real sovereign power. It is a borderline concept in terms of relating to law and non-law at the same time but also because any sovereign decision is also a decision on old and new, on the distinction between friends and enemies, and, as a result, on the (either old or new) form of the political community and the state. As is fitting for a borderline concept, sovereignty is a rather complicated notion that requires a lot of unpacking. Therefore, not only the importance of sovereignty but also its relation to the normal order, simultaneously dynamic and absolute nature, the question of who is really sovereign when two equally strong imperatives clash and, related to that, the tragic nature of sovereignty as a decision on a groundless terrain

will have to be considered. In short, in relation to the overall aim of this thesis, sovereignty is to be seen as the ability to impose a certain temporary snapshot of the process of ordering as the order that prevails at a particular time and place.

The Conscious Political Community

The state and the people are inseparable for Schmitt. The state is the status of the people and the embodiment – the form – of its political unity (Schmitt 2008a: 239). The Schmittian state is, therefore, ‘properly a site of “*pouvoir constituant*”’, in which collective will-formation and its expression through the constitution takes place (Shapiro 2008a: 3). As a result, a state can only be defined through the people. In this way, Schmitt clearly opposes legal positivism, especially his acclaimed contemporary Hans Kelsen (1999: 182-183; 189-190), for whom the normative order pre-exists the state-qua-community; in fact, in the Kelsenian system, the state as a community exists only because the already existing normative order predefines and shapes it – the state owes any reality it has to law and not vice versa. However, as Ojakangas (2006: 76) is correct in showing, the Schmitt-Kelsen opposition is not on the grounds of content (because Schmitt was indifferent to it – whatever is decided is legitimate and just) but on the grounds of form.

A unity capable of acting and conscious of its status as a unity – this is what a nation is for Schmitt (Schmitt 2008a: 101). Such consciousness allows for an understanding and appreciation of the political distinctiveness of the group and thus enables the unity to take political action as opposed to there being a mere ethnic bond (Schmitt 2008a: 127). Therefore, it would be incorrect to conceive the nation necessarily as based on blood ties. Instead, the political bond is all-important: a conscious decision to stick together, whatever informs such decision. This consciousness is needed if the grouping itself is to exercise the constitution-making power, i.e. to determine its destiny and political existence. When a group exists merely as a collection of disparate parts that, despite having something in common, are not aware of their common belonging or are unable to act together on these commonalities, it cannot determine its own political existence. Conversely, as long as the will to common political existence persists, the nation is superior to any normative framework

(Schmitt 2008a: 131). Political existence precedes political consciousness and, correspondingly, political will because that which does not yet exist cannot decide. Decision presupposes the existence of the deciding subject and the content of the decision presupposes the nature of the deciding unity (Schmitt 2008a: 102). Therefore, it would be correct to say that the political body exists only through its own effects. Any notion of contract is alien to such self-conscious political unity and to its immanent presence because a contract implies divergences and oppositions within a grouping and, thus, embodies an artificial and superficial unity. In contrast, unity and the general will of a united people either exists or it does not: there is no room for an artificial bringing together of disparate parts (Schmitt 2000a: 14).

Despite the close interrelationship between the people and the state, Schmitt traces a basic distinction in the conceptualisation of the two: that between identity and representation. Under the principle of identity, they are basically one and the same: when the people exercises the constitution-making power, it exists as a whole in concrete terms. Meanwhile, the principle of representation precludes the existence of the entire people at a single moment in time and space and instead opts for someone to stand in for the political unity (Schmitt 2008a: 239). Schmitt sees the state as perpetually caught in-between these two extremes. On the one hand, in modern states, it is not possible for the entire people to gather in one place: they need a form of representation. On the other, the entire principle of representation means that there is a people to be represented (Schmitt 2008a: 240-241). Absolute identity and homogeneity is never a reality but only a mental construct, just as, in practice, there are no ideal models but only potentialities. A maximum of identity with a minimum of representation and government means a homogeneous community unable to form an effective state while a minimum of identity with a maximum of representation implies a strong governmental apparatus but, in essence, a state without a people (Schmitt 2008a: 248). Constant tension between identity and representation is also crucial to understanding whatever is at the helm of the state, be it an individual person or a composite body: it cannot be detached and merely stand in for the people but at the same time cannot be completely identical with it. Any authority is, therefore, caught in-between these two potentialities.

The Importance of the State

The state is taken to be the central organisational unit for Schmitt. However, Bendersky (1983: 285-286) overstates it being at the core of Schmitt's entire oeuvre from the early writings in imperial Germany to his late post-World War II texts. In fact, one can trace a changing emphasis: from concentration purely on the state early on to regional (pre-World War II *Großraum*) or global (post-World War II *nomos*) orders to the fluidity of the partisan. The state, however, is a useful element of analysis: it is the most immediate expression of a political relationship between individuals and between a community and its form. For Schmitt, the state is coextensive with the people and sovereignty but none of the three overlap completely. The state is not identical with sovereignty because the latter is independent of the legal order that forms the backbone of a state and is able to suspend that order in its entirety. The state is the form that the people has assumed at a given time and is, therefore, shaped by the people – it is, in essence, 'a specific entity of a people' (Schmitt 2007a: 19). However, it is not identical with the people not only because the state is a dependent variable but also because the people is not something that has determined itself once and for all; the nature of a people's existence – its fundamental way of being – is prone to change, and, therefore, the people is a more dynamic entity than the state. Consequently, although the existence of a state is, for Schmitt 'a question of fact which the law can only recognize but cannot control' (Koskenniemi 2005: 232), this is not to say that the state is absolute.

The state, as the embodiment of the political community, has the decisive power to wage war and, therefore, to require the ultimate sacrifice – that of one's own life (Schmitt 2007a: 46). In Schmitt's theory, the state is the collective existence of those who comprise it, and therefore sacrifice is not for the state as something external but for the being of the kin. Following this logic, it is absolutely natural that the state should control the subjects: the subjects' ability to act according to their own consciousness instead of obeying threatens peace and challenges the political quality of the state (see e.g. Preuss 160-161). Although this prerogative of the state is central, it will be shown later that neither homogeneity nor sacrifice are absolute as they are not intended to be invoked in the normal situation in which the foundations of the state are unquestioned. But in exceptional circumstances where they come into

question, the decision over the inside and the outside becomes central. In addition, Schmitt ascribes fundamental importance to the state as a spatial organisation of the people: for him, spatial division and appropriation form the basis for any normative structures that govern a certain territory and the people that claim it their own (Schmitt 1997: 37-38). The state, providing a fixed body to the people, also provides the territory with fixed borders. The inner equality that a state produces can only apply to a bounded place and not to a universal sphere (see e.g. Kennedy 2004: 128). Therefore, territoriality is of vital importance for Schmitt, not only because a community and a state cannot exist without a certain territory but also because of an almost mystical quality attributed to land. Land, for him, is ‘the mother of law’: as a producer of harvest, as something that must be cultivated, and as an area that can be fenced off – all this requires a legal order of appropriation and allocation (Schmitt 2003: 42). As Kahn (2011: 155) reads it, there can be no willingness to commit oneself wholeheartedly, to the level of self-sacrifice, for an abstract, disembodied idea. Therefore, the territorial element of the nation’s political body is vital.

Once a higher ethic of the state is abandoned, one ends up postulating a universal entity (e.g. ‘humanity’) that, in theory, subsumes all conflicting parties (Schmitt 2007a: 44). However, in Schmitt’s understanding, such universal concepts are meaningless – at least on the political level – because they have nothing to negate. Political subjects become obsessed with the illusion of it being possible to become subjects by themselves. Self-affirmation, self-expression, self-empowerment become the fictions that guide the modern political world devoid of potentially stabilising points of reference (Schmitt 2007c; Schmitt 2008b: 34). As Meier (1998: 5-6) puts it, this is the Promethean rebellion in all its madness and self-arrogation of attempted self-salvation and self-redemption. Such process is ‘the opposite of creation *out of nothing*’ and is, in fact, ‘the creation *of* nothingness as the condition for the possibility of the self-creation of an ever new worldliness’ (Schmitt 2008b: 129). This is what Schmitt loathes in the Romantic spirit in politics: complete rejection of any causal relations in the name of indeterminacy (Schmitt 1985: 82). Such political subjectivity refuses to discard any option and possibility, resists any objectivity, any exhaustive list of characteristics, and does so in the name of infinite freedom (Schmitt 1986: 71-72). Such freedom is possible only where real substance is lacking. However, this prerequisite of removal of any being means that absolute freedom and self-sufficiency

is non-political. And yet, if for the Romantics, the normal (the necessary condition for political order) is uninteresting (Kelly 2003: 169), Schmitt himself is a Romantic in a way that he is interested in the exceptional rather than the normal. However, unlike the Romantics, he is so with the normal as a goal. Hence, the infinity of possibilities is both necessary for Schmittian politics and a menace to be confronted.

The Concept of the Political

The Schmittian state is the locus of political activity. And yet, there is another crucial notion: the political. In fact, '[t]he concept of the state presupposes the concept of the political' (Schmitt 2007a: 19). Therefore, Schmitt sets out to discover the essence of the political and the criteria that define it. In a well-known passage, he pursues an analogy with other domains, such as morality, aesthetics, and economy to determine that all of them rest of specific distinctions. At the core of aesthetics is the distinction between beautiful and ugly, morality is defined by the opposition between good and evil, while the domain of economics is characterised by the distinction between profitable and unprofitable. A specifically political distinction is, then, between friend and enemy (Schmitt, 2007: 25-26) and delimits the 'degree and intensity of association and dissociation' (Schmitt 2008b: 45). It is precisely the intensity and the ability to presuppose friends and enemies, and not *enmity per se* as it is often thought, that lies at the heart of the political (Schmitt 2007b: 91). This distinction goes 'entirely beyond good and bad' (Sneller 2007: 293) and, as noted by Kahn (2011: 20), due to its existential intensity, is prerational because reason on its own cannot establish it. And yet, from the conflictual nature of the political one should not imply that Schmitt outrightly favoured violence. What matters the most is the *possibility* of conflict.

According to Schmitt, the fact that modern state theory, and liberalism in particular, had negated, or at least concealed, the political does not automatically mean that the latter has ceased to exist; rather, the political must be brought again to the forefront of political life if the state and politics are to be treated seriously (see e.g. Strauss 1995: 92). Schmitt sees grave danger in the shift towards value-free or value-neutral domains, be they scientific or political, because they allow humans to shed responsibility for their actions and decisions, simultaneously paving path to

disintegration of communities towards the struggle of all against all when no more uniting ideas are left (Schmitt 2001b: 19-20). It is precisely the political, with its distinction between friends and enemies, that allows, on the one hand, the recognition of and siding with the own and, on the other hand, makes any absolute assertion of a single value impossible. This impossibility is seen as necessary: when a single value is posited as a major point of reference, it not only establishes a hierarchy of values within its own value system but also presupposes a non-value and thus negates otherness (Schmitt 2001b: 23). What thus emerges is a 'tyranny of values', which offers a straight path to fanaticism, disqualifying the other as inadequate and leaving no price too high to pay for the ultimate value to be achieved (Schmitt 2001a: 24-26). Taken to the extreme, this means that, when a system of *human* values is known in advance, there must also be the *inhuman*, which can be righteously destroyed (Schmitt 2002a: 114). The political, on the contrary, at least presupposes that the opponents stand on an equal ground.

One of the common objections raised against Schmitt is that for him enmity, and not friendship, is central (see e.g. Strauss 1995: 96-97). Hirst (1999: 14) even asserts that Schmitt is left only with the exception, perpetual struggle between opponents that have nothing to discuss. And yet, in Schmitt's own words, '[t]he core of the political is not enmity *per se*, but the distinction of friend and enemy, and the presupposition of friend *and* enemy' (Schmitt 2007b: 91). Schmitt is also accused of personalising politics, turning political struggle into fight among individuals not between ideas: supposedly, Schmittian politics 'is tantamount to fighting for and against someone, not for and against something' (Heller 1991: 232). However, the Schmittian enmity is a particular kind of enmity. Schmitt's reference to Hegel when defining the enemy is noteworthy as it sheds light on the nature and function of political enmity. Basing his observation on the master-slave dialectic, Schmitt, like Hegel, sees the enemy as a negated otherness (Schmitt 2007a: 63). Here, again, two consciousnesses engage in a life-and-death struggle, simultaneously owing their identities one to another. The enemy is essential for one's own self-definition. In essence, 'the enemy defines us' by calling one's very constitution into question and, therefore, 'is on the same level as am I' (Schmitt 2007b: 85). Schmittian identity is, therefore, essentially anti-fundamentalist: it is not known in advance and does not predetermine relationships but is the product of them. And yet, the Hegelian formula is slightly reworked: while

the original dichotomy was simultaneously abstract and personalised, for Schmitt the 'I' is more correctly understood as the 'we' or a collective 'I' of a (political) community (see Balakrishnan 2000: 112-113). However, rather than being a weakness and showing 'the author's own political disorientation' as Balakrishnan (2000: 112) suggests, such reworking is a completely logical extension of the Schmittian politics of identity, necessarily based on collective identification. Indeed, individual identity is far from being a concern for Schmitt. In fact, it could be argued that Schmitt disproved any self-forming personal identity, including that stemming from enmity, because political enmity is not personal; furthermore, self-forming individual identities would only foster political discord within the political community (Slomp 2009: 53-54). Whatever individual identity exists, is derived from the group to which the individual belongs. As Kelly (2003: 222) concludes, the very existence of enemies presupposes the existence of political entities. These entities then appear inimical, though they are not necessarily bad or unjust ones (Sneller 2007: 293). This relationship constitutes group identities which then transcend to individuals. In the end, these identities are entrenched through the structure of the state. These are, ultimately, also the relationships that define to whom the process of ordering applies.

Friendship and Enmity: Two Sides of the Same Coin

Slomp (2009: 113-114) raises a crucial point by stressing that, contrary to mainstream interpretations, not only the enemy but also the friend, the member of one's own group, should be seen as a constitutive and affirmative part of one's identity. The enemy defines the borders of identity, whereas the friend affirms the content of identity. Such is, for example, the nature of Schmitt's partisan who not only has the enemy in sight but – crucially – is also wholly immersed in the local population and amongst comrades (Schmitt 2007b: 15). A self-identity in the process of becoming has to be acknowledged and affirmed by an already existing self-identity in order to obtain content instead of remaining a monstrosity without content, only determined by and from outside (Schmitt 2007b: 75). This implies, then, that Strauss (1995: 99, 115) is fundamentally mistaken in equating the political with the state of nature, first and foremost because in the state of nature there is only enmity. But there is, nevertheless, a crucial distinction between the substance of friendship and that of enmity: the enemy

is usually concrete – an outside group that questions the self, albeit the *content* of questioning changes depending upon situation – while friendship is, in essence, empty (see e.g. Smith 2011: 193) and can refer to any content and any group. Böckenförde (1998: 39) correctly argues that the function of the state, therefore, is to integrate the many tensions within a common identity – i.e. in friendship – and thus ensure peaceful coexistence. And yet, due to the Protean nature of the political community, friendship, and the institutional power structure that expresses and maintains it, cannot remain fixed and rigid. The state could certainly be correctly defined as ‘a unity of power and peace’ (Böckenförde 1998: 39) but it is erroneous to see it as a given, purely because the substance that underlies it – the constitutive power of the political community – is never a given but is something that must be constantly transcended into being.

Although the enemy is absolute otherness that one has to engage in a life-and-death struggle, this struggle is not to annihilate the enemy but to assert one’s own self. Also, it is only in enmity, and not in the world of friends, that otherness can really find its place. In a world of all friends, otherness is excluded. An enemy, meanwhile, has a consciousness, and this consciousness, even if fought against, cannot be completely negated because it is a constitutive part of one’s self. In contrast, where there is only friendship, otherness is merely false consciousness. On the other hand, pure enmity without friendship and without the ability to partake in a unity is not far from the struggle of all against all. Therefore, only the political, with its tension between friendship and enmity, can account for the multiplicity of life and contribute to the perpetuity of the process of ordering.

The Independence and Public Nature of the Political

Schmitt insists that politics and the political, with its central distinction between friends and enemies, are to be treated seriously. The political is to be seen as based on embedded identities and existential struggle and not as merely a game ruled by chance. This is one of the several open conflicts that Schmitt has with Spinoza, who, in Schmitt’s opinion, had inspired ‘a philosophy of intuition and pantheistic rationalism’ (Schmitt 1986: 54). Although it will be argued later that the intuitive and

the occasional-qua-contingent can be redeemed even within a politico-theological framework, this would still be something objectionable for Schmitt, even if not logically incompatible with his thought.

The political is independent of other domains in the sense that its core distinction, just like those of other domains, cannot be derived from distinctions belonging to another sphere, e.g. good cannot be derived from beautiful or ugly cannot be derived from enemy. However, the various domains are often strategically associated with one another, thus producing a stronger emotional affect (Schmitt 2007a: 26-27); also, every distinction often leans on others for support, and even more so the political distinction between friend and enemy, because it is the most intense distinction. At the same time, moral, economic, religious, and other domains can acquire existential intensity but by so doing they cease being moral, economic, religious etc. and become political (Schmitt 2007a: 38). As Schmitt himself powerfully states, ‘political enemy need not be morally evil or aesthetically ugly; he need not appear as an economic competitor, and it may even be advantageous to engage with him in business transactions. But [...] it is sufficient for his nature that he is, in a specially intense way, existentially something different and alien, so that in the extreme case conflicts with him are possible’ (Schmitt 2007a: 27). The above quote clearly illustrates the nature of political enmity: a political enemy is a public one and its existence involves the possibility of one political unity confronting another.

The public nature of the enemy means that even the commandment ‘Love your enemies’ does not apply as it deals with private enemies only (Schmitt 2007a: 28). Because the enemy is public, an intervention by the state is necessary: only unified authority could preclude individualised understandings of the political. It is perfectly possible that the development of political identities had involved non-essential and contingent events, but as Hirst (1999: 9) notes, once the existential logic of the political is strong enough to bring a group to the sense of identity, the motives that had brought to this point would have already sunk into oblivion. Once an antagonism reaches political intensity, it sheds all the particularity previously possessed – ‘the enemy becomes a palimpsest and finally blurs, ultimately losing any recognisable form’ (Shapiro 2008: 42). This is essentially the meaning of (political) stranger: a palimpsest of traits that are ‘not I’, thus delimiting the boundaries of the ‘I’ and

opening up potential for enmity. It is a palimpsest not only because multiple meanings and textures are fused into one. It is a palimpsest also in the sense that whenever a particular trait of the 'I' (or the 'us') is in question, a necessary layer of the 'not I' (or the 'not us') is always already present to both threaten and establish the troubled identity (see e.g. Kalpokas 2012).

Next, the political, as the core of communal existence, implies not only knowledge of one's self but also a necessary limitation as to the objectivity of this knowledge in the form of the ideological apparatus. There is a necessary element of force in communal existence: even when a free consensus is presupposed, one still needs to raise the question of who has the power to produce the consensus (Schmitt 1999a: 202). As Schmitt states, '[n]o political system can survive even a generation with only naked techniques of holding power. To the political belongs the idea, because there is no politics without authority and no authority without an ethos of belief' (Schmitt 1996: 17). In essence, even though (political) existence is groundless, ideas are still crucial as both rallying cries and means to cover the groundlessness of subjectivity. Emphasis on ideas, therefore, becomes for Schmitt a tool for critiquing the mechanised and depoliticised modern governance (see, generally, Braun 2012). Evidently, there are two aspects of idea in Schmitt: the dominant structure of belief and the metaphysics of institutions, in which they are invested with special dignity. And yet, both of them not only are mutually compatible but even serve to reinforce one another to create a higher ethos of politics. However, such ethos is hardly possible once the mythical politico-theological element has been removed and the state is transformed into machine. As Mehring (1998: 145-146) insightfully notes, epochal metaphysics, the higher ethos of belief is what holds political communities together and legitimises them; once the metaphysics is lost, disintegration ensues. But if such an ethos exists and the politico-theological belief in a higher grounding order is in place, then people obey not the ruler as a person but the higher force (Schmitt 1996: 50-51), be it God or any other higher third element. It is clear that for Schmitt, the source of political authority is an Idea, which sustains political form in a temporal unfolding of events (see Shapiro 2008: 31). Political theology arises from Schmitt's decentred subject and places faith at the core of common existence and common action. As pointed out by Meier (1998: 43), not only is political theology aware that it is based on faith but it even wishes to be because from this perspective every interpretive scheme is based on

faith. If Schmitt's entire theory of politics and the state is a quest against the subject who is always occupied with him/herself, then political theology is the antidote that he offers to the depoliticised modern age. And such theological structure is embodied by the state as the locus of the central Idea. Hence, the political world becomes groundless and quasi-objective simultaneously.

By stressing the existential intensity and the public nature of political enmity, Schmitt seemingly relegates the real political distinction to inter-state relations, noting grimly that should one assert the primacy of internal politics, this would mean affirmation of civil war (Schmitt 2007a: 32). However, while it is true that inside a homogeneous political entity of friends significant conflicts are impossible, differences and minor conflicts are not necessarily precluded entirely; it is the function of the state (and the sovereign) to preclude these conflicts from achieving existential intensity, i.e. from becoming friend-enemy relations. If necessary, the state thus can decide on the domestic enemy and ostracise or destroy him/her in order to prevent internal conflict and to preserve the homogeneity of the political community (Schmitt 2007a: 46). And even in the international sphere, war is important as a possibility and not as an actual state of affairs. The ever-present possibility of war is necessary in order to define the nation and its boundaries but is not the aim or content of politics (Schmitt 2007a: 34), since only a grouping that can orient itself towards the ultimate existential conflict can be called sovereign in that the decision on the exception (and on the friend-enemy relation) necessarily arises from inside this entity (Schmitt 2007a: 38). One might reasonably suspect that what actually matters is the political community's ability to distinguish between the inside and the outside, both physically, in terms of its borders, and symbolically, in terms of what modes of communal life it deems acceptable. In terms of the overall argument of this thesis, that refers to the community's ability to carry out its own ordering.

The Borderline Concept of Sovereignty

If the state requires the political and the political is based on conflict between friends and enemies, there is a need to both decide on where this distinction lies and preclude internal conflict inside the political community. This is the essence of sovereignty.

Sovereignty, for Schmitt, has had a crucial function in the formation of modern states by absorbing all other status relationships (Schmitt 2008a: 100-101). However, sovereignty, despite being a historical phenomenon, for Schmitt, is something more than just a passing temporary issue: it is an existential concept, the fundamental attribute of which is a decision on the status of the political unity, which is the highest unity, subsuming all other groupings (Schmitt 1999a: 203).

It is well known that, for Schmitt, '[s]overeign is he who decides on the exception' (Schmitt 1985: 5). Only the sovereign can defy existing laws by suspending or replacing them, just as in Hobbes (*Leviathan*, 313, 346, 367; *De Cive*, 129) and Bodin (*On Sovereignty*, 8, 11-12, 55), although Schmitt, arguably, goes further, disregarding natural law as a noteworthy limitation (in contrast to e.g. *On Sovereignty*, 8, 12). Schmittian sovereignty is a borderline concept that defies any routine and, indeed, a core concept to understanding his entire thinking. Several important attributes of the borderline nature of sovereignty are already clear from the above. First, sovereignty as a borderline concept pertains to a limit, a dividing line between the inside and the outside, 'us' and 'them', but also between order and disorder, the normal situation and the exception. The need to decide on the border arises from the logic of the political: once the existential intensity of the political is reached, no discussion and critical reflection is able offer a solution; rather, the Gordian knot has to be cut by a sovereign decision. Constant renegotiation of borders also precludes the political from being completely relegated to purely external affairs, even in a Schmittian homogeneous political community, because homogeneity is constantly brought into question. Gross (2007: 149) emphasises a crucial point in noting that a decision creates not only the content of the law but also 'the nature of the legal person the decision applies to': by creating the law it also moulds (or even establishes) the political community. Moreover, whatever is decided, necessarily reflects the always already existing (old or new) form of the political community. To an extent, then, sovereignty and law both have an immanent nature in Schmitt, just as in Spinoza.

The second attribute of sovereignty as a borderline concept is that it defies routine and is concerned only with existential issues: in routine situations, sovereignty remains a potentiality, while in situations concerning a state's existence it becomes an actuality. There is also a third aspect of sovereignty as a borderline concept: the one who is

sovereign decides in a situation where conflict arises (Schmitt 1985: 6), i.e. sovereignty is the frontline on which conflicting interests clash. Instances of sovereign power exist because there remains the possibility of *bellum omnium contra omnes* – the possibility of (civil) war should differences within a state be left unchecked. To the nature of the sovereign belongs the responsibility to determine the condition, form, and interests of the state, i.e. of the people (Schmitt 1985: 9). Such task, as Schmitt sees it, would be impossible should different groups be left to quarrel among themselves without a higher authoritative force. As such, the sovereign power is included through exclusion: it is outside the law but at the same time belongs to the legal system. Consequently, the sovereign power belongs to law and to non-law simultaneously. By making a decision on the state of exception, the sovereign not only establishes the law but also declares the absence of anything outside the law, thus imputing the law with its absent fullness (see Agamben 1998: 15). Sovereignty is itself the threshold between ‘us’ and ‘them’, *nomos* and *anomie*. Albeit arbitrary and unable to exhaust all available possibilities, the decision still establishes a chain of signification that seemingly holds the constantly shifting world in place. The state of exception allows the creation of political totality: in addition to the taking of land (*Landesnahme*) that, for Schmitt (2003), characterises a political entity, exception (*Ausnahme*) is the taking of the outside (see Agamben 1998: 19). The exception captures the outside of law – the world of things not yet ordered by the chain of signification – and paradoxically includes it into law, albeit through exclusion. Exception is the law’s response to the unknown, the unrepresentable, and the unpredictable.

Finally, one more paradoxical quality of sovereignty has to be stressed: it can be both norm-preserving and norm-creating or, more precisely, *either* one or the other at any given time. This two-sidedness is already found in one of Schmitt’s earliest works – his analysis of dictatorship – in the distinction between commissary dictatorship and sovereign dictatorship. While ‘the commissary dictatorship suspends the constitution in order to protect it’, the sovereign one ‘does not *suspend* an existing constitution [...]; rather, it seeks to create conditions in which constitution – a constitution that it regards as a true one – is made possible’: the former grounds itself in the already existing constitution, the latter – in a constitution ‘that is still to come’ (Schmitt 2014: 118-119). It is not unimaginable for these two aspects to clash – and yet, only one of

them can be truly sovereign at a time. Here, Schmitt could be interpreted as an anti-essentialist because the only relevant question is whose decision has effectively determined the state of exception in a particular case: the constituted (upholding decision) or the constitutive (creative decision). That, which is against the pre-existing order, can become the basis of a new order but, in case of failure to establish itself, it only remains outside of the law. In either case, there is a decision at the end – a ‘last say’ which ‘normalises’ the situation, making it part of the legal and symbolic order, either an old or a new one. It, therefore, follows that sovereign power, instead of being an objective given, can only be attributed retrospectively: whoever succeeds in making an effective decision, is sovereign. In fact, the successful person or body, at least as a matter of representation, has always already been sovereign. After all, the clash takes place on a groundless terrain and, therefore, the ability to decide effectively only proves a pre-existing quality, even though that proof is only created by and applicable to the new situation that has been created by either a conservative or a revolutionary decision and not in relation to some universal essence (Kalpokas, Mininger and Rusinaitė 2013: 132). Hence, possession of the attribute of sovereignty can easily be subsequently disproved by a new situation, whereby the new sovereign loses to an even newer one. This, nevertheless, is the strongest grounding one can expect – one that is constantly within the process of ordering.

Sovereignty: Dynamic but Absolute

Of course, the ultimate aim of sovereignty is to establish order. However, order, as it relates to sovereignty, is an empty concept: *any* order must exist and not a particular one. As a result, sovereignty is not only about preservation but also about contestation and indistinction between the contending forces, those preserving the status quo on the one side and those challenging it on the other. As the political is based on an ever-present possibility of conflict, it comes as no surprise that ‘all political concepts, images, and terms have a polemical meaning’ (Schmitt 2007a: 30). Their content derives from a concrete situation, a concrete friend-enemy grouping, and without this particular situation, any political concept becomes a mere abstraction, devoid of any meaning. Such concepts cannot be comprehended ‘if one does not know exactly who is to be affected, combated, refuted, or negated by such a term’ (Schmitt 2007a: 31).

The precise content of the decision is secondary; of prime importance is the transformation from chaos to norm. The sovereign intervenes in an undecidable situation and fills the empty idea of order with a particular meaning. Sovereign decision, therefore, must not be seen as trailblazing a path to a predestined bright future, i.e. as a teleological process, but as a constant steering process, the outcome and final end of which are unknown. And, since there is no ultimate telos, sovereignty cannot, at least from a political point of view, be rigid and incontestable.

Sovereignty necessarily implies the ability to decide, and decision is impossible without sovereignty. In a critique of Walter Benjamin's sovereign that is ultimately unable to decide, described in the book on *Trauerspiel* (Benjamin 1998 [1925]), which, in turn, was at least partly a critique of the sovereign of *Political Theology*, Schmitt embarks on his own literary analysis by espousing the figure of Hamlet. Here, as in Benjamin's account of Baroque sovereignty, the hero is unable to decide. However, this is so for a reason. In one of the central passages of his *Hamlet or Hecuba*, Schmitt explicitly places Hamlet on the dividing line, portraying him as a borderline figure and placing him among what he considers as the great symbolic figures of European literature, the Spanish Catholic Don Quixote and the German Protestant Faustus (although one could disagree with Schmitt by referring to the pre-Protestant origin of the Faustian legend). Hamlet, in turn, is in-between, constantly torn between Rome and Wittenberg and their conflicting doctrinal worlds (Schmitt 2006: 44-45). This allegory is at the same time very particular (for Schmitt, Germany is Hamlet) and abstract, referring to a situation where a decision needs to be made in the grey zone between two equally strong imperatives. Hamlet's madness, real or simulated, is, in essence, an exception without a decision. And yet, Hamlet's indecision is not a sign of a deficiency in the theory of sovereignty. On the contrary, Schmitt's explanation is almost straightforward: Hamlet is not yet a sovereign figure. It is only with Corneille and Racine and their overarching unity of place, time, and action that the new sovereign state penetrates the stage, making the earlier form of never-ending possibility look savage (Schmitt 2006: 53-55). But, as Salter (2012: 190-191) shows, Hamlet also marks a transition: after a long and agonising period of indecision, Hamlet finally acts, claiming sovereignty that rightfully belongs to him, even though it only brings death and doom. This excursus to literature illustrates the tectonic shift not only in government but also in popular imagination that the

inception of sovereignty had brought. If previously indecision and multiplicity were commonplace, after this shift decision and unity became central. In a world that has passed the epoch of Schmitt's revered *societas Christiana*, a conflict between equally strong imperatives is commonplace, and indecision is madness, a struggle of the (political) subject against itself. Transferred to the political realm, this means civil war (political madness), and it is the task of the sovereign to prevent it.

Notably, exception is about choice on the part of both the sovereign and the potential sovereign-to-be. It is also about a choice on the part of the people and of every individual – a need to take sides. This comes at a price, and the tragic once again comes into play. The choice in the exception is between the order of the state and something that challenges it. That is the tragic choice of the political, impossible to either feign or avoid, in other words, the moment of absolute responsibility and authenticity. As in Kahn's (2011: 155) reappropriation of Schmitt, no revolution is possible until there is the willingness of sacrifice, the pledging of life. The stakes cannot be higher: as sovereign power is not an atemporal essence but an attribute to be obtained, a successful challenger is able to *ex post facto* establish one's own decision as a sovereign one, that is, this decision is subsequently seen as always already reflecting the state and the homogeneous people that it embodies. Authority becomes a corollary to success (Schmitt 1998: 231). This could be the answer to what Dyzenhaus (1999a: 43) sees as a fundamental ambiguity in the Schmittian concept of sovereignty, whence the sovereign decision is simultaneously grounded on de facto power and on holding the formal attribute of sovereignty: both are interwoven inextricably and are retrospectively seen as having always already been present and simultaneous. Returning to Kahn's (2011: 155-156) interpretation, the basic formula, then, becomes a movement from slavery, which through a sacrificial act, has been transformed into emancipation, culminating with a sovereign decision to establish an order of reason and freedom. But whoever loses, becomes the object of the sovereign's right to decide on the internal enemy and has always already misconceived the true essence of the homogeneous people. Meanwhile, the winner in this tragic drama is able to produce a political pact that has the strength of divine covenant for those who remain (Kahn 2011: 155).

There is a further limit to sovereign decisionism. Any sovereign establishment of order cannot be disconnected from metaphysical ideals. Pan (2009: 53-54) has an important insight here: the very *conditio sine qua non* of sovereignty is the existence of a plurality of such ideas and conceptions of the good that cannot be grounded and prioritised by any other means than an external decision. No normative order can pass from potentiality into actuality, i.e. into concrete political existence, without being imposed by a sovereign decision, which bridges the gap between the world of words and the world of things in a groundless, foundationless *fiat* (see Žižek 1999: 18-19). This is where Schmitt's parallel between miracle and exception is especially pertinent. And yet, just as the miracle needs the religious context to be at least partly explicated, i.e. included into the symbolic structure of representation, the sovereign decision must be understood in the context of both what it establishes and also of what it rejects, that is, in the context of available options. In both cases – the religious and the political – an extremely strong element of belief is necessary because only belief can bring about the tragic decision and the willingness to sacrifice oneself. In this sense, political martyrdom parallels religious martyrdom. An extra element of the tragic is introduced, however: for Schmitt, one of the core prescriptions for political action is doing what is commanded rather than what is good (see Versluis 2006: 52-53) but, at the same time, when a real existential struggle between two authoritative commandments takes place, it is impossible to know which commandment is real until after the struggle has taken place and the ultimate decision has been made. Furthermore, given that a decision is always made on a groundless terrain, whatever one chooses to stick with and sacrifice oneself for, the sacrifice is always in vain since no choice is inherently better than the other. And yet, one has to choose anyway. This is the ultimate tragic of Schmitt's politics – perhaps, the tragic taken to its extreme: no security of the universal and simultaneous unavoidability of constantly being tried and tested in a never-ending struggle to establish a universal which does not even exist. But also there cannot be a clearer opening for ordering to be conceived as process.

3.3. The Theology: Law and Politics

Having already established the basic framework of ordering in Schmitt's thought – his ideas about the state and sovereignty as well as the bridging concept of the political –

it is the purpose of this subchapter to delve into the content of Schmittian ordering: law and politics. This content, it transpires, is to a significant extent, about establishing a system of belief – in essence, a theology of ordering.

Schmitt (2014: 16-17) openly declares his Hobbesian roots with regards to legal thinking, claiming that there can be no law before or outside the state. Although Spinoza, as seen in the previous chapter, does the same, Schmitt is more radical: while Spinoza, although refuting natural law as such, still introduces parts of it as universal norms of reason, for Schmitt, no ideal model or even guideline can be presupposed. Law is, in essence, situational and any content there is depends on the political community's mode of existence as expressed through a sovereign decision. The law, old or new, is always already willed by the community and imposed onto itself to provide Being with embodiment and structure. And yet, despite that groundlessness (or, probably, because of it), the law has to be believed in and observed in a quasi-religious way. The will of the sovereign becomes analogous to the will of God – that is one of the core pillars of Schmitt's political theology. If law does become the core of a political theology of a state, it becomes a tool to uphold the shape and form of a political community and precludes chaos – and that was Schmitt's ultimate concern. In effect, Schmitt's understanding of law will inform the constitutive element of legal thinking promoted in the final chapter.

For Schmitt, law is necessarily political. It is the result of political processes within the community and not based on a self-referential system of legalistic norms and procedures. Since it refers to existence, it can never be detached from that existence – that is the core of Schmitt's quest against legality and for legitimacy and for politics as opposed to managerial adjudication of interests. The political community always retains its potential to change the mode of its existence, even if in normal circumstances the actual power to do so might not be visible. In fact, in everyday situations that temporality of ordering has to be forgotten because only in this way political theology is possible. But even under this collective amnesia, political life never stops and potential changes to law are constantly brewing. Once again, the relentless permanence of politics is to prove crucial in formulating a model of ordering in the final chapter.

Constitution as Partial Suturing

Constitution, as far as it is of interest to Schmitt, is ‘the constitution of the *state*, that is to say, the political unity of the people’ (Schmitt 2008a: 59) and, therefore, must arise from the people. The people is where all the meanings of the constitution converge: the constitution is the way of a political community’s organisation and its condition of being, a particular form the political community assumes, and a continuous act of the people’s self-determination. Schmitt (2008a) sees the constitution as a mediator between the people and the state: it simultaneously provides the state with its normative framework, i.e. with its form, and is moulded by the self-conscious political community. Also, in normal circumstances, constitution is the pinnacle of law which governs the community which has provided itself with that constitution. It is, therefore, a paradoxical instrument that occupies a borderline position between the creator and the created, *potestas* and *auctoritas*.

Only a self-conscious unity can provide itself with norms and only those norms that a community has provided itself with are legitimate. Central is the will external to norms, the will that transforms the existence of the people, its political way of being, into norms, thus establishing the integrity of a legal system (Schmitt 2008a: 70, 125). In this case, it is the will to political existence, direct and unmediated (Schmitt 2008a: 131-132). The quasi-metaphysical will is thus seen by Schmitt as the prime mover of law and politics. As a result, he has no doubt which of the two is first: political unity or the order governing it. The constitution cannot establish itself; it cannot originate from absolute nothingness. The primordial act is the decision of a constitution-making power – the legal order ‘does not give itself’ (Kennedy 2004: 126). The core actor is the people which immanently *defines itself* through the constitution. A constitution is a boundary, a borderline, a site of inclusion and exclusion: any act of self-definition and self-determination necessarily includes and excludes by embracing some alternatives and discarding others. And a constitution is, essentially, such an act. A constitution, then, is ‘a conscious decision, which the political unity reaches *for itself* and provides *itself* through the constitution-making power’ (Schmitt 2008a: 75-76). This power can be a monarch, an aristocratic council, or the whole of the people – such considerations are secondary for Schmitt. What matters for him, in the entire corpus of his work, is the decision that defines the political unity and its way of being;

due to such existential quality, this decision does not require any ethical or juridical justification (Schmitt 2008a: 136) although, as already stressed, it is premised on a quasi-theological framework. This decision stems from the political *being* of the people as such and has an essentially existential quality (Schmitt 2008a: 125). As a result, Schmitt's focus is not on legality but on legitimacy.

In a sense, one can speak about an immanent nature of law in Schmitt. There is no order that could arise without a pre-existing unity of will, that is, without a political foundation, as opposed to mere integrity and coherence of bare norms (Schmitt 2008a: 65). Indeed, for him, all legal norms, constitutional ones included, presuppose 'a *will* that already exists' (Schmitt 2008a: 76). Whatever the law, it is always already willed by the political unity of the people, and this unity takes shape only through its own effects, i.e. through the norms produced. What is even more, everything the people intends is law: law 'stems from the *potestas* of the people' and has no limitation (Schmitt 2008a: 286). The state as such produces law in the positivist sense but not its content – it only codifies the will of the people and the people's sense of right (Schmitt 1985: 23). Therefore, proper meaning arises from a concrete source, not from an empty transcendental ideal or an abstract concept of right (Schmitt 1985: 35). Schmitt is radical on this point: whatever the political community decides is just and right, and any real democracy has to take the risk of accepting that indeterminacy.

What has already been said applies at least as far as the potentially unchangeable core of the constitution – its fundamental essence – is concerned, although perhaps less so to the adjustable secondary provisions. This is Schmitt's distinction between constitution in the fundamental sense and constitutional laws (Schmitt 2008a: 75). The former stems from the very *being* of the people, embodying the fundamental decisions on the form of a particular people's existence and on the basic principles of a political unity's organisation in a state form, thus providing validity and legitimacy to all other regulations (Schmitt 2008a: 78, 125). Constitution, in essence, is also a borderline concept: 'not an actual existing condition, also not a dynamic becoming' (Schmitt 2008a: 62). It is the 'law of laws' to which all other norms can be traced, quasi-sovereign in a sense that it implements 'a closed, systematic unity of norms', which becomes equivalent to the state; in this way 'constitution is the state' (Schmitt 2008a: 63). However, the sovereign must first of all be concrete, and constitution, in the sense

of a mere valid norm, is not concrete enough to be considered sovereign. This comes as no surprise when one considers the existential quality of political unity and the constitution that embodies it: as long as the constitution *is* the unity of the people and establishes their particular will, it is quasi-sovereign; conversely, when the constitution exists as a mere legal form and no longer has an existential foundation, the political community has to decide on its own mode of political existence once again, thus reappropriating its sovereign power.

Law, Norm, and the Decision

The centrality of exception in the foundation of any order indicates that, for Schmitt, all law is ‘situational law’ (Schmitt 1985: 13). It is in this character of law that sovereignty resides. If law was simply somewhere ‘out there’, if it existed universally and independently, there would be no sovereignty in its popular or any other form, because there would be no place for will and decision. It is decision and not a norm that grounds a legal order (Schmitt 1985: 10). Such statement is less controversial than it might appear: indeed, order, even for Schmitt, is about norms. What is important, however, is that norms cannot establish themselves. They require an act of will – a decision – in order to come into being. Such decision has the power of law without being law as yet and serves as a foundation of law, the force of which it already carries within itself: the will that establishes the norm is always already present – immanent – and transforms chaos into law (Schmitt 2004b: 59-60). It is up to the sovereign to decide whether the normal situation, to which legal order is applicable, exists at any given moment (Schmitt 1985: 13). Such decision cannot be explained from a normative perspective and incorporated into any order because it grounds and establishes what only subsequently becomes order (Schmitt 2004b: 62). At first glance, it seems that the sovereign also decides on the conditions of his own appearance and is an independent variable on its own. Although to a certain extent this is correct, Kennedy (2004: 101) correctly notes that sovereignty, being transformed by Schmitt from a personal institution (Bodin, Hobbes) to an existential intervention into the normal order of things, simultaneously loses a certain degree of autonomy: the sovereign decides but only when the conditions are ripe, when antagonisms within the political community reach a dangerous intensity.

In a famous politico-theological twist, Schmitt equates exception in jurisprudence with the miracle in theology (Schmitt 1985: 36). The allusion to the miracle is twofold. First, the miracle is something that defies the normal order of things by the sheer will of the supreme power. Second, the miracle also serves as a proof of election and divine mission. In the same manner, the exception, as a rupture in the fabric of the everyday, serves as a moment of unconcealment in which the very essence of political Being appears in its pure form. Consequently, the very essence of law is revealed in non-law and the very essence of a political community is revealed in a non-communal moment of sovereign decision – thus, again, on the boundary of exception. As it has already been seen, this is contrary to Spinoza who denied the existence of miracles and thus could not accept law as arising from exception either. Schmitt is here also in explicit opposition to the positivist interpretation of law, embodied in particular by another prominent legal scholar of the time, Hans Kelsen. If, for Schmitt, law is a normative consequence of a fact-description, imposed by a sovereign decision, and sovereignty is the ability to impose law from outside the law, for Kelsen, as seen in the first chapter, the picture is absolutely the opposite: what ought to be cannot be arbitrarily decided and established and can only be derived from a hypothetical *Grundnorm*, or basic norm (Kelsen 1989: 8-9, 198-199; Kelsen 1999: 111). Sovereignty is, then, an attribute of legal validity, existing within the legal order and not above it (Kelsen 1999: 189). Although the basic norm may not be graspable in concrete terms, its existence must be presupposed as an underived foundation, as a kind of prime mover (Kelsen 1989: 194-195); having this in mind, it is not surprising that Kelsen constantly refers to God's commandments as the archetypal *Grundnorm*. In this context, Schmitt's abovementioned claim that all political concepts are secularised religious ones obtains new currency.

Clearly, despite Schmitt's ever-recurring emphasis on the importance of order, not the law but the exception is paramount: 'the rule proves nothing; the exception proves everything' (Schmitt 1985: 15). Exception is that which defies codification and cannot be subsumed (Schmitt 1985: 13). The state of exception, as suspension of the existing order, entails an unlimited authority and an absolute decision unhindered by any normative ties; however, the exception is not completely anarchic or chaotic, because a certain kind of order still exists (Schmitt 1985: 12). More precisely, three kinds of order exist: the old order is still included as a spectre of itself that can be re-embodied

once again, a new order can be in the making, and between them is the will of the sovereign. In this respect, Kennedy (2004: 85) is incorrect to point out that Schmitt allows for unlimited indeterminacy and removes all law: although law in the formal sense might be abolished in the exception, it is still perfectly viable as a goal, an antithesis to be countered, or a potentiality to be transcended into being. In other words, although law is grounded in the exception and defined by and within an exception, this is not to say that exception is lawless or that law is discarded or even discardable. Law is, rather, an ever-recurring reality, only without any necessary content and even without any criteria to adjudicate between different normative orders or to compare them.

Since norm and any specific content of law rests on a decision, the very need for a founding *fiat* which would produce the norm *ex nihilo* becomes crucial. In fact, the law, once decided upon, becomes probably the most important weapon in the theologico-political struggle but not by its content (since there is no necessary content) but by its very presence. Clearly, the Schmittian decision that grounds legal order plays a special role in what Schmitt sees as a Christian idea of history, by which he means history that ends in a redemptive struggle. The state, insofar as it protects order, stands as the *Katechon* (a figure that Schmitt borrows from Paul's letter to Thessalonians) – the restrainer of the Antichrist. Although, as Hell (2009) stresses, this figure is only directly applicable to imperial political theology on a global scale (the upholder of world order), the basic logic of sovereign-qua-*Katechon* could be easily transposed to the national level. On the state level, *katechonic* logic would mean the upholding of order (which in itself always contains the potentiality of disorder and change) against the fall of any communal signification (and the ensuing loss of any distinctions and of the ability to stand up for anything). Sovereigns may change but the *katechonic* function and, therefore, the political community itself, remains. Balakrishnan (2000: 224-225) quite rightly suggests that the *Katechon* in its various guises (as a 'commissarial dictator', 'sovereign', 'Defender of the Constitution', 'Leviathan') persists in Schmitt's core writings as something which is beyond order with a view to establish it and banish lawlessness. As early as *Roman Catholicism and Political Form*, Schmitt related the Antichrist with the modern economic-technical thinking that pervades all domains of life, making subjects comfortably numb (Schmitt 1996: 15-16). Also present in Schmitt's entire oeuvre is

the positioning of Marxism as the arch-enemy, indeed, the new Antichrist (see Bolsinger 2001: 164). Here the source of Schmitt's antipathy to liberalism is also perfectly clear: while it is necessary to make a decision, to take sides, liberalism engages in a permanent discussion, unable to either affirm or negate anything, not even to choose between Christ and Barabbas (Schmitt 1985: 59). Those who oppose the high stakes of politics, then, necessarily take sides with the Antichrist, understood as lawlessness, demystification of politics, and negation of political conflict. Indeed, the importance placed on establishing and maintaining order cannot be higher.

Between Legality and Legitimacy

Despite the power of the state playing a stabilising role, Schmitt still assigns superiority to the constitutive power. He vehemently opposes the reduction of law to a decree issued by the right authority following a correct procedure. On his account, such an approach replaces concrete existing sovereignty with the 'sovereignty of law' – a set of fictions designated to conceal the real sovereignty. A rigid symbolic structure thus deprives the people of the existential will. In such a system, norms govern but do not rule. As a matter of fact, due to their impersonal nature, they eliminate rule, power, and obedience. What is left is a system of bare legality that even suspends the right to resistance because one can resist power but not legality (Schmitt 2004a: 4). Indeed, the only rudimentary traces of any authority are those derived from legality itself, discarding the claims even of powers that do not require an external foundation, including the power of the people (Schmitt 2004a: 9). Such state form is abstract in the sense that it loses any connection with 'the actual concrete situation' and is placed in its own sphere, distinct from the state of a political unity (Schmitt 2004a: 10), thereby violating the nature of the state as an entity of the people. The state is reduced to 'law in statutory form'; law, but not the people, becomes the essence of the state (Schmitt 2004a: 11). Schmitt sees the origin of this approach as coextensive with the deist turn in theology. Just as deism effectively banished God and miracles from the world by subjecting terrestrial processes to the rational laws of nature, the new quasi-deist approach to law removed the metaphysical-existential origin of every norm and left only rational legal process in its place (Schmitt 1985: 36-37). Although the deist turn happened at a time when one sole sovereign was

proclaimed – the time of absolute monarchy – the sovereign, simultaneously, was, in effect, pushed aside. The state-machine was imagined as running by itself according to universal laws of reason and nature that provided an external point of reference (Schmitt 1985: 47-48). Of course, Schmitt was not alone in expressing such concerns. On the contrary, as Shapiro (2008: 4) notes, he could lean upon a rich tradition that included not only the reactionary tradition but also his contemporaries from the entire political spectrum. However, Schmitt was able to achieve a broader synthesis of concerns than many of his contemporaries and add a new twist through his political-theological interpretation.

Schmitt offers a clear alternative to the dominance of legality: a ‘political’ concept of law. This understanding of law is, then, directly juxtaposed to the legalistic one by presuming a law that ‘is concrete *will* and *command* and an act of sovereignty’ (Schmitt 2008a: 187). Law, then, is not a norm but an order that arises directly from the political existence of the state and the people and directly reflects its present form. Law as command deals with the particular case, it is situational and adjustable, but is such at the expense of equality before the law. Only the *Rechtsstaat* law presupposes equality because it is meant to be general, but this recourse to pure law ‘destroys everything individual’ (Schmitt 1996: 50). Rather than removing any arbitrariness from law, as aimed by both positivist and normative theories, Schmitt opts for the ‘judicially concrete’, for law tailored separately for each situation (for an elaboration, see Kennedy 2004: 79). Political law treats each case separately and does not presuppose equality because the cases are not necessarily identical (Schmitt 2008a: 194). Such decision on a case-by-case basis, according to Schmitt, allows for reason and justice to manifest themselves unmediated by general norms without being exhausted ‘in the normativism of mere legality’ (Schmitt 2004a: 5). Contrary to bare legality, such approach is based on legitimacy: ‘an instance of will’ (Schmitt 2004a: 6). This instance can be twofold: on the one hand, it arises from the law-making power and orders the world; on the other, it is the will of the individual as a part of the political unity to act in conformity with law (the latter understood here as the will of the sovereign), as opposed to following the rule without reflection. Once again, the necessary primacy of existential will is evident.

The Immanent Will

Although it could be argued that many aspects of Schmitt's theory of state and politics are best understood through the prism of immanence, Schmitt himself was far from content with what he saw as an increased prevalence of immanence in the modern world. Therefore, it is necessary to discuss the ways in which he fused immanence and transcendence in his work or, more precisely, how, despite laying down a theory of immanence, he still left a back door open for transcendence, creating, in essence, 'transcendence *within* immanence' (Ojakangas, 2006: 33). This flash of transcendence – which Schmitt calls the concrete – suddenly breaks the chain of immanence and discloses the void at the heart of subjectivity and politics: this is how theorising a border (or, better, the borderline) becomes possible. As Ojakangas (2006: 34-35) shows, this void or openness is a crucial attribute of some of Schmitt's core ideas: the sovereign decision of *Political Theology*, a people's self-determination in *Constitutional Theory*, or the figure of the enemy in *The Concept of the Political*. This openness not only interrupts the order of things: it provides for a creative force which renews and recreates (political) order. The borderline not only is a primeval aspect of order but also provides for the indeterminacy and non-finality of any existing order by resisting a synthesis. After all, Schmitt was no Hegelian: although, for him, thesis and antithesis are very real, they never form a new, more perfect, sum of previous parts. Change is, therefore, not a challenge to a synthesis but a constant movement of tectonic plates that are themselves constantly changing. And yet, even these flashes are no longer pure transcendence: even a seemingly foundationless *fiat* has become a manifestation of something pre-existing, either an always already existing form and will of a political community or the existential identity of friendship, coming into being only through its own effects. Therefore, a void simultaneously is created between what already is *and* creates a new reality which purports a radical break with the past and, seemingly, has no roots in the past. To be more precise, Schmitt politicises immanence, fusing it with transcendence to an extent that they become indistinguishable.

Again following the immanence-transcendence amalgamation, it is only when substantial homogeneity is presupposed that a vote is not about quarrel and disunity but a means of bringing forth an already latently existing agreement because a

homogeneous people presupposes a homogeneous will and not a struggle between majorities and minorities (Schmitt 2004a: 27-28). If democracy is based on homogeneity, there is no necessary difference between the wills of the majority and of the minority. In effect, if a people is homogeneous, it can have one will only, and those who had remained in minority have no other option than to admit that they were wrong and that what they considered to be the general will in reality was not (Schmitt 2000a: 26-27). The content of the popular will can only be understood through its effects. Therefore, the function of the government in a democracy is to transubstantiate the otherwise latent will into order. This is because the nature of democracy is 'the identity of the ruler and the ruled, governing and governed, commander and follower' (Schmitt 2008a: 264) – in short, democracy is characterised by immediacy and its absolute character. This is not 'psychological identification' (Holmes 1993: 49) but a much deeper – existential – identity. Although such identity is never absolute – as long as there is government, there is also representation – one rules not because of some trivial qualities (e.g. class, nobility etc.) but because one has the confidence of the people. This, however, should not be confused with mere election of a representative. For Schmitt, 'nothing could be further from the idea of representation' than technical procedures (Schmitt 1996: 20). Instead, what matters for Schmitt is the underlying will that is carried from potentiality to actuality in the process of representation while the very technique of representation could take any form (hence it is not too difficult to understand why Schmitt did not have a problem with authoritarianism). However, due to the underlying will of the people, a democratic government's rule can be stricter, more intense, and more decisive (Schmitt 2008a: 265-266). Hence, the one who rules, rules by the will of the people and through him/her the people rules itself (Schmitt 2008a: 264). A democratic government becomes, in essence, a medium through which the people speaks and acts. No mediation or external criteria are required: 'homogeneity elevated to an identity understands itself completely from itself' (Schmitt 2000a: 14). Therefore, in Schmitt's own words, 'all democratic thinking centers on ideas of *immanence*' (Schmitt 2008a: 266). In democracy, the will of the people and the will of God cannot contradict, and if they do, the will of the people must take precedence, because the God that appears in the political realm can only be a god of a particular people. This is how Schmitt interprets the principle 'the people's voice is the voice of God' (Schmitt 2008a: 267). Consequently, any political theology can only be of a particular political community.

And yet, as noted earlier, it must still be perceived as an absolute and quasi-transcendent universal, just like any theology. Immanence is, thereby, again politicised by an infusion of transcendence. What Schmitt implies here is that democracy has inverted the traditional trajectory: when the people qua God is the omnipotent lawgiver, God is no longer transcendent but immanent, even if not without certain losses involved: the loss of transcendence has limited the decisionist character and independence of sovereignty (Schmitt 1985: 49).

Immanence is the logic of both the decision that establishes a norm and of the decision to follow that norm. One could probably object that Schmitt consciously rejects the applicability of the logic of immanence, especially to the theologico-political, by expressly dissociating power and prophecy (Schmitt 1996: 14). However, this applies to the normal situation only. In such situation, the will of the homogeneous people is already expressed and has become a reality. Therefore, there is no need to prophesise in the sense of seeing through the signs of what passes as reality in order to tell the 'real' order and direction of things. However, as any present constitution of the state is fundamentally dependent on the people, once the people's way of existence moves away from what had been established and a tension between being and norm becomes acute, a need for prophecy arises in order to bring the otherwise latent popular will into actuality. The question that remains is how to know whether an attempt at political prophecy is a genuine effort to express the new will or an effort to undermine the very existence of the political unity and to possibly incite civil war. The only plausible answer is that, again, one can know only *ex post facto*: should a prophecy prevail, it becomes evident that this had been the true and authentic will of the people. Otherwise it had been a seditious idea only. Here, again, the Being of the people becomes true only through its own effects. In this sense, the process of ordering manifests its autonomy: whatever is established through such process is legitimate internally to the process.

There is, however, one more quasi-prophetic moment implicit in the Schmittian account of politics. As already discussed, Schmitt suggests equating the power of God and the democratic power of the people in that they must act under the logic of immanence, being always already present and caused by their own effects. As Shapiro (2008: 7) suggests, this means that the will not only cannot be reduced to positive

statutes but also cannot manifest itself directly and must be transcended into reality, literally, spoken into being. However, this needs some unpacking. Clearly, there is a need for a figure, a locus of concentrated power, in order to establish meaning and the content of the will, thus constraining the omnipresent and inexhaustible creative power of heresy (or ‘dissent’ in the discourse of secularised political theology). And yet, this incarnation of order is necessarily empty or otherwise it, and not the will of God or of the people-qua-God, would be the real constitutive power. The mystery of this embodiment of order lies in its *dignitas*, a sort of *Corpus Mysticum* assumed by the actual person or institution. Here one must distinguish clearly between embodiment and representation: while in representation someone steps in for the people, in embodiment the political community is in the *Corpus Mysticum*, suggesting – what is crucial for Schmitt – identity of the ruler(s) and the ruled. Similarly, the political community cannot stand for itself and must be embodied. Both the constitutive and the constituted constantly need something more than themselves in order to become themselves. This is clearly reflected in Schmitt’s discussion of the pope in *Roman Catholicism*: he is the Vicar of Christ and not a prophet, therefore, he is infallible and has authority by the merit of his office and not through personal charisma (Schmitt 1996: 10). However, the distinction between the person and the office, the divine/popular will and the will of the medium is often blurred. There still remains, it appears, an unavoidable tension and standoff between the constitutive and the constituted, which, in turn, upholds the process of ordering as a process.

The Constitutive Power and Its Law

Even after it has been established that any order rests upon a decision, a fundamental question still remains: who decides? The answer to it determines the entire legal and political reality (Schmitt 1985: 34). Also, it has already been established that the sovereign decision can be both radical and conservative. There is, as almost always with Schmitt, a dualistic tension: he is fascinated by the political community and its will and simultaneously doubts the people’s capacity to decide adequately. The constant tension between the constitutive and the constituted elements means that the people and the state cannot be completely identical in Schmitt, and the powers of both constantly check one another. The possibility of exception exists only because the

political community as constituent power outpaces whatever the embodiment of that community is at a given moment in time, i.e. the constituted power. The constitutive power, however defined, creates the normal situation through exception (Kennedy 2004: 86). The normal situation and the laws that apply to it constrain the constitutive power but at the same time the normal is grounded in the exception, and the latter can only be produced by the constitutive power. Sovereignty, thus understood, is the locus of tension between the two powers: truly, a borderline concept. Schmitt's solution is double conceptualisation of sovereignty: radically popular in *Constitutional Theory* and abstract-conservative in *Political Theology*. These two works, taken together, clearly illustrate another tension in Schmitt's thought: between Protean change and stability. Indeed, in a Schmittian political universe, the nature of the ordering power (and of every concrete order) can most aptly be expressed in the words of Exodus (3:14): 'I am that I am'. No further identification or grounding is available or needed, meaning, once again, that any status quo can only be an instance in the process of ordering.

Although some authors (see e.g. Kelly 2003: 225; Agamben 2005: 54) suggest that Schmitt abandoned the distinction between constitutive and constituted power as his body of work progressed, this distinction not only motivates the early work on dictatorship but also, very explicitly, *Constitutional Theory* and remains implicit in many other works, including his last book *Political Theology II*, where the political importance of *stasis* (to be discussed later on in the chapter) can be fully appreciated only if the division between the constitutive and the constituted powers is presupposed. And yet, it must be admitted that the relationship between the constitution-making power and an already established constitution is a rather complicated one for Schmitt. On the one hand, the people, as the ultimate constitution-making power, retains the potential to act and to express its being anew; on the other hand, Schmitt's entire oeuvre is a quest for stability and order within the state (see Hirst 1999: 12, 14; Preuss 1999: 160). Indeed, as Preuss (1999: 160-161) reads it, the dynamic nature of humans and their quest for what they themselves consider to be good make them dangerous because both unpredictable and easy to sway. Therefore, Schmitt could not leave popular power unchecked. As a result, the people's potential to decide in normal circumstances of orderly political life remains precisely that – only a potential. In a normal, orderly situation, a people conforms to

the norms that it has imposed upon itself and exercises only those freedoms that it has provided itself with (Schmitt 2008a: 268). The power of the people is, in a sense, exhausted, absorbed, or consumed once it has been exercised, although it is not eliminated. This power remains subterranean and can become visible only when constitutional conflicts arise or gaps within the present constitution become visible. It is only this constitution-making power that can legitimately fill in any substantive lacunae within the normative framework (Schmitt 2008a: 125-126), thus providing an opening for political struggle. These lacunae, grey areas within a constitution, inevitably become political due to the lack of one specific interpretation and thus require a sovereign decision.

Crucially, existential issues cannot be decided from a standpoint neutral to existence. Balakrishnan (2000: 141-142) validly sees this as the core reason that had led Schmitt to argue against judicial review and in favour of the role of popular power, which cannot be captured by any formal institution or procedure (for this, see Scheuerman 1999: 71). It follows, then, that the constitution-making power is a sovereign power: it decides in a situation of exception, i.e. a situation that is not codified in the existing order (Schmitt 1985: 6). In such cases of unconcealment, existential danger requires an existential decision. Therefore, the will of the political grouping remains the fundamental power that can decide on questions concerning existence itself. Finally, faced with an existential threat, the political community can decide to significantly amend the constitution or abolish an existing constitution and replace it with a new one. This ability is a necessary attribute of the constitution-making power and the concept of popular sovereignty is an important illustration of that. However, the content of the will of the constitution-making power can be and is attributed retrospectively from the perspective of new power relations – that, of course is the price to pay for the removal or any normative prescriptions.

The Importance of the Constitutive Power

It is not true that, by seeing the most immediate expression of the will of the people in public acclamation, Schmitt reduces the people's political role and that he envisages 'a state populated by passive consumers rather than citizens' (Dyzenhaus 1999b: 84;

see also Cristi 1998: 206; Scheuerman 1999: 72). Such interpretation definitely misses the wider picture. An immediate critique of it would be a reference to the role of the people in existentially significant situations, i.e. in the state of exception, as shown above. Keeping this role in mind, acclamation receives new significance. An acclamation (an acceptance or rejection), supported by the potential for exception, is not a mere rubber stamp. This potential can be turned to actuality in critical situations and abolish the present order by deciding on a new form of political existence (Schmitt 2008a: 131-132). Through acclamation, the people – constitutive power and the highest sovereign authority – ‘exercise their political freedom, not as individuals with rights but as citizens with an opinion’ (Kennedy 2004: 133). Hence, acclamation is an attribute of active citizenship and not of consumption, even if it is exercised in exceptional situations, relating to the mode of collective existence, only. Crucially, the political community’s power to take decisive action – its potential to make an existential decision – remains intact even in ‘normal’ circumstances despite lurking in the background. For Schmitt, even if the power of the people is delegated, it is never surrendered but remains an essential attribute. Any constituted body, therefore, remains bound by the popular will and by the limits the latter had set, remaining under constant control and open to the possibility of being abolished at any time. The power of the people is, therefore, a force to be reckoned with.

To sum up, ‘the people’ (or ‘the nation’) is not a static concept for Schmitt. Therefore, despite lurking in the background after a concrete order is established, the nation ‘remains the origin of all political action, the source of all power’, perpetually expressing itself in ever new forms and organising itself in new ways (Schmitt 2008a: 128). As a result, no final, conclusive, and unchangeable mode of a nation’s being exists. There are two implications of this approach. First, a new constitution – i.e. a new way of a nation’s being – is an ever-present possibility; moreover, due to the self-determining and existential nature of the political will of the constitution-making subject, the new order does not owe its justification to the previous one: the new order is self-sufficient and derives its legitimacy from the act of will only (Schmitt 2008a: 136). Second, the present mode of a people’s existence can only be seen and theorised from its own effects, i.e. from decisions concerning its existence. It must be also noted that the inconclusive nature of the people does not allow it to act as a magistrate or decide on day-to-day issues: only fundamental questions invoke the founding will of

the people (Schmitt 2008a: 131). Even if the popular element was reduced to a simple plebiscitarian ‘yes’ or ‘no’ vote, it is an attribute of a successful leader to know what questions are to be asked in order to get public affirmation (see e.g. Scheuerman 1999: 102): in essence, a leader always already knows what the popular will is and speaks it into existence. The constitutive and the constituted elements are, therefore, inseparable. And yet, the constitutive element is both chronologically prior and foundational, even if not self-sufficient. Furthermore, it must be noted that, although the constitution establishes and entrenches a particular form of the people, the political still persists as a latent potential and even as the animating force of the constitution (see Preuss 1999: 157). Therefore, existential tensions that refer to the power of the people can only be hidden rather than eliminated.

Constant Turmoil: The Constitutive Power against Itself

Schmitt himself prepares the ground, albeit not necessarily intentionally, for the application of the logic of immanence to his political theory. This was done in his last major work, *Political Theology II* (Schmitt 2008b), conceived as a defence of his political theology against various critiques but primarily against that of Erik Peterson (1935). Peterson argued that, with the defeat of the Arian heresy and the establishment of the dogma of the Holy Trinity (as opposed to God as unitary), any equation between God and sole unitary lawgiver (e.g. one God – one King) has become logically flawed and incorrect in relation to the Christian doctrine. In reply to this, Schmitt firstly refers to the function of political theology from the Antiquity onwards, beginning with Terentius Varro, for whom political theology belongs to the political community (unlike the mythical theology of the poets and the natural theology of the philosophers) and constitutes its public sphere through rituals, norms, social bonding, procedures of legitimisation etc. (Schmitt 2008b: 64-65). As a result, political theology is about life and belief – the common mode of existence – and is not necessarily God-centred. It is a theology without a centre because, as already stated, sovereignty is only graspable through the miracle of exception. Notably, Schmitt was not a conventional Catholic theorist of the state, especially after his estrangement from the Church in the mid-1920s. However, it is erroneous to claim, as Hollerich (2004: 119) does, that Schmitt had merely instrumentalised Christianity, or, as Scheuerman

(1999: 3) does, that most of Schmitt's writings can be understood without due recourse to religious undertones. On the contrary, Christian (and, fundamentally, Catholic) worldview remained crucial to significant parts of his theoretical endeavour. And yet, this importance did not preclude him from, at times, creatively interpreting religion, with a tendency to treat dogma as ancillary to political argument – and *Political Theology II* is rather symptomatic of that.

Schmitt was ready to admit that the Trinity in the political sphere is impossible, especially in the case of monarchy for which the politico-theological equation between God and the King was originally coined. But Schmitt was not prepared to accept Peterson's argument any further. As soon as the emphasis shifts from the king to the people as a depersonalised power and, therefore, to democracy, there no longer is any inconsistency even with the Trinitarian view (Schmitt 2008b: 70-72). Schmitt makes two more crucial observations on the nature of the relationship between politics and theology. First, when an early Christian heresy (Arianism) is invoked as a critique of political theology, 'the heretic appears *eo ipso* as the one who is political, while the one who is orthodox, on the other hand, appears as the pure, apolitical theologian' (Schmitt. 2008b: 84). The political sphere is one of creativity and contestation, rather than of rigid orthodoxy. The heretic is someone who opens the political horizon of otherness and brings forward the ultimate need to choose between the inside and the outside of the community; consequently, the heretic, and not the orthodox, creates the possibility of the political. Indeed, there can be no existential split if there is no questioning of the status quo in the first place. Therefore, from a political perspective, the heretic is much more interesting than the orthodox. The heretic is also the one who discloses the rupture between the dynamic nature of a community and the rigid conservatism of the norm. Second, Schmitt provides an illuminating exegesis of a passage from Gregory of Nazianzus (*Oratio Theologica III 2*): 'The One – *to Hen* – is always in uproar – *stasiazon* – against itself – *pros heauton*'. Striking in this phrase is the presence of the word *stasis* not in the meaning of stability but of its opposite – uproar. As Schmitt explains, '*Stasis* means in the first place quiescence, tranquillity, standpoint, status; its antonym is *kinesis*, movement. But *stasis* also means, in the second place, (political) unrest, movement, uproar and civil war' (Schmitt 2008b: 123). Here, as shown by Ojakangas (2006: 86), Schmitt draws on a distinction between not only private enemies (*echtros*) and public ones (*polemios*) but also

between inter-Greek conflict (*stasis*) and struggle against the barbarians (*polemos*). One could argue that while *polemos* is characterised by the unleashing of destructive force, *stasis* is constructive and destructive simultaneously: it negates the old but has the potential to create the new. In essence, *stasis* as constant turmoil, is at the heart of a political community as well as, it seems, of political theology. Every unity thus implies a duality, the double-edged *stasis*: simultaneously stability and uproar. Here one can remember other significant political dualities: between *auctoritas* and *potestas*, between the two swords of the Gelasian doctrine, between the King's two bodies, between the rulers and the ruled. And, to take this further, there is a *stasis* within the subject itself: if, as it has been indicated, only the subject can question its own *Gestalt* so fundamentally as to provide for enmity, which is subsequently externalised, then this constant turmoil, the inability to be identical to oneself, is the driving force of politics. Therefore, a political *stasis* involves a distinction between the institute of power, which provides for stability, and the underlying instituting power: between constituted power and the constitutive power. This necessary duality provides for the creative power of politics and precludes it from becoming rigid orthodoxy. Rather, a continuous process of ordering is central.

Consequently, even when the element of quasi-religious belief is introduced through political theology, one has to keep in mind that even divine unity is a unity in diversity, whereby diversity loses itself in disunity: a unity perpetually dissolves into disunity and disunity perpetually solidifies into unity. In other words, *stasis* and *complexio oppositorum* are inextricably fused, unity and diversity fundamentally being one and the same. In a political theology of the people-qua-God, the people are the unity that produces the diversity of things, which in turn constitute the unity of the state. What prevails, then, is constant movement from unity to plurality to unity where the One is constantly in uproar against itself. Admittedly, Schmitt would be highly cautious not to take the principle too far. However, the principle itself is evident. Ultimately, the unity of the state as secularised *complexio oppositorum* characterised by constant uproar is an antidote to any final settlement. A homogeneous political community can exercise the will to existence (and will to power) by producing diversity which is, nevertheless, still able to coalesce into one political body. The politics of *stasis* could possibly be a tentative answer that encapsulates unity and diversity, oneness and multiplicity. This does not necessarily lead to harmony and

toleration but, rather, to a constant productive tension and competition, a *stasis* that simultaneously stands for fixity and a standoff that threatens the (political) unity with dissolution, offering only very precarious equilibria, if any. Such relationship is much more complicated than the theories that, for example, Strauss (1995: 117) attempts to extract from pure or Mouffe (see e.g. Mouffe 2000; Mouffe 2002) from reinterpreted, ‘agonistic’, Schmittian thought: for both, Schmitt eventually becomes in a sense more liberal than the liberals themselves.

Epilogue: The Question of Ordering

Clearly, the question of ordering is a central concern throughout Schmitt’s writings. The problems of how and by whom a certain political order is enacted as well as defence of the necessity and unavoidability of political ordering as such are the animating forces of his entire oeuvre. And the four core elements of that ordering – the state, sovereignty, law, and politics – are all inseparable for Schmitt.

The state, throughout Schmitt’s writings, is the form and embodiment of the self-conscious political community, a spatial, normative, and institutional embodiment of the community’s mode of existence. It is the theatre in which the drama of ordering is enacted: its physical borders delimit the spatial extent to which ordering applies while its symbolic borders (the normative-functional-institutional embodiment of the community, which simultaneously defines what belongs to it and what does not) become the locus of contestation and struggle for the soul and Being of that community. Only temporary outcomes of this struggle are available but they still serve as the basis of ordering, which is then expressed through the structure of the state itself. In fact, the state is, for Schmitt, the way in which the political community can become visible: although the political community must exist prior to the state (since the state is merely its expression), it can only come into being and become manifest once it is embodied, i.e. through the state, which, in turn, defines what a political community is, thus making it present. In a manner partly similar to Spinoza’s theory, this conceptualisation of the state is contrary to many current theories that have a tendency to treat the state and the political community as at last partly separate entities. What we encounter here is the notion of the state as the ultimate structure of

intelligibility, which is still employed by today's state-centrists. And yet, as will be shown in the final chapter, the state does not necessarily have to have complete exclusivity: in fact, the same function can be carried out by any particular (as opposed to universal) collective entity that can successfully arrogate sufficient power. Hence, the outlook is also capable of embracing the changes to what previously was, quite strictly, an *international* state system. Peculiar to Schmitt, in comparison with Spinoza, is the emphasis on content: whereas for Spinoza association is natural and comes first, followed by common content, which then holds the political community and its state together, for Schmitt there first of all has to be some substantial content, which only subsequently produces formal association. This tension between the state (or some other association that holds ultimate normative value) as a natural institution and as a created one is to be seen as one of the animating forces within the constant process of ordering.

As already indicated, the state is the locus of contestation (and contestation is, of course, unavoidable given the fallen state of humanity and the loss of certainty after the Original Sin). That contestation both predates the state (because one would not need the institutional-normative organisation of the state if all was harmony and concord) and is a constant feature of it. This is what Schmitt refers to as the political, which entails the basic ability to distinguish between friends and enemies and the willingness to engage in an existential struggle with those who question one's mode of existence. And since the only level of existence that really interests Schmitt is collective existence (and ordering, of course, refers to collective life as well, truly concerning individuals as part of the political community only), political friendship and enmity are necessarily collective – public – phenomena. Indeed, the friend-enemy distinction is the basis of the political self. The enemy is the negative definition of the self: an extrapolation of traits that the political subject is not, representing the ultimate outside of the political community, open to ever new meanings depending on circumstances and the political community's own mode of existence. The friend, meanwhile, is the embodiment of the 'own', a model of the self (thus a positive definition of the self) and an affirmation of the self because the function of the friend is also that of recognition and confirmation: the political community depends on these networks of recognition that constitute its collective consciousness. In both cases – self-definition through the friend and through the enemy – Schmitt's subject is

decentred as the truth of the self is in the other. Humans, for Schmitt, truly are relational – political – beings, even if that is solely because of the fallen state of humanity. Such emphasis on struggle can only be at odds with any theories of politics-as-consent and objectivist notions of law, such as those presupposing some ultimate criterion, be it natural, moral, or any other. Any existing order is constantly menaced by the possibility of dissent (since any order is groundless), and law is unavoidably dependent on the temporary outcomes of this struggle. Hence, in the final part, the Schmittian approach will provide considerable support to the constitutive side of the process of ordering.

Of course, there can only be one political order in a state at a time, despite the fact that the political as potential or actual conflict is ever-present. It is the function of the sovereign to keep conflict outside state borders and ensure peace and stability inside. Sovereignty, therefore, is a borderline concept: it rests on the division between inside and outside, friends and enemies, order and disorder, law and non-law. Only the sovereign can decide on the exception and suspend the present order altogether. However, this suspension is anything but straightforward because it can equally be intended to preserve the suspended order and to replace it with something completely new. Still, at the moment of exception, both aspects must be present: there must be the protector of the order but there must also be something to protect the order from, even though only one can be sovereign at a given time. It must, therefore, be the case that the actual locus of sovereignty can only be known *ex post facto*. Although the protective power is sovereign by default, the ultimate sovereign is the power which prevails. If the pre-existing order is restored, then the protective power was truly sovereign all the way. But if the old order is replaced by a new one, then it turns out that the previous sovereign power was usurpation only, not truly reflective of the political community's true mode of existence. In either case, the sovereign decision suspends the order and then affirms and enshrines either the old or the new order. In both cases, that is a constitutive moment: a political community's collective Being is established as the basis for the political order of the state. The above clearly shows why the theories of sovereignty's demise need to be put into question. Of course, the traditional state-sovereignty nexus is, in many ways, more and more questionable. But the essence of sovereignty – a political community's self-determination – forms an essential part of political ordering.

Sovereignty, it should be clear from the above, is an attribute rather than an essence, a moment of clash between opposing interests and demands and a moment of resolution of that clash. This nature of sovereignty also pinpoints to the political nature of any entitlements, rights, privileges, and any basic norms that define life within a state. They cannot be grounded in any higher principle and are neither natural nor God-given. They can only come into being through political struggle and, therefore, any group that is to promote its own vision of normativity must be prepared to fight for it on a groundless terrain. The only thing that determines the presence or absence of norms is the success or failure in this struggle. If a group succeeds, they have always already reflected the true shape and form of the political community, which was otherwise neglected. But in case of failure, that group risks becoming public enemies, for their agenda had been seditious and the norms they were fighting for never really existed. This is the tragic element of both sovereignty and political life in general: there is no ultimate criterion for a decision and yet there must be a decision. The same applies more widely: every member of the political community must take sides when an existential struggle over the survival (external threat) or essence (internal threat) of the community ensues, although, again, there is no way of objectively determining which side is right. Ultimately, there is no grounding on either side and, therefore, the struggle is for nothing (because there is no essence) and everything (because existence is at stake) at the same time. In short, the political and sovereignty – the former's ultimate corollary – are inseparable from the tragic. This element of the tragic is not sufficiently emphasised in most current theories of sovereignty: the individual tends to be seen as either determined and protected by sovereignty or able to relatively seamlessly translate political strivings into sovereign acts (in both cases referring to pro-sovereignty views), or subjected to the arbitrary and often oppressive actions of the sovereign authorities (according to the sceptics of sovereignty). The tragic, through the need to make a choice on a groundless terrain, adds more depth to the understanding of constitutive agency.

Regardless of its groundlessness, the ultimate decision on the political community's mode of existence is absolute and is then transformed into law, thus enshrining its content. In this respect, the constitution is central for Schmitt because it offers a codification of the existential will of the community – it is the community's body in law. At least in terms of its fundamental provisions, the constitution is stable and

unchangeable, save for the next instance of existential will. However, this does not mean that all other laws are accidental or have a life of their own, independent of the political community. Schmitt's oeuvre is also a crusade against positivism and manifestations of crude legalism. Instead, Schmitt holds, law and politics are inseparable and, therefore, the normative structure of law is, first and foremost, about legitimacy and correspondence to the Being and will of the political community. And still, as in the case of community-state relation, there is a significant degree of immanent causality: the political community is the cause of all law but it can only come into existence and assume certain content through its law. It appears, then, that immanence is the paradigm of the constitutive-constituted relation.

Law, just as the decision that precedes and establishes it, is groundless. Definitely, nothing that is built on a groundless terrain can ever reach natural or transcendent certainty. The most that law can refer to is its immanent relationship with the political community. However, Schmitt does infuse that immanent relationship with a hint of transcendence. Conscious of the fact that nothing that is groundless can command absolute obedience (and law must command absolute obedience or else chaos ensues), he engages in political theology. If politics is, as Schmitt claims, secularised religion and the sovereign power is secularised God, then law must be a secularised version of divine commandments. Despite its arbitrary nature (in fact, precisely because of it), law must be believed in and observed with quasi-religious fervour. Once again, at the core is an encounter with the absolute that does not allow any shirking or shedding responsibility. Hence, law simultaneously is dependent on circumstances, just as it would be for the theorists who see law as secondary, and must be seen as referring to something more than itself – as if there was a natural, moral, or any other criterion.

Finally, politics is, for Schmitt, the underlying element that dominates the content of ordering. Politics is, again, based on the existence and will of the political community and is the result of the latter's relative inability to be identical to itself. The more basic layer of that non-identity is the community's constant evolution and change. The constituted element simply does not keep up with it and, therefore, tensions arise. This, though, is a simple case of updating and readjusting the legal-institutional settlement. There is, however, a deeper, existential lack of self-identity. For one matter, the necessary homogeneity of the political community is a political and not

sociological reality and, therefore, differences that require resolution are constantly present. Later in his writings, Schmitt even employs the concept of *stasis*, whereby the political community (the constitutive power-qua-God) is in turmoil against itself. Schmitt, thus, uncovers constant tension regarding the soul of the political community and the definition of its existence. But, contrary to what could otherwise be expected, this turmoil does not incapacitate political unity – it only makes the sovereign decision on the content of that unity ever more relevant. Politics, therefore, has to be about constant dissent (as already indicated by the primacy of the political) but that dissent has to simultaneously produce temporary instances of perceived consent – fleeting stabilisations of political content. And if it appears that such stabilisations are challenged only occasionally, this is only because the observer is unaware of the constant dissent and permanent tragic choices that underlie any supposed status quo and also are building up towards more visible change.

Although any order, once established, pushes the constitutive power of the political community to the background, that power, nevertheless, remains potential, becoming actual once the political conditions within the state no longer correspond to the community's mode of existence or when any lacunae arise within the present order. And since any community is structured around an absent fullness, any present order is unavoidably less than satisfactory. The constitutive political community, therefore, brings forth ever new legal-institutional embodiments of itself, in turn being effectively brought into existence by them. As a result, a principle of continual reproduction of one power by another prevails, animating the process of ordering, which is to be the subject matter of the next chapter.

4. The Four Elements of Ordering Revisited

So far, an answer to the question of ordering has proved elusive. As shown in the first chapter, the approaches to the four core elements – the state, sovereignty, law, and politics – can only be characterised by diversity. Not only the relevance and survival of the state and sovereignty are being questioned but also the role and manifestations of law and politics cannot be agreed upon. Nevertheless, both Spinoza and Schmitt can offer important contributions to the proper understanding of ordering and of its four key elements. Their contributions do correspond on certain issues. But their premises and many crucial conclusions are, in fact, radically different, precluding a proper synthesis. Instead, Spinoza and Schmitt are read in a constant swinging motion whence each represents the constitutive or the constituted. Such reading is capable of revealing ordering as a process.

In this, final, chapter the four elements of ordering are revisited in terms of this reading-as-movement but also with reference to the current discourse, outlined in the first chapter. Such reading proposes a case for the state and sovereignty in the contemporary increasingly globalised world, albeit without many of the fixities and certainties accorded to them by traditional theory. Still, they are seen to carry out crucial functions as *principles* of ordering. Law and politics, meanwhile, are seen as being constantly caught in-between belief and contestation, with Spinoza, rather perplexingly, usually representing the former and Schmitt defending the latter. The answer to the question of ordering is, therefore, seen to reside in the movement between the constitutive and the constituted thrusts of politics, represented by the theories of (in no particular order) Spinoza and Schmitt.

In a sense, the two concepts that belong to the framework of ordering – the state and sovereignty – are the effects of law and politics. But that does not mean that they are less important. As will be demonstrated, stronger or weaker immanence is a feature of both Spinoza's and Schmitt's theories; thus, in an immanent fashion, the cause (law and politics) is in, and only comes about through, its own effects (the state and sovereignty). Hence, a normative point is reinforced: ordering must happen at the intersection of the political community's presence but not be superimposed from outside.

4.1. The Framework: State and Sovereignty

As seen in the first chapter, the state and sovereignty have traditionally been seen as closely interrelated phenomena. In fact, the state has been seen as the only truly sovereign entity, and even when one talks about the ‘sovereignty of the people’, that conventionally means the people of a particular state. However, in today’s world, it is not immediately evident that the state-sovereign nexus is to survive. In fact, as already noted in the first chapter, the future of both the state and sovereignty is contested. And yet, it is claimed here that they both represent crucial principles which are deemed more than likely to survive.

First of all, the state points at the principle of differentiation. As argued in the first chapter, even if the formal institutional structure of the state is not to survive in the long term, there will, nevertheless, exist other forms of political communities able to demand allegiance and arrogate to themselves ultimate norm-making power – after all, since as per both Spinoza and Schmitt, there is a necessary imperfection, or deficit of existence, at the heart of human nature, any particular order can only relate to the power of imposition. And, as per Spinoza, such power also equals right. That power, in turn, refers to sovereignty, which is the power of the relevant political community to determine its own existence. Both sovereignty and the state are analysed in this chapter by employing a reading of Spinoza and Schmitt which constantly exercises a swinging pendulum movement between one thinker and the other, establishing a process of ordering as permanent tension between contestation and belief.

4.1.1. The State

For both Spinoza and Schmitt, the state is the predominant mode of human (self-) organisation. The state determines reason, common interest, and rights by delimiting who belongs to the demos and who does not – this distinction is crucial for political will to take shape. The distinction between the inside and the outside of the political community cannot be avoided but only negotiated differently, and is one of the essential traits of a political grouping. The very ability to define these limits once

again points at the domain of power. Clearly, in the two theories under discussion, the state is able to exercise the function of distinction because it acts as an exoskeleton, establishing and maintaining the external form of the political community, which, by definition, implies a borderline between the inside and outside, both physically and symbolically. To that extent, the state clearly acts as a structure of intelligibility and determines the external form and internal relations of the political community. At the same time, the state is always a process and any definition available would only capture a momentary snapshot of an ever-changing political community. In essence, mutual causation takes place: the state is constantly being created by the citizens (because the state is only a snapshot of the political community) and the citizens are constantly being created by the state (because it serves as an authoritative representation of what the political community is supposed to be).

The state also is seen as a crucial source of identification and the locus where politics happens. And yet, there is a crucial difference between the Spinozist and the Schmittian loci. For Spinoza, humans are not obedient by nature but can be made such if obedience offers a greater benefit than living independently (Bagley, 2008: 208). As a result, there has to be a rather strong identity between the state and the citizenry: after all, the state exercises a guiding role and orchestrates a ‘coming together’ of the otherwise disparate individuals – essentially, it is a tool for individuals to harmonise relationships (Bijlsma 2014: 13-14). After all, the state has a single mind as long as it is guided by reason and thereby makes citizens rational (see e.g. TP, 313, Levene, 2004: 165). Even in a democracy, that means absolute self-unification under the reason of state, determined through the general will. Spinoza’s state, in particular a democratic one, operates under the logic of strong immanence, whence any movement within the multitude involves an analogous movement within the state-qua-exoskeleton and vice versa – these movements are indistinguishable, especially in democracy as the most absolute form of government (see e.g. Hallett 1962: 189, TP, 385). The Schmittian state, meanwhile, operates under the logic of weak immanence: although the same mutuality of determination exists, there is a lag, an incomplete identity between the state and the people (Schmitt 2008a: 272): there always has to be a deficit or a surplus which motivates any political action. Certainly, ever-present deficit is a core motivating force for Spinoza as well – if it was not, there would be no more *conatus*. But in terms of the state as an object of identification and determinant

of form, there is a crucial difference: whereas Spinoza presupposes the ideal of reason, which partly compensates for the abovementioned deficit (see e.g. *Ethics* IIP43, TP, 303), guiding the citizens towards their better selves, for Schmitt, due to human existence being groundless, the development of the state is open-ended and, therefore, only the gap between the political community and its embodiment in the state can be a driving force (see Schmitt 2008a: 240-248). Hence, Spinoza and Schmitt constitute two very different modes of thinking, although neither can be seen as sufficient: both the Spinozist prescription of a singular standard and the Schmittian affirmation of underlying indeterminacy can lead to unlimited concentration of power and total marginalisation of the weaker party. Instead, a more dynamic model, which involves constant movement between the two extremes, must be affirmed: the distinction between the inside and the outside is groundless (Schmitt) but, once established, must be seen as singular and legitimised as a manifestation of sound reason or any other supreme ideal (Spinoza); nevertheless, due to its groundless foundation, this distinction must always be contestable once a gap between the political community and its form emerges (Schmitt) but, again, this contestation can only happen in the name of some absolute ideal, e.g. reason (Spinoza), which, if successful, becomes the new ordering principle. In essence, the state as form and object of identification oscillates between status quo and contestation, consent and dissent, the constituted and the constitutive. Notably, here Schmitt is seen as a representative of the constitutive thrust and Spinoza – of the constituted one. In this dynamic, the basic engine of ordering as process is already taking shape.

And yet, preconditions for the state also suggest a complex relation to essentialism. For Spinoza, the state is about strength in numbers: whereas in the natural condition humans are effectively powerless, having organised themselves into a state, they acquire collective power and right (*Ethics* IVp18s, TP, 296). Schmitt, meanwhile, sees pre-existing homogeneity as a *conditio sine qua non* of the state (Schmitt 2000b: 299; 2008: 255). The Spinozist state enjoys natural formation, whereby commonality emerges through the affective capacities of individuals, creating a shared social world through numerous interactions and is, at first glance, more inclusive. And yet, although in principle anybody can join in, there still remains the guiding principle which both dictates association and prescribes the principles of that association: reason. Meanwhile, for Schmitt, a founding act needs will of some collective body

and a consciousness of ‘we, the people’: essentially, it is a miraculous *fiat*. But this also means that the Schmittian political community can only be really known after their ‘we, the people’ has acquired an institutional form. In terms of a fully developed theory, again, one should read the two accounts in a movement, further indicative of ordering as process: an inclusive moment of origin, whence commonality is derived from constant interaction, albeit with a prescribed telos (Spinoza), is, through the founding act, ex post facto solidified into quasi-objective homogeneity, which is seen as having always already existed (Schmitt). Here, as in the previous movement – and as in any future sequence – an element of belief in the ultimate guiding principle is paramount. Towards the end of this chapter, that belief will be analysed in terms of political theology.

Since, for Spinoza, there is an external ideal (reason), the state is contingent upon producing the greatest collective good possible – otherwise, citizens cannot be expected to obey (TTP, 199). In that sense, Spinoza constructs his theory with a very clearly defined public interest in mind. After all, the state is not an independent variable – it is, rather, the exoskeleton of the collective body of citizens. Therefore, anything the state does, must be done with the citizens in mind. On the surface, Spinoza here proclaims the primacy of the constitutive, before subjugating it again under the singular criterion of reason. Meanwhile, for Schmitt, who constructed his theories on a deliberately groundless terrain, one simply must obey because the only choice is between order and anarchy, between Christ and Antichrist (Schmitt 1996: 15-16; see also Balakrishnan 2000: 224-225). State laws are as they are and must be observed because they are laws. The very existence of the state is a good in itself, since it allows ordering of the world and of one’s self. Thus, Schmitt is on the constituted side at first sight; and yet, at a deeper level, he allows for more constitutive contestation by denying objective prescription, such as reason. Nevertheless, one could again establish a movement, corresponding to the process of ordering: the laws of the state must be obeyed simply because they are laws since there cannot be any deeper grounding (Schmitt) but in order to acquire support, it is always better if they pass for some common good (Spinoza), although any state order can be contested if one is prepared to take the risk (Schmitt) because otherwise there would be just a basic duty to observe (Spinoza).

Certainly, one of the crucial challenges of the modern globalising world is the coming together (and, often, clash) of different, sometimes even incommensurable, worldviews, based on ideological, cultural, or religious assumptions. Also, migration is changing the faces of states and of communities within states. Finally increasing demands for recognition and self-determination (individual and group) are a feature of today's politics. Hence, a non-essentialist account of relatively stable coexistence must be suggested. According to the perspective advocated in this thesis, there is no inherent reason for privileging any of the worldviews brought together by globalisation, as well as those that have naturally developed within a particular state, other than the fact that people happen to hold them. However, the constitutive-constituted movement developed in this chapter helps refute that 'anything goes': those worldviews do ground (individual or collective) existence and, therefore, solidify into beliefs, acting as banners in the tragic struggle for primacy. A worldview that happens to be victorious (nationally, regionally, globally, or across groups without traditional spatial definition) solidifies into the ordering principle of the relevant political community (or agglomeration of political communities or a group of like-minded states) but can always be dislodged by competition (since neither is inherently better), with this competition itself then solidifying into a new ordering principle – very much in line with the Spinozist-Schmittian movement and correlative ordering as process. Hence, the proposed model enables one to combine both groundlessness and commitment. In addition, there is also fluidity: although the dominant group establishes its myth of foundation as one of collective origin, *ex post facto* ascribing foundational homogeneity that has to be believed in, once the structure of the political community changes significantly due to internal or external reasons, that foundational myth is to be challenged and a new (essentially biased) account is instituted as the objective origin. Hence, there is constant movement between strong belief and strong contestation, directly signalling political ordering as an always ongoing process.

The state is also the originator and guarantor of rights for both Spinoza and Schmitt. For Spinoza, this is because people are strong enough to claim rights only when they combine their power (TP, 296). Meanwhile, for Schmitt, any normative content is only known *ex post facto*, thus any rights exist only once a certain group has successfully established them through political struggle, entrenching them in the state-

form (Schmitt 1998: 231, see also Kahn 2011: 155-156). And yet, there are differences as well. For Spinoza, people appear to have certain rights and freedoms in the private sphere (especially in monarchy and aristocracy) but not when public matters are concerned (TTP, 252; see also Prokhovnik: 2004, 204). The only public freedoms that are acknowledged relate to situations when the state strays away from the ideal of sound reason, and even then citizens only have the right to point out any shortcomings but not to try and rectify things (TTP, 252-253). Within the confines of the state, citizens collectively claim the same thing and strive for the same norms – and that is what everybody gets. Schmitt, meanwhile, is less equivocal. By positing *complexio oppositorum* as the ideal for a modern state, Schmitt hinted at representation as lending concrete manifestation to something that is otherwise elusive, if not immaterial (Bates 2006). In other words, the state is a common political expression of otherwise disparate societal groups. Political theology is, therefore, the overarching and overwhelming belief in the concrete political order that provides the otherwise absent unity. As soon as the existence and nature of the ‘friend’ group is questioned – i.e. the figure of the enemy appears – any lower-order differences and squabbles become irrelevant. In other words, homogeneity is predicated in existentially threatening situations. Essentially, substantive homogeneity is needed, first and foremost, in order to provide the basis on which the community would be able to unite when encountered with otherness and to showcase a common way of life which would differ, even if trivially, from that of others. This removal of universality, coupled with the understanding of ordering as a process, points towards a solution to the aporias of competing rights claims in the increasingly globalised world: instead of singular universal entitlement, one should see them as the result of contestation within political communities. Once somebody attempts to claim a certain right, one has no other choice but to actively take on the status quo with the risk of becoming public enemy should the claim be unsuccessful. And only those claims that are successfully established become rights – others remain just false opinions. That, certainly, does not preclude the spread of certain claims beyond state borders as other groups might see successful claims as inspiration. A number of victorious groups can even attempt to solidify their gains through international agreements and conventions. That, nevertheless, should not preclude one from seeing the groundless origin of any claims, the precarious nature of any status quo, and the possibility of political communities legitimately deciding to follow a completely separate path. However, a critique of

universalist *aspiration* (of e.g. rights claims) does not necessarily lead to a critique of *content*, especially from a perspective internal to the claim: as the constitutive-constituted movement of ordering as process indicates, such content has to be believed in and upheld just as strongly as if it actually was universal.

And yet, as established in the first chapter, the fate of the state is not unproblematic. Hence, the question of Spinoza's and Schmitt's applicability arises. Spinoza, quite straightforwardly, was a theorist of the state. This should not come as a surprise, given that the sovereign state was reaching centre stage and achieved its Westphalian recognition during Spinoza's lifetime. After all, given the relative inadequacy of humans, whereby ultimate reason can never be achieved, the state, as a restraining device, plays an irreplaceable role in ensuring harmony and progress (see e.g. Levene, 2004: 165). The only way to get rid of the state would involve all humans achieving sound reason that very closely approximates the infinite intellect of God. In that case, the state would no longer be needed because humans would agree in nature by themselves and lead unhindered life together – and there is hardly any indication that Spinoza believed this to be a realistic prospect. Meanwhile, moving to Schmitt, contrary to many mainstream interpretations, there is rather little in his writings to suggest that the state is a universal entity, which is somehow natural and should necessarily be preserved until the end of time – it is, rather, a historical phenomenon (see Marder 2010: 118-120). Even when the state is argued to be impossible to replace (see e.g. Schmitt 1985: 78), it is referred to as the locus of politics rather than an entity in and of itself. One could also see an inner shift of emphasis within Schmitt's writings: from the state in the early works to *Grossraum* and then to the partisan (although one could still argue that the state makes a somewhat low-profile comeback in *Political Theology II*). But all those objects of analysis are parts of a particular *nomos*, and *nomos* is about division and appropriation – hence, again, the principle rather than a particular form is paramount.

From the above, it seems appropriate to suggest, then, that whatever form the locus of politics takes, must be related to some physical or symbolic division of the world. In addition, sovereignty and the political must and will remain for Schmitt. And as long as they remain, some embodiment of the political community – its constituted counterpart – will also exist, although the nature of that counterpart cannot be

predetermined. The criticisms of those who see the demise of the state have to be taken on board. Although it is unlikely that states, as formal institutional structures, would become irrelevant soon, they may be hollowed out, becoming merely providers of social care and public security for whoever resides within a certain territory but without the authority and norm-making power they used to enjoy. The decisions that matter may be taken elsewhere, and people may be pleading allegiance to other, formal or informal, political communities. And yet, the principle of division, of there being separate political communities that enjoy ultimate authority, is to remain. After all, human identity, as both Schmitt and Spinoza tell us, is a bounded one, and humans need help in choosing how to cover that deficit of existence. Such communities, dispersed geographically, would be organised around an idea or a set of ideas (since, if the territorial-institutional structure of the state is to be discarded, there is no other basis) and, consequently, the question of belief and that group's own theology becomes paramount. As a result, the Spinozist-Schmittian movement between belief and contestation is to become, if anything, even more important, providing both inner dynamic of such communities and a way for them to differentiate themselves from other, equally dispersed, communities. In other words, membership would be attributed through joint participation in the process of ordering.

For Spinoza the only way to get rid of the state is for all humans to achieve sound reason that very closely approximates the infinite intellect of God. In that case, the state would no longer be needed because humans would agree in nature by themselves and lead unhindered common life together. However, he did not see that as a likely outcome. Schmitt, although less predetermined on a particular form, still stipulates a necessary locus of politics, characterised and shaped by sovereignty. The Schmittian *nomos* is of particular relevance, since it ties developments in political communities and global developments in mutually affective ways. Certainly, nearly every *nomos*, past or present, that Schmitt could analyse was connected to division and appropriation. And yet, in the *Nomos of the Earth*, there are several possible openings. Definitely, *nomos* primarily is about land appropriation; although, increasingly, other domains, like the sea or the air (from today's perspective, one could add the cyberspace) are added to the equation, for Schmitt, still 'a land-appropriation of the earth's soil remains fundamentally significant' (Schmitt, 2003: 80). Presumably, then, even if one talks about a globalised order, from a Schmittian perspective, there must

be some relation to territory and its appropriation. But that might not be as anachronistic as it might sound: after all, one could think not only about concentrated appropriation of traditionally conceived states but also about dispersed appropriation in a globalised order, whereby scattered groups are activated on issues, identifications, and loyalties rather than geography but, nevertheless, still possess a physical location. Equally, however, geography can be preserved as the basis uniting disparate populations that find themselves within the same geographic confines into a minimally conceived state. After all, the future shape of the *nomos* was anything but certain for Schmitt (2003: 351-355).

Would the above allow some form of global unity, especially in terms of global democracy advocated by some modern theorists? Certainly not as far as Schmitt is concerned – not only, for him, no global order would be able to destroy the necessarily conflictual human nature without destroying itself (Schmitt 2003: 354-355) but also that would directly contradict Schmitt's own understanding of democracy as based on inclusion and exclusion. For Spinoza, meanwhile, there would be no major theoretical objections, since all humans have the same ideal *telos* of reason. He would certainly have had doubts about the feasibility of such projects but not about their theoretical grounding. After all, that would correlate well with his single substance argument. Similarly, Spinoza's theory is much better compatible with state obligations *erga omnes*, international concern with domestic populations, and the very status of the state as an implementer of global strategies and rights regimes. After all, he already had set forth a *telos* for the state – reason and freedom (both meaning the same thing) – and this modern trend could be seen as merely an extension of the argument and its extrapolation to the global. With Schmitt, of course, matters would be very different. For him, nothing can replace the existential will of the political community, the content of which cannot be prescribed from outside. That will is the cause, the essence, and the *conditio sine qua non* of ordering. Moreover, because of the necessarily conflictual nature of humans, it cannot be circumvented by presupposing a global popular will. Would that mean that Spinoza is, in some way, more 'modern' than Schmitt? Throughout this thesis, it has been presumed that there is some kind of inner deficit of self-identity that makes any presence, more or less, groundless. Such thinking does not give any normative preference for a single global mode of ordering. Quite to the contrary, a variety of different, albeit sometimes

overlapping, modes of ordering based on shared existences of the respective political communities would be a more logical conclusion. With this premise in mind, a cosmopolitan universe of meaning would be impossible and undesirable. After all, since humans are, following both Spinoza and Schmitt, essentially void spaces surrounded by a shell of desire and imagination, human-centred order would only be just another name for a void-centred order. Consequently, a cosmopolitan universe of meaning would merely be a cosmopolitan void.

The modern state is also often seen as no longer unitary in terms of population and falling short of its previous nature as a container of social processes, an entity lacking power and efficiency, losing control over numerous issues and often even being disaggregated. Although that might appear somewhat paradoxical from the canonical perspective, Schmitt is not incompatible with that view. Certainly, there is a crucial caveat: despite admitting that state homogeneity is never sociological homogeneity, Schmitt always insisted that unity must be maintained at the political level: in other words, despite being different in many ways, citizens must collectively support the state and its order and actively uphold it. Even in a globalised world, then, as long as political bonds of some sort are maintained, the state would be fit to survive. Spinoza, on the other hand, would struggle with that, since for him, there is a more immediate, strongly immanent, relationship between the state and the political community. From that perspective, there is something to learn from Spinoza as well: the state is the actual producer of homogeneity (which fits with even the Schmittian precondition of groundless existence) but, once established, that homogeneity must pass as natural and primordial. That also perfectly correlates with the story of state foundation laid out above and, therefore, constitutes continuity throughout the lifespan of the state.

All in all, Spinoza and Schmitt, in different ways, both provide support for a critique of some of the present theories of the state. In that interplay, they also introduce some correctives. They show that the state always expresses something more than itself – the demos – even if in today's world that demos might be constituted somewhat differently. The model arrived at through constant movement between Spinoza and Schmitt lends itself very well even to non-essentialist modern demoi: from groundless distinction between the inside and the outside in Schmitt to its ex post facto passing as something natural in Spinoza back to groundless existence as a natural source of

contestation (because one order is not inherently better than the other) in Schmitt, and, finally, to the fact that even contestation must be carried out in the name of something more than mere contingency (Spinoza). The same movement between actual groundlessness and the need for certainty (or, rather, belief) is also apparent in the case of any actually existing order. And there also is a crucial lesson to be learnt about the composition of the state: following Schmitt's analogy between the state and the *complexio oppositorum* of the Church, one has to talk about *political* homogeneity only, that homogeneity being activated once the friend-enemy tension looms. But even then, once again, that homogeneity is the consequence of a top-down process, the results of which only retrospectively pass as something existential. If the state is able to unite citizens under a common telos, exclusivity of identification and social action might be a thing of the present as well as of the past. In fact, in case of both foundation and perpetuation of the state, top-down homogeneity must ex post facto be made to pass as something natural and existential. In terms of global unity, obligations, and democracy, these goals are achievable only when some single overarching telos is presupposed, such as reason in Spinoza. But Schmitt is, in fact, more consistent here: since the only essential thing about humans is that there is a deficit at the very centre of existence (and there is one for Spinoza as well), no single telos can be presupposed. As a result, immaterially of the (non-)survival of the state-qua-institutional structure in the long term, one might still presume continuous existence of bounded communities of some sort, able to claim ultimate loyalty and identification. In such conditions, a plurality of orders seems to be a more likely and desirable outcome, leaving ordering a constrained, rather than global, process.

What many critics of the state forget is that the state is not something externally imposed upon citizens. Rather, as shown by the Spinozist-Schmittian dynamic, the state is a shifting concept, not only immediately related to the community but, essentially, inseparable from it. Unfortunately, as Steinberger (2004: 8) notes, the 'state versus civil society' distinction 'has become an absolutely central preoccupation of contemporary political thought'. What remains, then, is the state as an apparatus of rule and coercion. If one adopts this 'straw man' representation of state, then it surely has no chance of survival. And yet, this thesis purports to show the erroneous nature of such arguments. Instead, a notion of the state that treats it as 'the entirety of political society' and pits it in opposition to anomie (Steinberger 2008: 9-10) is to be

embraced. After all, the state is created by the citizens, just as the citizens are created by the state. As the political communities change and become more global and fragmented, the state will have to adapt in a way that reflects the new way of existence of political communities which may be dispersed, not always bound by the formal ties of citizenship, or may even be partly ad hoc (whereby, on some issues, only part of the formal community participates but, on other issues, global support and concern seemingly expands the state's political community). Even if the state passes into something else, there will still be some *corpus mysticum*, endowed with ultimate dignity.

Of course '[s]tates have always been partial and constrained' (Smith 2009: 265). But there is, nevertheless, a need for *some* locus of ordering and political struggle, and this locus cannot be universal. The state may no longer be strictly about one patch of territory with a citizenry that is necessarily fixed and known in advance but, as the proposed model implies, political communities still must have some exoskeleton and common referent – essentially, a locus of politics.

4.1.2. Sovereignty

The conceptualisation of sovereign power in Spinoza and Schmitt is, certainly, closely interrelated with the community-state nexus. For Schmitt, the sovereign power is an entity in and of itself, proceeding from the groundless existence of human beings. Sovereignty, therefore, occupies a dual position: it is both inside the political community, transubstantiating the community's mode of existence into its mode of ordering, and outside it, because it is impossible to suspend order while remaining part of it. For Spinoza, meanwhile, the sovereign's power is a function, proceeding from organic self-association rather than some independent essence: it is 'entrusted' to a particular authority (TP, 297). Sovereignty is, effectively, a power inherent in political ordering: both a power to carry out the transformation and the power unleashed by it. Quite clearly, then, 'sovereignty emerges as a relation between the state and individual members of that entity' (Bargu 2011: 145). But, even more importantly, this is a relation that operates both ways.

Only if sovereignty is misperceived as simply being somewhere out there can it be seen as ‘necessarily unjust’, simply signifying ‘a power to abuse people with impunity’ (Endicott 2010: 245). In so doing, the political community would merely abuse itself: after all, sovereignty is the political community’s relationship with itself. Sovereignty, seen as a relationship, is also something more than just an organised fiction or a purely legal concept because it simultaneously proceeds from, makes visible, and shapes a political community’s collective existence. Thus, it is equally wrong to claim that sovereignty is only enabled through external conditions – the latter perspective implies seeing the external dimension of sovereignty only. Sovereignty is certainly partly fictitious in the sense that it must always refer to something more than itself. Indeed, the very principle of the core elements of ordering referring to something more than themselves is crucial to the model of ordering as process and can be directly related to Spinoza’s *conatus*: by striving to persevere in existence, humans constantly confer upon the objects of their desire the dignity of compensating for the deficit of existence (*Ethics* IIIp6; ST, 73-74). In this particular case, due to the added value of embodying a demos, as long as some political community exists, sovereignty cannot become anachronistic even though, with the transformation of communities in the era of globalisation, one might agree that the exclusivity of *state* sovereignty is no longer (fully) sustainable. If sovereignty is the power to turn a political community’s potentiality into its actuality, then non-state bodies can do that as well. That is especially the case when, on a certain issue, the borders of the community do not strictly coincide with particular state borders or when a state in question is part of an international organisation, capable of making binding decisions (as more or less all states are today). Hence, sovereignty is to be seen as fluid: rather than being tied to a particular holder, it represents a particular relationship between entities, individual as well as collective. Essentially, sovereignty is an attribute to be arrogated in the course of political struggle and, due to that fluidity, is part of the process of ordering itself: in fact, the position of the sovereign is determined *in* the process of ordering. For Spinoza, sovereignty is all about the ability to establish the external form and internal arrangements of the state and, therefore, simultaneously of the political community (TP, 309). Since the state establishes unity and homogeneity and determines the collective path towards ever greater reason, the sovereign turns that ideal into concrete order. Unless one is dealing with democracy, the distinction between the sovereign and the multitude is very clear. In democracy, of

course, the multitude is the sovereign and, thus, sovereignty cannot occupy an almost external position. Instead, the process turns onto one of immanent causation whereby the multitude, its form (i.e. the state), and the sovereign decision that leads from one to the other (both ways) are simultaneous. In a somewhat similar manner, the Schmittian sovereign decision establishes the will of the people thereby creating unity (Schmitt 1985: 9). And yet, as with the state, there is a fundamental difference: Spinoza's criterion for unity (reason) is outside the political community (TTP 205; see also e.g. Belaief 1971: 22-24) while, for Schmitt, only the inside – the political community – can determine itself (Schmitt 2014: 118-119). As a result, Spinoza's sovereignty is a natural attribute while Schmitt's – an existential one. In effect, Schmitt's sovereignty is the locus where the power of the community coalesces, a means of the community's self-determination. It both fences the community from the outside and provides a gravitational pull that keeps the community together: in effect, then, it is simultaneously at the centre and at the borders of the community. To that extent, one can see the immanent nature of sovereignty in *both* Spinoza and Schmitt, albeit, as is the case with the state, Spinoza's is a very strong immanence (there is no separation between sovereignty and the political community in democracy), while Schmitt's is weaker, allowing for some distance between the community, the state, and sovereignty. In Spinoza's democracy, meanwhile, there is no mediation and no critical distance – after all, democracy is the most absolute form of dominion (TP, 385). If left unchecked, such immediacy is at the risk of implosion, i.e. of the entire community being crushed by its own self-referentiality and absence of even a theoretical possibility of difference. And yet, it also signifies the (unachievable) aim of belief-based ordering: the quest for universality and, through that, objectivity: unanimity in pursuit of a supreme telos. Nevertheless, this quest for universality is only acceptable when combined with Schmittian groundlessness, thus rendering any objectivity contestable and always only to be achieved (but never present) – after all, as has already been argued, any supposed objectivity is only a certain partiality imposed through the sovereign decision. Here, once again, the constitutive-constituted tension is manifest: belief in (Spinozist) strong immanence of sovereignty-to-be challenges the belief in strong immanence of sovereignty-that-is, weakens it in revealing the gap between the community and the attribute of sovereignty (i.e. revealing the hidden weak immanence of the Schmittian type), only to then occupy

dominant position by instituting the belief in its own strong immanence before being challenged by yet another belief. That is again, the engine of the process of ordering.

Certainly, sovereignty would, then, easily be seen as an antidote to global managerial thinking, both conceptually (because it is quasi-metaphysical as opposed to rational-economic) and functionally (by being community- rather than universality-centred). Sovereignty thus understood takes pride in its particularity because that is as far as the process of ordering gets. Any globalist pretence to universality is just a different particularity, even though a veiled one. Only now sovereignty as responsibility can really be conceived as one of an ethical subject, i.e. of a political community that can choose a course of action and, therefore, is responsible for that action. In effect, then, the Schmittian-Spinozist framework does offer some support for the pro-sovereignty side of the modern debate. But there is potential for change as well. As already indicated in the discussion of the state, for Schmitt (and, to some extent, Spinoza), the political community and not the state is paramount. If the community finds an alternative way to express and uphold its form, the state could get relegated. Therefore, it is not inconceivable that the state-sovereignty nexus was broken and sovereignty became an attribute of some other communities, united by an idea other than that of the state. But as long as these communities needed internal and external form (hence, potentially indefinitely), they would need sovereign power to acquire and maintain it.

Definitely, democracy currently is the name of the game. And yet, totally immanent democratic sovereignty, whereby any decision is always already willed by the entire community and, therefore, made by all and for the benefit of all – thus not leaving any space for contestation, deviation, and difference – is a frightening prospect. There is a need for a stumbling block, a residue of otherness – the constituted power – to establish some critical distance between the community and the norm, whence something that already is could legitimately have been different. But, at the symbolic level at least, democracy cannot operate in any other way: it cannot present itself as something completely arbitrary but only as a will of all – that is its source of legitimacy. And yet, this need for some otherness and incommensurability also creates an opening for yet more interaction. Certainly, one source of difference is the lack of internal homogeneity, whence the political community is in turmoil against itself

(*stasis*) – something that Schmitt would predict, and the reason why his system is not a closed totality. But, in a partly Spinozist fashion, this difference can also come from outside, as a contrast with some criteria that do not exclusively belong to the state and the political community that underlies it. In that sense, sovereignty is a borderline concept in two ways: first, it constitutes a borderline (and, indeed, frontline) between internal forces and, second, it constitutes a borderline (frontline) between the forces inside and those outside the political community. The latter inside-outside tension is not a clear-cut friend-enemy distinction because that outside is not in itself purely external (although it might be declared such through a sovereign decision) but, rather, a pool of possible friendships and enmities that can be constantly rearranged. Sovereignty, then, implies constant renegotiation of these borders and decision on where any lines are to be drawn. And yet, freedom remains a problematic concept. In completely functional terms, one has to side with Spinoza in that freedom is the ability to follow the demands of reason without any hindrance (see e.g. *Ethics* IVp66s). But then, of course, the definition of reason is paramount. And here, contrary to Spinoza, it has to be argued that reason as such does not exist – instead, in purely political terms, (public) reason is what is decided by the sovereign (thus, once again, returning to Schmitt). And this, in turn, means that an alternative and challenge to the prevailing reason is, at least, always a possibility. Once again, the movement is from a Schmittian imposition of a groundless standard to solidification into a Spinozist objective standard (reason or anything else that holds supreme value) to unavoidable inadequacy and deficit that leads to change into yet another solidification of a (new or prevailing old) standard.

Nevertheless, the above allows for some transnational normativity to manifest itself. After all, there is currency in the argument that people now participate in multiple different communities and projects, live under different authorities – all simultaneously. Sovereignty, as indicated, does refer to the border between norms emanating from the political community itself and those norms trying to enter it from outside. Those outside norms can certainly alter the balance of power within the community or create new identities that subsequently challenge the status quo. And yet, the political community itself must have the last word on its form and order, i.e. whether to accept the ‘guest’ norms or not. Of course, the political community itself is no longer straightforward: it can be a national community, a regional community, a

community dispersed across various locations in the world etc. But *some* political community, as already established, must exist anyway. At the same time, it seems unlikely that the constitutive power would be directly channelled to the global level, making it the locus of political ordering and precluding the need for intermediary sovereign authorities. As already demonstrated, the nature of humans as beings characterised by a deficit of self-sufficiency makes any world community neither desirable nor possible. If that world community was to materialise, one would live in a Spinozist totality without the Schmittian correction: any struggle against the status quo could only be a struggle against humanity and reason. Meanwhile, if the world is likely to remain composed of multiple political communities, even if ever-changing and overlapping ones, one should, if looking for some form of global normative coherence, delve into the relative power of the political communities and respective sovereign authorities: since sovereignty is a floating quality, any dispersion of agreement corresponds to the dispersion of power-qua-right – that, again, is an integral part of the process of ordering. To that extent, any calls for resistance against sovereignty as such, emphasising constant creativity or some other allegedly subversive qualities are nothing else but an integral part of the sovereign struggle par excellence. After all, sovereignty being the borderline that divides the outside from the inside, it relates to both sides of the divide and, therefore, strictly speaking, there is no outside of sovereignty.

Determination of sovereignty's limits is, however, rather complicated. Due to the close intertwining of the state and the political community, contradicting the authorities would mean, in Spinoza's view, contradicting oneself and acting against one's own interests (see e.g. TTP, 253). Still, one should not imagine the sovereign as completely unlimited. Faithful to his right as power doctrine, Spinoza maintains that any commands are limited to what people can do and have an interest in doing (TP, 310). Any power depends on its effectiveness, and it cannot be effective if the citizenry is not kept in mind or else the sovereign power would simply destroy itself (which is inconceivable following the *conatus* doctrine). And that effectiveness cannot be achieved by brute force – instead, Spinoza prefers winning the hearts and minds of the subjects (TTP 210). In this sense, Spinoza manages to formulate a theory of limited power without any normative preconditions (although the norm of reason is subsequently superimposed). In a similar fashion, Spinoza appears quite confident that

the sovereign authority will pass reasonable laws – after all, it is in that authority's interest to do so, since only reasonable laws strengthen both the state and the sovereign authority. That clause is certainly desirable given that the sovereign has the monopoly of right to decide on what is good and bad, what laws are to order the communal life, and how those laws are to be interpreted. By using these prerogatives contrary to reason, the sovereign would grow weaker and, ultimately, lose the power and right to command. It is, therefore, in the sovereign's own interest to stick with sound reason or, from a more critical perspective, with what passes as reason.

Schmitt, meanwhile, is more open-ended. For him, sovereignty truly is a borderline concept which occupies the groundless division between the inside and the outside and decides on who belongs to the community and who does not, i.e. on the community's order and on its friends and enemies. Sovereignty itself is a threshold between 'us' and 'them', *nomos* and *anomie*. Since the friend-enemy distinction itself is groundless in the sense that it cannot be resolved by any universal criteria, the sovereign decision is a miraculous *fiat* that establishes order *ex nihilo*, setting a point of reference that holds meaning in place. Sovereignty is, indeed, a 'liminal concept' in a sense that 'when illegality becomes extreme, it can convert itself into a new standard of legality. One sovereignty is replaced by another' (Kalmu 2010: 114) while, equally, if such conversion is unsuccessful, the old standard of sovereignty reasserts its authority with the challenger remaining outside the borders of legality. Certainly, only one of the two faces can prevail at a time, especially when they clash in a state of exception. Therefore, sovereignty should, as already indicated, be conceived of as an attribute: only *ex post facto* one can say that either the law-preserving or the law-making force had been sovereign all the time, depending on which one was successful. But that is almost a restatement of Spinoza's right as power doctrine: the ability (power) to decide determines the right to do so. Still, this seemingly arbitrary nature of sovereignty does not diminish its importance in any way. On the contrary: the constant renegotiation of the symbolic borders of the political community – the essence of sovereignty as a borderline concept – also means that neither sovereignty nor political struggle can be eliminated or externalised. The process of ordering must simply continue. Hence, seeing modern sovereignty as a fluid relationship gives the concept a renewed *raison d'être* in an increasingly globalised world. Here as well, the crucial tension between Spinoza and Schmitt remains the usual one: sovereignty as

orientated towards an external standard (e.g. reason) or based on pure ability to decide, both simultaneous and constantly challenging one another, representing the constituted and the constitutive respectively.

Next, for Schmitt, the struggle over sovereignty undoubtedly contains a tragic element: one has to take sides but, since the foundation is groundless, neither side is inherently better than the other. That clearly echoes the non-essentialist approach to rights outlined in the discussion of the state. The stakes are high: once identified, the loser-qua-other becomes (or remains) outside of law and, effectively, has always already been such. Losing always means having been wrong. But choosing not to contest the status quo is no less tragic because one then has to obey instituted contingency – non-resistance is a form of tacit consent. Certainly, that contingency must not pass as such – instead, it must be seen as something more than it actually is, namely, the ultimate standard of order – and, consequently, politics does not turn everyone into a Hamlet, at least not into a conscious one. Here, as ever, Spinoza comes into play, offering the criterion of reason as a placebo to cure the anxiety of the tragic. An ultimate criterion is needed for both the constitutive and the constituted thrusts, making any choice seemingly natural. On the other hand, siding with an alternative to the status quo is not inherently better either – it only means siding with another contingency, although one is not necessarily aware of it. In fact, real political struggle can only be a struggle between different sets of beliefs in a quasi-religious sense, whence any constituted theology is being challenged by a constitutive theology, which if successful, solidifies into a new constituted one, only to be challenged by a new constitutive one. The price to pay for losing, as already indicated, is the determination that one's belief had always been nothing but heresy. In this way, again, Spinoza and Schmitt, when taken in turns, account for constestability (groundlessness) and stability (external criteria), the constitutive and the constituted, and show how the perpetual process of ordering is animated.

As ever, for both Spinoza and Schmitt, human beings are characterised by a deficit of existence, which is the cause of constant desire to fill that gap or, at least, to cover it up. In fact, for Spinoza, humans are automata of desire that construct reality out of pleasure. Therefore, moving to Schmitt, the core question of sovereignty is who decides what legitimate satisfaction is and, therefore, who controls desire. Two

different outlooks can be constructed out of this. The outlook of the constituted is the conflation of a certain mode of desiring with a quasi-objective standard, such as reason (Spinoza). Meanwhile, the constitutive has to expose the decision on the existing status quo as groundless and arbitrary and, therefore, open for contestation and ever new sovereign decisions (Schmitt). But, once constitutive desire is pitched against the status quo of desire, the former starts acquiring quasi-objective grounding itself, becoming fixed once the alternative way of desiring becomes the new status quo via a sovereign decision, while the old status quo then appears to always already have been groundless. In this case, Spinoza again is the agent of the constituted while Schmitt is the agent of the constitutive. And, again, one encounters the ever-recurring kernel of belief: any order must be believed to be something more than it really is. After all, sovereignty rests on both *auctoritas* and *potestas*. If no *potestas* is left, sovereignty collapses immediately because the order it maintains can no longer be protected. If no *auctoritas* is left, sovereignty will unavoidably be challenged and the only tool the sovereign will be able to employ is sheer power – this is a bloody outcome but no matter how much blood is shed, pure power without legitimacy will not be able to maintain itself indefinitely. For a power to maintain itself, it must be coupled with belief – Schmittian practice must robe itself with Spinozist imagery. Sovereignty is, indeed, contingent but only on that inner relationship (and inner stasis) as well as on the relative strength of one authority on comparison with another (e.g. national vs supranational) but not on fulfilment of some preset criteria. Or, if it is dependent of externally preset criteria, then the norm-setting body must admit its own nature as a higher-order sovereign, the implication being that it itself is but yet another instituted particularity trying to pass as universality.

Spinoza and Schmitt, read in an alternating sequence, help resolve what otherwise would be a crucial aporia of sovereignty: if sovereignty relies on transcendence, as it has to in order to be effective, it faces an impossibility of being what it is, because the most it can rely on is merely the *form* of transcendence, failing to provide an ultimate external point of reference (see Mininger 2010: 150-151). Sovereignty would then be trapped in the impossible position between the inside as immanence and the outside as transcendence. Instead, the dynamic model proposed in this chapter implies that sovereignty is always attached to one of the two poles (but never to both and never permanently) and constantly pulled both ways by the permanent tension between the

two, i.e. caught up in the midst of the process of ordering, the latter, of course, being the core object of the thesis. Hence, sovereignty is neither something inherent nor something superimposed but rather a scene for enacting the (often tragic) drama of democratic politics (see Martel 2012: 3). Sovereignty itself should, indeed, be seen as an attribute that states (and other actors) try to arrogate to themselves. That is not some modern innovation. After all, this was the case even in the heyday of sovereignty when sovereign equality was, in fact, an attribute of the most powerful European states. Their sovereign equality was based on the fact that they were able to grab an approximately equal amount of the attribute of sovereignty. Other states and territorial structures have always been less sovereign to the degree to which they were weaker. This is what constituted the difference between a colony and the imperial mainland or a client state and a patron state. That was, in practice if not in theory, also the case during the Cold War era. Today, meanwhile, states have increasingly turned to acting collectively, as it were, pooling some aspects of their sovereignty together within international organisations. Such organisations, then, become centres of gravity by themselves, attempting to pull the attribute of sovereignty in their direction. Alternatively, if a sovereign state is weak and some bodies within it grow in relative strength, these units can claim more and more sovereignty to themselves until they are the real and full possessors of authority. That, certainly, goes contrary to the principle of territorial integrity, which has been one of the cornerstones of post-World War II international order, although in favour of a much more obscure principle – that of self-determination. But that is, again, an instance of the paradigmatic constitutive-constituted tension. In this context, it is useful to apply Spinoza's right as power doctrine (*Ethics* Ip11s; TP, 292) – perhaps rebranded to sovereignty as power – to the composite bodies of states, international organisations, and other actors that acquire ever more of the attribute of sovereignty, once again seeing sovereignty as an attribute. In a nutshell, every entity has as much sovereign right (i.e. possesses as much of the attribute of sovereignty) as it has power to claim and uphold it. However, it must be stressed that any fluidity of sovereignty must also be a constitutive fluidity. That necessarily involves an existential decision over the shape and form of some collective body that has successfully arrogated the power to make that decision: ordering must be of any by some body, and the two always go together.

As per both Spinoza and Schmitt, the origin of political life is irreducible plurality, which requires a decision on competing claims. This plurality also opens up a power struggle: who decides and what the content of the decision is going to be – essentially, whose particularity is to become the new universality of a new political theology. The main difference between Spinoza and Schmitt is that while, for the former, the process of ordering has neither beginning nor end, for the latter, both points are clear: ordering moves from Genesis to the Last Judgement. And yet, despite that, it transpires that Schmitt still manages to maintain a more open outlook of how this process is supposed to flow by refusing to prescribe anything but those two points. This is why Schmitt is satisfied with a decision which, in effect, justifies itself, while Spinoza resorts to rational grounding. Nevertheless, both, quite paradoxically, dislocate sovereignty from the centre: as already shown, sovereignty is an attribute, arrogated by those who ultimately have the power (and, therefore, right) to do so and, as has now become evident, that attribute belongs to the process of ordering.

But, as ever, there needs to be something more than merely arrogation of an attribute. Sovereignty, in order to be effective, needs to be of a *corpus mysticum*, guided by something beyond understanding and questioning. It needs to represent a conflation of the entire political community with all its authority and something more than it actually is or could be – not only representation but also a larger purpose of that representation, an imaginary telos that lends added dignity to the decision, elevating it to sublimity. Here one has to return to the necessary kernel of belief: it is the same idea that lends both the state and the sovereign power their authority. At this point, one must ask, with Agamben (2011: xii), ‘Why does power need glory?’. The answer is that Glory, ‘the acclamative and doxological aspect of power’ is, in fact, ‘the central mystery of power’ (Agamben 2011: xii). What transpires, then, is that ‘the center of the governmental machine is empty’ (Agamben 2011: xiii). That, indeed, is a clear expression of power and authority structured around the core emptiness, completely in line with the Spinozist-Schmittian perspective. From the perspective of applicable political theology, then, ‘[i]t is not so much that the effects (the Government) depend on being (the Kingdom), but rather that the being consists of its effects’ (Agamben 2011: 142). That is, manifestly, a restatement of immanent causality. The added dignity necessary for the constituted not only must underlie government as the object of belief – it can only be manifest through that government because, in fact, there is

nothing behind government but yet another attempt to cover the deficit. Thus, again, the Spinozist-Schmittian movement is paramount: from struggle on a groundless terrain (Schmitt) to rationalisation-qua-belief (Spinoza) to openness for contestation because nothing built on groundless terrain can be stable (Schmitt) to either new or renewed stabilisation as the only viable and reasonable outcome (Spinoza). In short, the sovereign decision prevails simply because it *is* sovereign decision but it simply cannot be ‘sold’ as such – it needs a more impressive packaging. But the movement between sovereignty-as-presence and sovereignty-as-potential is completely inherent in the process of ordering.

In today’s international order, emphasis on International Criminal Law, Responsibility to Protect, etc. seeks to create temporary outsides of the international community which only serve to confirm the ‘us’ of that community and to strengthen its own theology. But by portraying power and sovereignty as autonomous, bearing (almost) no relation to the political community, these approaches oversimplify the existing problems. It is not that authorities operate in a vacuum. Instead, there are conditions in the constitutive-constituted nexus that allow them to act as they do. That also serves as at least a partial explanation of why international interventions have such a poor track record of long-term success and why post-authoritarian and post-conflict transitions tend to be so complicated and dangerous. Either the political community (or its part that matters) approves what is happening under a particular regime or there is no political community at all and, therefore, no referent of intervention or transition (but, in the latter case, there is also no sovereignty – just sheer power). If sovereignty is taken to be the borderline attribute that stretches across the inside and the outside of a political community, then the very notion of sovereignty as an externally prescribed ‘Responsibility to Protect’ loses its purpose. After all, self-protection (and one has to keep Spinoza’s *conatus* in mind here) is an inbuilt element of the internal and external attributes of a political community’s sovereignty.

4.2. The Content: Law and Politics

There is, once again, a core tension between contestation and belief in both law and politics, best reflected through Spinozist-Schmittian movement. It is law that provides

ordering with its content, thus determining what a political community is and what it is not, i.e. providing it with form. But, at the same time, law itself is the product of that community, arrived at through the process by which the community finds out the truth about itself – politics. Law here stands for something more than the community can ever be – a well-ordered and integrated whole – and that is both its source of appeal (law becomes an object of quasi-religious belief) and ultimate downfall (because it cannot live up to that promise). The ability to grasp the nature of law, therefore, requires the ability to conceive presence and absence simultaneously. Politics, meanwhile, refers to the constant inner dynamic of the political community, in which multiple particularities compete for the status of the embodiment of the entire community. However, no effective claim can be formulated in the name of a particularity – instead, a domain of political theology is opened up. Such inner dynamic of law and politics only further points to ordering being a process.

4.2.1. Law

The essence and presence of law can, at first sight, seem paradoxical, especially in terms of its relation with the political community to which it applies. For example, Honig (2009: 15) sees a chicken-and-egg dilemma in lawmaking, whereby ‘In order for there to be a people well formed enough for good lawmaking, there must be good law, for how else will the people be well formed? [but] Where would that good law come from absent an already well-formed, virtuous people?’ However, there is an answer to that: once one begins to see the process of ordering as constant movement between the constitutive (the people) and the constituted (law), whereby both are mutually reproduced, a gradual process opens up through which ordering sediments. Another related problem is that of stability and change. In order to fulfil its constituted stabilising promise, law itself must be stable in both its form and representation of the political community but simultaneously mutable enough to reflect the groundlessness of social existence. Finally, there also is the problem of observance: if law is but a moment in the flow of social significations, then how does it merit observance but if it is something to be observed unconditionally, how is one to account for any change in law? Here, again, the Spinozist-Schmittian reading-as-movement is crucial in

understanding the tension and interrelation between contestation and belief that animates the process of ordering.

For Spinoza, law is, essentially, a substitute for reason, a tool to make sure that people act *as if* they were reasonable (see e.g. TTP, 57). In so doing, it harmonises relations within society since, it must be remembered, reasonable people necessarily agree with one another. Its norm-setting function ensures that any tension between the collective *conatus* of the state and those of individuals is well-managed and that the community proceeds towards ever more perfect reason. This harmonising function is also highlighted by Schmitt: law is the expression of the political community's internal order and, just like another constituted element, the state, it is an incarnation of that community's will. Since the fallen nature of humanity leads to unavoidable conflict if humans are left on their own, law does introduce coherence which is partly artificial and partly organic (because it follows from substantial homogeneity of the political community). The crucial difference is, of course, Schmitt's negation of reason or any other external criterion: in effect, everything that is decided is law and that suffices for it to be binding. As Spinoza sees it, law, as long as it leads towards reason, can force people to be free (because reason is freedom) and, therefore, to act against law is to act against one's own true interest. This attitude is a crucial premise for any theological thinking about law because it implies an unquestionable higher criterion, the ultimate benevolence of which cannot be doubted. Meanwhile, for Schmitt, the individual must decide to observe the law instead of blindly following universal norms – thus an instance of tragic choice is created (see e.g. Schmitt 2007b: 28; for a discussion, see also Meier 1998: 11, 14). After all, without this ability to act otherwise, there could be no friend-enemy distinction. That decision is not always open and straightforward – often it happens in the form of tacit consent. But the crucial, existential, choices cannot be made by recourse to any ultimate criterion: the demands are simply too irreconcilable, hence leading to a groundless tragic choice. However, such groundlessness at least introduces some openness. Schmitt might have lamented that ability to choose, tracing it back to the Original Sin, but nevertheless, it was, for him, an empirical fact of life. But once the choice is made, there can be no further doubt. The belief in the ordering principle must constantly be affirmed through an incessant recital of the creed or, in the case of law, constant observance. Here, as ever, the incessant movement between form and appearance is evident: law must be

open to all possibilities (Schmitt) but, once some of those possibilities are selected, they must be seen as objective and believed in (Spinoza) but, since ultimate fixity and rigidity, whereby any status quo is deemed final and incontestable, is neither desirable from a normative perspective nor feasible in communities built on a groundless terrain, the instability of any ordering must be acknowledged and the possibility of contestation reintroduced (returning to Schmitt), albeit keeping in mind that any result of that contestation will again need to acquire the added dignity of something more than itself (returning to Spinoza). Hence, both stability and change are accounted for, further revealing constant movement within the process of ordering.

In terms of political organisation, for Spinoza, law functions as a point of reference which allows the people to know what their general will is at a certain time (TP 302, 383; see also Balibar 1997). For Schmitt as well, whatever is law at a certain time, is always already willed by the political community and expresses its mode of existence (Schmitt 2008a: 70, 125, 131-132). Especially for Schmitt, law prevails only as long as it reflects the self-determination of the political community. Once that is no longer the case, the community has to again decide on its own form. In effect, both authors propose a very similar scheme of transformation from constitutive will to constituted form, even though their approaches to external criteria differ. In this way, a second source of added dignity is presupposed: not only dignity accrued from some ideal form (and any present form must be considered ideal or, at least, superior to any alternatives) but also dignity accrued from the collective body of the community. Belief in legal order is, essentially, the political community's belief in itself. The community aggrandises itself to the position of the ultimate criterion, to the status of some metaphysical presence that appropriates and divides the symbolic and the material worlds. To that extent, the voice of the people truly becomes the voice of God. The *corpus politicum* and the *corpus mysticum* are intertwined, giving the political community both physical presence and power that exceeds any presence. In Spinoza's theory, the theological nature of law is even further strengthened by the fact that, especially in democracy, law needs quasi-prophetic mediation in order to be promulgated: the political community prophesises about itself. Schmitt, clearly, allows for more distance between the community and its law but does not do away with the quasi-prophetic moment. For Spinoza, a democratic multitude (because of its absolute and immediate character) itself speaks the law-qua-its-own-being into

existence while Schmitt postulates the need for a sovereign decision which is never fully identical with the political community as such (if there was full identity, there would be no politics; but a degree of identity must, nevertheless, exist because otherwise there would be no substantial homogeneity). Still, in both cases, the political community is the source of ultimate truth which is revealed through law as the substance of ordering.

The simultaneous creator-created relationship of the political community and its law definitely brings together the social theories of law that often either simply see law as a set of codified relations within a society or posit law as fully a creator of society by establishing a distinction between those who observe certain norms and those who do not. Here, once again, the same paradigm becomes clear: sharing a core premise (that there is a causal relation between law and society), the two strands of theory exemplify the two core thrusts observed throughout this thesis: the constitutive one, putting law in a subservient position, and the constituted one, making society dependent on pre-existing law. A Schmittian-Spinozist reading-as-movement allows seeing both interpretations not only as commensurable but also as mutually necessary: only by operating together they can account for both the prevalence of political communities as units and for their constant change in relation to internal and external circumstances. The above, nevertheless, does not say anything about the grounds for both stability and contestation or, rather, the presence or absence of ultimate grounds. To understand the latter issue, a Spinozist-Schmittian analysis-qua-movement is once again needed.

Notably, for Spinoza, there is nothing ‘natural’ in human law – essentially, nothing is forbidden by nature, except what people cannot do anyway (TP, 294). In the same vein, there is no necessary relationship to moral norms, except to the extent that law and morality are both based on reason. Certainly, keeping in mind that Spinoza keeps back door open for a quasi-objective redefinition of ‘good’ and ‘bad’ (*Ethics* IVp24), an absolute law-morality distinction cannot be sustained. And yet, there is no direct transference from one domain to the other: any overlap is mediated by reason (a moral norm is codified in law not because it is a moral norm but because it is a command of reason). Thus, while natural law or moral law would presuppose norms that simply exist, Spinoza’s law, even if it is to be moral, must be made such by humans

employing their faculty of reason. The same absence of any 'natural' elements of law also applies to Schmitt's doctrine. Here, correct interpretation and application of law is seen as a practical, rather than abstract-philosophical concern (Schmitt 1985: 35). Thus, not only reason but also any other normativity is disregarded: it is concrete situational decision that matters and not universal norms. In that sense, the flexibility and mutability of Schmitt's law and the aspiration towards universality of Spinoza's law must constantly check one another: law must be simultaneously oriented towards an ideal which is believed in, hence fostering observance, and groundless to allow for any change. But that drive for change must be made in the name of another universalist aspiration which is, in practice, just as groundless as the previous one.

Evidently, both Spinoza and Schmitt are at odds with the positivist theories of law, albeit in different ways. Spinoza's law lacks the independence that the positivists ascribe to law: albeit there is no natural content of the legal system, the ultimate criterion of reason constrains the independence of legal thinking. Admittedly, to an extent, Spinoza could be thought of in parallel with Kelsen in terms of reason as the *Grundnorm*. And yet, whereas *Grundnorm* is internal to law and mutable, reason is neither. In fact, Spinoza sounds more like a Dworkinian interpretivist than a Kelsenian positivist. Schmitt, meanwhile, despite his emphasis on the absence of any predetermined content of law, is easily classified as an anti-positivist, especially because of his polemic with Kelsen. And yet, he is quite close to the other, Austinian-Hartian kind of positivism, postulating a rather strict independence of law and the importance of a founding decision. After all, Schmitt's decisionism was, clearly, closer to the Anglo-American common law than to the continental civil law. Schmitt, of course, presents legal independence in a radicalised form, getting rid of any rules of recognition and leaving bare sovereign decision as the sole mode of change and inclusion of anything from outside. Yet, at the same time, that outside is strengthened: it is not the case that law decides by and from within itself that a certain external norm be recognised but, rather, the outside irrupts the flow of law by forcing itself to be recognised by arrogating the sovereign decision. This having been said, positivism in itself does constitute an important means of understanding the functioning of law by coming close to the movement already outlined: from the relative openness of the common law branch to the rigidity of belief in the *Grundnorm* to, again, irruption of openness because only that allows any change in the *Grundnorm*, as Kelsen himself

has permitted. And yet, this movement only approximates the Spinozist-Schmittian one, concentrating on the inside (i.e. the status quo). That, arguably, is due to positivism being, essentially, a theory of appearance, of how the legal process and legal change must look like – a tamed vision of change (Hart) and a reinforced presence of stability (Kelsen), proclaiming that law simply exists and is capable of independently determining itself in terms of both its own preservation and change.

Just as well, for both Spinoza and Schmitt, law cannot simply be somewhere out there waiting to be discovered: it must be created, even though, to be more precise, the political community both creates law and is created by it. Since, as already indicated, a reference to the community imbues law with added dignity, law essentially assumes its dignity from something that is simultaneously created by it and, therefore, can in effect, be called the source of its own dignity. As ever, there is a two-way reciprocal relationship where the inside and the outside, relations of causation and arrogation defy traditional dimensional logic like a Möbius strip.

In Spinoza's case (see e.g. Levene, 2004: 165 for a discussion), law is not only an internal matter (a product of the community) but also an external one (approximation of the infinite intellect of God). Here Spinoza, as already seen with the state and sovereignty, inadvertently demonstrates the need for law to be seen as something more than it actually is and to thus shroud itself with ever more dignity. And Schmitt adds his own mystique: law comes about through the exception-qua-miracle, in which the underlying Being of the community momentarily becomes manifest. In this way, law, once established, through its very presence becomes a crucial weapon in the theologico-political struggle: it upholds the order and provides content to be believed in. As often happens, Schmitt is more straightforward about that theological aspect, and thus opens ground for contestation. Spinoza, then, once more gives an example of the theological nature of ordering in action in support of the constituted.

In Spinoza's theory, law is of fundamental importance because an association becomes a collective body only through its ability to pass laws and uphold them. Law both is created by a political entity and makes a political community into an entity itself. In essence, law is the defining feature of ordering, its most immediate and visible manifestation. And for Schmitt, there is, strictly speaking, no way of getting out of law because some kind of order always exists, even in an exception: the present

law and an aspiring law-to-be, divided by an instance of sovereign will (see e.g. Schmitt 2014: 118-119). Seen from this perspective, even the position of the sovereign appears to be less paradoxical than commonly thought: it is neither something outside law nor the force of law without law but, instead, always relates to a present law: if the status quo prevails, that is quite straightforward, while if the law-to-be prevails, then it turns out that the latter had always been the real, present, law (and, therefore, real sovereignty must have always related to it) and the former status quo had been just a case of mistaken identity. After all, for Schmitt, there must be law at any time because law is a crucial weapon against disorder of the Antichrist. If sovereignty did not refer to the always already present law, it would not be able to carry out its katechonic function. For both authors, therefore, law is the crucial and defining presence – which is very much in line with the argument put forward in this thesis.

Schmitt, as it is well-known, refers to a few rather cryptic lines of St Paul: ‘And you know what is restraining him now so that he may be revealed in his time. For the mystery of lawlessness is already at work: only he who now restrains it will do so until he is out of the way’ (II Thessalonians 2.6-7). The function of the *Katechon* (the ‘he who restrains’ of the letter) adds metaphysical dignity not only to particular laws (or political order more generally) but the very *presence* of order as such. In fact, once such approach is adopted, law does not even need justification: it suffices that it is and is effective, because the alternative to even bad laws is worse still. Justification is not necessarily rendered superfluous in this way – rather, political ordering is simply given an extra weapon to defend itself. Something quite similar can be found in Spinoza as well: for him, law is needed in order to uphold reason and restrain the human tendency to stray away from it (see e.g. TTP, 199). On this occasion, Spinoza and Schmitt can be read together, showing that both metaphysical and rationalist arguments can signal an identical process of shrouding the order that is with (quasi-)metaphysical dignity simply because it is the order that is.

Nevertheless, the ‘impurity’ of law must still be kept in mind: each group will formulate a claim from a transcendent or quasi-transcendent perspective, seeking justification either in reason or in some other higher cause. This plurality of ultimate causes is not only expedient in terms of political mobilisation, since it is open to

potentially competing standpoints, but also desirable normatively, because if there is no distance, no alienation between the political community and its law, then fanaticism is the most likely outcome. As it has been shown, this overstated immediacy forms the essence of Spinoza's unconsciously theological theory. Meanwhile, in order to better understand Schmitt's political theology, it is useful to read him as a reader of de Maistre. For the latter, 'to conduct himself well, man needs beliefs, not problems' and, therefore, '[n]othing is more vital to him than *prejudices*', i.e. 'any opinions adopted without examination' (de Maistre 2001: 111). As a result, '[g]overnment is a true religion; it has its dogmas, its mysteries, its priests' (de Maistre 2001: 111). Schmitt's understanding of theological thinking in political ordering is, in principle, the same. Theological thinking and the necessity of belief (or 'prejudice') are corollaries to groundless existence: when no option is inherently better or more strongly grounded than the other, one can only resort to belief. And that belief, moving back to Spinoza's theory, does not have to be openly metaphysical (e.g. in a transcendent God in Heaven) but can have other objects as well (reason included). Thus, despite Spinoza's own struggle against prejudices, reason might only be the name of an especially appealing prejudice. Furthermore, some (see e.g. LeBuffe 2015) even suggest that Spinoza himself might not have been as critical towards prejudice and politico-religious conflation, if only for reasons of political expediency. But, even then, any entrenched constituted belief in law must always be checked by upcoming constitutive beliefs in alternative law – that is a clear implication of ordering as progress.

In this respect, it might be useful to bring back some of the legal theories outlined in the first chapter, namely, interpretivism and natural law. It could be argued that the rationalist tradition of natural law, with its emphasis on reason as a means to determine the natural content of law, is quite well aligned with some key features of Spinozism as, in a way, does interpretivism, stating that once the relevant norm is established, single correct answers could be given. Certainly, interpretivism is somewhat more open than natural law theories, since it concentrates on what is collectively deemed to be the relevant norm. Thus it is, in part, transcendental-interpersonal, whereas natural law is fully transcendent. Spinoza's intellectual love of God and the situation that Dworkin puts his Judge Hercules in correspond in some fundamental ways; most prominent among them are quasi-ideal knowledge, quasi-

ideal consideration, and decisions that are fundamentally right. Evidently, there can be little contestation in both interpretivism and natural law theories or, if there is, that contestation is only towards better and truer law but not in terms of any alternative demands; in other words, no otherness is permitted. To that effect, the two theories can be seen as an inversion of the Kelsenian *Grundnorm*-based positivism: here, again, one encounters a basic norm which acts as a source of validity but, contrary to Kelsen, that norm lies outside the legal system. As a result, one can easily see two strategies in which the constituted power can add the extra dignity to its law, making it more than it is: either the belief that law is internally coherent, producing meaning from its own sublime centre or the belief that law is validated from outside, by an equally sublime centre that stands above any human particularity. That effort, as ever, needs a Schmittian counterbalance in order to preclude self-serving rigidity.

In fact, if one needs to locate Schmitt as being close to any of the modern theories of law, a form of pragmatism would, perhaps, be the obvious candidate. Certainly, that would not be the pragmatism of Rorty's liberal ironists who are always able and willing to doubt anything (Schmitt would deplore that, seeing in the ironist attitude the worst vices of liberalism). Rather, one might see an overlap in the more basic attitude that law is based on a paradigm that exists here and now and that any foundation is, ultimately, groundless – in short, what effectively passes as order, is order (that has already been observed in the discussion of Schmittian sovereignty). Schmitt would not, perhaps, even be very much at odds with some of the affiliated theories, like the economic analysis of law. Certainly, sympathising with their emphasis on competition and conflict in an environment of scarce resources, Schmitt would, nevertheless, accrue to law a somewhat stronger stabilising role, limiting the competition of interests and standpoints because, if left unchecked, it could threaten the political community with dissolution (and it also has to be remembered that Schmitt strongly advocated separation and independence of domains; hence, he would not be comfortable with the conflation of law and economics). Strangely in terms of Schmitt's own convictions, although not in terms of subsequent appropriations, Schmitt is, as well, close to some principles of critical legal scholarship. As well known, for the critical theorists, law only objectifies underlying power relationships. A very close relationship between law and power is something that prominently features in Schmitt's writings. As already emphasised, the presence of any normativity

rests on the power to make it actual. And yet, Schmitt never espoused the negative attitude characteristic to critical theorists: for him, that was just a diagnosis, a dissection of what actually is, rather than a tool to criticise society. Again, the two contrasting thrusts that operate simultaneously, permanently holding one another in movement and in tension, are evident: the (rather Spinozist) interpretivist and natural law constituted thrust and the (rather Schmittian) pragmatist and critical constitutive thrust, with the Schmittian-Spinozist movement providing a framework on which those otherwise competing theories can be placed. Once again, one needs to start with power that establishes effective order, which then solidifies into an object of belief but, being groundless, can be dislodged by another, which, in turn, will need its own structure of belief.

Nothing of the same sort could be said about the realist theories of law, with their emphasis on decisions being determined by external factors and personal choices. Both Spinoza and Schmitt would have found that too seditious, although Schmitt might have approved the claims that there always is more than one possible option and any choice is determined through preference for a particular end. While the latter might resemble quasi-decisionism, Schmittian law is, nevertheless, an integrated framework that can only be replaced in its totality and not a set of do-it-yourself options. Hence, law, once established, is for Schmitt, determinate enough (or, if not, is made determinate through the sovereign decision) to act as a criterion even in a decisionist system. As far as deliberative theories are concerned, the ideal of free flow of arguments where the best one wins and becomes law would not be judged kindly by Spinoza and Schmitt either. Spinoza would disagree on the grounds that law must be guided by reason and not unpredictable deliberative encounters, although the general principle of collective improvement clearly echoes his theory (as do the more rationality-inclined versions of deliberative theory, such as Habermas'); Schmitt, meanwhile, would see only constant chatter without the ability to make a decisive choice. Both of those modern theories, in effect, are over the top: on the one hand, innovation without fixity (realism), producing an unduly radicalised constitutive thrust, and on the other hand, the ultimate legitimation of the status quo because it is easier to contest some sublime external point which upholds order than to challenge oneself (because, by implicitly participating in deliberation, one is, effectively, part of the agreement). But the basic tension between the constitutive and the constituted

poles prevails. Arguably, in today's world, the unity of law has been rendered problematic by internal pluralism and transnational norm-making (Krisch 2010: 305-306). But here one has to remember the borderline nature of sovereignty and its quality as a floating attribute. Such tension and contestation within law makes sovereignty-qua-borderline ever more relevant. Certainly, ever greater fluidity is both the condition of and the solution to the modern increasingly globalised world (Krisch 2010: 307). And yet, points of reference are still needed, arbitrary as they might be, and these points of reference need to be objectivised in the name of something. Hence, law retains close ties with the local and particular. This is illustrated by the difficulties faced by international transitional administrators trying to impose their understanding of law over local legal cultures (May 2014: 100). Certainly, modern law takes place at the frontier between the national and the international. Just as sovereignty is now more than ever about the borderline between the inside and the outside, not only in terms of internal content but also of pressures from the inside and the outside of the community, law is caught within those multiple loci of decisions. Regardless of its origin, law still relates (as it must do) to a certain political community, although the relevant community might transcend particular state borders – at least that is how is (and must be) presented. However, such transnational law poses a challenge: on the regional and, especially, on the global level, even the law that poses as the embodiment of a certain community's values (e.g. international criminal law as expression of global consciousness) is, in reality, the creation of expert panels or, at best, state representatives, thus only *ex post facto* presuming the existence of some community.

Notably, the principle of law-making is the same as that of sovereignty (after all, as both Spinoza and Schmitt suggest, sovereignty is about establishing particular laws): power and right is one thing. As the transformation of state, sovereignty, and law illustrates, the current globalising thrust seems to favour the constituted by creating ever larger spheres of ordering that are much easier to rule through governance (in terms of centralised prescription of norms, a fair amount of managerial thinking, and dispersion of communities) than through government (political struggle characteristic of political communities). The added constituted dignity of the general will, universal norms, rationality, or simply, of there being no other way clearly seems to be having an upper hand. Thus, from a normative perspective at least, a constitutive counter-

thrust is needed. That, however, need not be some form of cosmopolitan, globalist constitutive thrust leading to global democracy – any project on such vast scale would only mean ever larger exclusion of smaller groups rather than inclusion of everybody's interest. In fact, such thrust would only serve to add even more extra dignity to the oversized constituted, lending it more legitimacy. There needs to be a counterbalance, thus, again, returning to the Spinozist-Schmittian movement: an increasingly interconnected and globalised world does need some order that not necessarily transcends particularisms but, rather, provides a framework for their interaction. Therefore, criteria that claim to transcend any specific situation, and their corresponding dignity, are required (a Spinozist moment). But, at the same time, law has to be realigned with particular communities that are able to determine their own mode of existence and, when encountering the regional/global level, appropriate any common ordering in their own particular ways, again, with their own appeal to extra dignity (a Schmittian moment). This counterbalance, however, is not necessarily directed against integration as such but is certainly needed for balance between the all-encompassing constituted and the unavoidably smaller-scale constitutive. In other words, integration on regional and global levels is, quite probably, a necessary feature of today's world. And yet, the regional must always be held in tension by the communal or the national (and vice versa) while the global must be held in tension by the regional (and vice versa). Only through such constant flow of legal norms, of power, and of the attribute of sovereignty that moves and whirlpools in all directions can a bearable non-universal and yet integrated ordering be conceived. Hence, those promoting a certain 'de-noming' of the world (see e.g. Mignolo 2015) only repeat the fallacy of the advocate of 'global society' or 'international community': *both* poles are actually necessary and undisputed primacy of or preference for either cannot be asserted.

In fact, right as power must be seen as a fundamental principle of law, especially when being interpreted from the perspective of a movement between groundlessness and dignity, referring simultaneously to Spinoza and Schmitt. Ultimately, despite the fact that the principle of rule of law has become part of the common sense globally to the extent that it is often treated as an end in itself (May 2014: x, 82), any justice is victor's justice, the rule of law being 'tied up with the articulation and mobilization of political power' (May 2014: 83): victorious international community judges the

vanquished according to its own liking in international criminal law, victorious society judges the loser according to its own standard in domestic law, a victorious societal group judges the loser (the new internal enemy) according to its own standard of ordering – that is unavoidable. And as long as that its name is not spoken, justice can pretend to embody the universal – become the sublime object of the theological thinking about law. But as soon as the name *is* spoken, a challenge is mounted. Of course, anyone who objects the legal order must be punished (at least as long as the law retains its effective power) – punishment is part of law's appeal to be more than just a particularity of one group. Law is, after all, a force that strongly affects people's decisions, providing them with a considerable incentive to choose or not to choose a given alternative (Chong 2000: 210-211) – as Spinoza would have it, law intervenes in the chain of causation. Sanction, therefore, is crucial for symbolic reasons no less than it is important for practical ones.

Part of the common-sense understanding of the rule of law is that it ensures 'independence and dignity of each citizen' (MacCormick 2005: 12). And yet, that is precisely what the rule of law cannot do since law cannot provide something equally to all; instead, by its very nature, it has to favour some more than others. That raises a question of why law is actually obeyed. Neither a cultural-sociological explanation of obedience to law, whereby people obey law because they have developed a culture that fosters observance of normative requirements or nurtures temperamental characteristics that contribute to observance nor a rational choice explanation that sees rule of law as solution to conflicts of interests within society whereby it is beneficial for everybody to observe rules, provided that everybody does the same (see e.g. Przeworski 2003: 114) can provide a full picture. Instead, observance of law must be based on a co-created belief in norms that represent something more than the norms themselves – the presence and the dignity of the community itself. Crucially, law is not primarily its positive content. Instead, 'its basic reality – in every society – consists in the drama of its continual enactment and re-enactment; and that drama, with its ritual, its tradition, its authority, and its universality, manifests and effectuates not only the legal principles and policies but also legal values, legal emotions' (Berman 1974: 74). The latter interpretation contains both the absoluteness of Spinozist democracy (the community simultaneously orders and obeys itself) and the Schmittian point of internal-external (borderline) gatekeeper – the sovereign decision

and the law thus produced which subsequently assumes the dignity of the community's presence. For a theology to be complete, *voluntas* (political authority) must pass as *ratio* (moral authority) and the two have to become indistinguishable. *Ratio* represents the inevitably unsuccessful drive to rationalise law as an expression of the nation as community; *voluntas*, meanwhile, represents the power relations within a society (Cotterrell 2006: 166-167). As Berman (1974: 13) insightfully noted, 'law and religion share certain elements, namely, ritual, tradition, authority, and universality'. Here, ritual signifies 'ceremonial procedures which symbolize the objectivity of law', tradition refers to 'language and practices handed down from the past which symbolize the ongoingness of law', authority stipulates 'reliance upon written and spoken sources of law which are considered to be decisive in themselves and which symbolize the binding power of law', while universality denotes 'the claim to embody universally valid concepts or insights which symbolize the law's connection with an all-embracing truth' (Berman 1974: 31). These qualities 'connect the legal order of any given society to that society's beliefs in an ultimate, transcendent reality' (Berman 1974: 25). This transcendent reality must not necessarily deal with God traditionally conceived: it can be reason, the economy, or an apotheosis of the human being (with the characteristic expression of human rights) itself. What matters is that, 'unless people believe in the law, unless they attach universal and ultimate meaning to it, unless they see it and judge it in terms of a transcendent truth, nothing will happen' (Berman 1974: 74). Of crucial importance is the structure of signification, and by the aforementioned alignment, law and the fundamental existence of the community are coextensive, as prescribed by Schmitt. However, to complicate the Schmittian model, law and community are in a two-way reciprocal relation of determination. Indeed, not the mere passing of laws (or the ability to do so) but the effectiveness of laws determines authority (Raz 2009: 173). That is also a Spinozist principle: unless people observe law and live by it, law effectively does not exist. As a result, one yet again needs that constant movement between the two poles: contestation enabled by groundlessness and solidification enabled by belief. That which is groundless must acquire sublime dignity and yet that groundlessness must always return to haunt it. Once again, the process of ordering manifests itself as an ever-ongoing one.

To conclude, law – and by that here is primarily meant public law – is a momentary stabilisation of conflict and, although this moment has to be seen as authoritative, it only reigns over a conflictual terrain. As a result, those who seek to overcome this precarious foundation ‘in the name of some higher universal truths are likely to ensure only that the future will be marked by confusion, disappointment, and the generation of new forms of conflict’ (Loughlin 2010: 465). And yet, confusion, disappointment, and conflict, all ensuing from appeal to higher truths, are necessary conditions and results of ordering. If that was not the case, no change would ever happen. Rather than being seen in a negative light, confusion, disappointment, and conflict must be seen as both natural, ensuing from the deficit of existence at the heart of the human condition and the groundless foundation of any status quo, and positive, ensuring that no particular order is entrenched unassailably. Once one embraces the Spinozist-Schmittian reading-as-movement, encompassing both contestation and quasi-religious belief, the above no longer appears as a paradox, and the process of ordering can again be seen as constant movement between groundlessness and certainty.

4.2.2. Politics

For both Spinoza and Schmitt, politics has a competitive premise, although the authors differ in their solutions. For Spinoza, human essence is desire as expressed through *conatus*: a desire for elusive perfection, aimed at removing or, at least, covering up the deficit of existence. And politics is a practice of managing that desire, the ultimate goal being collective perfection and striving towards ever greater reason, with the political community imposing the commands of reason upon itself. But despite that competition, one also has to see politics as a constant attempt to make one out of many. Certainly, there are several ways of creating a singular community, and politics is, clearly, about winning over the hearts and minds of the population and not just brute force. Politics is about joint participation in a common project, but that project always has a goal ahead of it: reason. Meanwhile, in Schmitt’s writings, the competitive element is more pronounced. Since, for him, there are no first principles, everybody must be ready to fight for everything. After all, there are no natural grounds to solve conflicts – politics is about differences that simply cannot be reconciled. Politics revolves around an empty centre; and yet, despite this absent

fullness, something must be. This leads Schmitt to the tragic nature of politics, whereby one has to choose on an undecidable terrain without any criteria to ground the decision, except for one's belief. In terms of agency, it is up to 'political entrepreneurs and social groups to form new coalitions which can unseat the dominant ones' (Spruyt 1994: 192). If such political entrepreneur intends to promote a point, (s)he has to take a risk. After all, if (s)he loses, (s)he has always already been incorrect and, therefore, a public enemy. But if (s)he wins, (s)he has always already been right. The victory element is, of course, crucial since, as already seen, only one order can prevail at a time and that, again, plays into Spinoza's understanding of power as right. Admittedly, for Schmitt at least, the price to be paid for non-normativity is that, effectively, anything goes, as long as it is willed (or can be presumed to have been willed) by the people. In fact, Schmitt, despite being a lawyer himself, clearly prefers the political (constitutive) process over the legal (constituted) one, arguing against judicial review and in favour of the more immediate political will (Schmitt 2015: 130). Schmitt's own political allegiances can serve as a stark warning of the dangers involved. Arguably, Schmitt himself was not a cynic – after all, he did very explicitly claim that everyone must believe in something that holds normative value. But the fluidity of the content of any norm does not preclude any outcome, terrible as it might be. In part, this risk can be mitigated through the constant movement between the two ideas, one of openness to competition between different beliefs and the other of belief in a singular rationality, i.e. the constitutive and the constituted thrusts. With the political process oscillating between the two thrusts, both can check one another.

Crucially, if the terms 'reason', 'progress', or others are merely halos of *dignitas* accrued by the established order, then risk – in fact, the tragic – is an unavoidable element of politics. The tragic nature of politics deserves some clarification. Certainly, politics is sometimes seen as driven by excess, something that exceeds life, e.g. good life (see e.g. Lacoue-Labarthe and Nancy 1997: 134). That is, however, only partly correct. Politics is certainly about excess in a sense that one always strives for something more than actually exists, i.e. excess is always the goal in mind. Nevertheless, precisely this desire for ever more than exists pinpoints that the actual reason behind politics is a deficit of existence, the absence of fullness. The tragic opens up with the unavoidable differences in conceptions of good life, and those differences only exist because there is no grounding for any proposition of what this

‘more than actually exists’ should be like. This constant futile expectation of fullness is a necessary illusion of the human subject, corollary to his/her incomplete subjectivity but, simultaneously, a *conditio sine qua non* for potential change. The central deficit of existence is usually masked with a generic symbol, capable of the added dignity of something more than itself. For example, Laclau (2001: 72) sees any ‘order’, ‘unity’, ‘revolution’ etc. are, essentially, ‘the name of an abstract fullness’ that cannot have its own authentic content since that fullness is unachievable. Effectively, ‘[t]his relation, by which a certain particular content overflows its own particularity and becomes the incarnation of the absent fullness of society is [...] a hegemonic relationship’ (Laclau 1996: 72). But, even though hegemony for Laclau is a dynamic concept, it still involves a prioritising of the constituted: the political community is, effectively, acted upon, although not without its own involvement. The Spinozist-Schmittian framework-qua-movement, meanwhile, takes a step further by showing both the constitutive and the constituted as equal accomplices. One might see the core element of belief – the theologico-political kernel – as a necessary exaggeration of a partiality of a group through added dignity (one must not interpret it as a deception because ‘deception’ would imply that there is some hidden ‘truth’ somewhere) but the origin of that belief is immanent, albeit sustained through a partly transcendent stabilisation. That is the core difference between the hegemonic and politico-theological approaches.

A rather crude and mechanistic rational choice scenario of electoral politics might prove useful for illustration purposes: ‘[e]lections authorize compulsion’ and ‘[a]uthorized to coerce, the electoral winners promote their values and interests against those of electoral losers. Hence losers lose.’ (Przeworski 2003: 130). This interpretation brings electoral democracy to the tragic account of politics: the one that loses the sovereign struggle for fundamental depictions of the political community, is, by that very loss, rendered misguided and an adherent to an interpretation of the community that has always already been false. And yet, a Spinozist maxim brings in the necessary moderation: the winners’ right to compel, even after a comprehensive victory, extends as far as their power does. Depending on the balance of power, the result of the sovereign struggle, including its electoral form, can be anything from modest reform to a complete overhaul of the system. It is, thus, completely erroneous to imagine political freedom to be ‘the absence of domination’, meaning that ‘a person

is free to the extent that others do not stand over him or her, able to interfere at will and with relative impunity in his or her affairs' (Pettit 2005: 87). Politics is always about the possibility or threat of domination – hence, the tragic nature. Politics could be seen as a struggle for not being dominated but achieving this condition necessitates dominating others. The freest politics can get is when everybody has equal chance to dominate others – that is, if one dares to take risk and embrace the tragic. Nevertheless, neither embracing the tragic nor shying away from happens without reason: '[p]eople will not give their allegiance to a political and economic system, and even less to a philosophy, unless it represents for them a higher, sacred truth' (Berman 1974: 73). In other words, the high stakes game of politics would be impossible without political theology. But, with the absence of a centre of political power in democracy, ever more elaborated political theology is needed to mask that deficit.

For Spinoza, politics happens at the point of indistinction between the collective *conatus* of the state and those of the individual members of the state. Indeed, the two manifestations of *conatus* are both separate and indistinguishable: every member of the political community has his/her own *conatus*, which refers specifically to their own person but, since a significant amount of their power and ability to persevere in existence is transferred to the common pool of the state, there is unavoidably an overlap with the collective *conatus*. This overlap enables politics as a collective phenomenon. However, the overlap is never fully complete (although democracy, arguably, reaches that almost entirely), meaning that there always is a need for something more than already is, causing the state actually to progress towards reason instead of stagnating. Since the *natura naturans* and the *natura naturata* cannot be identical, neither can be their political equivalents, the constitutive and the constituted powers. And yet, politics is a striving towards closure and order – after all, politics is an endeavour to establish agreement in nature and collective proceeding towards reason. The collective *conatus* of the state is, therefore, a striving to keep the community together (and thus persevere in existence) – not at all dissimilar in its structure from the individual one, although, of course, different in its complexity. Moreover, since desire – the central motivating force – is insatiable and *conatus* never ceases, there must be a constant demand for renewal. The only question is that of possible alternatives. And Spinoza is all about constant regeneration of political forms but, notably, following a singular model that is always already agreed upon as the

general will as well as with the ultimate telos of reason. Any alternative is both unreasonable and a misjudgement of one's own true interest – Spinoza can easily be read as a forerunner to Rousseau in this respect.

For Schmitt, meanwhile, every outcome of the political process reflects the always already present Being of the political community. Only the will of the constitutive power can decide on the question of existence. Thus, the entire *corpus politicum/mysticum* is the ultimate point of reference and thus seems to lead to immanent causation. But, as already established, Schmitt's is a weak immanence and rests on the impossibility of either complete representation or complete identity. There is always a mixture of both and, although the community has the power of acclamation (which is a decisive power), that will of all must be transcended into existence through some medium instead of imposing itself directly. As Schmitt sees it, the function of government is to transubstantiate the general will into real order. The sovereign, then, becomes the medium through which the people speaks but is never fully identical with the people, even in democracy (Schmitt 2008a: 248). As a result, there always remains a degree of critical distance between the political community and its order, and sovereignty remains a borderline concept, separating presence from pure potentiality. Meanwhile, in Spinoza's democracy, everyone transfers their power and right (almost) completely, although that is not technically even a transfer because it happens from the private self to one's enlarged, collective, self (Sacksteder 1975: 134). Moreover, since democratic politics is a completely collective endeavour, it must also be about complete agreement within the community. Hence, whatever is willed, is willed by all and is in the true interest of all. Finally, because, in democracy, the sovereign and the multitude coincide, all checks and balances are removed. Here lies the core difference: for Spinoza, the existence of a political order is, or should be, in the true best interest of all, leading towards reason and ever greater perfection, while for Schmitt, no alternative can be inherently better than the other but is, instead, legitimised through its success only. Both approaches require complete fidelity but on different grounds: order as the progressive fulfilment of the self (Spinoza) or order that suspends all questioning through its groundless dignity in a moment of tragic choice (Schmitt). For Spinoza, order *is* the communal existence (strong immanence) while, for Schmitt, order is based on that existence but simultaneously conditions it while both remain suspended on a groundless terrain (weak immanence). Yet again,

Spinoza's approach is based on metaphysical certainty, which must be added to the model of ordering as process because nobody can bear constant weighing of options that are equally impossible to weigh, and thus people have to believe that their choice is the best one for them. Meanwhile, Schmitt's approach, based on presence rather than preconditions, is needed to counter the rigidity of certainty and to reintroduce the field of potentiality that constantly lurks beyond the borders of presence.

For Schmitt, the entire political community is in the *corpus mysticum/politicum*, its more-than-itself, similarly to the way in which, for Spinoza, everything is in God. To that extent, Schmitt (2008a: 267) is able to adopt the maxim 'The voice of people is the voice of God': it is, ultimately, a tautology but it also implies that the *stasis* which Schmitt reads into the nature of the triune God is equally at the heart of the political community. Hence, there is the need for prophecy to break the deadlock of *stasis* and to speak a particular instance into existence – in other words, the need for a sovereign decision. Prophecy and miracle are, of course, closely related; in fact, prophecy itself is a manifestation of supernatural power, a gift that confirms or, rather, confers a status. Characteristically, prophecy is completely natural for Spinoza: a prophet is merely somebody who has superior knowledge but has to convey it in a way understandable to the lay people (TTP, 27). In the latter case, that prophecy needs to be part of politics, only signals absolute ignorance of the political community; if it was not so ignorant, rational argument and adequate knowledge would prevail. Both authors, in fact, rely on belief in at least some essence: Schmitt tries to overcome groundlessness by opting for institution of an instance within a process as miraculously prophesised (and, through that prophecy, established) by the sovereign while Spinoza, as ever, relies on true knowledge that can be accessed. Certainly, because democracy, for Schmitt, is premised on an always already existing homogeneity, the prophesised general will is singular and always already present. The outcome is the same as the one reached by Spinoza. And yet, the premises are opposite: Schmitt starts from homogeneity and the general will merely exemplifies it, although there is no prescription as to what content exactly the general will (and, therefore, the underlying homogeneity) should assume, while Spinoza starts from heterogeneity but sees the general will as proceeding towards homogeneity through the singular goal of reason as perceived clearly by the sovereign-qua-prophet. Here, notably, one encounters movement *within* the respective theories: from the constituted

towards the constitutive in Schmitt and from the constitutive towards the constituted in Spinoza. Now, for the first time, they have to be read in parallel in order to see how any supposed homogeneity is only the result of a process that starts with heterogeneity and can only be believed in but not grasped empirically but also in order to see how a supposed imposition of reason is but a quasi-prophetic flash of something ungraspable.

The homogeneity-heterogeneity tension clearly raises the question of membership in the community. For Schmitt, formal categories (e.g. citizenship) are not enough because the core defining traits of the political community are its common consciousness, common existence, and common participation in politics, all referring to the nature of underlying homogeneity. This take on relations clearly serves as an impetus to rethink the traditional forms of attribution of membership in the political community, not only abstractly but also with regards to our own times. An obvious question is, of course, what happens to those who do not participate, either because of their indifference or because they have no right to participate directly, e.g. are not citizens. Those who choose not to participate are, in essence, not members of a political community but its subjects. They are still part of the state and the law because they are subjected to it and, through their inactivity, give tacit consent in the Lockean sense. However, not having full rights does not prevent one from being part of a political community and, indeed, even of the constitutive power. As long as a person identifies him/herself with the political community and the processes that take place within it, (s)he has a stake in what is happening, and uses any means available to him/her to affect those processes. Here, Spinozist affective capacity is clearly illustrative: somebody who disposes oneself to be affected by others and to affect them in turn has the more reality-power-perfection the more intense these affective relations are while somebody who does not take part in affective exchanges, strictly speaking, has no reality whatsoever. The latter constitutes a heterogeneous connection: the more relations and points of contact one has, the more fully one belongs to a community. Still, in both cases (passivity as choice and passivity as exclusion), belonging to a political community (and, consequently, political existence) is a question of being and not a question of prescription.

The membership-as-affective-capacity principle does call for a review of formal regulations of participation. One has to acknowledge that '[n]ew modalities of membership have emerged, with the result that the boundaries of the political community, as defined by the nation-state system, are no longer adequate to regulate membership' (Benhabib 2004: 1). There must be a re-evaluation of political communities in relation to all sorts of newcomers, whereby individuals without participatory entitlements (e.g. migrants) are to be acknowledged as full members of the political community as long as they identify with it and strive to affect others while simultaneously disposing themselves to be affected in turn. And these reciprocal affective relations would also suffice for ex post facto attribution of quasi-Schmittian homogeneity because not only such relations provide for sufficient interconnectedness and integration but also any sovereign decision on the actual form and shape of the political community would be transmitted and internalised through the affective network of the national political community. Also, a Schmittian principle of distinction would remain in place, albeit in a different form: not between citizens and non-citizens but between participants and non-participants. Certainly, the rules for recognition of the status of a 'citizen' always imply some constraints on how political action can be performed, these rules and the ensuing limitations being non-neutral but rather supporting the status quo and the existing relations within a political community (Tully 2008: 149). But, while this observation has to be affirmed, it should not necessarily imply a critique: the system of participation is always biased but it cannot be otherwise (e.g. the model proposed here would be biased against the 'idlers'): one simply has to choose whether to conform or not and that is part of the tragic nature of politics. In short, membership in a political community and participation in its own process of ordering are inseparable.

By now, it is evident that politics must be seen as a struggle involving high stakes. Recognition of a new group or introduction of new attributes of the political community's mode of existence can only take place through standing up for change and not through reference to some abstract norm. In fact, both Spinoza and Schmitt show that rights and privileges exist only politically. But the Schmittian perspective is more radical in maintaining that if a certain group is about to promote a norm, it must take the risk of actively contesting the status quo on a groundless terrain. Just as it was the case with sovereignty – itself a power to enact such change – if such group

succeeds, then it must have reflected an otherwise neglected aspect of the political community's existence. That does not mean that the victor is standing on a firmer ground than the loser – in fact, as Honig (2009: 47) emphasises, 'Our moral clarity regarding identities or forms of life that were once but are no longer excluded is a product of political victories [...] Those victorious political actors *created* post hoc the clarity we now credit with having spurred them on to victory ex ante'. Neither victory nor loss in the political struggle refers to any universal essence but simply to the community's mode of existence. If a norm is refuted, it is not because of its essence (indeed, it might be successfully implemented in another political community) but only because it has nothing to do with the Being of that particular community. Therefore, the losers of the political struggle only truly become public enemies if they refuse to acknowledge their loss, resorting to strategies that further challenge the order and well-being of that political community. Otherwise, their overarching commitment to the general identity of the community is preserved and they, therefore, remain a loyal opposition which does not, in the strict sense, challenge the necessary substantial homogeneity of the political community. Like the Augustinian emphasis on the Heavenly City leaves the question of inclusion in the earthly city immaterial (Johnson 2007: 184), the added dignity implicit in political theology transcends all differences – it is enough that the whole political community shares the same core belief. As long as that is the case, the politico-theological *complexio oppositorum* prevails, making a common process of ordering the central uniting feature of the political community.

Certainly, the above approach, when taken to its extreme, can have the opposite effect to the one desired: instead of encouraging dynamism, it can lead to relativist passivity because, ultimately, anything goes and one alternative is as good as the other. That, definitely, is neither what Schmitt himself envisaged nor something desirable from a normative perspective – in fact, this would signal the end of politics. As a result, an irruption of belief is, once again, necessary since '[w]ithout reference to the sacred, violence would be just that – force and bloodshed. The sacred transforms violence into sacrifice and imbues it with meaning, value, and function, by establishing a communicative link with the profane' (Bargu 2011: 145). The 'sacred' truth is an extremely powerful rallying cry and source of identification which inspires political action and, when coupled with sacrifice, helps impart sacredness on the cause or entity that claims to possess truth and demands sacrifice (Bargu 2011: 145). In other words,

the tragic and the sacred coalesce to form the core of political struggle. However, since absolute immediacy of meaning, self-sufficiency, and self-identity are impossible, this messianic moment is an illusion, even if, arguably, a necessary one. The catharsis of the resolution of a tragic political drama is never enough, never as purifying as expected and, consequently, leads to yet another drama – after all, the deficit of existence at the heart of the human condition cannot be eradicated. Therefore, *stasis* as politico-theological struggle retains its relevance, constantly referring to ‘the One which tends towards the manifold, and the manifold which in turn tends towards the One’ (Cerella 2015: 49). And, as unwillingly demonstrated by Spinoza, the necessary belief that grounds the ‘real’ exception can be rationalised and transposed to a completely new domain, such as reason, thus rendering political theology extremely versatile. Hence, in line with the argument put forward in this thesis, the movement between contestation and belief is, again, the core animating principle of the process of ordering.

Traditionally, as Schmitt (2014: 92) notes, ‘[t]he dictatorship of reason was rooted in the distinction between the enlightened philosopher and the people who needed to be enlightened’. This is still part of legitimation for the constituted power today, especially with regards to universal norms. Spinoza, as already shown, clearly falls into that patronising trap. His task was, clearly, to get rid of all superstitions and mystifications (see, in general, Deleuze 1990). However, he only opened the door to other mystifications, as any rationalist (or anybody else who presupposes a universal ideal) does. When he claims that ‘[s]omeone who has a true idea knows at the same time that he has a true idea, and cannot doubt about the truth of the matter’ (*Ethics* IIp43), this can be only be read as an exaltation of a subject of ideological hegemony. Such mystifications only make truth claims differently from more explicitly belief-based ones: an appeal is made to reason-as-belief (or human-nature-as-belief or any other supposed essence) as opposed to plain belief. Although in Spinoza’s writings religion dissolves itself into morality (Gallicet Calvetti 1968), by that same move reason achieves a quasi-religious metaphysical intensity. Even in the case of Spinoza’s emphasis on reason, whence he contrasts rule of reason with political theology, one first has to *believe* in reason in order to subscribe to this kind of thinking. It is not accidental that Spinoza opposed scepticism despite having many affinities with the sceptic tradition: his own philosophical premises fundamentally

rested on belief in their supposed self-evidence, and therefore any possibility of questioning beyond a certain point had to be removed (for a discussion, see e.g. Popkin 1979: 240-241). Indeed, truth is self-referential and self-legitimizing in Spinoza: a true idea is its own standard, and adequate knowledge needs no sign or confirmation other than itself (for a discussion, see e.g. Mark 1978: 44). Naturally, then, as Hampshire (1978: 44) notes, there can be no ‘Big Bang’ moment in Spinoza: everything must belong to the common order of nature. That is why Schmitt must come into play: to demonstrate that anything that actually is, must have been somehow established because there is no such thing as natural order and that immanence and transcendence must come together. One cannot properly oppose the people as a hegemonic creation by pitching against it the multitude as organic self-articulation on the plane of immanence without any hegemony whatsoever as Hardt and Negri (2009: 169-170) do. Despite its self-articulation and self-organisation, the multitude is not an antithesis of the people, because it needs hegemonic articulations to constitute itself. Even though the initial move might be bottom-up, once any proto-centres of articulation begin to develop, the formation of the political multitude or multitude-qua-people becomes a hegemonic struggle, which is *both* top-down and bottom-up. This introduction of alienation of power is even desirable, because politics of complete immanence would no longer be politics (since, as already established, politics is driven by alienation and deficit of existence) but ultimate tyranny. On the other hand, it is not that Schmitt’s theory, taken on its own, can provide a panacea: as already indicated, it would only make the tragic of being unbearable; as a result, politics needs illusions, superstitions (in the sense accorded by de Maistre), or hegemonic constructs – and Spinoza’s rationalisation of belief is highly illustrative here.

As stressed by Schmitt, ‘[t]here always are concrete human groupings which fight other concrete human groupings in the name of justice, humanity, order, and peace’ (Schmitt 1985: 37). Abstract principles do not clash and one side cannot be seen as representing something universal simply because there cannot be anything abstract or universal, at least in politics. Any struggle is one between concrete groupings with their concrete ideas as expressions of their particular modes of existence, although they certainly rely on the added dignity that the reference to something universal provides. This dignity has twofold importance: it not only serves as a rallying cry and

seemingly bypasses the tragic choice by purporting to offer a ready-made answer but also renders the competing proposition a non-value. This quest for universality, once again, has to do with human desire for fullness, i.e. constant striving to fill the deficit of existence and to appear to oneself (and to others) as a complete human being, fully immersed in one's own humanity. Of course, as seen from both Spinoza and Schmitt, humans can form bonds as long as they are imperfect. They become united in their imperfection. Completely perfect self-sufficient beings would be contained within themselves, and any social component would thus be irrelevant or at least superfluous. Therefore, as long as politics is perceived to be about communities and collective self-ordering, a somewhat negative perspective on human nature must be presumed. Indeed, politics is enabled by groundlessness and deficit of existence and not by self-sufficient certainty. As far as politics is concerned, the self must be in the other, either positively, in a relation of friendship, or negatively, in a relation of enmity. However, both relations are organised around ideas, not around people: a particular embodiment of the friend or the enemy might change (perhaps even routinely) but the ideas conferred upon them are rather stable, changeable only by an existential decision. Therefore, those ideas must be framed in terms that transcend particularity – and this once again comes back to the Spinozist-Schmittian movement.

The circular solution outlined above is crucial in providing a viable answer to the question of ordering. On the one hand, there is the potential overdetermination of the constituted which is always implicit in Spinoza. A telos is always already present and universal and the only substantial question of politics is how to best achieve it. The politics of reason involves rather limited existential questioning and, consequently, is about the status quo at the fundamental level of organisation. Furthermore, the way it is framed by Spinoza, the politics of reason is an elitist affair. But even if one repositions reason as widely accessible, such politics is very much about hegemonic entrenchment of norms. On the other hand, there is the challenge of populism when constitutive phobias and passions are transferred to the constituted element directly and without balancing, either by a populist political force itself or through the effects it has on established political forces. This immediacy of the constitutive existence of the people being transcended into existence by the sovereign is very much what Schmitt embraced as the ideal of democracy ever since his early writings on dictatorship (see Schmitt 2014). But one could (and, normatively, perhaps should)

also adopt a more nuanced approach and take part in an exercise of risk management: losing some of the immediacy of ordering for the sake of keeping some of the radicalism at bay. This is by no means an ideal solution since not only dangerous but also beneficial demands might be upset if they run against the constituted power. That, again, constitutes an element of risk – as any political choice does. As a result, the tragic is not bypassed – it is, rather, an ever-recurring element of politics. But only if the two drives of ordering are perceived simultaneously, as constantly holding one another in tension, with the actually existing order always moving from the constitutive to the constituted and back again, some of the dangers implicit in both approaches can, at least potentially, be avoided. There can be no perfect balance between the two and, certainly, no solution that would satisfy everybody. One pole or the other will have some primacy and strive to establish itself, presumably through a politico-theological nexus. And yet, that inner tension will, nevertheless, produce some form of ordering. But to understand that tension itself, one has to return to Schmitt's *stasis* of one God that is, nevertheless, a Trinity.

For once, the theological element of politics might be taken literally, and a precedent in Christian theological thinking could be employed. The Nicene solution to thinking one and three simultaneously was that the Father, the Son, and the Holy Spirit are to be seen as three persons, or hypostases, of the same substance (*ousia*); as for person, of course, 'persona' was the mask worn by actors in Greek dramas and thus refers to a certain character that is played while 'hypostasis' refers to a particular mode of existence – in essence, the three parts are to be seen as different performances or manifestations of the one (Urban 1995: 61-62; Brown 1997: 525-526). In the domain of political theology, the constitutive and the constituted are, then, two hypostases or persons of one *ousia* – the political community. The essence of political theology is not that there is a decision which establishes an order at the beginning of time through a transcendent *fiat*. There would be no politics if that was the case. The essence of political theology's appeal and its true function in political life is that it provides the aforementioned metaphysical certainty *over and over again*. Political theology functions *as if* there was a decision at the beginning of time, *as if* there was a transcendent *fiat* (or a secular Big Bang – see e.g. Freeden 2013) which had established the present order once and for all, and that happens every time a sovereign decision is made. Political theology provides certainty and belief, thus temporarily

hiding the messiness and impurity of the political world, its groundless nature, and the perpetual deficit of existence which animates change. In short, politico-theological thinking is a solution to the problem of *stasis*: a supposed irruption of *ousia* that claims to leave no question unanswered. The Truth, the ritual, and the higher purpose that momentarily mask the deficit of existence and allegedly fix the two hypostases of ordering in their respective places is always already present and always already demanding to be believed in. But even then, one thing is certainly notable: as the introduction of *stasis* in *Political Theology II* illustrates, ‘even in the firmest, most organic, perfect, and natural of all unities, the possibility of faction is inherent and ever threatening’ (Bargu 2011: 152): the hypostases of *ousia* never completely coalesce into one (because then there would be *ousia* only, accessible in itself) but are in a standoff of varying intensity. One could definitely hear an echo of his thinking in Spinoza’s world of things qua different manifestations of a single substance, each of them possessing its own *conatus* and thus easily coming into conflict so as to almost nullify each other’s right and power and, hence, existence (*Ethics* IVp3). Antagonism is thus an integral part of every unity. Crucially, ‘the political is not only the breaking of form by the disorder that never vanishes but also disorder in search of a form’ (Cerella 2015: 48). And yet, as it has been stressed numerous times already, politics needs something more stable than pure contestation (e.g. of the agonist type), at least on the surface level. Perhaps, quasi-agonist politics must aim to pass at least as deliberation, i.e. people need to believe that outcomes are (relatively) stable and determined by the power of the best argument, as if there was one, or if one desires even more stability, as politics based on a purely transcendent principle, or as serving a natural or a moral purpose that is beyond questioning in its exquisite and exclusive sublimity. The alternative, as Schmitt correctly saw it, would be Hamlet’s madness.

Schmitt’s is, primarily, a theology of order. And yet, the potentiality of an ever new decision means that no existing order is absolute. But simultaneously, it is an anti-Messianic theology (that is not to be confused – it needs a Messianic *appearance*, i.e. each order must appear as the ultimate one, in order to appeal to people but cannot be Messianic per se): anyone who poses as a redeemer, having the recipe for the ultimate unquestionable order is, in Schmitt’s view, an agent of the Antichrist (Schmitt 1996: 15-16). There is a pronounced difference between the Antichrist and the sovereign-qua-Katechon (that includes both the existing sovereign and the potential sovereign-

to-be): the Katechon upholds the order of this world against the Antichrist but this order is more of an organised disorder – it is about the maintenance of high stakes that make politics. The Antichrist, meanwhile, purports to bring an end to all conflict and to the tragic need to choose – the negation of any friend-enemy distinction. As ever, where Spinoza sees purposeful striving towards reason, Schmitt sees only instituted contingency. In fact, whereas, for Spinoza, humans intently seek particular ways in which to follow their *conatus*, Schmittian politics is much more compatible with a political community haphazardly seeking any satisfaction that would compensate for the otherwise groundless existence and, apparently, instituting just about any order that becomes available. Once again, both outlooks must hold one another in permanent tension while any actual condition oscillates between the two poles, thus fuelling the process of ordering.

Indeed, it is the *possibility* of conflict inherent in a present order and not the conflict itself that lies at the heart of the political. In fact, violence breaking out is only the sign of one (revolution) or more (war) states failing to manage the political. It is a sign of the sovereign's failure to decide or decide adequately, the result of which is radical questioning of the sovereign authority itself, either from inside or from outside. This is, however, no longer a 'social' act (Schmitt 1985: 33) – it is an open clash of naked political wills. A 'social' political act, by inference, would be a controlled adjustment of demands and, possibly, redefinition of sovereignty. This, however, is different from a compromise. For Schmitt, only a temporary balance can be instituted. Indeed, whereas compromise indicates a mutually *acceptable* outcome, for Schmitt, only a *bearable* conclusion can be reached – otherwise there would be no more deficit of existence, and the political would lose its meaning. Of course, if the conflict at the heart of the political expresses different existential natures of the parties to the conflict, no resolution of that conflict can be completely acceptable if it does not establish the requirements of the side concerned *fully*. Any other outcome would require sacrificing part of one's existence. As a result, the political tension can only be diffused but never eliminated. That is an alternative to a Spinozist imaginary of a coming together of sorts: certainly, because reason is universal, an outcome equally applicable to all is unavoidable. But this Spinozist outlook is, nevertheless, needed to legitimise and uphold that interim conclusion by making it look as something more

than it actually is – conferring upon it the added dignity of the general will, an expression of ultimate truth, or both.

Although politics, in terms of manifestation rather than substance, is most evidently present in the circumstances described by occasionalist theorists like Rancière (1999, 2009, Rancière 2010) – i.e. ‘real’ politics, understood as major struggle, often appears to be occasional – this is a very limited perspective. An apt analogy would be one with the tectonic activity of the Earth’s crust: although it is most clearly visible when earthquakes strike, this does not imply that the tectonic plates do not constantly move. On the contrary, they not only move but, even more importantly, are constantly building up the pressure that will ultimately cause a new earthquake. Politics is, thus, ever-present and not merely occasional. And, although in normal situations politics is not always about high stakes and existential conflicts – that would make social life impossible and any stability unachievable – the potential for fundamental change must always lurk in the background.

To an extent, Spinoza does represent the drive for prognostication and ultimate, supposedly self-evident, values that can, nevertheless, be approached creatively. Schmitt, in that respect, is, again, a closet pragmatist, at least to a degree. For him, like for pragmatists, there is no ultimate truth (except, in a supra-political level, the redemptive truth of Christianity) but only paradigms that temporarily condition our thinking about what truth is. And yet, differently from pragmatists, Schmitt would vehemently object the need to be constantly open to the possibility of one’s subject position being proved false. The possibility is certainly there since one can be proved false by a new sovereign decision but until that happens, steadfastly holding onto one’s belief is a must. Alternatively, Schmitt could, perhaps, be read as an ally of Laclau in seeing particularities posing as universalities in a way not entirely dissimilar from hegemonic articulation. In fact, if a sovereign decision is to be effective, it has to pass into a hegemonic practice. After all, in line with the view expressed by Freeden (2013), politics is, essentially, a quest for an ever-elusive finality (a view which is as strongly Schmittian as a liberal thinker like Freeden would allow himself) although (as demonstrated by the Spinozist counterbalance) any instance within that quest must be believed to be one in which the more-than-particular speaks, i.e. it needs to be imbued with an added dignity. Politics cannot be about some public consensus over a

conception of the good or some collective virtues because both consensus and virtue are the products and not the determinants of politics. Rather, Spinozist-Schmittian politics might be seen as an a-rational choice game in which individuals indeed struggle to further their interests under conditions of relative scarcity but what they consider to be ‘rational’ or ‘right’ action is an internal product (neither taken from somewhere nor exportable outside) of the game itself rather than part of the rules. Nevertheless, the basic model of a new norm disrupting supposedly normal life, forcing a decision to either switch to the new or stick with the old depending on incentives available (see Chong 2000: 210) is certainly very much in line with the Spinozist-Schmittian outlook proposed here. To a significant extent, the political process is a bargaining game (as put forward in Doron and Sened 2001) between the constitutive and the constituted, just with the stakes being raised to an existential level. And yet, it would be futile to look for some stable ‘rules of the game’ that, by themselves, structure the outcomes – instead, bargaining simply happens ad hoc. The most important thing, however, is that this bargaining is a permanent process and not just an occasional exception. What is more, such bargaining never leads to some sort of agreement or a stable set of outcomes – there can only be intermediary conclusions that become contested at the very moment they are formulated, first and foremost because this is a zero-sum game, always producing suboptimal results for most participants. In equal measure, ideals of substantive justice, good life, etc. are, in the fashion of Spinoza’s reason, legitimisation strategies for the constituted rather than criteria that point towards the best interest of all. On the other hand, such legitimisation is, as ever, necessary in order to maintain some shape and form of the political community and to provide the different sections of the political community with their own sources of identification as well as rallying cries when faced with the tragic choice of politics. But at the same time, of course, the politics-as-dissent models need to be brought in as a counterbalance, i.e. as something that precludes any rationalisation of instituted contingency from becoming overly entrenched and thus maintains the creative constitutive thrust which always is at the forefront of change. Hence, yet again one encounters what could be seen as the basic tension and constructive opposition that animates the process of ordering – one between the constitutive and the constituted thrusts, ceaselessly creating the conditions for both creativity and limitation.

To conclude, a world without certainties and without grounding is the necessary precondition of the political (Biset 2012: 54), seen as ‘the tragic tension that runs throughout history, the dramatic coexistence of form and breakthrough, peace and war, order and disorder’ (Cerella 2015: 48). However, to get the full picture, it must be stressed that the political space is always caught in-between two potentialities, both equally dangerous: relativism, whence no stakes are simply high enough for an existential decision to be made, and self-referential fixation, whereby a particularity is so strongly articulated as universality that all possibilities of contestation are removed. Instead, the political space must always be incomplete (and, therefore, open for contestation) and yet upheld in a relatively ordered condition. In a sense, Spinoza and Schmitt help construct a layered structure of oppositions: Spinoza stresses natural organic self-association which stems from human nature (for a discussion, see e.g. Umphrey 1976: 48), while Schmitt postulates a groundless (and yet, substantially homogeneous) community, the essence of which is based on sovereign decision (Gross 2007: 149). Simultaneously, however, Spinoza can be read as totalising and prescriptive, setting forth a predefined standard of reason as the basis of state order and, therefore, discarding any alternative as unreasonable, i.e. unworthy. Schmitt, meanwhile, although potentially oppressive due to his emphasis on sovereign *fiat*, could also be read as siding with liberty much more than Spinoza does: the decision does not have any necessary content and thus anything can be decided. In terms of politics, as it is usually the case, Spinoza and Schmitt represent two very different modes of thinking, both of which are prevalent and necessary, albeit on different occasions: when considered separately, they reflect what the picture must look like, i.e. how communal life must ideally be perceived, for either the constitutive or the constituted pole. But when read together, they reveal politics more adequately – in terms of constant productive tension and continuous reproduction. This process of continuous reproduction, in turn, would not be possible without political theology, which turns ordering into a quasi-religious experience. After all, as Agamben (2009: 18-19) notices, ‘one can define religion as that which removes things, places, animals, or people from common use and transports them to a separate sphere’ although, at the same time, ‘what has been ritually separated can also be restored to the profane sphere’ to make room for something new. Any particular political theology is bound to sooner or later lose its appeal. That happens, as Walzer (1992: 69) puts it, through ‘a slow erosion of the old symbols, a wasting away of the old feelings they once

evoked, an increasingly disjointed and inconsistent expression of political ideas [...] until finally the units cease to be accepted as intellectual givens and the references cease to be meaningful'. Nevertheless, there cannot be a vacuum in politics (or, if there is one, it means disintegration, with the potential of turning the political community into a failed one). Hence, 'since men cannot orient themselves in the political world without unit and reference symbols, the systems are replaced even as they are called into question' (Walzer 1992: 69); in other words, a new political theology takes the place of the old one. That is the constant tension involved in politics as a theological struggle and a core element in the Spinozist-Schmittian movement. A political event (an instance of divination-profanation) is always caught in the process of political ordering while the process itself is constantly being renewed through these events that are always caught in reciprocal (in fact, quasi-immanent) causation. All in all, in line with the core argument of the thesis, ordering has, by now, been clearly shown to be a process rather than a static thing. Hence, the Rota Fortunae of ordering keeps on moving, becoming *perpetuum mobile*.

Conclusion: Answering the Question of Ordering

This thesis has advocated ordering as a process. It has been argued that, instead of analysing order (which itself is always partial) as a given thing, one has to concentrate on constant movement within political communities and the contradictory – constitutive and constituted – forces that impact on it. The process of ordering was explored under its core attributes: the state, sovereignty, law, and politics. Sovereignty has been taken to refer to a political community's independent power of ordering, while politics is a necessary precondition of sovereignty because it determines the content of the ordering decision; sovereignty, in turn, is a necessary precondition of politics because it both protects a given community's political process from interference from outside (external sovereignty) and ensures that political process is ultimately translated into political ordering (internal sovereignty). The state denotes a certain referent – the citizens of the state and the territory of the state – and, in addition, provides an institutional structure through which ordering can take place. Law, meanwhile, provides ordering with content and makes tangible the political order which exists at a particular time (i.e. a snapshot within the process of ordering). Law also creates the necessary conditions for politics (politics is the struggle over the content of law) and politics creates the necessary conditions for law (law is the product of politics). Similarly, sovereignty, it is argued, creates the necessary conditions for the state (because the state could not exist without the autonomous will for it to exist) and the state creates the conditions for sovereignty (because not only the sovereign will must be of somebody and over something but also it needs a spatial-institutional structure to effectively establish itself). It is thus possible to establish two sets of opposing and yet complementary concepts, seen here as different elements of ordering: its institutional/formal aspect, composed of the state and sovereignty, and the content of ordering, i.e. law and politics.

Another important claim made in the thesis is one about the two core authors – Spinoza and Schmitt. Although conventionally perceived as incommensurable, they, in fact, complement each other, accounting for different sides of the process of ordering. As a result, they are best read in a constant movement whence the ideas of one check and clarify the ideas of the other. The ideas of both presuppose a certain deficit at the heart of human existence: for Spinoza, that is the inability to achieve the

ultimate perfection and intellect of God (humans can only endlessly strive to approximate it) while for Schmitt it is the result of the Original Sin and the ensuing loss of certainty and plenitude, forcing people to lead a groundless existence as a punishment. For both authors, this deficit and its correlate, lack of self-sufficiency, are what motivate the need for the state and law – essentially, these are prosthetic devices that hold human communities together and provide them with the symbolic and institutional means to live together – the alternative, for both Spinoza and Schmitt, is the Hobbesian conflict of all against all. As shown in relation to both thinkers, that deficit also has to be compensated for, at least at the cognitive level. This compensating act can be either through presupposing an ultimate standard of reference (reason in case of Spinoza), i.e. by establishing a structure of quasi-theological belief in a legitimating principle, or by embracing contingency within which there only are certain stabilising flashes (sovereign decisions in case of Schmitt). The latter approach, of course, provides for creativity and contestation, while the former – for stability and limitation. Throughout this thesis we have seen that both of these poles are necessary to keep the process of ordering in motion. Correspondingly, both authors manifest complementary views in relation to norm-creation within political communities and their institutional expressions. Spinoza, especially when it comes to democracy, presupposes (or has to be taken to presuppose) strong immanence, whence there is no distance between the community and its expression in a particular order; hence, whatever the content of ordering is, has always already been willed by the people. Schmitt, meanwhile, manifests weak immanence, whence the community is, again, always in the order it has produced for itself and imposed upon itself but the translation of the community's way of being into a particular order is always a mediated process and, therefore, some critical distance always exists. To that extent, Schmitt, again contrary to many mainstream interpretations, is to be taken to represent the constitutive thrust of ordering while Spinoza is to be seen as a representative of the constituted element. Since ordering has been demonstrated to involve both thrusts simultaneously, Spinoza and Schmitt are to be read together, in a constant constitutive-constituted movement.

As it has been shown, the Spinozist-Schmittian movement is both horizontal and circular. It is horizontal because both the constitutive and the constituted essentially exist on the same plane, neither being a higher or lower order concept. But this

movement is also circular because no organisation can be entirely flat and, in terms of actual ordering, a hierarchy of arrangements and disparity of power is constantly present. With any change in political ordering, something moves upwards and something moves downwards, in terms of both ideas and individuals who choose (and that is the tragic choice of politics, although not always a conscious one) to align themselves with those ideas (i.e. to believe in them). To that extent, the Spinozist-Schmittian movement resembles a Medieval *Rota Fortunae*, the Wheel of Fortune. But ordering is always also a spectacle. In fact, ordering is, and can only be, first and foremost performative. After all, there is no natural, objective quality or centre that determines the right and power (both, as per Spinoza, being one and the same) of ordering. Only as long as that performance goes on, the gravitational pull that holds the political community together still exists.

As it has been shown, Spinoza employs strong immanence in his definition of the state: any change in the multitude automatically means an analogous change in the state structure. Schmitt's state is, meanwhile, defined by weak immanence: although change must, as well, correspond on both levels, there is a lag, an incomplete identity between the people and the state. Hence, while for Schmitt any drive for change is the result of that lag, a deficit of fullness, and is internal to the political process, in Spinoza's account, change is driven by the desire to approximate the elusive fullness of the intellect of God and is external to the political process. Hence, the state-qua-intelligibility is groundless for Schmitt but based on a definite criterion for Spinoza. Yet, rather than seeing a straightforward opposition or attempting a synthesis, this thesis has proposed reading-as-movement: although the inside-outside distinction is groundless (as per Schmitt), it must, once established, be seen as objective (as per Spinoza); and yet, being groundless, this distinction is constantly open for contestation (Schmitt) but only in the name of a higher ideal, e.g. reason (Spinoza). In a very similar fashion, any law, being groundless, is to be obeyed simply due to the fact of its existence (Schmitt) but can only be seen as worthy of observance if passing for some higher good (Spinoza); and again, in a movement from Schmitt to Spinoza, being groundless, law is essentially contestable, although the challenger itself cannot be seen as equally groundless. Law must, therefore, move from endless possibilities to exaltation of some of them once they have been selected, back to unavoidable contestation to, again, exaltation of either the old or the new. Nevertheless, both the

present norm and the promoted norm must pass for something more than they actually are or can be – they must assume the added dignity of an object of belief. The latter struggle between exalted contingencies also takes place beyond the state: from the national to the regional to the global and back again. In line with the argument made throughout the thesis, once an actor attempts to claim a right or a norm, the only option is taking on the status quo with the unavoidable risk of becoming a public enemy should the struggle be unsuccessful – after all, in case of failure, the right or norm promoted turns out to always already have been false (in relation to that particular situation – the groundless nature of human existence precludes any *universal* correctness or falsity anyway). However, if the challenger succeeds, the relevant content turns out to have been always already present (again, in relation to that particular situation), only unduly ignored. That is applicable even to the *demos* of today, characterised by their increasing fluidity and movement: the distinction between the inside and the outside of the political community is groundless (Schmitt) but *ex post facto* passing as something natural (Spinoza), hence, simultaneously highly contestable and yet defined in the name of something that is more than instituted contingency. Essentially, any particular order (i.e. a snapshot of the process of ordering) is, then, only an object of competition and not an essence in itself. In line with the reading-as-movement promoted in this thesis, inherent groundlessness protects any order from overdetermination while the necessary element of belief in a higher truth preserves high stakes and precludes ‘anything goes’ relativism. Whatever form the locus of the struggle over ordering assumes, it must relate to some symbolic or physical (or both) division and appropriation of the world. In the future, that division might no longer refer to the state (just as the state has not always been the relevant locus) but the very principle of division must remain. That is a necessary corollary of the Spinozist-Schmittian movement that precludes universal fulfilment and dissolution of collective signification but also of the broader outlook demonstrated throughout this thesis as present in Spinoza and Schmitt, revealing humans as beings that must always strive for an unachievable fullness, meaning that partial communal significations are as good as it gets.

The same Spinozist-Schmittian movement is just as clearly displayed in terms of sovereignty and politics. Here, again, one first needs to distinguish between the strong immanence of Spinoza and the weak immanence of Schmitt: absence of mediation

and critical distance between the constitutive and the constituted for the former and strong interconnectedness, although essentially non-identity, of the community, the state, and sovereignty for the latter. Hence, the movement revealed in this thesis is one between the organic universality of a strictly self-ordering democratic community in Spinoza and Schmittian groundlessness that renders universality and self-sufficiency contestable. Just as it was the case with the state, then, Schmitt provides a *political* impetus for change (change is predicated upon competition with no incontestable goal in sight) while Spinoza postulates an *extra-political* one (change only leads towards a preset goal, and that goal is the ultimate driving principle). Both, nevertheless, have been shown to be necessary: the political nature of sovereignty allows for contestation of any existing order while its extra-political appearance allows sovereignty to be authoritative. Both have to also keep one another at bay: political contestation, although allowing for bringing down a status quo that has lost its effectiveness, does not preclude any outcome, no matter how terrible, while the presumption of an external criterion, while characterised by the danger of unresponsive rigidity, also allows for normative evaluation. In a similar way, this movement has been demonstrated to be both the cause of and the solution to the tragic nature of sovereignty and politics. One has to always take sides either with the status quo or with the competition; but since any decision is groundless, neither option is inherently superior to the other: in fact, both are equally empty, and the choice is between contingencies only. Once again, should someone choose to contest the existing order, his/her ultimate status (as the norm-founder or the enemy), just as the status of the promoted norm or agenda, would hinge on the actual outcome of contestation. And yet, the element of belief in something higher and universal helps preclude the horror of this unbearably groundless lightness of being: contingency simply does not pass as such, and hence belief enables one to commit to a cause wholeheartedly. Any real political struggle can, therefore, take place only between different sets of such beliefs (after all, groundlessness cannot inspire real struggle and, in the ultimate case, sacrifice), with the constituted theology being challenged by the constitutive one, which upon victory solidifies into the new constituted but is subsequently challenged by the ever newer constitutive theology. Hence, the Spinozist-Schmittian movement accounts for both creativity and limitation.

Sovereignty, just as well, has been revealed as an attribute to be arrogated – after all, it is groundless and, therefore, not exclusive to a particular actor – in a way that follows Spinoza’s right as power doctrine. Such arrogation of the attribute of sovereignty happens both internally to the state (as per above) but also, increasingly, internationally whence states, regional and global organisations, as well as other actors, either pool their power-qua-right together or struggle to assume as much of that attribute as possible. In both cases, however, sovereignty (or the proto-sovereignty of a challenger) can only be effective if it acquires the added dignity of belief which renders the status quo (or one to be achieved) both natural and desirable, and always something more than itself.

In short, as demonstrated in the final chapter, two elements are crucial for the question of ordering: the tragic and the theological. The tragic refers to the unavoidable need to choose between equally imperative and yet equally groundless demands, neither of the available choices being inherently better than the other. Effectively, one has to choose between groundless contingencies – that is, of course, a Schmittian category, taking into account the groundless existence of the fallen humanity and his political thinking, seen through his reading of Hamlet. When taking place on a collective scale, the tragic forms the backdrop of the political, the latter being a crucial precondition for sovereignty. The theological, meanwhile, provides imaginary closure to the tragic: one has to believe one of the demands to be the ultimate universal reality and thus beyond contestation, thereby hiding the impurity and complexity of everyday life. A central ordering principle has to be presupposed, providing a certain political *telos* with something more than it actually is or can be – presenting it as the answer to the deficit at the core of human existence. And, although political theology is more often associated with Schmitt, it is claimed in this thesis that, in fact, Spinoza manifests the practical workings of such theology, albeit, most probably, inadvertently. Both thrusts are crucial and can only be adequately grasped simultaneously, holding one another in tension and providing for the creativity (tragic contestation) and limitation (theology) in the process of ordering.⁶

⁶ Of course, the term ‘theological’ might appear problematic when discussing secular ordering. Certainly, the political-theological model advanced here is based on Christian theology – or, to be even more precise, Western (Latin) Christian theology – and, therefore, might well be directly applicable to the Western Christian and post-Christian modernity only. In that respect, this thesis is, admittedly, a biased project. This is certainly not to say that the desire for foundational belief in something is not

To reiterate, ordering has to be seen as a process – this has been the central claim of the thesis. To claim otherwise would be to fall into the trap of the constituted, seeing any status quo as natural and final rather than a momentary snapshot, thus manifesting a predisposition towards belief. At the same time, however, embracing pure contingency or even the tragic unavoidability of choosing between contingencies is also not an option – such awareness would make everyday life unbearable and any common fabric of a society impossible. At least certain presumptions have to be taken for granted even in today's society which is, arguably, more saturated with information and more sceptical than ever. As it has been maintained in the thesis, it is only through the constant tension between contestation and belief, creativity and limitation, that meaningful existence becomes possible.

More than anything, the essence of ordering is to bring forth the 'Truth' through a particular representation of the world, even though nothing else about that Truth is known or can be known because Truth is always the name of an exalted contingency. Therefore, politics is here claimed to be a struggle for and between such contingent representations that are transformed into actual instances of order through sovereignty, with a particular contingency being institutionalised through a system of law, the above taking place at a certain location within a certain political community (where the community and the location can be both concentrated and dispersed), defined by the state or some other structure. And this struggle is simultaneously conditioned by both the tragic and the theological: one has to choose between options that are, at their origin, contingent but simultaneously any options have to be believed in quasi-religiously. Such interrelationship between the four core elements allows for a dynamic model of ordering – a Rota Fortunae of the constitutive and the constituted, creativity and limitation.

The process of answering the question of ordering is thus complete, inasmuch as such closure is possible under conditions of groundlessness, i.e. inasmuch as the present author is able to arrogate sovereignty over his own thesis and pronounce the fiat of closure.

present elsewhere – far from it. But direct application of the theory outside its original sources without due grounding in a different tradition would create more ethical issues than it would solve. It must also be stressed that no causal relationship is implied – the question of whether the political-theological is derived from the religious-theological is simply off the bounds of this thesis.

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