

Ab placito humanum and the Normativity of Human Laws in the *Theological-Political Treatise*

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1 Introduction

The few passages in Spinoza's work in which he focuses on the concept of human law have not received as much scholarly attention as passages focused on other themes, but they have still been very well examined, as evidenced by, for example, the collection edited by André Campos in 2015, which brought together 21 articles written between 1948 and 2010.¹ It is true that most of these studies do not directly aim to determine whether Spinoza adopts a normative conception of human

- 1 See also, for example, Gail Belaief, "The Relation between Civil Law and a Higher Law: A Study of Spinoza's Legal Philosophy," *The Monist* 49, no. 3 (1965): 504–518. doi: [10.5840/monist196549332](https://doi.org/10.5840/monist196549332) and Gail Belaief, *Spinoza's Philosophy of Law* (Berlin: De Gruyter Mouton, 1971); Edwin Curley, "The State of Nature and its Law in Hobbes and Spinoza," *Philosophical Topics* 19, no. 1 (1991): 97–117. doi: [10.5840/philtopics199119114](https://doi.org/10.5840/philtopics199119114); Alexandre Matheron, "La déduction de la loi divine et les stratégies discursives de Spinoza," *Cahiers de Fontenay* 10, (1991): 53–80; Jean-Marie Beyssade, "Norme et essence chez Spinoza," in *Spinoza et la Norme*, ed. Jacqueline Lagrée (Besançon: Presses Universitaires Franc-Comtoises, 2002); Manfred Walther, "Natural Law, Civil Law, and International Law in Spinoza," *Cardozo Law Review* 2, (2003): 657–65. URL: https://heinonline.org/HOL/Page?handle=hein.journals/cdozo25&div=30&g_sent=1&casa_token=&collection=journals; Jon Miller, "Spinoza and the Concept of a Law of Nature," *History of Philosophy Quarterly* 20, no. 3 (2003): 257–276. Marilena Chauí, "La déconstruction de l'idée de loi divine dans le chapitre IV du *Traité Théologico-Politique de Spinoza*," *Historia Philosophica* 4, (2006): 33–46; Michael LeBuffé, "Spinoza's Normative Ethics," *Canadian Journal of Philosophy*, 37, no. 3 (2007): 371–391. doi: [10.1353/cjp.2007.0022](https://doi.org/10.1353/cjp.2007.0022); Donald Rutherford, "Spinoza and the Dictates of Reason," *Inquiry* 51, no. 5 (2008): 485–511. doi: [10.1080/00201740802421402](https://doi.org/10.1080/00201740802421402) and Donald Rutherford, "Spinoza's Conception of Law: Metaphysics and Ethics," In *Spinoza's Theological-Political Treatise: A Critical Guide*, eds. Yitzhak Y. Melamed and Michael Rosenthal (Cambridge: Cambridge University Press, 2010), 143–167. doi: [10.1017/CBO9780511781339.009](https://doi.org/10.1017/CBO9780511781339.009); André Campos, *Spinoza's Revolutions in Natural Law* (London: Springer, 2012); Pina Totaro, "Law and Dissolution of Law in Spinoza," in *A Companion to Spinoza*, ed. Yitzhak Y. Melamed (Hoboken: Wiley-Blackwell, 2021) 384–393.

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law² in the political-legal field or, if he does adopt such a conception, what the conditions under which he could do so could be, given the logical-causal necessitarianism and naturalism of his metaphysics,³ explicitly reaffirmed in paragraph 3 of Chapter IV of the *Theological-Political Treatise* (G III 58–68). However, this problem is unavoidable, and it is precisely to this matter that I would like to contribute, in a rather modest way, by examining the answer that Spinoza himself offers in the passage just cited.⁴

My purpose is to demonstrate that these four paragraphs clarify how and why Spinoza can introduce a source of regulation of our actions (which is referred to by the expression “*ab placito humanum*”) that is different from the principles that necessarily follow from our nature without violating the basic tenets of his metaphysics.

Still, I hope to be able to show that Spinoza provides reasons for supposing that what he calls “human law” has an *intrinsic* normativity, that is, for supposing that the demand for obedience (binding force) that constitutes its meaning *as* a principle regulating human action is not extrinsically added to it by threats and promises but is instead rooted in its *ab placito humanum sanction*, which is explained by *motivations*.⁵ The rewards and punishments defined by the legislator, which Spinoza recognizes to be necessary to obtain *de facto* obedience, must be assumed to have this intrinsic normativity.⁶ In this way, the *potentia* of each individual, which is the fundamental thesis of natural law, does not become a more sophisticated version of “might makes right” (whether this might is thought of as physical, psychological, or even intellectual), which is something Spinoza rejects in several places.⁷ Insofar as certain laws are rooted in the aspect of human nature referred to by the expression “*ab placito humanum*,” I also intend to explain how they can be understood as normative in Spinoza’s philosophy. I should note, however, that my claims are limited to the metaphysical theory of actions, rather than their political or legal aspects.

I begin (I) by clarifying the understanding of the concept of normativity that will be assumed in this article. This is not a notion used by Spinoza himself, and there has been much dispute over

2 This qualification is important because Spinoza explicitly states in several passages that the concept of divine law should not be understood normatively, that is, as a command whose disobedience would be punishable (cf., among others, E4p68s/G II 261–262; TTP 2.32/G III 37; TTP 4.26–27/G III 63, and TTP 4.38–39/G III 65–66; TP 2.6/G III 278; Ep 19 to Willem van Blijenbergh/ G IV 89–95). What seems to me to remain open, and which will be the subject of this article, is just the case of human law, which is a concept that will serve as the basis for the formulation of the pact that is at the origin of the Republic and, by extension, of civil laws.

3 I would like to express my gratitude to anonymous referees for pressing me to address this aspect of Spinoza’s philosophy. I would also like to thank Kristin Primus and Andrea Sangiacomo for their insightful comments and adjustments.

4 A brief analysis of this same passage can be found in Walther, “Natural Law,” 659–660.

5 I use the term ‘motivation’ rather than ‘reason’ in this context only to emphasize that individuals acting both in accordance with reason’s dictates (and thus based on what we call ‘reasons’) and in accordance with their passions (and thus based on what I call ‘motivations’) must be able to sanction laws of the second kind, which are at the heart of the pact that underpins the Republic. Indeed, the pact is necessary precisely because “it’s far from true that everyone can always be easily led just by the guidance of reason” (TTP 16.22/G III 193). Thus, even though Spinoza shows that the pact is useful for everyone, few, if any, individuals actually understand its true value. This poses a challenge to the TTP’s version of contractualism, whose explanation cannot be based solely on the advantages and rationality of the contract. However, the author’s strategy for addressing this issue will not be discussed here.

6 See TTP 6.6/G III 58–59; 16.22–24/G III 193.

7 See in particular TTP 16.24/G III 193 and TTP 16.32–36/G III 194–195.

its appropriate interpretation. Next (II), I present my understanding of the problem introduced in the first paragraph of Chapter IV of the TTP. The subsequent sections develop my analysis of the first four paragraphs of that chapter. I first establish (III) the theses of the first two paragraphs, which underpin the subsequent two, which will be the object of a more detailed analysis (IV–V). I will conclude by gathering the main results of the previous analyses, in order to put together an explanation of the concept of law that depends on *ab placito humanum*, as well as clarifying the reasons for its introduction in Spinoza’s theory.

1 Conditions for the Application of the Concept of Normativity

As we know, the term ‘normativity’ is not part of Spinoza’s vocabulary. If ‘norm’ is really present in his work, especially in the epistemological context, it means the same as criterion or *index*,⁸ and does not encompass what is usually understood by the term in the normative sense.⁹ However, the philosopher employs other terms whose use in these texts strongly suggests that he accepts the idea of a prescriptive rule.¹⁰ In this regard, the first four paragraphs of Chapter 4 of the *Theological-Political Treatise* provide an unique opportunity to evaluate my hypotheses, namely that Spinoza recognizes that human beings are capable of producing certain normative principles of action and of self-regulating themselves by them, and that these principles—in some sense—do not necessarily follow from human nature; and that the meaning of this claim, as well as the arguments supporting it, do not contradict, but rather rely on, his naturalism. As a result, it is crucial to establish the conditions under which I intend to apply the concept of normativity to the analysis of the proposed text.

For the purposes of this essay, I consider a statement to be normative only if it is *prescriptive*, and where its purpose is to guide the actions of human beings within a social context, that is, in inter-human practices. So understood, a normative statement must have certain syntactic and semantic characteristics. It cannot be declarative, nor necessarily have truth-value, for it does not state what—or how—things are, but rather what—how—they should be.¹¹ Therefore, its most basic form must be

8 TIE, 35–49, 69, 75–76, 95/G II 15–19, 26, 28–29, 34–35; E1App/G II 84; E2p43s/G II 124–125. In this regard, see Beyssade, “Norme,” 20, who notes that this term, for example, does not appear in the *Lexicon* by Emilia Giancotti-Boscherini, *Lexicon Spinozanum* (Den Haag: Nijhoff, 1970).

9 The characterization that follows is inspired by the works of John Rawls, “Two Concepts of Rules,” *The Philosophical Review* 64, (1955): 3–32. URL: https://www.pdcnet.org/phr/content/phr_1955_0064_0001_0003_0032; Georg H. von Wright, *Norm and Action: A Logical Enquiry* (London: Routledge & Kegan Paul, 1963); John R. Searle, *Speech Acts: An Essay in the Philosophy of Language* (Cambridge University Press, Cambridge, 1969); Christine Korsgaard, “The Sources of Normativity,” *The Tanner Lectures on Human Values 12* (Utah: University of Utah, 1992), 19–112; Campos, *Spinoza’s Revolutions*.

10 As, for example, ‘prescription’ (*praescriptio*), ‘dictates’ (*dictamen*), ‘commands’ [*mandatum*], ‘law’ (*lex*). These terms occur mostly in the *Theological-Political Treatise* and in the *Political Treatise*, but are also found in the *Ethics* and in some letters.

11 On prescriptions having no truth value, cf. Von Wright, *Norm*. There are, in fact, meta-normative theories that advocate in favor of a normative realism, according to which normative statements are propositions that describe normative facts or properties, and therefore bear a value of truth (cf. Ralph Wedgwood, *The Nature of Normativity* (New York: Oxford University Press, 2007) and Stephen Finlay, “Defining Normativity,” in *Dimensions of Normativity: New Essays on Metaethics and Jurisprudence*, eds. David Plunkett, Scott Shapiro and Kevin Toh

that of *imperative* statements that are irreducible to declarative statements. In this sense, normative statements presume the validity of the distinction between *is* and *ought*. This distinction need not be understood to be ontological: if it were, there would not be a question about the possibility of imperatives in Spinoza's philosophy.

Furthermore, in order for certain statements to be thought of as genuinely normative within a political-legal context, they must be capable of containing deontic terms that modalize the prescriptions expressed in imperative statements, making them manifestations of rights and duties, or even *prescriptions of binding character* (or normative force) to which promises of punishment in cases of disobedience are legitimately added.

It will be up to the semantics of these operators to explain the nature of this binding character and the basis of the obedience they postulate. This explanation can be based on different theories: threat of use of force/violence, psychological manipulation, *bottom-up* constructions in specific legal practices (legal pragmatism), various forms of consequentialism, deontological theories, etc. However, not all of them account for normativity in itself, because the first three only explain (because they intend nothing other than to explain) the *fact* of obedience (and, therefore, the effectiveness of norms) and not the *legitimacy* of a *demand* for obedience. By explaining the effectiveness of laws, these theories open the door to an explanation that reduces normative statements to a set of declarative statements (generalized or not). The other alternatives mentioned, as well as other theories, aim to explain not why we actually obey legal rules, but why we *must* obey them, thus posing the problem of their groundwork.¹² Apparently, there are a whole range of *prima facie* options available for evaluating Spinoza's stance, provided its utilitarian and consequentialist character is recognized.

The most crucial aspect to my point is that the addition of rewards and penalties to the prescriptions that these terms are a part of cannot account for the normative force that enables deontic terms to be said to express obligations, prohibitions, and permissions, as I have already stated, albeit through a different argument. The actions to which the individual would be subject in the case of performing certain actions in a social context can only be rightly conceived as sanctions because the condition of their application is obedience to a prescription with normative force. It is the normative force of that prescription which establishes rights and duties as such, and only in relation to them can these actions be considered legitimate penalties and rewards. The correct application of the concepts of reward and punishment supposes the bounding force without which the law cannot constitute rights and duties as such. In this sense, explaining the force and binding nature of normative prescriptions would imply, in my view, a vicious circle.

Since normative statements are guidelines for *acting* (or modifying reality) and not the description of facts or actions already performed, their scope should include actions that *may* be performed by the individuals they are directed to and exclude what is *impossible* for them to do. Its

(New York: Oxford University Press, 2017), 187–220. This position, however, is incompatible with Spinoza's philosophy, so I will not consider it in my nominal definition of normativity or normative force.

12 This does not mean that these theories should not also explain the *effectiveness* of these norms. G. von Wright argues that this force depends, as to its effectiveness, on the institution of sanctions and rewards (Von Wright, *Norms*, 7). Spinoza, like Hobbes, states the same thing in several passages, but does not consider this a necessary condition of the normative force of human law, but rather a psychological expedient to ensure its effectiveness in specific cases.

significance assumes, therefore, that it is possible to distinguish, within a universe of *possible* and *contingent* actions, those which *should*, *should not*, and are *allowed* to be done.¹³

For these reasons, a normative statement cannot have factual or causal relationships with the actions to which it refers, but only logical ones. Nevertheless, it must be possible to determine whether or not the normative statement has been *fulfilled*, i.e., possible to ascertain whether what it prescribes was (or was not) actually done in accordance with what is prescribed. This type of statement is *axiological* and has an evaluative function: it assigns a positive value to the actions that *must* be performed, a negative value to those that *must not* be performed and is neutral vis-à-vis allowed actions. These aspects give it a dual function: it *guides* future actions and *evaluates* past actions.

But I would say that these statements have intrinsic normative force only if, in addition to these formal characteristics, they are legitimately effective and not only mechanically or psychologically so.¹⁴ None of these conditions are sufficient to ensure that such an utterance has normative force if it does not impose *legitimate obligations*, that is, actions that determine and *are understood as authoritatively* determining *what we must* do in certain more or less specified circumstances.

The biggest obstacles to applying this concept of normativity to the expressions of what is designated by *apparently* normative terms in Spinoza's works, besides making its assumptions compatible with the core tenets of his metaphysics, is the absence, in his theory, of the theses usually drawn on to act as the foundation of obligation. C. Korsgaard and A. Campos mention four types of normativity grounds available in modernity:¹⁵ (i) the *will of an authority*, that is, of someone endowed with a legitimate statute to issue commands (legal voluntarism); (ii) *reason* as the supreme source of true knowledge of being, goodness and justness (intellectualism and/or legal realism); (iii) human nature as naturally containing values that can be apprehended and endorsed *reflexively*; (iv) a combination of some of the previous types.¹⁶

13 A reader familiar with Spinoza's philosophy might be tempted to conclude that, given this condition, the concept of normativity cannot be applied anachronistically to understand his political philosophy. Here I ask the reader to be patient and wait for the arguments that will be presented later.

14 To this end, as Campos (*Spinoza's Revolutions*) observes, they must at least be *uttered* so that they are *known* (in the case of the legal context) and their temporal preservation must be ensured by social devices or practices. They must therefore be chronologically prior to the actions they aim at regulating. Campos (*ibid.*) also adds as a condition that statements with normative force be also *logically* prior to the actions they aim at regulating. However, I believe that this requirement does not apply to all types of utterances with normative force, but only to those that *create* or *institute* practices or new types of action, such as those identified by Rawls ("Two Concepts") with his practical concept of law, by Von Wright (*Norm*) for the rules of logic, games, and grammar, and by Searle, *Speech Acts*, with his concept of constitutive rules. Although I believe that it is possible to apply these concepts in some way to Spinoza's theory of human law, I do not think that the passage to be analyzed provides sufficient allowance for doing so.

15 Korsgaard, "Sources;" Campos, *Spinoza's Revolutions*.

16 A. Campos (*ibid.*) argues that the four types are incompatible with Spinoza's philosophy. LeBuffe (2007) and Rutherford (LeBuffe, "Normative Ethics;" Rutherford, "Spinoza" and "Spinoza's Conception"), by believing, at least in certain cases, in the role that reason can play in guiding our actions, seem to adopt a stance that is akin to option (iii). C. Korsgaard ("Sources") also includes a fifth alternative that she associates with Kant and which she calls "the call for autonomy." Although I believe this type may be used to think about Spinoza's position, I don't take it into consideration here to avoid adding another anachronistic bias.

Even if we can prove that Spinoza recognized that human law has all the *formal* characteristics of normative statements, it would still remain to prove that his philosophy is capable of grounding human law's legitimately binding dimension. Without this proof, Spinoza's theory could only explain human laws effectiveness in the social control of individuals through the impact that the sanctions and rewards stipulated by the legislator have on the manipulation of the passions of individuals who do not act by reason.¹⁷

The first paragraphs of Chapter 4 of the TTP allow us to glimpse a *very peculiar* form of legal voluntarism that allows us to attribute to the imaginative process that underpins it an epistemic status and a broader and more fundamental legal-political function than that of a necessary but irrelevant illusion.¹⁸ We will see that all the above-mentioned conditions that are necessary and sufficient for the application of the concept of normativity are met by the concept of *human law* in Chapter 4. For this reason, there may be, within the restricted scope of the republic, the *will of a legitimate authority* to issue commands (civil laws).

2 The Problem

On the one hand, it is generally agreed that the metaphysics defended by Spinoza in the *Ethics* (and even in the TTP) is naturalistic, causally deterministic, and necessitarian. In the *Ethics*, the philosopher maintains that everything that is, necessarily is, either by virtue of its own essence (E1p7/G II 49) or by virtue of its cause (E1p21, p28/G II 65–66, 69–70), concluding that there is absolutely nothing that is real and contingent (E1p33 and s1/G II 73–74). Everything that occurs, necessarily occurs, and it is determined by necessary natural causes (E1p24–27/G II 67–68); in the case of finite durational things, whatever occurs is determined by an infinite series of finite causes that operate necessarily (E1p28). The fundamental characteristics of the causality model of the ontological system are spontaneity (E1p17/G II 61) and immanence (E1p18/G II 63–64), and it is equivalent to or analogous to logical relations among the *relata* (E1p16/G II 60). No causality characterized as transcendent, transitive, or arbitrary (and therefore unnatural) can be accepted in his system. As a result, his assertion that God is the first and only cause of all reality is completely incompatible with monotheistic and/or creationist views of divinity; so much so that the expression *Deus sive Natura* is more than a metaphor in Spinoza's philosophy; it accurately designates the naturalistic character of his philosophy.¹⁹ In this sense, the title of this article, by including the word 'normativity,' foreign to the spirit and the letter of his work, is certainly a provocation.

However, this notion of normativity finds its *raison d'être* in the fact that Spinoza opens his chapter on the concept of law in the TTP by distinguishing (and thereby recognizing) two types of law, according to the nominal definition he presents. One type conforms perfectly with his

17 This hypothesis is actually considered by Spinoza in TTP 4.7, which suggests to its interpreters that it is only this extrinsic normative force that Spinoza accords to human laws. However, this passage is subsequent to the paragraphs analyzed here and, therefore, its interpretation hinges on them and not the other way around.

18 This expression is used in the way set out above, namely, to refer to a theory that assigns the source of normativity to the will of an authority.

19 Cf. E4pref/ G II 206. See also E3pref: "God, or Nature [acts according to] "laws and rules" (*leges & regulae*) [that] "are everywhere [*ubique*] and always [*semper*] the same" (G II 138).

necessitarian naturalism (a principle of regularity that depends on the necessity of nature) while the other type, at least *prima facie*, is entirely *incompatible* with his naturalism, since it is said to depend on a principle distinct from the necessity of nature.

The first type of law lies at the basis of Spinoza's own version of natural law, in which law, right, and power (*potentia*) are interspersed (TTP 16.2; 3–5/G III 189ff), but will not be addressed as themes or problems here. It is still at the root of his thesis that divine law is not a command, a rule that is bound to be disobeyed; it stems from the necessity of nature just as much as natural laws do. Its representation in the form of an imperative serves exclusively to guide us in our actions toward the knowledge of God and toward our beatitude (TTP 4.38–41/G III 66).

It is the allusion to the second type of law that astonishes any present-day reader who is minimally familiar with Spinoza's philosophy: what principle could this be, if the metaphysics of the *Ethics* teaches us that there is nothing real that does not originate from the necessity of nature?²⁰ Even more surprising is the fact that this second principle is said to depend, according to the text, on what we may call "human decision," or even "human decree" ("*ab placito humanum*").

Traditionally, in order for a theory to invoke a human decision or a decree to explain at least some of our actions, it must recognize that we have a principle or absolute power to act, that is, that we may be the absolute first cause of these actions, or that we are capable of determining ourselves, without being determined by external causes, to perform certain actions that would not otherwise take place. The adoption of this principle into a theory of action does not necessarily imply that the actions resulting from it are entirely random or devoid of intelligibility. It is perfectly possible to think about the action within a conceptual framework in which its self-determination is *oriented* by rational principles, which would confer rationality to the actions it determines. However, its mode of operation is such that it assumes at the same time the contingency of self-determination and the contingency of the actions performed. In this sense, the way we regulate our actions cannot make them *necessary*. Within some contexts, this principle is designated by the expressions 'volition,' 'free volition,' or 'free will,' the last being the expression Spinoza uses as he criticizes the concept, claiming it is based on an illusion.²¹

The use of the expression "*ab placito humanum*" to characterize the source of the second type of law therefore creates a strong tension in Spinoza's theory of action.²² Human decision, as a

20 In reality, it was the introduction of the first type of law that caused many reactions among his contemporaries. Thus, the problem dealt with here was the subject of debate among different interlocutors, although from a perspective contrary to the one adopted here (which problematizes the second type of law). See the epistolary exchange of the philosopher with Willem van Blijenbergh (Ep 18 to 24 and 27/G IV 78–157 and 160–161), with Jacob Osten (intermediating the position of Lambert van Velthuysen; Ep 42 and 43/G IV 207–226) and with Henry Oldenburg during late 1675 and early 1676 (Ep 71, 73 to 75, 77 to 79/G IV 304, 306–316a, 324–330).

21 See in particular, the Appendix to Part One of the *Ethics* (G II 204), Ep 22 to Blijenbergh (G IV 134), Ep 58 to Schuler (G IV 265), among others.

22 It should be noted that this use should be thought of as associated with the use of expressions semantically close to others related to the concept of free will in this and other works, such as '*ex beneplacito*,' '*ad libitum*,' '*ex arbitrio*.' True, these expressions are frequently used to express theses that Spinoza will criticize or to express something in a way that the *vulgus* will understand. Nonetheless, they appear also in phrases expressing the author's own theses: TIE 19, 72 and 89/G II 10, 22 and 36; E4p37s1/G II 236–237; TTP 5.29–30/G III 74–76; TTP 7.1/G III 176; TTP 17.30–31 and 103/G III 216 and 219; TTP 20.17 and 21/G III 242; TP 4.3/G IV 52; Ep 12 to L. Meyer (G IV 55).

principle of the regularity of our actions, characterized as different from our nature's necessity, resurfaces in the TTP. Here it is no longer an object of criticism but apparently treated in a positive way, as explaining a central element of the political philosophy exposed in this work, namely, the human laws in a non-civil context. It is not a matter of questioning the different translations of this expression, which are all correct from the perspective of the languages involved, but of asking about the meaning they can have within the framework of a necessitarian and naturalistic philosophy which, *prima facie*, should refuse any and all explanatory functions to the concepts of decision, deliberation or choice.

Thus, the text is open for us to examine Spinoza's precise understanding of *ab placito humanum* and the semantic field to which it is associated. The text invites us to investigate whether the type of law that originates it does not allow us to understand a little better, within the specific framework of the political philosophy presented in the TTP,²³ the foundation and role of normative laws (that is, of prescriptions about what or how things *must* or *should be* rather than declarative statements about what or how things (necessarily) *are* or (necessarily) *occur*, which is the function of the first type of law).²⁴

3 Analysis of Paragraphs 1 and 2

The first four paragraphs of Chapter IV are brief but conceptually quite complex. Their main purpose is to provide the parameters that will serve as the basis for the proof of the chapter's main thesis: viz., that the true law of God (divine law) is not a command, a commandment instituted by God as the Supreme Lawgiver, but a rule of life that guides our actions toward the true knowledge of God and toward the love of God, which constitute the supreme good (TTP 4.9/G III 59).²⁵

The chapter opens with the elucidation of the meaning of the term '*lex*,' by virtue of which an individual or several individuals of the same type act (all) in the same way ("*eademque certa ac determinata ratione agunt*"). It is a nominal definition of the term *considered in an absolute way*, that is, in abstraction of any other relevant specification that may affect its meaning.²⁶ This nominal

23 Note that this article is limited to the analysis of the political and legal spheres, and does not address possible repercussions for ethics. I assume here that the question about the normative or non-normative character of Spinoza's ethics does not necessarily affect the analysis of this question in the legal sphere. A preliminary argument in favor of the plausibility of this separation lies in the difference in treatment of the concepts of sin (whose validity is refused by Spinoza's ethics) and disobedience/crime (whose validity, however re-signified, cannot be refused in the legal-political context).

24 It should also be noted that this article is limited to the analysis of these issues within the framework of the TTP, which clearly adopts a *contractualist* concept of the origin of the Republic, albeit a peculiar version compared to the other contractualist positions of the period. The relationship between the political philosophy discussed there and the one presented in the *Political Treatise* will be put aside and addressed later on.

25 Regarding the specific function of the chapter within the general structure of the TTP, see Preface: "to know whether Scripture implies that the human intellect is corrupt by nature, I wanted to ask [in Chs. 4 and 5] whether universal Religion, or the divine law revealed to the whole human race through the Prophets and Apostles, was anything other than what the natural light also teaches?" (TTP pref.23/G III 10).

26 In this case, the customary use of the term will be responsible for defining the concept of law: "But since the word law seems to be applied figuratively to natural things" (TTP 4.5/G III 58).

definition can be considered as an operative definition that serves as the starting point of the analysis.
27

The paragraph goes on to introduce a first distinction between two types of principles of regularity in the action of individuals, principles that are distinguished by *their origin*. The first principle of regularity depends on the *necessity* of nature to the extent that it *follows* [*sequitur*] from the very essence or definition of a thing. The second principle depends on *ab placito humanum*, *prescribed* by humans to themselves and/or others with a *view to an end*, whatever it may be.²⁸

This distinction has a retrospective impact on the meaning of the nominal definition of ‘law.’ It is certain that both types of principles can be appropriately designated as *principles regulating the action of individual(s)*, and therefore can be univocally designated by the term ‘law’ as defined. However, there is a set of differences between them suggesting the *equivocal* use of the term.²⁹ To begin with, they are distinguished according to their origins; the first depends on the necessity of nature, while the second depends on *ab placito humanum*. And concerning their scopes, the first type regulates *everything* which follows from the essence of *any and all* individuals, whereas the second applies exclusively to human beings and their actions.

From the modal point of view, only regulation by the first principle, and not by the second, implies the *necessity* of the regular character of the actions; in this regard, this regulation is entirely compatible with Spinoza’s refusal of all contingency in reality (E1p33/G II 73). In fact, it is this first type of law that Spinoza uses to construct the concept of natural law (TTP 16.2–10/G III 189–191) and to deconstruct the normative vision of the law of God (TTP 4.9/G III 59). Nothing is said about this in regard to the second type of law, but by being characterized as a *prescription*, we are allowed to assume that it does not imply the *necessity* of the regular character of the actions.

Concerning the logical structure of the sentences that express them, we should take into account that the first kind of principle regulates our actions insofar as it necessarily follows from our nature, *whereas the second regulates our actions insofar as it is* prescribed to us as a means to an end. A universal and necessary affirmative causal declarative sentence that describes the pattern of our actions that fall under its purview should thus be used to express the first type. The truth of this description is founded on the fact that this principle, because it is derived from our nature, *constitutes* the regularity of actions within its purview.

The second type must be expressed by a sentence that not only conveys relationships between means and ends, but that takes the form of a *prescription*. Relationships between means and ends can be expressed by sentences of the same logical type as those of the first type of law. And they

27 It should be recognized, however, that this lexical clarification is not complete, as it does not yet exclude different interpretations of how the law relates to the pattern of the actions of individuals: it may be (a) a rule that *describes* the regularity of certain actions of this (these) individual(s), (b) a rule that *confers* (intrinsic—b’, or extrinsically—b’’) regularity to certain actions, or (c) a rule that *constitutes* the regularity of certain actions. The last meaning is inspired by the concept of the practical conception of rule (Rawls, 1955, p. 24 ff.), which constitutes the regularity of certain actions when defining *practices*, and the concept of *constitutive rule* (Searle, *Speech Acts*, 33ff.), which constitutes the regularity of certain actions in the sense that these actions are not *logically* independent of the rule.

28 Although Spinoza explicitly mentions the purpose of achieving a more comfortable and secure life, he also makes it clear that this is only one of the possible ends figuring in this type of principle.

29 Spinoza suggests that we call this second type of principle by the term ‘*jus*’ and not ‘*lex*’ (TTP 4.1/G III 57), although he himself does not follow his own suggestion in that chapter.

are sometimes so expressed, for example in the explanations of the usefulness of the covenant for security and the good life we find in §§12 to 114 of Chapter XVI.³⁰ But in this case, these statements, in explaining the pact by unintended principles, are only providing a theoretical explanation pointing to the *rationality* of the decision. If this were, in fact, the logical form of the laws of the second type, they could be reduced to a subset of the first type of law, and the creation of the republic could then be interpreted as an entirely unintentional process. However, Spinoza explicitly characterizes the second type of law in terms of *prescriptions*, and these can only regulate the actions of individuals to the extent that they are represented in thought by these individuals, which is not the case with the first type of law.

Prescriptions can be expressed either in the form of a finished *imperative* statement or in the form of a finished statement that includes some deontic expression (e.g., ‘must,’ ‘is allowed,’ ‘is prohibited’). In the first case, we would have something like: *Do m to get f*; in the second, *m must be done in order to get f* (or *You must do m to get f*). In either case, the designated end may be interpreted as a *part* of the foundation (i.e., motivation or reason) for the action to be performed.³¹

From the standpoint of how they regulate actions, do these two types of laws also differ? The former expresses a causal relationship of determination, which operates even if the agent does not represent the principle of regularity to themselves. The second, although it takes the logical form of a prescription that must be represented in thought to an agent for it to effectively regulate actions, could, in principle, be thought of as operating causally. The explanation of its effectiveness on our actions, given the impossibility of resorting to the theory of free will mentioned above, could refer to a form of intrinsic final cause yet to be specified. This interpretation, however, is not in accordance with what is defended in the preface of the fourth part of the *Ethics*, where we read that final causes are only the representation of the result of an action that acts upon us as an efficient cause (E4Pref/G II 375–376).

For this reason, I argue that the second type of law operates in a totally different way to the first, requiring that the individual not only represent to themselves the end sought after, but also the principle that will lead him to this end. It operates intentionally and therefore should not be *descriptive* or reduced to one or more descriptive statements, but rather should take the form of a *prescriptive* statement. It seems, therefore, to be this second type of law that Spinoza refers to so much in §5 of Chapter IV:

commonly nothing is understood by law but a command [*mandatum*] which men can either carry out or neglect [*perficere, & negligere possunt*]—since law confines human power under certain limits, beyond which power extends, and does not command anything

30 Consider, for example, the following: “Also (as we showed in Ch. 5 [§§18–20]), if we consider that without mutual aid men *must* live most wretchedly and without any cultivation of reason, we shall see very clearly that *to live*, not only securely, but very well, men *had to* agree in having one purpose” (G III 191; my emphasis); “Nevertheless, they would have tried this in vain if they wanted to follow only what appetite urges (...) So they *had to* make a very firm resolution and contract to direct everything only according to the dictate of reason” (*idem*; emphasis added).

31 I state that the end is part of the foundation because it must yet be considered that it must be wanted or desired and that obtaining it is the object of a decision. All these conditions and the relationships they maintain with each other are quite complex and are being intentionally set aside here.

beyond human powers—for that reason Law seems to *need to be defined more particularly*: that it is a principle of living man prescribes to himself or to others for some end. (G III 58; emphasis added).

‘Law’ would thus designate the second type of regulatory principle of action: it is a principle of life that has the form of a command prescribed to humans, which they *may or may not* follow, to perform certain actions and not others, having in its scope only the actions that *can* be performed by them.

However, up to this point in Chapter IV, it is still possible to assume that the second type of principle (*jus*) was formulated solely to create arguments contrary to positions that defend the normativity of the regulatory principles of our actions, particularly divine laws and decrees, and should not be integrated into a particularly Spinozian concept of law. Indeed, later in Chapter IV, in §§26 and 27, Spinoza states that if God had told Adam that he did not want him to eat of the tree of knowledge, that is, if this were a divine law, that is, a law of the first type, it would have been impossible for Adam to perform this action (“*contradictionem implicaret, Adamum de illa arbore posse comedere*”; G III 63). For if God had so decreed it, either the essence of Adam would be such that he could not eat of the tree of knowledge, or external causes would necessarily have prevented him from doing so. Because the Scriptures report that the action was performed, we must understand this account differently: what God said to Adam was not a law of the first kind, nor was it a law of the second kind (it was not a *prescription*), as Adam realized. By reason of a defect in his knowledge, Adam took what was said to him as a law of the second kind: “as something instituted, which profit or loss follows [*institutum, quod lucrum aut damnum sequitur*]³², not from the necessity and nature of the action performed, but solely from the pleasure and absolute command of some Prince [*ex solo libitu & absoluto imperio alicujus Principis*]” (G III 63).

Laws of the second type, though they have become the principal referent of the term ‘law,’ are characterized as an imperfect perception, at least in the case of divine laws. This suggests that *all* of them are so, whether or not they are related to the way we perceive divine or natural laws. It also suggests that this imperfection can be corrected in all cases of normative laws. However, it might still be too soon to draw these conclusions.

It is noteworthy, moreover, that what Adam interpreted as a law of the second type, that is, as an order to be obeyed under penalty of punishment, is seen by Spinoza as an eternal and necessary truth that implies neither the necessity nor impossibility of performance: “we must say that God only revealed to Adam the evil which would necessarily befall him *if* he ate of that tree, but not the necessity of that evil’s following” (TTP 4.26/G III 63; emphasis added). This eternal and necessary truth is a conditional proposition that associates, in a necessary and eternal way, the performance of an action to its consequence, without requiring the actual performance of the action or the actual occurrence of the consequence. The realization of the first action, at least, remains, under this reading, *not necessary*. Although all actions are necessarily causally determined by God, it does not follow that each, taken individually, is actually necessary.

If Spinoza did not want to incorporate in his notion of law laws that have a normative configuration, he could have explicitly denounced them as reduceable to laws of the first type,

32 In this passage, two other characteristics of normative laws are added to the second type of law: they are instituted by the authority of a sovereign and are accompanied by promises of rewards or punishments.

recovering the univocity of the term ‘*lex*,’ or given them the same treatment given to the notion of free will in *Ethics* (especially in the appendix of the first part). As seen in the case of Adam just discussed, this second type of law could be used only to explain the way in which principles of the first type and the actions they determine are perceived inappropriately (or even falsely) by the imagination of individuals who act.

However, the text goes on to present evidence in favor of my hypothesis by giving an example of the second type of law: “But [the law] that men should yield, or be compelled to yield, the right [*jure*] they have from nature, and bind themselves [*sese adstringant*] to a fixed way of living, depends on a human decision [*ex placito hominum*]” (TTP 4.2/G III 58). This example is not a hypothetical one; it expresses a fundamental thesis of the Spinozian theory on the formation of the republic (TTP 16.12–22/G III 191–194).³³ Thus, in spite of the possible future abandonment of this explanation of contractual content in the *Political Treatise*, it must be recognized that this second type of law plays a role in Spinoza’s more general argument within the specific context of the TTP. This example, in itself, requires us to suppose that Spinoza’s political theory uses normative principles to account for at least some human actions.³⁴ I will consider here, however, the hypothesis that this thesis applies exclusively to the legal-political scope, that is, to the rules of Law (*Jura*).

The compatibility problem of this recognition and necessitarianism does not go unnoticed by Spinoza. In subsequent paragraphs (§§3 and 4), he goes on to explain why he states that the regularity of some of our actions originates *ab placito humanum*, despite also stating “without reservation, that everything is determined by the universal laws of nature to exist and produce effects in a fixed and determinate way” (G III 58).

Spinoza then abandons the semantic register and turns to issues of conceptual and doctrinal order.

4 Analysis of Paragraph 3

I will now analyze the two arguments that Spinoza offers in favor of his position (“I have two reasons for saying that laws of this second kind depend on a decision of men”). The first (§3) explains the relationships between depending *ab placito humanum* and depending on our power, because the first *authorizes* us to enact/sanction principles of action that, according to our hypothesis, have binding or normative power. The second (§4) clarifies the reasons why the imperfect epistemic circumstances in which these laws are produced do not effectively (and not only apparently) jeopardize the normative power of these rules.

33 It should be noted that later in the chapter, in §§9 to 15, the concept of divine law is defined in terms of the second type of law: “Since, therefore, Law is nothing but a principle of living which men prescribe to themselves or to others for some end, it seems that Law must be distinguished into human and divine. [...] We can call the means required by this end of all human actions—i.e., God, insofar as his idea is in us—God’s *commands*, because God himself, insofar as he exists in our mind, *prescribes them to us*, as it were. So the principle of living which aims at this end is quite properly called a Divine law.” (G III 59–60).

34 For other examples corroborating this statement, cf. Otto Pfersmann, “Law’s Normativity in Spinoza’s Naturalism,” *Cardozo Law Review* 25, (2003): 643–656, 649–651. URL: <https://heinonline.org/HOL/P?h=hein.journals/cdozo25&i=659>.

The argument of (§3) involves two steps. The first consists in showing why we can conceive of a legitimate source of regulatory principles (of the second type) that is *different* from our nature. Its structure is quite recurrent in Spinoza's arguments: from the thesis that we are part of nature, he concludes that our *potentia* is part of nature's *potentia*, and that, therefore, "the things which follow from the necessity of human nature—i.e., from nature itself insofar as we conceive it to be determined through human nature—still follow, even though by *necessity*, from human power" (G III 58). This argument seems out of place: he begins by explaining that some of our actions depend on *ab placito humanum* because we are allowed to say that from our *potentia* certain things necessarily follow, since our *potentia* is part of the power of nature. It seems to be an argument that reduces the second type of law to the first type: the actions that depend on *ab placito humanum* in fact follow *necessarily* from our power/nature.

However, this is only the first step of a larger argument, and I suggest that its function is to establish, first, *that* we are allowed to consider laws of the second type as *depending* on us, and moreover, that *we* are its authors (rather than the *whole* of nature). Second, this step gives the reasons why Spinoza states that laws of the second type can only have within their scope actions that are in our power to perform. Third, it is possible to infer from this step that, regardless of the meaning and source of the normative value of the second type of law, this normativity must be rooted in Spinoza's naturalistic tenets. Finally, it serves to determine that, whatever the nature of what is referred to by the expression *ab placito humanum*, it cannot be a principle of action that operates in a *random* manner but must be that which *effectively* (and not just illusorily) regulates our actions in line with the necessary relationship those actions maintain with our nature.

If the first step of the explanation suggests the reduction of the second type of law to the first by signaling its relationship with the concept of human *potentia*, the second step explains in what sense this reduction cannot be done. Yet, Spinoza curiously suggests that the first step ("That's why") allows us to "say quite properly that the enactment [*sanctionem*] of those laws depends on a decision of men."³⁵ Now, we have seen that the first step does not seem to allow this conclusion unless one takes 'human decision' to mean the same as human power. The previous step of the argument allows us to conclude that all our actions derive from the necessity of our power, but the conclusion that Spinoza intends to draw from this does not deal with this dependence, but rather another one: the second type of law depends on human decision to be sanctioned. Human decision is the act by which certain prescriptive statements become *laws* acquiring *binding force*. What is at stake in the introduction of the second type of law is not the material determination or content of these finalized principles of action, but its formal determination as *norma* or law (*jus*), which legitimizes the constitutive demand for obedience and accompanying promises of punishment and reward. In this sense, the second step makes it clear that the dependence of the laws of the second

35 '*Sanctio*' or '*sancio*' is a term whose religious origin—consecrate—is brought to the legal vocabulary by Cicero and it designates both the promulgation of a law, and the punishments (*sanctions*) corresponding to disobedience to the law. This term and its variants occur with legal significance in passages referring to divine laws (CM 9/G I 267; E1p33s2/G II 74–76; TTP 6/G III 85) and in passages referring to human laws (TTP 6/G III 61–62; and TTP 5/G III 69–80). However, TTP 16.14 and TTP 17.14 contain a related term, 'ratify' or 'validate', the occurrence of which must be noted: "*Qua autem ratione pactum hoc iniri debeat, ut ratum fixumque sit, hic jam videndum*" (G III 191; emphasis added); "*Deinde ut pactum ratum fixumque esset, & absque fraudis suspicione*" (G III 205–206; emphasis added).

type on human decision is that their normative force depends on the *authority* of this aspect of our power.

The text goes on to clarify what this aspect is and in what sense it must be distinguished from our power. The laws of the second type do not derive from the necessity of our nature/power because they depend

Mainly [*praecipue*] on the power of the *human mind*, but in such a way that the human mind, insofar as it perceives things as either true or false [*res sub ratione veri, & falsi*], can be conceived quite clearly without these laws [that depend on a human decision], although it cannot be conceived without a necessary law, as we have just defined it. (G III 58; emphasis added)

A first distinction regarding the laws of the first type has it that the *ab placito humanum* dependence designates principally (*praecipue*) the power of our *mind* and not *human* power. This first distinction, however, only approximates the meaning of the expression to the concept of human *will*, as defined in E3p9s/G II 147–148. However, it is the second distinction that is the more important (but is, as far as I know, overlooked in scholarly discussions). This second distinction explains the significant difference between and irreducibility of the two types of law, as well as the difference of their *modi operandi*. The key here is that we can conceive the power of our mind in at least two ways: insofar as it perceives things *sub ratione veri & falsi*, and insofar as it does not.

The normative laws, like the first type of laws, are founded in our natural rights and in the *potentia* of our minds. However, unlike the first type of laws, the normative laws do not necessarily follow from our power of thought *as long as* this power is conceived as a power of knowing.³⁶ For if we only regard our mind as a knowing power, we can deny the connection between these laws and our mind's *potentia* without destroying the adequate knowledge we have of our mind. The truth value of the ideas contained in these prescriptions is irrelevant in explaining the *binding force* of these laws.

This restrictive condition allows us to conclude that, *in that specific sense*, the laws of the second kind depend for their being *sanctioned* on a source other than the necessity of our mind's *potentia*: that is, on our decision or will. We see that it does not reintroduce free will as Descartes understood it, but rather begins to re-signify the concept of human will as our own power, since it is considered an abstraction resulting from perception of *sub ratione veri & falsi* things.

It is the combination of the theses 1) that our power is part of the power of nature, which underpins our natural right and authority, and 2) that there are laws that derive from the nature of our mind in one sense, but not in another, which leads Spinoza to distinguish between laws of the first type, which need not be sanctioned to operate, from laws of the second type, which depend on this act to be prescribed to oneself and to others. It is only when *sanctioned* by human decisions,

36 In the first paragraph of this chapter, Spinoza characterizes the first type of law as “*ex ipsa rei natura sive definitione necessario sequitur*” (emphasis added). In the argument examined here, he does not consider our nature or its definition, but only our nature in its cognitive function. Hence the question of whether or not the concepts of human power of thinking and of human power of knowing are synonymous for Spinoza. For the sake of brevity, I will not discuss this question here.

i.e., formally instituted as such by the natural authority of individuals, that these laws can express genuine duties and rights. And to the extent that they are not related to our nature *sub ratione veri & falsi*, their effectiveness in regulating our actions does not depend on whether they are true or false. Therefore, the naturalistic dimension of the second type of law, as well as all the normative vocabulary that surrounds it, resides in (and therefore depends on) the validity of the distinction introduced.

Keeping the *Ethics* in mind and assuming that the TTP must be fully adapted to the metaphysics expressed in the *Ethics*, when we read the fourth chapter, we conclude that only the first type of law can regulate our actions. Laws of the first type can only follow necessarily from our nature, and so we suppose that since laws of the second type suggest something different, they must be taken as the mere imaginative appearance of the laws of the first type. Their false representation is taken as normative and liable to be disobeyed. However, the distinction between these two ways of considering our mind's *potentia* teaches us that our actions may be ruled by the two types of law and that, therefore, my hypothesis that the second type of law is normative in the sense defined by Spinoza is not incompatible with his text and his arguments so far.³⁷

But if we learn that these laws do *not* follow necessarily from the power of our mind seen in a certain way, we still do not understand what is, positively, its relation to the power of our mind in another way. Our power of thinking is the power of producing ideas from existing things, from non-existent things, but also from variations of their power (of their affections), in addition to thinking about images and *entia rationis*. In most of Spinoza's works, these thoughts are contemplated not only in their representative nature, but, above all, in their cognitive function. We now know that these thoughts can and should be taken into account regardless of this function. It is possible to consider that when we value things, actions, and events, we are precisely adopting this other perspective.

In fact, this assumption is compatible with the non-realist concept of values adopted by Spinoza, who considers them to be signs of the way things affect our power. According to E3p9s and E4p9/G II 216, saying that something is good does not mean assigning a real property to this something or determining its value in relation to a universal objective standard. Evaluative propositions are always relative and expressive: they do not refer to what is valued, but to ourselves (to the configuration of our *ingenium*) according to how we are affected by things or ideas in the specific circumstances in which we find ourselves.³⁸ Relating this dimension of our mind's *potentia* to the second type of law would explain why Spinoza is capable of asserting that our power of thinking can be clearly conceived in its cognitive function without it being necessary to include any consideration of these laws.

Nonetheless, some points still need to be elucidated. First, because what is prescribed must be represented in order to be carried out, the cognitive dimension of the thoughts involved in these

37 It remains to be seen whether these two types of law work exclusively or complementarily in explaining the foundations and functioning of the republic, which only a more detailed analysis of chapters 5, 16 and 17 can clarify. Unfortunately, this is a task for another day.

38 Spinoza's philosophy would thus be a variant of the expressive concept of value judgments and the normativity of the laws of the second type. And it avoids moral relativism by determining a model of rational human being in relation to which the duality of good/evil can be defined in terms of useful/useless, beneficial/harmful (E4pref/G II 205–209).

prescriptions should be relevant in explaining their *effectiveness*. Furthermore, the realization of the actions included in its scope is determined not only by the necessity of nature as expressed by the nature of our mind, but also by the causal series of finite causes (E1p28). In this sense, Spinoza's explanation about the sense in which the second type of law can be said to be a legitimately sanctioned law in the legal sense is still incomplete, because it does not explain how it is consistent with the metaphysics of the *Ethics*. Finally, assuming we have the authority to sanction because we are part of nature's authority, this partiality pervades all of our actions, whether of the first or second type of law.

5 Analysis of Paragraph 4

Spinoza's explanation is not complete yet. The second argument (§4) fills in the unresolved issues just mentioned:

Second, I have also said that these laws depend on a human decision [*ex placito hominum pendere*] because we ought to define and explain things through their proximate causes. That universal consideration concerning fate and the connection of causes [*in fact, & concatenation and causam*] cannot help us to form and order our thoughts concerning particular things.

Furthermore, we are completely ignorant of the order and connection of things themselves, i.e., of how things are really ordered and connected. So for practical purposes [*ad usum vitae*] it is better, indeed necessary, to consider things as possible [*melius, imo necesse est, res ut possibiles considerare*].

Once again, Spinoza develops his argument in two stages, one resorting to a methodological thesis, and the other to an epistemological one. First, he goes back to the thesis that we must explain things [particular things or events] by their proximate causes and that this is why we can rightly say that the laws of the second type depend on *ab placito humanum*, without having to cite the other causes of the infinite series of finite causes.³⁹ Note that the referent of this expression, human decision, is considered here as designating the *proximate* cause of the second type of law, and not its *initiating* cause, as would be the case concerning the explanations of human decisions that refer to the concept of free will as an absolute power to self-determination. The first justification for considering us to be the authors of our actions, even though we are not their primary cause, is of a *methodological* order. Therefore, it also depends on an epistemic justification, because this requirement ("we ought to") must rest on the characteristics of the epistemic context to which it must be applied, at the risk of being considered arbitrary.

39 This thesis is compatible with the infinite chain of finite causes demonstrated in E1p28/G II 69, responsible for the existence and operation of finite things existing in duration, as well as with its scopes, where it is stated that God is the remote *cause*—and not the proximate cause—to singular things. See also E4app, I/G II 266. However, the introduction of the concept of proximate cause in this context does not fail to raise the difficult problem of the individualization of agents, since this is not absolute, but relative (see E2d2/G II 84 and E2p13def)

The rest of the argument presents just this justification, proposing something that had not been defended so clearly until then. The first reason asserts that not even true knowledge of the whole of everything that occurs taken collectively (“universal consideration concerning fate”) or of the causes of nature taken distributively (“*concatenatione causarum*”) can help us form and order—i.e., regulate—our thoughts concerning particular things in the use of life. But what if we could attain true knowledge of the order and connection of particular things and their effects by the third kind of knowledge? Should this not help us regulate our actions in circumstances that demand laws of the second type and, therefore, undo the normative appearance of these laws?

The second reason eliminates this possibility by asserting that we completely [*plane ignoremos*], insurmountably ignore the order and connection of particular things. Even though we *universally* know *that* they are ordered and *that* they necessarily interconnect in an infinite chain of finite causes (E1p28), and *that* the order and connection of ideas is the same as the order and connection of things (E2p7, c and s), “we are completely ignorant of [...] how things are really ordered and connected.” In this context, where we are unable to know the necessary relation of human laws to the laws of nature, Spinoza concludes that it is not only pragmatically better (for otherwise we could not act in certain circumstances), but indeed also *necessary* (“*melius, imo necesse est, res ut possibles considerare*”) to consider things and actions as *possible*.

But what does the term ‘necessary’ mean in this passage? Let us consider the nominal definitions of possible thing and contingent thing that were introduced at the beginning of the fourth part of the *Ethics*:

I call singular things contingent insofar as we find nothing, while we attend only to their essence, which necessarily posits their existence or which necessarily excludes it. (E4d3/G II 209)

I call the same singular things possible, insofar as, while we attend to the causes from which they must be produced, we do not know whether those causes are determined to produce them. (E4d4/G II 209)

Although Spinoza had already clarified in what sense *we can* appropriately say that particular/singular things are contingent or possible and the meaning of these terms (E4d3 and d4), he had admitted, however, that these terms do not correspond to anything in reality (E1p33 and scholia).⁴⁰ We saw that the analysis of Adam’s case led us to recognize, in the TTP, that the necessity of the connection between an action and its consequence does not necessitate the performance of the action. We learn, therefore, the context in which *we must* use these definitions for the uses of life (which includes legal and political uses).

These definitions are not incompatible with Spinoza’s necessitarian determinism or his naturalism. On the contrary: they *rest* on it. There is nothing *in re* that is possible and/or contingent, but there is *in re* that which exists solely in function of its cause (modes) and that which depends on that cause being determined to produce its own existence. Therefore, to represent something as

40 For an examination of the use of these terms and their importance for politics in Spinoza’s text, as well as a defense different from what I present here, see Homero Santiago, “Por uma teoria spinozana do possível,” *Conatus: filosofia de Spinoza* 5, no. 9 (2011): 41–48. URL: Dialnet-PorUmaTeoriaEspinosanaDoPossivel-3718042.pdf.

possible or contingent is not to have a false representation of that thing, provided that those terms are taken in the sense of E4d3 and d4. Sure, they express the stage of my knowledge about the existence of this thing, but they also express something about its existence and the way it is determined by the necessity of nature.

Thus, the scope of the terms ‘possible’ and ‘contingent’ does have a double focus on the existence of the thing

Saying that *one thing is possible* is to say that (a) *I know what this thing (its essence) is, but I do not know if it exists or not*; and (b) *its existence does not follow from/is not involved in its essence, and it is hence dependent on being caused by other existing things*.

Saying that *one thing is contingent* is equivalent to saying that (a) *I know which are the causes of the existence of this thing, but I do not know if these causes are determined to cause this existence*; and (b), *its existence not only depends on other existing things to be produced, but also that these things are determined to produce it*.

What these definitions teach us when applied to the epistemic context described by Spinoza in this second argument is that we *can only consider* the essences of things, events, and actions *by abstracting* from what causes their existence and what determines their occurrence. This is because the knowledge to not consider them this way and to take them as necessary is necessarily *beyond our reach*. All the actions we perform or think about performing can only be thought of by us as being *possible* and *contingent*, since we do not consider (because we cannot consider *comme il faut*) ourselves or the things outside of us as necessarily including these existences or excluding them, nor do we consider (because we cannot consider *comme il faut*) their causes as determined, or not, when producing them.

The epistemic context in which these definitions are applied is *necessary* for us. Therefore, it is not only more practical to consider particular things as possible and contingent: this is how we *effectively* (because necessarily) represent them within the scope of action. From God’s perspective, laws of the second type apply to things and actions that are causally determined by the necessity of nature. Still, the second type of law is said to originate from human decision because *intentional* regulation of things (i.e., that which depends on the representation of a principle of regularity) is necessarily (and not only pragmatically recommended to be) represented by us as being applicable to things or events that are necessarily represented by us as not necessary. However, the imperfect character of this knowledge does not affect the effectiveness of these laws precisely because their relationship with our nature does not go through the cognitive dimension of thinking.

6 Conclusion

I hope to have demonstrated here that a careful analysis of the first four paragraphs of Chapter 4 of the TTP helps us to better understand Spinoza’s legal naturalism. These paragraphs provide good reasons for claiming that his theory conceives human law as being intrinsically normative, rooted in what he calls “*placito humanum*,” which refers to an aspect of our own natural right that is rooted in a feature of our own power of thinking that is not intended to fulfill a cognitive function. Because

it is not necessarily connected with our power of thinking quatenus a power of knowing, it can be a source of laws that do not follow from the necessity of our nature (power of thinking tout court), i.e., the source of normative laws. Because it is an aspect of our natural right, it institutes us as legitimate authorities and makes us responsible (and liable) for sanctioning rules of life that are intrinsically normative, being that this is the authority at stake in the covenant that founds the Republic. It explains the authority that is transferred to everyone in the covenant and is, therefore, the principle underlying obligations, prohibitions, and permissions in the civil sphere.

The laws of the second type depend on human decision not only because they must be *sanctioned* by the authority that natural law (i.e., law of the first kind) confers on each one of us, but also because some of our actions—even if determined by the necessity of our nature—depend on being represented to be regulated. The rationale behind why Spinoza's naturalism can coexist with the second type of law (normative prescriptions) is that it asserts that both these actions and the law that regulate them are grounded in our nature/*potentia*. But if this regulation by representation depended on the knowledge of such rooting, it could never occur. Even if the correct explanation of things presupposes only the knowledge of the proximate causes, our actions and their regulation do not have only our decision as the proximate cause; therefore, knowledge of this rooting still depends on the true representation of the infinite series of causes that is entirely and definitively beyond our grasp. Conversely, the perception of what is good or bad, useful or harmful is accessible to everyone because they are expressions of how things in the world affect our power to act and think. In this case, the truth value of the propositions that express these perceptions is irrelevant to their regulatory function.

Even if there is rationality in the laws of the second type that allows them to be understood and obeyed by those who follow the dictates of reason, it is not this rationality that explains their normativity, but individuals' perceptions that what they order is possible for them (it is something they can do), may or may not occur (they are obliged to do, but it is not necessary that they do), and is useful/good for them to do, and thus to obey them *by themselves* is *to themselves*. Hence, although all our actions are causally determined, it is possible to say that the relationships between the normative laws and the actions they regulate are not causal, but only logical in the precise sense in which the actions are explained by their usefulness (whether or not truly perceived by the agent) but not by their necessity.

These imperfect epistemic conditions do not in any way compromise the normativity of these laws because they are conditions from which we cannot escape and are *constitutive* of the circumstances in which the laws of the second type are necessary for human beings.

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