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7. *Spinoza's Empty Law: The Possibility of Political Theology*

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The evolution of how power is both understood and exercised can be explained in two ways or two distinct narratives.[1] According to the first one, power articulates itself by seeking justification through its relation to the law. I will refer to this as the juridical conception of power.[2] According to the second one, the exercise of power cannot be justified with recourse to the law. I will refer to this as agonistic power because it expresses itself through its antagonism towards juridical power.[3] Clearly, the juridical model has been the dominant one in the Western tradition: that is, in any conception whereby power is different from kingship. However, the agonistic power forms a strong current in the intellectual tradition, one that includes Marx and Nietzsche in the nineteenth century, as well as French post-structuralists such as Foucault, Derrida and Deleuze, and the Frankfurt School and Walter Benjamin in Germany.

It may appear easy to identify and to critique the tradition that understands power from a juridical perspective. For instance, Foucault identified that tradition as the source of our conception of sovereignty, even though he lamented that 'we still have not cut off the head of the king' (1990: 89). The reason that the king's head is still intact may be that the secular conception of sovereignty shares an essential similarity with the agonistic tradition opposed to it – namely, that they both conceive of the law as empty. The emptiness of the law does not mean that power is disconnected from statute. Rather, the emptiness of the law refers to the lack of a foundation to legality as such. For instance, Jean Bodin (1992: 7) argues that sovereignty is given unconditionally, meaning that sovereignty stands above the law of the state and hence the sovereign is entitled to change the law at will. The content of the law is a mere derivate of power standing above the law – or, what is primary is power's relation to, and use of, the law. This idea is present,

mutatis mutandis, in the entire tradition that understands power from a legalistic perspective – from Locke's insistence on the sovereign prerogative in the *Treatises of Government*, to Rousseau's famous assertion that 'the general will is always in the right,' to the development of the theory of the exception by Carl Schmitt and his followers. At the same time, however, the agonistic tradition, with its opposing emphasis on the lack of any – transcendent or earthly – authority of legitimacy, also conceives of the law as empty. The law is also determined in relation to particular articulations of power. For instance, Derrida (1992), in his essay on Kafka's 'Before the Law', describes the law as constantly vacillating between a universal proscription and its particular application, just as, in the legalistic tradition, Derrida describes the law not in terms of the inviolability or otherwise of its content, but rather in terms of its utility. So how are we to understand this common insistence from two opposing traditions on the emptiness of the law? In this chapter, I will turn to Spinoza, who belongs to the tradition that critiques juridical power, in order to show how, in fact, the emptiness of the law can be used to show some of the salient differences between the two traditions of how we understand power.

Before turning to Spinoza's own position, it is necessary to clarify further the juridical understanding of power. The first significant point is that, even though juridical power articulates itself in relation to law, this does not mean that it is commensurate with law. Rather, juridical power is given in its various relations with legality that lead to justification. According to Antonio Negri, such relation to the law is the criterion for distinguishing three phases of juridical power. There is a first phase where right and sovereign power are united. What characterises the empires of the past, especially the Roman Empire, is, according to Negri, a moralisation of the law. The second, modern phase begins with the secular separation of powers. This entails the separation of right and law, leading to the distinction between the private and the public and ultimately to the Enlightenment ideal of the progression towards a 'perpetual peace' or a universal community of enlightened citizens. The third, biopolitical phase, according to Negri, performs a re-unification of law and right, of institutional formations and eternal moral values. This re-unification effectively means that law is transformed into regulation and procedure – or, in other words, the law pervades every aspect of life.[4] The starting point of Spinoza's critique of the juridical tradition is that the law is empty. This emptiness of the law asserts, as I will argue, agonistic power and allows for a conception of power's monism. We will also see how Spinoza's conception of power leads to his political theology that is determined from two perspectives – either

in relation to law's emptiness or in opposition to an understanding of the law as having a content.

A further significant point in clarifying the juridical tradition is to recognise that the juridical tradition itself can appropriate the emptiness of the law that is mobilised by Spinoza precisely in order to deconstruct it. For instance, the emptiness of the law is a defining feature of the discourse of political theology that starts with Carl Schmitt. 'The sovereign is he who decides on the exception,' writes Schmitt (1985: 5). There are two significant aspects in this definition of sovereignty. First, power is articulated through the sovereign, whose function is to stand above the law in such a manner as to be able both to affirm and to suspend the law. The law, according to this tradition of political theology, is empty because it is given by something external, the sovereign, that is without content because he occupies a structural position of exteriority to the law. So, even though he defines the law as empty, Schmitt can still be regarded as working within the juridical tradition since he relies on a justification of power through the law. Thus, in order to argue that Spinoza is indeed opposed to the juridical tradition, his own notion of the law's emptiness must be differentiated from Schmitt's – as well as that of the entire post-Schmittian movement that has dominated political theology in the twentieth century and up to the present through thinkers such as Agamben (see, for example, Agamben 2005). In other words, we need to discover a criterion to distinguish between the two notions of empty law that lead to two different political theologies, one relying on juridical power, the other putting forward agonistic power.[5] And this brings us to the second aspect of Schmitt's definition of the sovereign which has to do with how the exception is understood. It is the figure of the enemy that allows Schmitt to define the exception. The exception arises through sovereignty's response to those that threaten its power.[6] Contrasting Spinoza's definition of agonism to Schmitt's enmity will highlight their divergent understandings of the emptiness of the law and their distinct political theologies. Spinoza's political theology is different from Schmitt's because agonism is not articulated as enmity but rather as a function of love, as we will see shortly. Such construal of agonism in Spinoza entails that there is no outside power. Schmitt requires that outside – indeed, it is precisely the enemy that occupies the space outside the sovereign's power. For Spinoza, on the contrary, there is a sense of power that excludes no one – or, rather, a power to which the binary of exclusion and inclusion does not pertain. In this sense, it is a single all-inclusive power. Thus, the distinctive feature of Spinoza's political theology is that it is both agonist and monist.

In order to delineate clearly Spinoza's political theology, as well as its differentiation from the political theology of Carl Schmitt and the entire juridical tradition of power, it is necessary to show the way that agonism and monism are related. Such a task is only possible by examining in detail Spinoza's conception of the emptiness of the law.

In order to recognise the emptiness of the law as it is conceived in Spinoza, it is necessary to situate his project within the accounts of the formation of the state by the social contract theories of the seventeenth century. There are two aspects of Hobbes's well-known version of the social contract that will help us juxtapose his construction of juridical power to Spinoza's agonistic power. These consist in the way that legitimation and justified violence are understood. According to *The Leviathan*, there is a state of nature where everybody is an enemy to everybody because all are absolutely equal and hence all can desire the same thing. Such a state of nature is defined by an absolute freedom conceived of as man's natural right. The transition to civil society introduces law whose function is the opposite of right: namely, law's function is to delimit freedom, to prohibit, to ban. Whereas the freedom of the state of nature is simply the unharnessed desires of the equal individuals, the law of the social contract regulates desires by referring them to statute, to a written content. In other words, Hobbes's narrative requires the distinction between right and law that, as Hardt and Negri indicate, defines the second or modern configuration of juridical power. This separation of law and right legitimates sovereign power that, in its turn, has recourse to justified violence in order to perpetuate itself. This requires the creation of the outlaw. What happens when people follow their desires – that is, their natural rights – after they have entered the commonwealth? What happens when they seek to re-assert their natural freedom and equality? They contravene the content of the law that legitimated the state. As a consequence, their actions exclude them from the law that founded the commonwealth and the full force of the state can legitimately fall upon them. For instance, Hobbes discusses rebellion thus: 'Rebellion . . . is against reason. Justice therefore, that is to say, Keeping of Covenant, is a Rule of Reason, by which we are forbidden to do any thing destructive to our life; and consequently a Law of Nature' (1999: 103). The rebel contravenes reason because reason is commensurate with the content of the law – which is precisely what the rebel opposed. Therefore, the justification of violence against those excluded from the law, such as the rebel, relies precisely on the fact that the law has a content. This is not an argument peculiar to Hobbes but rather one that permeates the social contract tradition. For instance, a century later, Rousseau, in his own *Social Contract*, despite

being in many respects almost antithetical to Hobbes, is still in complete agreement about the violence that ought to be directed against the outlaw. In Chapter 5 of Book II, titled 'The Right of Life and Death', Rousseau unambiguously states: '[E]very wrongdoer, in attacking the rights of society by his crimes, becomes a rebel and a traitor to his country . . . The preservation of the state becomes incompatible with his own' (1994: 71). Foucault (2003: 240) summarises this point by saying that the sovereign prerogative consists in the right of life and death, which 'is actually the right to kill', or the justification of violence against anyone who is deemed to be outside the law. So, according to the contract tradition, the outlaw is, by definition, excluded by the law, and hence can be liquidated. Law justifies violence against the outlaw. In sum, the juridical power arising out of the social contract tradition consists in giving content to the law – first, as a way of separating it from right and, second, as the justification of violence against the outlaw who contravenes the law's content.

Spinoza's description of the emptiness of the law is opposed to the law having a content according to the social contract tradition. Spinoza presents, in the *Tractatus Theologico-Politicus*, his version of the narrative of state formation by opposing the starting premise of the contract theory: namely, that there is a state of nature defined by lawlessness. Spinoza's detailed reading of the Biblical account of the exodus and the formation of the Jewish state in the first thirteen chapters of the *Tractatus*, situated within the context of the theories of state formation in the seventeenth century, ultimately amounts to a single point: *pace* contract theories, power is not articulated with recourse to the institution of law. Giving content to the law – legitimating the state – does not signal the transition from natural lawlessness to socially and politically organised power. More broadly, right and law do not define power simply by distributing their fields of influence within power. Instead, law always already exists – or, more precisely, what always already exists is the law of nature or possibility, which, as will be shown later, leads to an account of power that does not require a justification of violence. So, does this mean that there are no outlaws in Spinoza? Are there no rebels who can oppose the law of the state? And would the state, then, not be justified in exercising violence against those rebels? To tackle these questions, we need to turn first to the role that law – law as empty – plays in the formation of the political.

Spinoza summarises his analysis of the Biblical narrative about religious law and the formation of the Jewish state by writing that 'the aim of Scripture is simply to teach obedience . . . Moses' aim was . . . to bind [his people] by covenant' (TTP Ch. 14, p. 515). The aim of the

lawgiver was to bind the people together, as a people. The law makes a community possible. This is radically different from Hobbes's account because the law consists solely in the fact that it must be obeyed, not that its content as such is legitimating.[7] If the sole purpose of religious law is obedience, then the aim of the law is the following of the law. In addition, this is the necessary condition for the creation of a community. The aim of the law is the following of the law and this following is the constitution of a community. Spinoza continues: 'the entire Law consists in this alone, to love one's neighbour . . . Scripture does not require us to believe anything beyond what is necessary for the fulfilling of the said commandment' (TTP Ch. 14, p. 515). Spinoza does not regard the 'love of one's neighbour' as *a* commandment – the law does not prohibit or ban, as is the case in Hobbes. Rather, the *entire* content of the law can be reduced to the love of one's neighbour. And this amounts to saying that, from the perspective of obedience, all that can be said about the content of the law is that, in a set of circumstances, a content is given solely with the purpose of facilitating the creation of love as the actualisation of commonality. The law as such is empty, but the giving of a content to create a religious law is dependent on the situation. The moment law is given a content, it becomes *contingent*.[8]

Arguing that law is contingent is not simply an argument against religion or religious law. On the contrary, Spinoza recognises a clear function for religion, which is that the obedience of religious law – the love of one's neighbour – makes a community possible. This function turns religious institutions into temporal authorities. As the story of the Israelites demonstrates in the first thirteen chapters of the *Tractatus*, Moses proposed to them laws that suited their pursuit of a state. Because of contingent circumstances, the love of one's neighbour can be articulated in an indefinite number of ways. Further, in so far as someone participates in a community by loving one's neighbour, then there is no fixed content of the law; there are no eternally true commandments or eternally true dogmas. When religion is politics, little does it matter whether 'god' is omniscient, omnipotent or omnipresent. Instead, 'every man is in duty bound to adapt these religious dogmas to his own understanding and to interpret them for himself in whatever way makes him feel that he can then more readily accept them' (TTP Ch. 14, p. 518). What the doctrines and dogmas say, what the content of the law is, is irrelevant, so long as – and for as long as – it can be accepted. The manner of effecting obedience in order to form a community is entirely contingent, and it is the duty of every man to 'adapt' to these contingent circumstances. The actual laws of the Church and the state are effects of the historical and economic circumstances, no

less than the prejudices and imagination (in Spinoza's sense) of the people for whom the laws are written. The following of the law so that a community can be formed – the fact that there must be obedience in order to love one's neighbour – is produced by the law's contingency – the myriad articulations that obedience as well as neighbourly love can take. The law is sharply separated from universality, because it addresses contingent human relations, unpredictable formations of communities.

Spinoza's conception of religious and political law as contingent does not require a radical relativism that rejects truth as such. The contingency of the law is, rather, directed against the belief that there is an end to the law. More broadly, the emptiness of the law for Spinoza means that there is no law of teleology. Since no content to the law is of necessity true, then the truth of the law is that it effects the political. This is not to deny that the law should not be given content in particular configurations of society. Rather, Spinoza's is the much more radical position that whatever content is given to the law, it is necessarily always transformable. The empty law can be given a content if and only if that content is open to challenge when it does not suit the particular circumstances within which the community is formed. An allowing of agonism against the law is necessary for the law to be articulated. As Spinoza himself puts it, 'faith requires . . . dogmas . . . [that] move the heart to obedience; and this is so even if many of those beliefs contain not a shadow of truth, provided that he who adheres to them knows not that they are false. If he knew that they were false, he would *necessarily* be a rebel' (TTP Ch. 14, pp. 516–17, emphasis added).[9] With rebellion, we move from law's contingent modality to the modality of the necessity of challenging the law. Rebellion is necessary in order to guarantee that, after its being given content, the law – or the lawgivers, *potestas* or constituted power – adheres to its own constitutive emptiness and hence its originary contingency. Etienne Balibar (1998: 68) summarises Spinoza's radical conception of the polity thus: '[N]o body politic can exist without being subject to the latent threat of civil war ("sedition").' It is at this point that the category of truth is operative. The law as statute contains 'not a shadow of truth'. It is a category mistake to ascribe truth to the law since that would rob the law of its contingency, giving it a content and a *telos*. The modality of truth is necessity and its articulation in relation to the law is in the form of the possibility of rebellion against the law's articulation of content seeking to pass itself as true instead of as contingent.

The religious and political laws are co-articulated in terms of a mutual dependence of necessity and truth. Rebellion is not merely

opposed to obedience but in a sense makes it possible. It is the function – the responsibility – of reason to safeguard that the law's content is not given as a *telos*. Thus, reason is distinguished from obedience. 'The domain of reason . . . is truth and wisdom, the domain of theology is piety and obedience' (TTP Ch. 15, p. 523). The name of the former domain is philosophy and of the latter is religion. The two are distinct, but not opposed: '[I]f you look to its [i.e., religion and obedience's] purpose and end, it will be found to be in no respect opposed to reason' (TTP Ch. 15, p. 523). Sheer obedience, devoid of any resistance or opposition, is, in Spinoza's structure, a contradiction in terms, because it would require that a true content had been found for the law, whereas the law, as already shown, is empty for Spinoza. Rather, it is the role of opposition or resistance to seek the truth of the law – that is, law's contingency.

> I ask, who can give mental acceptance to something against which his reason rebels? For what else is mental denial but reason's rebellion? I am utterly astonished that men can bring themselves to make reason, the greatest of all gifts and a light divine, subservient to letters that are dead. (TTP Ch. 15, p. 521)

It is the illusion of a 'true' content to the law that turns it into a 'dead letter'. In other words, sheer obedience would collapse the distinction between religion and philosophy. Spinoza's political theory requires that these terms are kept distinct but in such a way as to challenge or probe each other, thereby preventing their solidification in an ultimate *telos* – their final death.

We can discern here the otherwise obscure meaning of the title of the *Tractatus*. Political theology does not indicate merely the obvious point that religion is politics – or that the Enlightenment ideal of the separation of powers is just that, an ideal (cf. Lefort 1988). Further, political theology indicates the transformative relation between obedience and reason – a relation that, in Spinoza's sense described above, couples necessity with contingency. More precisely, political theology is the ineliminable agonism between obedience and reason, religion and philosophy – an agonism as the rebellious instability that guarantees the radical openness of the law. The truth of the law is its untruth. This statement recognises both that the law is distinct from truth because it is contingent, and also that the law relies on truth as a function that probes the law and keeps it transformable. Untruth and truth – law and reason, obedience and rebellion – rely upon their mutual agonism in order to produce each other. This agonism is, for Spinoza, political theology.

It is of paramount importance, however, that political theology's

agonism is not violent in the sense that it does not operate through exclusions. We can call it an 'agonism of love' in order to distinguish it from the violent exercise of power through the expunging of the outlaw that we encountered as the second characteristic of the construction of juridical power in the social contract theories. It will be recalled that the social contract requires the outlaw against whom violence can be directed so that the content of the law, as the source of the social contract, can both delimit freedom and justify its operation. For Spinoza, conversely, there is no such notion of the outlaw because 'all men without exception can obey [*omnes absolute obedire possunt*]' (TTP Ch. 15, p. 526). This is not merely a religious or political law, but rather a natural law as the condition of the possibility of obedience – that is, of the contingency of religious and political law. Natural law could not be articulated here in the Hobbesian terms of a bifurcation between absolute freedom and law as prohibiting. Instead, Spinoza's conception of natural law is articulated here in terms of possibility – a possibility that is ascribed to the entirety of humanity. Or, more precisely, possibility, or power, excludes no one ('*omnes absolute*'), not even the non-human: 'And here I do not acknowledge any distinction between men and other individuals of Nature, nor between men endowed with reason and others to whom true reason is unknown, nor between fools, madmen and the sane.' Spinoza immediately links absolutely possessed power with right. 'Whatever an individual thing does by the laws of its own nature [*ex legibus suae naturae*], it does with sovereign right [*summo jure*], inasmuch as it acts as determined by Nature, and can do no other' (TTP Ch. 16, p. 527). Everyone is subject to the law of nature and, moreover, one's right is determined by the way that natural law allows one to do what is possible for them to do. Everyone is included within this law of nature that is described as the dispensation of possibility.[10]

At this point, the question arises about the relation between, on the one hand, law as obedience and the way that it effects the creation of the community, and, on the other, the law of nature. Or, to reformulate the same question: how can the agonism pertaining to political theology tally with an all-inclusive, and hence all-encompassing, nature? In delineating how the domain of possibility needs to be distinguished from – but not opposed to – the domains of obedience and truth, Spinoza will show the indispensable reliance of the agonistic aspect of power to monism. Spinoza formulates the question as follows:

> Is not our earlier assertion, that everyone who is without the use of reason has the sovereign natural right in a state of nature to live by the laws of appetite, in clear contradiction with the divine law as revealed? For since all men without exception, whether or not they have the use of reason, are

> equally required by God's command to love their neighbour as themselves, we cannot without doing wrong, inflict injury on another and live solely by the laws of appetite. (TTP Ch. 16, p. 533)

In a sense, this question amounts to Spinoza querying the similarity of this theory to that of Hobbes, and in particular his assertion that the state of nature is pure appetite, and therefore lawless. Spinoza responds to the possible objection:

> [T]he state of nature . . . is prior [*prior*] to religion in nature and in time. For nobody knows by nature that he has any duty to obey God. Indeed, this knowledge cannot be attained by any process of reasoning . . . So a state of nature must not be confused with a state of religion; we must conceive it as being apart from [*absque*] religion and law. (TTP Ch. 16, pp. 533–4, trans. modified)

The first crucial term that describes the relation between political theology and nature is 'prior'. The law is articulated in relation to reasoning – not in relation to a putatively lawless state of nature, as is the case with the social contract tradition. The law as contingent is delimited through its agonism with the necessity of truth. In addition, this contingent necessity of political theology is not opposed to the possibility contained within Spinoza's extrapolation of the state of nature. Instead, nature as possibility is 'prior' to political theology. The reason is that, whereas political theology designates the untruth of truth – the *agon* between obedience and truth, or religion and the reasoning of philosophy – power designates a different level that is defined in terms of possibility, as a modality that is more basic (*prior*) to any consideration of truth as its opposite.[11] It is only the fact that everyone without exception ('*omnes absolute*') *can* – has the *power* to – obey that untruth and truth, obedience and reason are possible.

The second crucial term in Spinoza's description of the relation between political theology and nature in the above quotation is 'apart'. Spinoza describes the state of nature, not only as being apart from obedience, but also as being of a different kind from 'any process of reasoning'. It would be a mistake to understand this word '*absque*' as indicating a disconnectedness between the three different modalities – contingency, necessity and possibility. Rather, they are both apart and a part of each other.

> Nature's right is co-extensive with her power. For Nature's power is the very power of God, who has sovereign right over all things. But since the universal power of Nature as a whole is nothing but the power of all individual things taken together, it follows that each individual thing has the sovereign right [*ius summum*] to do all that it can do; i.e. the right of the individual is coextensive with its determinate power. (TTP Ch. 16, p. 527)

The power of nature encompasses everything. There is nothing outside nature. Nature's absolute right entails a radical connectedness between things.[12] This means that everything is mediated. Any notion of immediacy in its various manifestations – for instance, as the absolute freedom and absolute equality that characterised Hobbes's state of nature – is incompatible with Spinoza's conception that 'the individual is co-extensive with its determinate power.' Spinoza's power includes the totality of human activity. The 'a-partness' of nature refers to this interconnectedness, as the condition of the possibility of action and thought.

The total interconnectedness of Spinoza's power includes everyone and everything. We can discern here a notion of the exception that is not only very different from the exception that plays such a pivotal role in the standard accounts of political theology, but which also illustrates a second function of the agonism that characterises Spinoza's political theology. According to Spinoza, there are no exceptions to the fact that there is no exception to the totality of power, not even for the sovereign whose power is defined precisely in the same terms as that of nature and the individual: 'the rights of sovereigns are determined by their power' (TTP Ch. 20, p. 567). Thus, Spinoza's conception of political theology appears completely incompatible with, even agonistic against, Carl Schmitt's juridical understanding of power, as well as the entire post-Schmittian movement that includes thinkers such as Giorgio Agamben. For it will be recalled that the exception – a state of lawlessness or a state outside the law, bare life – is the common denominator that defines the standing of sovereignty above the law. But more broadly, and much more importantly, we here arrive at a second way of describing power's agonistic function. It emerges at this point that political theology does not solely stage an *agon* between contingency and necessity, obedience and truth, or religion and philosophy. In addition, it emerges that theologico-political effervescence is itself positioned against all these conceptions of power that seek to deny the third modality – the all-encompassing possibility – that is ontologically prior to, and a-part from, the agonism of the theologico-political. In other words, the theologico-political, as it is conceived by Spinoza, is also agonistic towards any understanding of power that relies on a notion of lawlessness and understands power as juridical power. But, crucially, this is only possible because there is the single, all-encompassing sense of power. Or, to put this the other way around, it is the agonism against juridical power and its various forms of exclusion or exception that point to power's irreducibility to a legalist definition. What emerges here is that agonism and monism empty the law of content, thereby allowing it to transform itself, while at the same time the fact that

power can be conceived as independent of the law makes the resistance to juridical power possible. Monism and agonism are the obverse sides of the same notion of non-juridical power in Spinoza.

So, Spinoza separates three modalities – contingency, necessity and possibility – in order to separate three realms that are nevertheless imbricated; religion/politics, reason and power. By describing these modalities and their realms as a-part – apart and yet part of each other – Spinoza can offer an account of agonistic and monistic power as different from, and incompatible with, juridical power. This account relies on the total interconnectedness that characterises possibility. This possibility – the possibility of political theology – shows that the potential that characterises the right of nature is the all-encompassing dialectic of obedience and disobedience. At the same time, however, this is a dialectic devoid of any final synthesis. Rather, it persists in the process of the unfolding of the agonism allowed within its all-inclusive power. This relation between agonism and monism is Spinoza's conception of the theologico-political.

NOTES

1. I examine these two ways in terms of justification and judgement in my *Sovereignty and its Other*. The entire discussion of Spinoza here draws on my book that provides much historical and conceptual background of and elaboration on the two ways of understanding power. See also my 'Kafka's Empty Law'.
2. In the famous discussion in *The Will to Knowledge* about not having yet cut off the image of the king, Foucault observes that 'we must break free of . . . the theoretical privilege of law and sovereignty, if we wish to analyse power within the concrete and historical framework of its operation. We must construct an analysis of power that no longer takes law as a model and code' (1990: 90). This is not to say that Foucault is opposed to the law. Such a superficial reading of Foucault has been conclusively refuted by Golder and Fitzpatrick (2009).
3. For the concept of the agonistic I am indebted to the work of Chantal Mouffe and Bonnie Honig.
4. See Michael Hardt and Antonio Negri, *Empire* (2000), Part 1, Section 1, as well as the entire Part 2. For a summary of this position, see pp. 11–12. Even though I am relying on Hardt and Negri to refer to the distinction between three different phases of power, I disagree with their account in one significant respect. They describe that transition between the different forms as passages, suggesting that the three forms are successive and that they can be separated. I argue instead that the three forms of sovereign power are in fact mingled, and that one of the main features of biopolitics is that it incorporates the older forms of power.

5. For an analysis of the two different senses of political theology, see Vardoulakis (2010).
6. There is a significant body of literature on the concept of the enemy in Schmitt. Jacques Derrida's critique in *The Politics of Friendship* (1997) remains the decisive argument against it: Schmitt slides between two definitions of the enemy that are mutually exclusive, either as the structural, transcendent other of the sovereign, or as actual enemy that sovereign power faces. Arguably – although this is not a point that I can take up here in detail – it is the actuality of the enemy that re-introduces a content to Schmitt's conception of the empty law.
7. For an outline of the differences between Hobbes and Spinoza, see Armstrong (2009).
8. According to Lefebvre (2008: 58–9), Deleuze also creates a positive image of the law, or what he calls 'jurisprudence', by developing a similar conception of its parallel contingency and necessity.
9. Such an assertion is incompatible with the liberal insistence on tolerance, as it is expressed, for instance, in Locke's 'Letter on Toleration'. But the importance of the 'necessary rebel' is a point that H. L. A. Hart fully recognises for any conception of the law:

> At any given moment the life of any society which lives by rules, legal or not, is likely to consist in a tension between those who, on the one hand, accept and voluntarily co-operate in maintaining the rules . . . and those who, on the other hand, reject the rules. . . . One of the difficulties facing any legal theory anxious to do justice to the complexity of the facts is to remember the presence of both these points of view. (Hart 1982: 88)

10. Spinoza mentions in the *Tractatus Theologico-Politicus* that a renunciation of one's right in order to enter the polity (that is, the pre-requisite of the Hobbesian theory) is impossible. However, this point is not argued for properly until the *Tractatus Politicus*. For a discussion of the relation of the first to the second treatise, see Montag (2005).
11. The distinction between the three modalities and their relation to the law in the *Tractatus* raises the obvious question of the relation of the law to the three levels of knowledge identified in *Ethics*. This is a complex issue that I plan to discuss in detail elsewhere.
12. This absolute connectedness is a motif that will be taken up again by Romanticism, especially Jena Romanticism (see Benjamin 1997; and Kompridis 2009: 251, who expresses this point as the aesthetic problem of philosophy).

BIBLIOGRAPHY

Agamben, Giorgio (2005), *State of Exception*, trans. Kevin Attell, Chicago: University of Chicago Press.

Armstrong, Aurelia (2009), 'Natural and Unnatural Communities: Spinoza beyond Hobbes, *British Journal for the History of Philosophy* 17.2, pp. 279–305.

Balibar, Etienne (1998), *Spinoza and Politics*, trans. Peter Snowdon, London: Verso.

Benjamin, Walter (1997), 'The Concept of Criticism in German Romanticism', in Marcus Bullock and Michael W. Jennings (eds), *Selected Writings*, vol. 1, Cambridge, MA: Belknap, pp. 116–200.

Bodin, Jean (1992), *On Sovereignty: Four Chapters from the Six Books of the Commonwealth*, ed. and trans. Julian H. Franklin, Cambridge: Cambridge University Press.

Derrida, Jacques (1992), 'Before the Law', in *Acts of Literature*, ed. Derek Attridge, trans. Avital Ronell and Christine Roulston, New York: Routledge.

Derrida, Jacques (1997), *The Politics of Friendship*, trans. George Collins, London: Verso.

Foucault, Michel (1990), *The Will to Knowledge*, vol. 1 of *The History of Sexuality*, trans. Robert Hurley, London: Penguin.

Foucault, Michel (2003), *Society Must be Defended: Lectures at the Collège de France 1975–1976*, trans. David Macey, New York: Picador.

Golder, Ben, and Peter Fitzpatrick (2009), *Foucault's Law*, London: Routledge.

Hardt, Michael, and Antonio Negri (2000), *Empire*, Cambridge, MA: Harvard University Press.

Hart, H. L. A. (1982), *The Concept of Law*, Oxford: Oxford University Press.

Hobbes, Thomas (1999), *Leviathan*, ed. Richard Tuck, Cambridge: Cambridge University Press.

Kompridis, Nikolas (2009), 'Romanticism', in *The Oxford Handbook of Philosophy and Literature*, ed. Richard Eldridge, Oxford: Oxford University Press.

Lefebvre, Alexandre (2008), *The Image of Law: Deleuze, Bergson, Spinoza*, Stanford: Stanford University Press.

Lefort, Claude (1988), 'The Permanence of the Theologico-Political?', in *Democracy and Political Theory*, trans. David Macey, Cambridge: Polity, pp. 213–55.

Montag, Warren (2005), 'Who's Afraid of the Multitude? Between the Individual and the State', *South Atlantic Quarterly* 104.4, pp. 655–73.

Rousseau, Jean-Jacques (1994), *Discourse on Political Economy* and *The Social Contract*, trans. Christopher Betts, Oxford: Oxford University Press.

Schmitt, Carl (1985), *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George D. Schwab, Cambridge, MA: MIT Press.

Spinoza, Baruch (2002), *Complete Works*, trans. Samuel Shirley, ed. Michael L. Morgan, Indianapolis: Hackett.

Vardoulakis, Dimitris (2010), 'Stasis: Beyond Political Theology?', *Cultural Critique* 73, pp. 125–47.

Vardoulakis, Dimitris (forthcoming), 'Kafka's Empty Law: Laughter and Freedom in *The Trial*', in Brendan Moran and Carlo Salzani (eds), *Kafka and Philosophy,* New York: SUNY.

Vardoulakis, Dimitris (forthcoming), *Sovereignty and its Other*, New York: Fordham University Press.