CHAPTER VIII

SPINOZA

All our modern philosophers, though often perhaps unconsciously, see through the glasses which Baruch Spinoza ground.

Heine

SPINOZA approached law from the point of view of both wisdom and science. He inherited from the Scholastic tradition a sense of order, a way of looking at society that was essentially legal. As a central figure in the great scientific renascence of the seventeenth century he was dominated by the idea of the necessary. At the same time, his experience of life prompted him to allow for the contingent, for those details of conduct which need not, or could not, be subsumed under general principles. He knew that scientific research required the construction of ideally isolated systems in which the necessary relations of things in their essential aspects would be revealed. But no such construction is ever final, particularly in the realm of human affairs; there are omissions and rearrangements which demand a continuous process of correction.

A convenient edition of the Latin works is Benedicti de Spinoza, Opera quotquot reperta sunt, recognoverunt J. Van Vloten et J. P. N. Land, 3rd ed. 1913, 4 vols. A translation of the principal works of interest to the legal student was published in the Bohn Library: The Chief Works of Benedict de Spinoza, trans. by R. H. M. Elwes, revised ed. 1903, 2 vols. Although it appears that the number of commentaries devoted to Spinoza may some day surpass those on Aristotle, studies of his legal thought are rare. The most important studies in English are Spinoza’s Political and Ethical Philosophy by Robert A. Duff (1903); Pollock, Spinoza’s Political Doctrine, 1 Chronicon Spinozanum (1921) 48; Green, Lectures on the Principles of Political Obligation § 32 et seq., 2 Works (1890) 355 et seq. Reference to the Latin works are given as “L. Works”; to Elwes’ translation as “Elwes.” However, I have departed from Elwes’ version in many cases. I have also utilized White’s translation of the Ethic (4th ed. 1937) and the 1862 translation of the Tractatus Theologico-Politicus. References to the letters are to Wolf, The Correspondence of Spinoza (1928).
Spinoza is surpassed by no other philosopher in the steadiness with which he kept before him both the requirements of his system and the importance of what it had failed to embrace.

As the professed aim of his philosophy Spinoza had a practical end in view. Experience had taught him that all the common aims of social life are vain and futile; that they have no intrinsic value, and are good or bad solely in the effect they have upon the mind. He resolved therefore, so he tells us, to inquire if there were anything so that if he discovered and attained it he would enjoy continuous, supreme and permanent happiness.\(^1\) All the sciences, he maintained, have but one end: the attainment of supreme human perfection.\(^2\) He argued that the foundation of virtue is the endeavor we make to preserve our own being, and that happiness consists exactly in the fact that a man can preserve his own being;\(^3\) to act in conformity with virtue is to preserve our being as reason directs;\(^4\) such an effort of the mind is nothing but the effort to understand, and this effort is the primary and sole foundation of virtue;\(^5\) to understand, therefore, is the absolute virtue of the mind.\(^6\) Thus man reaches ultimate happiness through understanding.

This doctrine Spinoza carried over explicitly into his social and legal views. His views, he held, contributed to the welfare of our social existence since they taught social cooperation and contentment. They contributed also to the advantage of common society to the extent they teach us by what means citizens are to be governed and led, not in order that they may be slaves, but that they may freely do those things which are best.\(^7\)

In all this there is little to alarm the most timid. We have still to reach the views that have been condemned as evil from the time of his own Amsterdam synagogue to that of the present day.\(^8\) These views flow from the naturalistic theory he held of

\(^1\) L. Works 3; 2 Elwes 3.  
\(^2\) L. Works 6; 2 Elwes 7.  
\(^3\) Ethic, iv, 18.  
\(^4\) Ethic, iv, 24.  
\(^5\) Ethic, iv, 26.  
\(^6\) Ethic, iv, 28.  
\(^7\) Ethic, ii, 49.  
the universe. This theory led him to assert that in nature every man has as much right as he has power.\textsuperscript{9} Every individual is conditioned by the rules of nature to live and act in a given way. Fishes, for example, are naturally conditioned for swimming and the greater for devouring the rest; therefore fishes enjoy the water, and the greater devour the less by sovereign natural right.\textsuperscript{10} Taken abstractly it is certain that nature has the sovereign right to do anything she can. In other words, her right is co-extensive with her power.

As a corollary to this doctrine Spinoza was cautious in holding out any hope for improvement in the social lot of man. The avowed aim of the \textit{Tractatus Theologico-Politicus} was to demonstrate that freedom could be granted without prejudice to the public peace, and that without freedom religion could not flourish nor the public peace be secure.\textsuperscript{11} But the \textit{Tractatus Politicus} had a different aim. Spinoza was dissatisfied with the political theories of both philosophers and statesmen although he held that the latter, inasmuch as they had had experience for their mistress, wrote far more happily about politics than the former. Philosophic political theory was too moralistic for Spinoza. Since it conceives that men fall into vice by their own fault it generally takes the form of a manual of abuse. It praises what is nowhere to be found in nature and attacks what, in fact, exists; it never conceives of men as they are, but as the philosophers would like them to be. As a result the theories are of no practical interest and are completely Utopian. It is possible that the theories of statesmen suffer from an equally serious but different defect. Statesmen may consult their own interests rather than those of mankind. For himself Spinoza was persuaded that experience had revealed all possible commonwealths which are consistent with men living in unity and also the methods by which people may be guided or kept in fixed bounds. He found it difficult to believe that anything new of service to mankind could be discovered. His whole

\textsuperscript{9} \textit{Tract. Polit.}, c. 2.
\textsuperscript{10} 2 \textit{L. Works} 258; 1 \textit{Elwes} 200.
\textsuperscript{11} 2 \textit{L. Works} 87; 1 \textit{Elwes} 6.
intention therefore is to demonstrate, not what is novel, but only such things as agree best with practice. Of necessity, men are liable to passions. If the well-being of a government depends on any man's good faith, if its affairs cannot properly be administered unless those who conduct them will act honestly, then it will be very unstable indeed. Spinoza turned here to a principle at the basis of the United States Constitution. The public affairs of a government should be so ordered that those who administer them, whether guided by reason or passion, cannot be led to act treacherously or basely.

In nature man is not, Spinoza insisted, a kingdom within a kingdom. Nothing happens in nature which can be attributed to any vice, or flaw, of nature; for nature is always the same and everywhere one, and her virtue and power of acting are everywhere and always the same. Spinoza hoped therefore for little improvement in the lot of man. If man lived a life of reason his lot would be a happy one; but it is very seldom indeed that men live according to the guidance of reason. Spinoza apparently anticipated that his doctrines at the best would have only an indirect effect upon practical affairs. He addressed himself specifically to philosophers and did not commend his thoughts to mankind, for he could not expect that his ideas would please them. He asked the masses not to read his book; they would gain no good themselves and might prove a stumbling block to others.

Spinoza gave much attention to the development of a method that would yield the knowledge necessary for virtue. He wrote a still valuable study of philosophic methodology in which he held that clear and distinct ideas, i.e., ideas formed by pure intellectual activity, were the necessary components of adequate knowledge. He associated methodology with the theory of definition, and held that the definition of a thing must include its proximate cause, and also be such that from it

---

12 Merriam, A History of American Political Theories (1924) 76.
14 Ethic, iii, praef.
15 Ethic, iv, 35.
16 2 L. Works 91; 1 Elwes 11.
all the properties of a thing can be inferred. But as a symp­
thathetic critic has pointed out, the rules are too abstract and formal to have any value. Logically they are worthless for they do not embody a positive theory of definition. In practice they are of little use because they do not explain, in any given case, how the mind is to reflect upon and to analyze its true ideas. They have a negative value, however. They are formal canons of criticism, inasmuch as no formula which does not meet them is a genuine definition. In the Ethic Spinoza adopted a so-called geometrical method, with an elaborate apparatus of axioms, postulates, corollaries and propositions. However successful the Euclidean method may be in mathematics, it suffers in philosophy from a fatal defect, as a correspondent pointed out to Spinoza. From a mathematical definition we are able to deduce at least one property; if we desire more properties then we must relate the thing defined to other things. Spinoza’s deductions from his definitions are not really strict deductions; he is assuming other definitions which he has not explicitly stated. In truth, Spinoza’s method, as he himself recognized, is the general method of naturalism. What he did was to examine those aspects of nature which appeared to him important for the purposes of his inquiry, and on the basis of the observations to formulate various propositions from which he made further deductions, correcting them, as his writings show and as he himself claimed, by experience when necessary.

It is difficult to determine the extent of Spinoza’s knowledge of positive law. Probably it was not profound. In his library was a copy of Justinian—was it the Institutes?—but no one has ever claimed that he read it. He knew Hobbes’ writings and probably Grotius’ De iure belli ac pacis, although of this there is some doubt. He made no formal study of law, and so

---

17 L. Works 29; 2 Elwes 35.
18 Joachim, Spinoza’s Tractatus de Intellectus Emendatione (1940) 204.
19 Ep. 82. Wolf, The Correspondence of Spinoza (1928) 364; Joachim, A Study of the Ethics of Spinoza (1901) 115 et seq.
20 2 L. Works 172; 1 Elwes 99.
21 2 L. Works 4; 1 Elwes 288.
far as his life is known, had little association with jurists.\(^{22}\) He had, however, as his writings reveal, a complete command of the traditional law of the Jews, and since for Judaic thought law has always been a central idea, its significance was early impressed upon him. Throughout his writings he kept his theory of law at the initial stages of speculation. He was occupied with the general conceptions and the basic postulates. He did not follow the consequences of his theory to the subsidiary levels to which Hobbes, for example, conducted his own. It is clear that his grasp of Judaic law would have permitted Spinoza to follow this course if he had so chosen. That he did not do so must therefore be attributed to choice and not to lack of knowledge. Perhaps he was guided in this action by the consideration that at the level at which he formulated his theory the doctrine of necessity was fully operative, that excursions into what appeared to be legal minutiae would conduct him into the realm of the arbitrary.

**Concept of Law**

Spinoza’s theory of the nature of law is a clear anticipation of an idea which has been an influential one from Kant to the present day. It is the theory which conceives of law as a form of social control, as the device which has as its aim the ordering of human behavior through coercion.

Three proper objects of desire were acknowledged by Spinoza: to know things by their first causes; to control our passions, or acquire virtuous habits; to pass our lives in safety and in health.\(^{23}\) The means of acquiring the first two were in the nature of man himself, so that their acquisition lies entirely within our own power or depends on the laws of human nature alone. For this reason it may be concluded that these gifts belong to no nation in particular, but are and always were common to the whole of the human race. But the means which insure security of life and good health resides chiefly in external circumstances. They depend for the most part on the current

\(^{22}\) Pollock, *op. cit.* 48.

\(^{23}\) *Tract. Polit.*, c. 3.
of external things, of the causes of which we are ignorant; we are inclined to regard them as gifts of fortune. Nevertheless human forethought and watchfulness are of great avail in attaining security of life. Reason and experience both show no more certain means of reaching this object than the establishment of a society governed by definite laws, occupying a particular territory, with the strength of all the members concentrated in one body. It takes great ability and care to form and preserve a society, and one which is founded and administered by prudent and watchful men will be more secure and lasting than one ruled by men without skill. Nations are therefore particularly distinguished from one another by the institutions and laws under which they live.

Spinoza has accomplished several important objectives in this theory of the structure of the social state. He has carried over into politics the doctrine that the foundation of virtue is self-preservation. At the same time he has carefully excluded morality from his political theory. He admits that the acquisition of virtuous habits is a legitimate end; but their attainment is something for each man to achieve for himself if he can. Morality is not, in Spinoza's theory, the business of the state, which is concerned solely with security. This is, it need scarcely be remarked, a complete repudiation of the Platonic tradition; Spinoza is "not content to rave with the Greeks." He has deliberately associated himself with the doctrines of Machiavelli, Bodin and others that the origin and end of the state is security. In modern days the idea has been put forward with his customary pithiness by Bagehot: "The compact tribes win. . . . Civilization begins because the beginning of civilization is a military advantage." Spinoza's statement of the theory was his own, adapted to his philosophy as a whole, and led specifically to his idea of law.

The root idea of law (lex) in Spinoza's system is uniformity.

24 L. Works 89; 1 Elwes 7.
25 Machiavelli, Discourses (Modern Library ed. 1940) 105-106; Bodin, Six Bookes of a Commonwealth (Knolles trans. 1606) 47.
26 4 Works (1889) 464.
This allows him to connect the idea with the laws of the universe at one extreme and with the ordinances of the community at the other. In its most abstract or absolute sense the word law means, he says, that in virtue of which things of the same species act in a certain determinate manner. This comes about either because of natural necessity or human decree. A law which depends on natural necessity is one which follows necessarily from the very nature, or definition, of the thing. A law which depends on human decree, and Spinoza thinks it more correctly called an ordinance (Jus), is prescribed by men for themselves and others in order to live more safely or conveniently, or for other reasons. He offers as examples of laws which depend on natural necessity a law of mechanics and a psychological law of memory. But when men cede or are forced to cede a right (jus) which they have by nature, and bind themselves to a certain manner of living (ratio vivendi), this depends on human decree.27

However, Spinoza was a determinist. He readily admitted that all things are predetermined by universal natural laws to exist and operate in a given, fixed and definite manner. How then can a certain class of laws depend on human resolution? Spinoza gives two answers. First, because man, in so far as he is a part of nature, constitutes to this extent a part of the power of nature. If something follows necessarily from the necessity of human nature (that is, from nature herself conceived as acting through man) it follows, even though it be necessarily, from human power. Hence, Spinoza argues, laws for the regulation of society depend on man’s decree. Second, because we must define and explain things by their proximate causes. To take a wide view and regard events as always determined, can be of little aid to us in arranging and forming our ideas about particular objects. Moreover, we are obviously ignorant about how things are ordained and linked together. Hence for practical purposes it is necessary for us to consider things as contingent. So far as this argument is concerned

27 L. Works 134; 1 Elwes 57.
Spinoza holds that the laws of a nation are subject to the operation of the principle of determinism; however, we must act when we devise them as if the principle did not apply. So far Spinoza has been discussing law in its abstract or absolute sense. In common speech, he observes, it is taken to signify a command (mandatum), which men can either obey or neglect, for it restrains human nature within bounds that were exceeded in the state of nature, and therefore lays down no rule beyond human strength. Spinoza advances a theory to account for the command idea of law. He argues that few perceive the true object of legislation, and that most men are almost incapable of grasping it. Legislators therefore, in order to secure obedience to law, have wisely put forward another object, very different from that which necessarily follows from the nature of law. They promise to the masses in return for obedience that which the masses chiefly desire; they threaten violators with that which violators chiefly fear. They endeavor, in other words, to restrain the masses as a horse is checked with a curb. Thus the word law is chiefly applied to the modes of life enjoined on men by the sway of others; those who obey the law are said to live under it and to be under compulsion.

It is clear that Spinoza had before him the conception advanced by Hobbes that “law, properly, is the word of him that by right hath command over others.” He held it to be an unsatisfactory concept; in fact, men living under law so conceived were in a kind of slavery. A man who renders to each his due because he fears the gallows, acts under the sway of others and cannot be called just. A man is just only if he gives to each his due because he understands the true reason for laws and their necessity, and acts from a firm purpose and of his own accord. Spinoza took this to be the meaning of St. Paul’s statement that those who live under the law cannot be justified by the law.

Through this analysis Spinoza arrived at his own conception

*3 Works (1839-45) 147.*
of law: A plan of living which serves only to render life and the state secure, prescribed by the community under the sanction of a penalty.\(^29\) In its original formulation Spinoza omitted, in accordance with his criticism of the Hobbes' concept, the idea of penalty. Further reflection apparently convinced him that a punitive sanction was necessary to complete the idea, although, he endeavored to save something from his original argument by maintaining that men should be moved to obey the law by hope and not fear; they should be led to do their duty from good-will and not compulsion. When the state has to resort to punishment it is a sign that it has failed in one of its major tasks.

Spinoza's idea of law, although it represents a repudiation of Hobbes' theory that it is a command, is nevertheless not original. Actually, it was one of the aspects from which Aquinas viewed law. "Law," Aquinas wrote, "denotes a kind of plan directing acts toward an end."\(^30\) But the interpretation that Spinoza put upon his conception differed radically from Aquinas'. Here Spinoza was a Hobbesian. The community was free to impose any plan it liked upon itself.\(^31\) It was true that some plans would work better than others, but in any event the choice of the plan was a matter for the community to decide. This could not be admitted by Aquinas. All plans to be valid were to be measured by the common good.

**Divine Law**

From the tradition of legal speculation Spinoza inherited a variety of types of law which he proceeded to sort out. Hobbes had eliminated divine law and the *ius gentium* by identifying them with natural law. This solution was not satisfactory to Spinoza, it may be assumed, since it failed to account for the idea of necessity. He therefore reinstituted divine law, but gave the idea his own interpretation.

\(^{29}\) L. Works 136; 1 Elwes 59; 1 L. Works 210, 2 Elwes 214.

\(^{30}\) *Summa Theologica*, I-II, 93, Art. 3.

\(^{31}\) 2 *L. Works* 11-13; 1 Elwes 298-300.
The Divine Will had, from the earliest days of Greek thought, been associated with the notion of law. "All human laws are nourished by the one divine law," Heraclitus\(^{32}\) had written. This conception had been insisted upon by the Stoics, whose views were accepted by Cicero.\(^{33}\) It also came into Western thought through the Hebrew tradition, as the writings of Philo\(^{34}\) bear witness. The rise of Christianity gave the idea a special emphasis, and from the time of Lactantius\(^{35}\) and St. Augustine\(^{36}\) onwards it was customary to distinguish between eternal law and human law. But the problem of natural law still remained. Behind it was the great authority of Aristotle, Cicero and Justinian, and it would therefore be unthinkable to dismiss it. How was the Church to maintain the authority of the divine law, which enabled her to speak with supremacy on matters of faith and morals? Not until the twelfth century was the answer given with clarity. In anticipation of Hobbes, the Romans had identified their \textit{ius gentium} with the law of nature; and the Church in a similar move identified the law of God with the natural law in the Decretum of Gratian.\(^{37}\) This step was taken, Pollock writes, "with a thoroughgoing boldness which almost deserves the name of genius."\(^{38}\) Gratian found the archetype of natural law in the Golden Rule, "Do unto others what thou wouldest wish others to do unto thee"; he held also that natural law was immutable, that it was in agreement with the Scriptures, that it is supreme, just as the Divine Will and the Scriptures are supreme, and that customs and laws contrary to it are void. However, this solution also raised difficulties which Gratian and others attempted to meet. If natural law is contained in the law of the Scriptures, why is

\(^{32}\) \textit{Frag.} 91.

\(^{33}\) \textit{De Re Publica} III, 22.

\(^{34}\) \textit{Quod Omn. Prob.} 46.

\(^{35}\) \textit{Div. Inst.} V, 18.


\(^{37}\) \textit{Decretum}, D. i.

much of that law no longer obeyed? Again, if natural law is immutable, why are conditions allowed to exist which are contrary to that law? The answers to these questions were worked out with great ingenuity, but the result was that Aquinas found it necessary to classify law into four types—the eternal law, the natural law, the Divine law, and the human law. Divine reason governs the universe and is the eternal law; natural law is the participation of the rational creature in the eternal law; Divine law is the law of God as revealed in the Old and New testaments. Divine law is not in opposition to natural law, but permits men to share in the eternal law in a more perfect manner. By the time of Hooker, Aquinas' theory, with various modifications, had become a commonplace and was followed by Grotius.

Spinoza discarded these classifications, but he was nevertheless influenced by them and by the reasons which had led to their formulation. He defined the Divine law to be that which regards the highest good, the true knowledge of God and love. The love of God is the supreme good, the ultimate end and aim of man; hence he alone lives by the Divine law who loves God, not from fear of punishment, but solely because he has knowledge of God or is convinced that the knowledge and love of God is the highest good. The first precept of the Divine law, indeed its sum and substance, is to love God unconditionally as the supreme good. Spinoza, like Aquinas, recognizes the existence of both a natural Divine law and a positive Divine law. Spinoza gives the laws of Moses, which he holds to have been ratified by prophetic insight, as an example of the latter. But his main concern, at this point, is with natural Divine law.

He holds that it is universal or common to all men, for it can be deduced from universal human nature; it does not

---

39 Carlyle, 109 et seq.
40 *Summa Theologica*, I-II, 91, Arts. 1, 2, 4.
41 *Laws of Ecclesiastical Polity* (1594) Bk. I.
42 *De Jure Belli ac Pacis Libri Tres* (1625) Bk. I, c. 1, X.
43 2 *L. Works* 136; 1 *Elwes* 59.
44 *Summa Theologica*, II-II, 57, Art. 2.
depend on the truth of any historical narrative whatsoever; it
does not demand the performance of ceremonies; its highest
reward is the law itself, namely, to know God and to love Him
of our free choice; its penalty is the absence of this knowledge
and love and the presence of an inconstant and wavering spirit.

Here Spinoza comes to his central point. He denies that we
can conceive of God as a lawgiver or potentate ordaining laws
for men. When God is described as a lawgiver or prince, and
styled just and merciful, it is merely a concession to popular
understanding and the imperfection of popular knowledge. In
reality, God acts and directs all things simply by the necessity
of his nature and perfection. His decrees and volitions are
eternal truths, and always involve necessity. For example, the
necessity of a triangle's essence and nature, in so far as they are
conceived of as eternal verities, depend solely on the necessity
of the Divine nature and intellect; from eternity he has decreed
that three angles of a triangle are equal to two right angles.
Hence, if God said to Adam that he was not to eat of the
forbidden fruit, it would have been a contradiction for Adam to
have eaten of it; it would have been impossible that he should
have so eaten, for the Divine command would have involved
an eternal necessity and truth. Nevertheless, Scripture states
that God did give this command to Adam, and that Adam
ate of the tree. Spinoza concludes that we must perforce say
that God revealed to Adam the evil that would follow upon
his act, but did not disclose that the evil would of necessity
come to pass. Adam took the revelation to be not an eternal
and necessary truth, but a law, an ordinance followed by gain
or loss. Through Adam's lack of knowledge God was thought
of by him, in his ignorance, as a lawgiver and potentate.

Spinoza's example contains some elements of obscurity. If
he means that man can transform the necessity of God's com-
mands into obligations which he is free to follow or ignore,
man can also construct three angles of a triangle that are
equal to four right angles. It is true that non-Euclidean
geometry may perform such feats. but, nonetheless, it still
preserves the idea of necessity. Spinoza, in fact, seems here to be attempting to adapt to his own position an idea worked out by Aquinas. Eternal law, Aquinas held, is binding upon the whole of nature in all its actions and movements because God has imprinted upon it the principles of its proper actions, i.e., necessity. However, the eternal law merely obligates man, since he is rational and subject to passions, and his knowledge of what is good, and his inclination towards it, may be imperfect. Man is therefore free to break the eternal law but not with impunity. The substance of his thought seems to be that the evil resulting from the breaking of eternal law is a necessity even in cases where the observance of the law is not a necessity.

However confusing Spinoza's argument and examples may be, his intention is clear enough. He wishes to preserve the idea of necessity, as his example of the triangle shows. He wishes to deny that God is a lawgiver whose edicts can be ignored with impunity, and to deny also that the law of the Scriptures binds necessarily. In part this task had already been performed by Gratian through his doctrine of mistica, or regulations which, under certain circumstances, may be altered since they are concerned with ceremonies and sacrifices, and which differ therefore from the moral precepts (e.g., Thou shalt not kill), which are immutable. Spinoza generalizes this idea to include all the injunctions of the Scriptures except that universal law which signifies the true manner of life, and not ceremonial observances. He argues, for example, that Moses does not teach the Jews as a prophet not to kill or steal, but gives these commandments solely as a lawgiver or judge. He does not attempt to justify his doctrine rationally, but affixes for its non-observance a penalty which may and very properly does vary in different nations.

Ibid., I-II, 95, Art. 6. In Epist. XIX Spinoza attempts to answer a criticism of his position advanced by Blyenbergh. However, here he does not assume that God in fact instructed Adam not to eat of the forbidden fruit. The Scriptures, he says, should be understood as a parable, and should not be taken literally. Carlyle, 109.
Legal Philosophy from Plato to Hegel

Natural Law

In Hobbes' theory natural law was part of the science of ethics. Natural laws were precepts which had as their aim the preservation of human life. Law properly is the word of him that by right has command over others. Hence, natural laws are not properly laws, unless we hold them as delivered in the word of God, that by right commands all things. Natural laws are, in fact, apart from the theological reservation, nothing but dictates of reason.\(^7\)

This view of natural law was adopted by Spinoza. When he speaks of "natural right" he uses the phrase *ius naturae*;\(^8\) when he refers to the "laws" or "rules" of nature in accordance with which everything takes place he employs the phrase *leges naturae*.\(^9\) But when his topic is "natural law" in the sense of Hobbes' *lex naturalis* he takes his cue from Hobbes and abandons the word "law" altogether. As a substitute he uses the phrase "dictates of nature" (*dictamina rationis*)\(^50\) or "guidance of reason" (*ductus rationis*).\(^51\) Accordingly the idea is treated in the *Ethic* and not in the political treatises.

Spinoza's justification of the theory of the dictates of reason is carefully worked out, and with him it is completely a moral doctrine; however, it is associated with his theory of law. He held that a man is necessarily always subject to passions, and that he follows and obeys the common order of nature, accommodating himself to it as far as the nature of things requires.\(^52\) Hence men do not necessarily follow the dictates of reason although those dictates are not difficult to discover.\(^53\) Reason does not demand anything that is opposed to nature. It therefore demands that everyone is bound to seek his own profit; *i.e.*, what is truly profitable to him, that really leads him to greater perfection. In its absolute sense it means, as Hobbes

\(^7\) *Leviathan* (1651) c. 15 ad fin. *Elements of Law* (1928) 58, 74. Hobbes had inherited this theory from Grotius and others. *De Jure Belli ac Pacis Libri Tres* (1625) Bk. I, c. 1, X.

\(^8\) 2 *L. Works* 6.


\(^10\) 1 *L. Works* 196.

\(^50\) 1 *L. Works* 199.

\(^51\) *Ethic* 184.

\(^52\) *Ethic* 193-5.
had previously held, that everyone should endeavor, as far as he is able, to preserve his own being. From these premises Spinoza at once deduced some principles: (1) the foundation of virtue is that endeavor itself to preserve our own being, from which it follows that happiness consists of the fact that a man can preserve his own being; (2) virtue is to be desired for its own sake, nor is there anything more excellent or more useful to us than virtue, for the sake of which virtue ought to be desired; (3) all persons who kill themselves are impotent in mind, and have been thoroughly overcome by external causes opposed to their nature; (4) we can never free ourselves from the need of something outside ourselves for the preservation of our being, and we can never live in such a manner as to have no intercourse with objects which are outside us; (5) men who are governed by reason (i.e., seek their own profit) desire nothing for themselves which they do not desire for other men, and thus are just, faithful and honorable. This leads to the doctrine that the end of the State, in accordance with the dictates of reason, is not domination, but liberty. 54

**LAW OF THE STATE**

Although Spinoza was an individualist he insisted that the individual could attain his highest good only in the State. In the state of nature each person judges what is good and evil, consults his own advantage as he thinks best, avenges himself, and endeavors to preserve what he loves and to destroy what he hates. This condition could be tolerated if men lived according to the guidance of reason; for then every one would enjoy the benefits of the state of nature without injuring any one else. 55 But men are subject to passions which are stronger than human power or virtue, and their interests draw them in different directions. Inevitably they discover that by mutual help they can more easily procure the things they need, and

54 2 L. Works 306; 1 Elwes 259.
55 Ethic 210.
that it is only by their united strength they can avoid the dangers which everywhere threaten them.\textsuperscript{56}

Men must therefore necessarily come to an agreement to live together in harmony and be a help to one another. Only in this way will they be able to enjoy as a whole the rights which naturally belong to them as individuals. By the agreement they will cede their natural right and instil confidence in each other that they will do nothing to injure each other. However, no one will abide by his promises unless under the fear of a greater evil, or the hope of a greater good. Society must therefore claim for itself the right possessed by man in a state of nature; it must also possess the power to prescribe a common rule of life, to promulgate laws and support them, not by reason, which cannot restrain men, but by penalties. So far this theory appears indistinguishable from Hobbes' doctrine. But the conclusions which Spinoza drew from the theory would not have been recognized by Hobbes. He succeeded in this accomplishment by virtue of the principle—which he held clearly differentiated his doctrine from Hobbes'—that natural right as exercised by the State must be preserved intact so that the supreme power in a State has no more right over a subject than is proportionate to the power by which it is superior to the subject.\textsuperscript{57} By this Spinoza meant that in the civil state as well as in the natural state, right would be identified with power.

Here Spinoza anticipates the objection that it is contrary to reason to subject one's self wholly to the judgment of another, and consequently that the civil state is repugnant to reason.\textsuperscript{58} To this objection Spinoza gives several answers. So long as men are moved primarily by passions reason cannot hold that they should remain independent. Reason teaches altogether to seek peace, and peace cannot be maintained if the commands of the State are not obeyed. But above all it should be remembered that the ultimate end of the State is not dominion, nor

\textsuperscript{56} Ethic 206; 2 L. Works 260; 1 Elwes 202.
\textsuperscript{57} Ep. 50.
\textsuperscript{58} 2 L. Works 14-15; 1 Elwes 303.
restraint by fear, nor the exaction of obedience; on the contrary, its end is to free every man from fear, so that he may live securely; in other words, to make it possible for him to possess in the best sense his natural right to existence and work without injury to himself or others. It is not the end of the State to change men from rational beings into beasts or automata. Its end is to enable them to develop their minds and bodies in security, and to employ their reason unshackled so that hatred, anger, deceit, and strife should cease. In fact, the true aim of the State is liberty. But this is only part of the answer. Although right may be coextensive with power, power, in fact, in the civil community is limited, or, in modern phraselogy, there are limits to effective legal action. There are some things which men cannot be induced to do, either by rewards or threats. It is impossible to make a man believe against his judgment; no rewards or threats can bring a man to believe that the whole is not greater than its part. A man cannot be compelled to love one whom he hates or to hate one whom he loves. There are some things so abhorrent to human nature that they are regarded as actually worse than any evil; for example, that a man should be a witness against himself, or torture himself, or kill his parents, or not strive to avoid death. We can still say that the State has the right or authority to order these things; but this amounts to no more than that a man has the right to be mad or delirious. Finally, the power of the State is limited absolutely by the fact that if it behaves unwisely men will conspire together to overthrow it. The State, to maintain its independence, is bound to preserve the causes of fear and reverence, otherwise it ceases to be a State.

With this argument Spinoza executes a return in part, at least, to the position of Aquinas, that to be valid all plans for the community must be measured by the common good. Spinoza has attempted to show that there is an inescapable connection between power and its proper exercise. If power is wielded blindly, if it is exercised without regard to what

**Ibid. op. cit. note 54.**
men hold to be abhorrent, it will defeat itself. Since the end
of the State is peace and security of life, power is exercised
for the best where men pass their lives in unity and the laws
are kept unbroken. However, this is merely Spinoza’s con-
ception of the ideal State. He would not affirm that power
exercised contrary to that end was not a legal exercise of
power; he would not say, as Aquinas did, that an unjust law
was no law. A free multitude, he argued, is guided more by
hope than by fear; a multitude subject to a despot is guided
more by fear than hope. Nevertheless between the dominion
created by a free multitude and that gained by a despot, if we
regard generally the right of each from the point of view of
the science of politics, we can make, he held, no essential
distinction. Their ends and the means to the preservation of
each are very different; but so far as power, and hence right, is
concerned, they belong to the same species.\(^6^0\)

On the basis of this political view of society Spinoza came to
his theory of positive law. It was a mixture of his own thoughts
and those of his predecessors. It was also destined to be one of
the most influential theories ever proposed; it contains the root
idea of the Kantian system, and thus of all nineteenth century
metaphysical and twentieth century sociological jurisprudence.

He concurred in the Hobbesian idea that the supreme
authority in the State has the sole right to lay down laws, to
interpret them, and to decide whether a given case is in con-
formity with or in violation of the law.\(^6^1\) He followed the theory
of Aquinas and others that laws must be founded on reason,\(^6^2\)
and that the public welfare is the supreme law to which all
laws should be made to conform.\(^6^3\) He anticipates Bentham in
his insistence upon the point that the end of law is the security
of the individual and the state.\(^6^4\) At this point he reaches his
own doctrine of the state as one mind. Without law the state

\(^6^0\) 2. *L. Works* 23; 1 *Elwes* 313.
\(^6^1\) 2. *L. Works* 20; 1 *Elwes* 309.
\(^6^2\) 2. *L. Works* 12, 263; 1 *Elwes* 206, 299.
\(^6^3\) 2. *L. Works* 36, 298; 1 *Elwes* 249, 330.
\(^6^4\) 2. *L. Works* 23, 136; 1 *Elwes* 59, 313. "Security," writes Bentham, "is the pre-
is impossible. When a state is formed the power of making laws must be vested either in all the citizens, or in some of them, or in one man. Men’s free judgments are diverse and each believes that he alone knows everything; it is therefore impossible that all should think alike in any subject and speak with a unanimous voice. Hence it is impossible for men to preserve peace unless individuals abdicate their right of acting entirely on their own judgment. Spinoza is careful to point out here that the individual cedes only his right to act, not the right to reason and judge. When the right to act is ceded to the State it permits it to be guided as by one mind. It is the law which fulfills this function, but the laws must, as he has insisted, be founded upon reason. Spinoza’s use of the phrase “one mind” is, of course, a figurative one. Just as the human body is guided by one mind so must the body of the state be guided by one mind. In the realm of the State the one mind is the collective will which must be taken to be the will of all.

Consequently, law in the state is a harmonizing of wills in the interests of freedom. Men are not born fit for citizenship but must be made so. If men’s wills are not harmonized, if men are permitted in civil society to pursue their own ends, then it would be difficult to distinguish that society from a state of nature. Although Hobbes held that law was a fetter Spinoza argues that it is the way to freedom. Peace and freedom cannot be attained unless the general laws of the State are respected. Therefore the more a man desires freedom the more constantly will he respect the laws of his country, and obey the commands of the sovereign power to which he is subject. Spinoza had perhaps learned this lesson early in life from the Judaic tradition which teaches as a religious ideal, not freedom from the law, but freedom in the law. The idea

---

65 2 L. Works 306; 1 Elwes 259.
66 2 L. Works 12; 1 Elwes 298.
67 2 L. Works 14; 1 Elwes 302.
68 2 L. Works 23; 1 Elwes 313-14; Ethic 210.
69 2 L. Works 327; 2 Elwes 276.
of law as the instrument through which wills are harmonized for freedom is customarily attributed to Kant; in any event the idea is still with us. It is a fundamental element in today’s jurisprudence. “Kant’s conception of the legal order,” Pound writes, “as a reconciling or harmonizing of wills in action by means of universal rules becomes in the hands of the social utilitarian a compromise or adjustment of advantages, a balance of interests. In the hands of economic realists it becomes a reconciliation or harmonizing of wants—‘the satisfaction of every one’s wants so far as they are not outweighed by others’ wants.’ In the hands of the positive sociologists it becomes an adjustment of social functions. In the hands of psychological sociologists it becomes a reconciling or harmonizing or adjusting of claims or demands or desires.” 70 None of the schools of jurisprudence, since Kant revived or developed the idea, has escaped its influence.

Spinoza, like his predecessors, recognized that the affairs of human beings could not be regulated entirely by laws. He had been instructed by the Judaic tradition that the subtle matters of morality were altogether beyond the reach of the law; they were matters which were left to the heart. He recognized specifically that the laws give weak assistance if the continuation of public liberty is dependent upon them alone. 71 Things should be so arranged that the citizens of the state will always do their duty spontaneously rather than under the pressure of laws; when we have to resort to laws they should be so framed that the people will be moved to obey them from hope and not fear. 72 He held sumptuary laws to be not only vain, but a stimulation to the desires and lusts of men. 73 “We are ever eager,” Ovid had written long before, “for forbidden fruit, and desire what is denied.” The constitution is the soul of the dominion, and must be defended by both reason and passion. If it relies only on the help of reason it is weak and easily

---

70 *Immanuel Kant* (1925) edited by E. C. Wilm, 81-82.
71 2 *L. Works* 34; 1 Elwes 328.
72 2 *L. Works* 78; 1 Elwes 382.
73 2 *L. Works* 78; 1 Elwes 381.
The aim of Spinoza's thought was to devise the principles by which a dominion would be so ordered that of necessity, rulers and governed alike, whether they will or no, should do what makes for the general welfare. To guard against all evils and form a dominion where no room is left for deceit; to frame institutions so that every man, whatever his disposition, will prefer public right to private advantage—that, says Spinoza, is the task and that the toil. It is the dream no less of the closet philosopher than of the men of action as the writings of those who devised the American Constitution show.

From the Reformation Spinoza had inherited an individualistic tradition, which no doubt helped to color his views on liberty. But there were nevertheless definite limits to the liberty which he allowed the citizen. His most important ideas on this subject are to be found in his doctrine of obedience. He insisted that it was the citizen's duty to obey the law even if he believed it to be a bad law. To hold otherwise could lead only to the ruin of the State. What the State decides to be good must be held to be so decided by every individual. Hence, however iniquitous the subject may think the State's decisions, he is nonetheless bound to execute them. But what should the subject do if he is ordered by the State to disobey the word of God? Spinoza answers, obey God when you have a certain and indisputable revelation of His will. But men are very prone to error on religious subjects and on this pretext might assume unbounded license, and thus set at naught the sovereign power. The only remedy is for the State to have supreme authority to make any laws about religion it sees fit. Actually this is not a great concession, for the mind, so far as it makes use of reason, is dependent only on itself and not on supreme authorities. Hence the true knowledge and love of God cannot be subject to the dominion of any one. This doctrine had also

---

74 2 L. Works 79; 1 Elwes 383.
76 2 L. Works 25; 1 Elwes 316.
78 2 L. Works 271; 1 Elwes 217.
77 2 L. Works 14, 307; 1 Elwes 360, 302.
78 2 L. Works 268; 1 Elwes 211-212.
80 2 L. Works 17; 1 Elwes 305.
been advanced in substance by Calvin. He had held that it was the duty of the citizen to obey bad rulers, for an unjust ruler is a fulfillment of God's purpose to punish people for their sins.

In Calvin's theory the citizen was also to give priority to God's commands over the laws of the State; but here Spinoza parted company with him. The Calvinistic doctrine, not by direct statement, but by clear inference, permitted the citizen to judge of such matters.⁸⁰

CONCLUSION

Since Spinoza did not live to complete his system he can scarcely be blamed for the gaps which it contains. We have, for example, only a hint of his theory of legislation and how he would have developed it we do not know. It would have been coupled, we can be sure, with his idea that might makes right, just as his doctrine of freedom of thought was coupled with it. A State should, for the reasons he urged, allow freedom of thought; but as a matter of fact it has to allow it, since it lacks the power to control it. In the ethical field he saw his subject as a whole and in all its detail. He worked it out as a logical system with a finish which cannot fail to command admiration. He was not so successful with his jurisprudence. Law was at the basis of his political thought, and he isolated elements of the legal process which are of prime importance. But none of them was analyzed to the degree with which he studied his ethical ideas. He kept to a neutral path so far as the doctrines of the previous philosophers went, and he at no time lost sight of the demands of practical affairs. If he had lived to perfect his thought we would, in all probability, have been given a jurisprudence of the stature of his ethics. We have been given instead a jurisprudence which anticipates the most influential jurisprudence of modern times.