

# Beyond Decisionism: Spinoza's Affective Logic of Political Foundation

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## Research Article

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# Abstract

Modern constitutional theory has long been troubled by a foundational difficulty: how can a collective body be credited with the intentionality necessary for the exercise of constituent power? Since Sieyès, and through Schmitt's decisionist framework, the doctrine has relied upon a sovereign subject capable of a foundational act. Yet the identity of this subject remains elusive. This paper proposes that Spinoza's political thought provides the resources for overcoming this deadlock. By examining the mechanism of affective imitation (*imitatio affectuum*), we show that political association arises not from a sovereign decree but from the spontaneous alignment of passions through an impersonal, mimetic dynamic. The paper advances an original thesis: the formation of the legal order is not attributable to a constituent subject, but is rather the outcome of a subjectless process—a continuous interplay of affects that shapes and reshapes the political sphere.

## Introduction

Modern constitutional theory has long been haunted by a seemingly intractable problem: how can a collective entity—the people, the nation, or the multitude—be said to possess the intentionality, will, and rationality required to exercise constituent power? From Sieyès to Schmitt, the doctrine of constituent power has presupposed a sovereign subject capable of a decisive act of political foundation. Yet the identity and agency of this subject have remained persistently elusive. The preambles of constitutions invoke “We, the People,” but who exactly is this “we”? And how can a multitude, composed of countless individuals with divergent desires and interests, be said to act with a single will?

This paper contends that Spinoza's political philosophy offers a way beyond this impasse. Spinoza, we maintain, provides the resources for reconceiving political foundation not as the product of a sovereign act of will, but as an *impersonal, affective process*—a process in which the legal order emerges spontaneously from the circulation and composition of passions, rather than from the decision of a determinate subject. In doing so, we aim to show that Spinoza's account does not merely offer an alternative subject of constituent power (the multitude replacing the people or the nation); on the contrary, it dissolves the very logic of subject-centred foundation altogether.

Recent scholarship has witnessed a resurgence of interest in Spinoza as a pivotal figure in discussions of constituent power. Within this discourse, Antonio Negri's interpretation is particularly influential and politically charged. In *Insurgencies: Constituent Power and the Modern State* (1999) and subsequent works, Negri presents Spinoza as the preeminent philosopher of an immanent, creative, and inexhaustible constituent power. For Negri, the multitude embodies the living subject of this power, an ontological force that inherently resists representation and transcendence, perpetually generating novel forms of collective existence.

More recently, Filippo Del Lucchese has offered a nuanced and historically contextualized interpretation that substantially enriches our understanding of Spinoza's contribution to a theory of constituent power. In his 2016 article, “Spinoza and Constituent Power,” Del Lucchese maintains that Spinoza's radical

immanence, crystallized in the formulation *jus sive potentia*, resolves the enduring paradox that has plagued modern theories of constituent power: the dilemma that a power responsible for founding law must, by its very nature, be subsumed by the law it establishes. Del Lucchese holds that by interpreting Spinoza through the framework of a radical immanence between ontology and history, he can be understood as a foundational source for a theory of constituent power that circumvents the deficiencies of both Schmitt's mystical decisionism and Negri's ontological prioritization of constituent over constituted power. Subsequently, in his contribution to *The Oxford Handbook of Constituent Power* (2026), Del Lucchese has further solidified this interpretation by examining how Spinoza constructs a linguistic and conceptual framework that defines the relationship between politics and law through an equivalence between *jus* and *potentia*.

The current scholarly engagement with Spinoza has proven exceptionally fruitful, re-establishing his relevance to contemporary discussions concerning democracy, resistance, and social transformation. However, these interpretations frequently present the multitude as the quintessential *constituent subject*—a collective agent with a singular will or rationality that instantiates political order through a decisive act. Such a framing, we suggest, risks inadvertently re-inscribing the very voluntarist and subject-centered assumptions that Spinoza's philosophy ultimately destabilizes. Where Negri sees the multitude as a revolutionary subject and Del Lucchese sees a resolution of the constituent paradox through immanence, we contend that Spinoza's account goes further: it eliminates the need for a constituent subject altogether. The question, for Spinoza, is not *who* exercises constituent power, but *how* political order emerges through impersonal affective dynamics.

Concurrently with these developments in constitutional theory, the past two decades have witnessed a growing body of scholarship challenging the hegemonic influence of rationalist and deliberative models of politics. This scholarship maintains that emotions—traditionally marginalized or dismissed as irrational impediments to sound judgment—play a constitutive role in political life. More recently, this affective lens has been applied to the concept of constituent power itself. Scholars have begun to investigate whether emotions, far from being merely private or pre-political phenomena, might in fact exert a decisive influence in the foundational moments of political order, ranging from revolutionary upheavals to constitutional conventions.

It is in this context, we contend, that Spinoza emerges as an unexpectedly prescient figure. Long preceding the contemporary "affective turn," Spinoza attributed a central role to the passions within the political arena, asserting that no comprehensive account of collective life could afford to neglect the affective dynamics that both bind and divide human beings. This paper proposes that Spinoza's political philosophy offers a fully articulated account of how political order emerges through affective processes. Specifically, we shall claim that Spinoza's theory of affective imitation (*imitatio affectuum*) provides a mechanism for the *spontaneous* emergence of political community that does not rely upon the juridical fiction of the social contract or the sovereign act of a constituent subject. In doing so, Spinoza offers a compelling alternative to the aporias of voluntarist constitutionalism—most notably, the perennial problem of how to legitimately ascribe intention, will, and reason to a collective entity such as "the

people” or “the multitude.” As we shall demonstrate, this alternative points toward a conception of political foundation as a *subjectless process*—an impersonal, affective dynamic that produces legal order through the circulation and composition of passions, rather than through the will of a determinate sovereign subject.

The argument herein unfolds in three sections. Section 1 examines the role Spinoza assigns to the passions in political life, situating his account within the broader trajectory of the affective turn and establishing the methodological basis for his political theory. Section 2 reconstructs the mechanism of affective imitation as it appears in the *Ethics* and the *Political Treatise*, demonstrating how this process generates the consensus necessary for the emergence of political community. Finally, Section 3 returns to the problem of the constituent subject through a critical engagement with Carl Schmitt’s decisionist constitutional theory and its contemporary critics. Drawing on the work of Caroline Williams and André Tosel, we demonstrate how Spinoza’s affective logic offers a viable pathway beyond the voluntarist and decisionist aporias that have long characterized the doctrine of constituent power—from Sieyès to the present day—by reconceiving the production of the legal order as an inherently subjectless, affectively-driven process.

## Spinoza and the “affective turn”

A prevalent perspective holds that emotions should be excluded from the political sphere. This viewpoint is predicated on the assumption that emotional influence on political actors and institutions leads to irrational and indefensible decisions (Clarke et. al., 2006, p. 4). At the same time, there is widespread skepticism towards politicians who employ emotional appeals to the masses, often associating such tactics with populism and more extreme political ideologies like fascism (Fieschi, 2004). This long-held perspective has only recently faced significant challenge through what has been termed the “affective turn” in the social sciences (see, for example, Massumi, 2002; Ahmed, 2004; Brennan, 2004; Clough, 2007; Demertzis, 2013; Anderson, 2014; Burkitt, 2014; Leys, 2017).

The resurgence of scholarly interest in the role of emotions within the political sphere is not entirely new; rather, it engages with a venerable philosophical tradition that has, for centuries, accorded them a pivotal position. In antiquity, both Aristotle and Plato acknowledged the profound influence of emotions on public discourse and the civic psyche. During the modern era, Machiavelli elucidated the intricate relationship between fear and the allegiance of the governed, while Hobbes predicated his theory of the state upon fundamental human passions. Similarly, Rousseau and Hume, each through distinct frameworks, underscored the significance of moral sentiments and compassion for fostering social cohesion.

Nevertheless, this enduring intellectual legacy was largely eclipsed throughout the twentieth century, as political science embraced a model of human action intentionally divested of emotional considerations. The prevailing paradigm conceptualized political actors primarily as utility maximizers, whose decisions—even if occasionally suboptimal due to cognitive constraints—were predominantly dictated by a

dispassionate calculation of interests (Hoggett and Thompson, 2012, p. 1). This reductionist perspective ultimately forged an artificial dichotomy between instrumental reason and affective experience, decoupling deliberation from passion and confining political analysis to an exclusively rationalist dimension.

This rationalist bias has shaped even the theories that oppose one another within mainstream democratic theory. Theorists who champion an affective conception of democracy have confronted two competing models that continue to define the dominant paradigm: the *aggregative* model and the *deliberative* model. In the aggregative model, democracy is understood primarily as a market mechanism. Citizens express individual preferences, driven only by self-interest, and political agents compete to obtain the greatest number of votes (Schumpeter, 1943; Downs, 1957; Arrow, 1963). The political process is thus limited to the summation or aggregation of these preferences, without subjecting them to transformation or collective reflection. The deliberative model, for its part, seeks to remove emotions from the public sphere. Their aim is to specify the conditions—such as particular rules of discussion and specific civic virtues—under which reasonable deliberation can lead to rational consensus (Rawls, 1971; Cohen, 1989; Habermas, 1996). In doing so, they characterize the public sphere as a site of dispassionate debate, where rational argument prevails over irrational emotion. This approach assigns a central normative value to reason, in a Kantian-inspired vein. Reason thus becomes the sole faculty capable of conferring legitimacy on collective decisions and ensuring the impartiality of processes. It is precisely in the name of this impartiality and reasonableness that deliberative theories have sought to exclude affective elements from their operations.

While both models exclude emotions, they do so for different reasons: the aggregative model renders them irrelevant to the calculus of interests, while the deliberative model actively seeks to suppress them in the name of rational consensus.

It is worth considering, however, why the role of emotions is not limited to everyday politics; it also extends to the foundational moments of political life. Several authors have argued that, to understand the real processes that shape constitutional law, it is essential to take into account the contribution of emotions (Sajó, 2011; Elster, 2017). Constitutional institutions operate at the intersection of rational and emotional elements of human thought and social cooperation. A descriptive model that accords emotions their proper place can contribute to the development of more efficient regulatory models.

This approach carries substantial political implications. A core tenet of the new paradigm posits that excluding emotion from the reasoning process is neither feasible nor advisable. It is imperative that historical prejudices against the passions do not unduly influence our evaluations of emotions. While passions may, at times, obscure judgment, they are also indispensable motivators for action in numerous contexts. András Sajó (2011) advocates for an analysis of the role of emotions in constitutional law, premised on the understanding that human behavior and legal frameworks cannot be conceptualized as purely rational endeavors. Without an interdisciplinary approach to the formation of law and constitutional institutions, there is a risk of being confined to an impoverished understanding of

the constitution (Sajó, 2011, p. 4). Sajó's hypothesis asserts that emotions, operating through intricate mechanisms, exert a tangible influence on constitutional design. Concurrently, constitutional design itself constitutes a semi-conscious undertaking of emotional management, and constitutional law inadvertently generates consequences within emotional culture.

This position challenges the myth of law as a purely rational construct. Within this myth, emotions are conceptualized as distinct from reason, their influence often dismissed as an external impediment. Law is consequently portrayed as a mechanism designed to mitigate such interferences. This isolationist stance, predicated on a rigid dichotomy between reason and emotion, is demonstrably untenable (Sajó, 2011, p. 11). Scientific evidence, in contrast, indicates an interactive relationship between reason and emotion in both human decision-making and the formation of legal institutions.

It is at this point that Spinoza's philosophy proves particularly relevant. However, before turning to the specifics of his account, it is worth emphasizing that Spinoza does not simply anticipate contemporary affect theory. Unlike many of his contemporaries, Spinoza did not view affects as an obstacle to political life or as something to be domesticated by reason. On the contrary, his political theory starts from the premise that affects are constitutive of human nature, and that any political order that ignores them is doomed to failure. The *Political Treatise* and parts III and IV of the *Ethics* develop a conception of politics that rejects the artificial foundation of the community through a pact or a rational act of deliberation. For Spinoza, it is affects—not a rational contract—that bind individuals to one another and make common life possible. In this sense, his work anticipates one of the central intuitions of the contemporary "affective turn": that reason does not operate in an emotional vacuum, but is always accompanied and often guided by affective dynamics that escape conscious control (Williams, 2010, p. 247; Lembo, 2018, p. 220). The specificity of Spinoza's contribution lies, therefore, in offering a political theory that not only acknowledges the role of emotions, but makes them the very engine of the constitution of political community.

In the *Political Treatise*, I, 4, Spinoza explicitly declares his intention to deduce the foundational principles of politics from "human nature," which constitutes the affective substratum of individual and collective existence:

And in order to enquire into matters relevant to this branch of knowledge in the same unfettered spirit as is habitually shown in mathematical studies, I have taken great care not to deride, bewail, or execrate human actions, but to understand them. So I have regarded human emotions such as love, hatred, anger, envy, pride, pity, and other agitations of the mind not as vices of human nature but as properties pertaining to it in the same way as heat, cold, storm, thunder, and such pertain to the nature of the atmosphere. These things, though troublesome, are inevitable, and have definite causes through which we try to understand their nature. (Spinoza, 2002, p. 681)

Spinoza's methodological commitment to understanding affects as natural phenomena, however, does not amount to a dismissal of reason; rather, reason operates within and through the affective dynamics it cannot fully master. Yet even reason, for Spinoza, is always embedded in affective life. Human behavior

is widely understood to be shaped by affects that escape conscious control. This often results in regret over actions that appear to be voluntary but are in fact driven by powerful passions—as when individuals act out of hatred, anger, or envy. Traditional philosophy tends to approach this phenomenon through a moral framework, classifying such passions as “vices” that must be eliminated. Spinoza, however, proposes a different approach. He advocates for the study of affects “in the same unfettered spirit as is habitually shown in mathematical studies” (Spinoza, 1994, p. 153), calling for an objective and neutral investigation comparable to the analysis of lines, surfaces, and geometric figures. This requires setting aside any preconceived notions about human conduct. If nature is indeed “everywhere one and the same” (Spinoza, 1994, p. 153), and if human beings are part of nature, then human existence is subject to the same causal laws as all other phenomena. From this standpoint, affects should not be understood as vices or deviations; rather, like storms or thunder, they are necessary outcomes of determinate causes (Boscherini, 1977, p. 188–189). A robust and practical political theory—one that aspires to be more than abstract speculation—must therefore take into account the natural and irresistible influence that passions exert on individuals and on society as a whole.

## The “*imitatio affectuum*” and the natural origins of the State

Through the application of this method, Spinoza elaborates a *natural* genesis of the state’s formation (Lazzeri, 1998, p. 273). As he argues in the *Political Treatise*, I, 7, the state ought not to be understood exclusively as a product of civilized reason. In reality, it is a phenomenon that cuts across all societies, from the simplest to the most complex:

[...] since all men everywhere, *whether barbarian or civilised*, enter into relationships with one another and set up some kind of civil order, one should not look for the causes and *natural foundations* of the state in the teachings of reason, but deduce them from the *nature and condition of men in general*. (Spinoza, 2002, p. 682. Emphasis added)

More than advancing a speculative claim, Spinoza is here making a simple empirical observation: political societies emerge *naturally*, requiring no prior rational deliberation. In other words, individuals coalesce spontaneously, driven by the passions that present this association to them as advantageous—not because reason has “compelled” them to unite. But which affects, exactly, are responsible for this association? Spinoza enumerates them in the chapter VI, 1:

Since men, as we have said, are led more by passion than by reason, it naturally follows that a people will unite [*naturaliter convenire*] and consent to be guided as if by one mind not at reason’s prompting but through some *common emotion*, such as [...] a common hope, or common fear, or desire to avenge some common injury. Now since fear of isolation is innate in all men inasmuch as in isolation no one has the strength to defend himself and acquire the necessities of life, it follows that men *by nature strive for a civil order* [...]. (Spinoza, 2002, pp. 700–701. Emphasis added)

Initially, this passage appears to support a contractualist interpretation, where individuals, apprehensive of the perils of “solitude,” willingly subject themselves to an authority capable of ensuring their security. The verb “convenire” seemingly denotes a form of legal agreement. However, Spinoza employs the phrase “naturaliter convenire,” a distinction of considerable importance. If the multitude’s agreement is indeed *natural*, it obviates the need for any contractual construct to establish a political society (Matheron, 2020a, p. 125). Rather, the “instituting process” is wholly propelled by the dynamic *interplay of affects*, including fear, hope, and the desire for common vengeance.

What, then, constitutes a “common emotion”? To begin with, this term does not denote an extraordinary passion or a universal affective category. Rather, it signifies, in Aurélio’s words, “an affect concretely shared by a group of individuals, under specific circumstances, and for a more or less extended duration” (2014, p. 226). In essence, it is a particular passion—be it hope, fear, or vengeance—that coalesces individuals into a unified, albeit potentially unstable, political-affective entity. This shared emotion delineates a boundary between an “inside” and an “outside,” a “we” and a “they.” However, this explanation does not elucidate the genesis of a “common affect.” Individuals are not inherently connected by passionate bonds. Such connections emerge through a process of *imaginary identification* that Spinoza terms “affective mimetism.”

The theory of *affectuum imitation* (E III P27 Sch) is initially introduced in the *Ethics* to account for the contagious nature of intersubjective affectivity. Spinoza subsequently extends this theory to explain the genesis of the multitude in the *Political Treatise*. Let us now examine his summary of “affective mimetism” in *TP*, I, 5:

For this much is quite certain, and proved to be true in our *Ethics*, that men are necessarily subject to passions, and are so constituted that they pity the unfortunate, envy the fortunate, and are more inclined to vengeance than to compassion. Furthermore, each man *wants others to live according to his way of thinking, approving what he approves and rejecting what he rejects*. Consequently, since all men are equally desirous of preeminence, they fall to quarrelling and strive their utmost to best one another; and he who emerges victorious is more elated at having hindered someone else than at having gained an advantage for himself. (Spinoza, 2002, p. 681. Emphasis added)

As explained in the *Ethics* (E III P27), if we imagine that a being similar to ourselves experiences a certain affect, that imagination alone is enough for us to be affected by the same affect (Moreau, 2011, p. 169; Boukouvala, 2017, p. 1011). Consequently, when we see someone suffer, we pity that person—an affect Spinoza calls compassion (E III P27 Sch)—and we desire to free them from their suffering (E III P27 Cor III). If we succeed in ending their suffering, the other will rejoice. We, in turn, will experience joy, imagining ourselves as the cause of their happiness—this constitutes glory (E III P30 and E III P30 Sch). Because this provides a pleasant sensation, we will continue to do everything we believe will gladden our fellows, which is the essence of ambition for glory (E III P29 and E III P29 Sch). However, while we wish to bring the greatest joy to others, we do not abandon our own desires. To resolve this contradiction, we strive for others to love what we love and hate what we hate (E III P31 and E III P31 Cor). Thus, ambition

for glory transforms into ambition for dominion (*E III P31 Sch*) (Matheron, 2020b, p. 138). Finally, if another person obtains something we have led them to desire, we will ourselves desire to possess it and will do all we can to take it from them. Yet, the other will be saddened when deprived of what brought them joy; we will pity them, and the cycle of *affectuum imitatio* will begin anew.

This reconstruction, however, should not be read as a linear progression from imitation to consensus. Spinoza is careful to show that affective mimetism can also generate conflict: the same mechanism that produces compassion and shared hope can just as easily produce envy, rivalry, and the desire for dominion (*E III P27 Sch*, *E III P31 Sch*). The formation of the multitude is therefore always precarious, always subject to dissolution. The imitative process does not guarantee unity; it makes it possible, but it also makes it fragile.

Human beings exhibit a natural propensity for emotional contagion. Contemplating another's affective state is sufficient to elicit a corresponding emotional experience in the observer. When this mimetic identification recurs, it fosters a shared emotional landscape capable of unifying disparate individuals into a cohesive political entity. Yet the same mechanism can also amplify discord, as the imitation of negative affects—fear, envy, resentment—can just as easily fragment a community as unite it. The instability of this process is, for Spinoza, a permanent feature of political life.

This affective mimetism renders the Hobbesian construct of “representation” unnecessary as a mechanism of political foundation, though not necessarily irrelevant to the operation of existing states. Hobbes posited that common will and judgment existed solely through their personification in the sovereign (*Leviathan*, XVI). Nevertheless, the mechanism of *affectuum imitatio* facilitates the effective convergence of diverse wills into a system of “norms” which, by virtue of this convergence, acquire the status of *common law*. We should be careful, however, not to overstate the claim: Spinoza does not reject representation as such—the *Political Treatise* discusses various forms of government that involve representative elements. What we argue is that the *foundation* of political community does not require representation, because the affective convergence of the multitude already produces the conditions for common law. Representation may be useful or even necessary for the functioning of a state, but it is not the origin of political unity.

While the multitude undeniably desires to be “guided as if by a single mind” (Spinoza, 2002, p. 691), the resulting unity does not stem from a *juridical-representative unification* or a genuine *fusion*, as individuals retain their distinct rights and wills. Instead, it constitutes an “affective composition,” which politically manifests as a unity of consensus (Lazzeri, 1998, p. 282). Consequently, the *objective coincidence* of multiple individual emotions is sufficient for the constitution of political society:

[...] in a state of Nature and in a civil order alike man acts from the laws of his own nature and has regard for his own advantage. In both these conditions, I repeat, man is led by fear or hope to do or refrain from doing this or that. The main difference between the two conditions is this, that in the civil order all men *fear the same things*, and all have the same ground of security, the same way of life. (Spinoza 2002, p. 690. Emphasis added).

This passage substantiates our earlier claim: political unity is achieved when a group of individuals shares a common affect, such as fear, hope, or vengeance. This affective bond, amplified and generalized through unconscious mimetism (Jaquet, 2018, p. 150), generates the consensus required for the establishment of commonly accepted laws. This account, however, raises a question that has received insufficient attention in the literature: if the multitude's unity is indeed the product of an impersonal, mimetic process—rather than a conscious, volitional act—then what becomes of the classical doctrine of the constituent subject? Does Spinoza's affective logic not call into question the very idea that political order requires a determinate author? It is to this question that we now direct our attention.

## The Subjectless Production of the Legal Order

Having established the mechanism through which affective mimetism generates political consensus, we arrive at the central problem of this paper: what are the implications of Spinoza's affective logic for the traditional theory of constituent power? To answer this question, we must first engage with the most influential modern formulation of that doctrine—the constitutional theory of Carl Schmitt.

For Schmitt, the constitution is not a mere set of norms but a conscious and deliberate decision on the part of a sovereign subject. As he writes in his *Constitutional Theory*:

The constitution in the positive sense entails only the conscious determination of the particular complete form, for which the political unity decides. This external form can alter itself. Fundamentally new forms can be introduced without the state ceasing to exist, more specifically, without the political unity of the people ending. However, a subject capable of acting, one with the will to establish a constitution, is always a component of constitution making. (Schmitt, 2008, p. 75)

This passage reveals the core of Schmitt's decisionism: the constitution is not an emergent property of social interaction but the product of a willful act by a determinate subject. The identity of this subject, moreover, varies according to the form of government. In a democracy, Schmitt continues, "this is a decision by the people; in a genuine monarchy, it is a decision by the monarch." (Schmitt, 2008, p. 77). But regardless of its specific identity, the constituent subject is defined by its capacity for conscious and deliberate action: "The constitution-making power is the political will, whose power or authority is capable of making the concrete, comprehensive decision over the type and form of its own political existence" (Schmitt, 2008, p. 125).

Schmitt's formulation, however, raises a question that has received surprisingly little attention: who, exactly, is this "people" that is said to exercise constituent power? As Maxim van Asseldonk observes: "(...) too little attention has been devoted to the question of *who* this people as the source of all authority is. To put the question another way, if the concept of constituent power is meant to advance a view of the source of democratic legitimacy and holds that such legitimacy must always involve some reference

to the people or the *demos*, it is often overlooked that the *demos* itself also raises a question of legitimacy” (2022, p. 362)

Van Asseldonk goes on to argue that Schmitt’s account is haunted by the specter of totalitarianism, insofar as it theorizes constituent power as the “pre-political ontological existence of the people displaying substantial homogeneity” (2022, p. 362). The people, in Schmitt’s framework, assert this homogeneity through the constitution, drawing a line between friends and enemies—a line that potentially excludes all those who fall on the wrong side.

A related problem is identified by Marco Santambrogio, who draws attention to the work of Alessandro Ferrara. As Santambrogio notes, Ferrara subscribes to Schmitt’s claim that constituent power requires a subject to exercise it: “Constituent power needs a subject capable of exercising it. As we learn from Schmitt, neither a law nor a constitution can self-institute itself: they must be enacted by someone” (Ferrara, 2023, p. 137). The preambles of numerous constitutions, which invoke “We, the People,” seem to bear this out. But Santambrogio pushes the question further: “is the singular intentionality presupposed in the author of a constitution (...) that of a real subject or is it instead that of a fictional, purely imaginary entity that has the same ontological reality as literary characters and other entities that are perfectly respectable but lack intentionality and existence independent of human imagination, such as the metric system?” (2024, p. 43) The intentionality and subjectivity we ascribe to a collectivity such as “the people,” Santambrogio concludes, are far more complex than those of individual human beings, and it is far from clear that they can be attributed to anything other than an individual—except by pretense.

These critiques expose a fundamental aporia in Schmitt’s constitutional theory: in requiring a determinate subject to exercise constituent power, Schmitt posits an entity whose own identity and legitimacy remain unaccounted for. The subject of constituent power is thus both presupposed and elusive—a paradox that has haunted the doctrine from Sieyès to the present day.

It is precisely at this juncture that Spinoza’s philosophy offers a radical alternative. Filippo Del Lucchese has shown that Spinoza’s critique of free will undermines the voluntarist foundations of modern constitutionalism. As Del Lucchese explains, one of the principal aims of Spinoza’s philosophy is “to destroy, in both the anthropological as well as the ontological dimension, the idea of a free will, as well as to denounce the aberrations arising from it” (Del Lucchese, 2016, p. 191). Spinoza’s God, Del Lucchese notes, does not act through free will but through the necessity of its own nature. This analogy extends to political power: “No political power (...), including a constituent power, can be recognized as acting according to an absolutely free will, because to Spinoza such a will is simply an illusion” (Del Lucchese, 2016, p. 191). The Cartesian model of mind-body dualism, which supports the idea of a free subject imposing its will on matter, is thereby rejected. In the transition from the individual to the collective sphere, Del Lucchese observes, the will does not change its nature: the *multitudinis voluntas* appears only once in the *Political Treatise*, and Spinoza refers it “to the executive rather than the constituent power” (Del Lucchese, 2016, p. 192; cf. *TP* VII, 25). More recently, Del Lucchese has further

developed this argument, showing that for Spinoza, “one of the fundamental characteristics of traditional understandings of the constituent subject (i.e. its free will, absolutely detached from any conditioning of a political or legal nature) is (...) missing from Spinoza’s perspective” (Del Lucchese, 2026, p. 59). Spinoza denies such a possibility, returning the relationship between constituent and constituted powers to a “necessary and continuously immanent and recursive relationship of co-implication” that does not take refuge in “the mysticism of free will” but recognizes the vital necessity of their coexistence (Del Lucchese, 2026, p. 59).

We contend that Del Lucchese’s reading, while essential, does not go far enough. The problem is not merely that the constituent subject’s will is not free. The deeper issue, we contend, is the very idea that such a subject exists at all. Del Lucchese’s interpretation still operates within the framework of constituent power—it offers a solution to its paradox, but it does not question the framework itself. By contrast, we argue that Spinoza’s critique of free will is part of a more comprehensive rejection of any agent-centred account of political foundation. It is unwarranted, therefore, to regard the *potentia multitudinis* as a constituent subject in the usual sense of the term. As André Tosel notes:

The power [of the multitude] is to be confused neither with that of the subjects nor with that of the government; it is a system of relations which involves, in its elliptical trajectory, the dual focus constituted by the activity of the power of the masses and that of state power. *The sovereign loses all subjective figuration.* It is the circuit of mass-power relations as a *process* which cannot achieve stabilization except as a process of institutionalizing the common power. (Tosel, 2008, pp. 259–260. Emphasis added)

In other words, contrary to what occurs in contractarianism—but also in modern constitutionalism—where the law emanates from the will of a concrete political subject (the people, the nation, etc.), in Spinoza the law refers back to an indeterminate (and indeterminable) author, whose identity dissolves in the oppositional dynamics of the *potentia multitudinis*. There are, undoubtedly, points of convergence among the forces that compose multitudinous power; however, this convergence—or, if one will, this consensus—is always partial (since it is invariably accompanied by dissent) and provisional (since it is subject to constant modification). Therefore, not only is there no clear personification of the constituent will, but, strictly speaking, *such a will does not even exist*.

This line of argument finds powerful support in the work of Caroline Williams, who has explored the implications of Spinoza’s affective ontology for our understanding of political subjectivity. Williams argues that for Spinoza, affect is “a kind of force or power that courses through and beyond subjects. Thus, it cannot easily be inscribed within the borders of subjectivity” (2010, p. 246). Affects, she continues, “are forms of encounter; they circulate—sometimes ambivalently but always productively—between and within bodies (of all kinds), telling us something important about the power of affect to unravel subjectivity and modify the political body” (2010, p. 246). This insight has profound consequences for the question of constituent power, for it suggests that the affective dynamics that bind individuals into political communities operate *below* and *beyond* the level of conscious agency.

Williams proposes that affects are best understood as “transitive states through which bodies pass, they meander through and between bodies, resting like ‘foreign objects’, or excessive impersonal forces, awaiting transformation into the thought-imbued emotions of subjective experience” (2010, p. 250). This is not to deny the reality of subjective experience, but to insist that the affects that shape political life are not generated by subjects—rather, they constitute subjects through their circulation. The *imitatio affectuum*, Williams argues, operates through a “process of imaginary identifications” (2010, p. 256) that is not simply initiated by subjects but constitutes the mimetic process of identification for a subject. In her words: “It is through the dispersal and circulation of affects (which simultaneously produces identity and unravels, or withdraws from its completion) that subjectivity is retroactively produced. In other words, there is no subject of the affect, because affect drives the subject towards identity and performance” (2010, p. 258).

Thus, for Spinoza, “affect is also more than the subject; it overflows the subject and thus expands the scene of agency” (Williams, 2010, p. 258). Affects, Williams concludes, “are relations occurring in the space between individuals, traversing and composing singular knots of subjectivity as their effect, then interiority, it has been argued, is constituted by these very relations” (2010, p. 258).

We wish to extend Williams’s interpretation in a direction she does not herself pursue. While Williams is primarily concerned with rethinking the relation between subjectivity and affect in general terms, we argue that her insights can be fruitfully applied to the specific question of *political foundation*. If affects are relations that occur in the space between individuals, and if they “traverse and compose singular knots of subjectivity as their effect,” then the constitution of political order—the emergence of laws and institutions—need not be understood as the product of a sovereign act of will by a determinate subject. Rather, it can be understood as an *impersonal, affective process*: a process in which affects circulate between bodies, generating common emotions, which in turn produce the consensus necessary for the establishment of commonly accepted laws. The “subject” of this process, if one can speak of a subject at all, is not a pre-existing entity endowed with intentionality and will, but an emergent effect of the very affective dynamics that constitute political community.

One might object that this account deprives political theory of any normative criteria for evaluating constitutional legitimacy. If the legal order emerges from an impersonal affective process, does it follow that any order produced by such a process is legitimate? This is a serious objection, and it deserves a response. Spinoza is not indifferent to the quality of political orders: he explicitly argues that democracy is the most stable and most rational form of government (*TP*, XI, 1–4). The affective process that produces political community does not operate in a normative vacuum; it includes the possibility of rational deliberation, and it is constrained by the natural limits of human affectivity. An order that generates fear and resentment is less stable, less rational, and ultimately less legitimate than one that generates hope and common purpose. Spinoza’s account is not merely descriptive: it contains an immanent normative standard, grounded in the degree of stability and rationality that a given political order can achieve. The question of legitimacy, on this view, is not a matter of identifying the correct

constituent subject, but of assessing the affective composition of the multitude—whether the passions that bind it are conducive to collective flourishing or to mutual destruction.

This is not to say that Spinoza denies the existence of individual subjects or their capacity for action. It is rather to insist that the logic of political foundation is not reducible to the actions of such subjects. The *potentia multitudinis* is not a constituent subject but a field of affective forces—a dynamic interplay of passions that produces, through the mechanism of *imitatio affectuum*, the conditions for political consensus. The laws that emerge from this process are not the product of a deliberate and conscious decision by a sovereign will, but the institutional expression of an impersonal, affective logic that operates through and beyond individual subjects.

In this sense, Spinoza's account of political foundation offers a way beyond the aporias that have haunted the doctrine of constituent power from Sieyès to Schmitt. The problem of how to ascribe intentionality and will to a collective entity such as “the people” simply does not arise, because the production of the legal order does not depend on the intentional act of a subject. It depends, rather, on the affective encounters that ceaselessly constitute and reconstitute the political field. The legal order, in short, is produced not by a subject but through a *subjectless process*—a process whose logic is affective, whose mechanism is mimetic, and whose effects are institutional. This is not, however, to say that the process is arbitrary or that it cannot be evaluated normatively. The stability and rationality of a political order provide internal criteria for assessing its legitimacy. What we lose in the figure of the constituent subject, we gain in a more realistic, more immanent account of political foundation.

## Conclusion

If our analysis is correct, it carries a paradoxical implication: the more we attend to the affective foundations of political order, the less we are able to identify a definitive moment of foundation. Spinoza's account of political genesis, unlike the constitutionalist tradition from Sieyès to Schmitt, does not point to a singular act of institution—a revolution, a constitutional convention, or a popular referendum—but to a ceaseless, impersonal process that has no beginning and no end. The legal order, on this view, emerges not from a decision but from a dynamic: the incessant circulation and composition of affects that bind individuals into a common political body. This reconceptualization displaces the classical figure of the constituent subject and opens the way for a more fluid understanding of how political communities are constituted and sustained.

This shift carries significant implications. First, political stability depends less on formal legitimacy than on the affective composition of the multitude. When affective bonds weaken, constitutional formalism offers little protection. Second, democratic politics must attend to the affective dynamics that shape collective orientations. Political actors who ignore the passions that move the multitude do so at their peril. Third, the subjectless account invites us to rethink constituent power itself. Democratic legitimacy is not a matter of identifying the correct subject, but of understanding the conditions under which affects compose themselves into durable forms of collective life.

This analysis also opens new questions. What ensures institutional durability if the legal order emerges from an impersonal process? What institutional conditions allow affective composition without degenerating into tyranny? And what space remains for political intervention if the legal order emerges from an impersonal process? These questions mark out a rich terrain for future research. The legal order, on this view, is not the product of a sovereign act of foundation, but the always provisional, always fragile outcome of an affective process with no beginning and no end. To think politics in these terms is to recognize, with Spinoza, that the only genuine foundation of political order lies in the affective bonds that bind us to one another.

## Declarations

## Author Contribution

A.P. conceptualised the study, developed the theoretical framework, conducted the research and analysis, and wrote the entire manuscript. A.P. is the sole author and takes full responsibility for the content.

## References

1. Ahmed, S. 2004. *The Cultural Politics of Emotion*. Edinburgh: Edinburgh University. 10.1515/9780748691142
2. Anderson, B. 2014. *Encountering Affect: Capacities, Apparatuses, Conditions*. Farnham: Ashgate. 10.4324/9781315579443
3. Arrow, K. 1963. *Social Choice and Individual Values*. Hoboken, NJ: Wiley.
4. Aurélio, D. P. 2014. O Mais Natural dos Regimes: Espinosa e a Democracia. Lisboa: Círculo de Leitores. 10.11606/issn.2447-9012.espinosa
5. Boscherini, E. G. 1977. La question du matérialisme chez Spinoza. *Revue Internationale de Philosophie* 31(119/120):174–197.
6. Boukouvala, A. 2017. Imitation of affects and mirror neurons: Exploring empathy in Spinoza's theory and contemporary neuroscience. *Philosophia* 45:1007–1017. 10.1007/s11406-017-9857-5
7. Brennan, T. 2004. *The Transmission of Affect*. Ithaca, NY: Cornell University Press. 10.7591/9780801471377
8. Burkitt, I. 2014. *Emotions and Social Relations*. London: Sage. 10.4135/9781473915060
9. Clarke, S., P. Hoggett, and S. Thompson. 2006. The study of emotions: An introduction. In *Emotions, Politics and Society*, ed. S. Clarke, P. Hoggett, and S. Thompson. 3–13. Basingstoke: Palgrave Macmillan.
10. Clough, P. T. ed. 2007. *The Affective Turn: Theorizing the Social*. Durham, NC: Duke University Press. 10.1515/9780822389606

11. Cohen, J. 1989. Deliberation and democratic legitimacy. In *The Good Polity: Normative Analysis of the State*, ed. A. Hamlin, and P. Pettit. 17–34. Oxford: Blackwell. 10.7551/mitpress/2324.003.0006
12. Del Lucchese, F. 2016. Spinoza and constituent power. *Contemporary Political Theory* 15(2):182–204. 10.1057/cpt.2015.39
13. Del Lucchese, F. 2026. Right and constituent power in Spinoza. In *The Oxford Handbook of Constituent Power*, ed. P. Niesen, M. Patberg, and L. Rubinelli. 55–64. Oxford: Oxford University Press.
14. Demertzis, N. ed. 2013. *Emotions in Politics: The Affect Dimension in Political Tension*. Basingstoke: Palgrave Macmillan. 10.1057/9781137025661
15. Downs, A. 1957. *An Economic Theory of Democracy*. New York: Harper & Row.
16. Elster, J. 2017. Emotions in constitution-making. *Scandinavian Political Studies* 40(1):1–24. 10.1111/1467-9477.12092
17. Ferrara, A. 2023. *Sovereignty Across Generations: Constituent Power and Political Liberalism*. Oxford: Oxford University Press. 10.1093/oso/9780192871077.001.0001
18. Fieschi, C. 2004. *Fascism, Populism and the French Fifth Republic: In the Shadow of Democracy*. Manchester: Manchester University.
19. Habermas, J. 1996. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge, MA: MIT Press.
20. Hoggett, P., and S. Thompson. 2012. Introduction. In *Politics and the Emotions: The Affective Turn in Contemporary Political Studies*, ed. P. Hoggett, and S. Thompson. 1–20. London: Continuum. 10.5040/9781501301629
21. Jaquet, C. 2018. *Affects, Actions and Passions in Spinoza: The Unity of Body and Mind*. Edinburgh: Edinburgh University. 10.1515/9781474433204
22. Lembo, A. 2018. L'altro Spinoza del Novecento: Passioni e politica tra psicanalisi e neurologia. *Lo Sguardo – Rivista di Filosofia* 27(2):219–239. 10.5281/zenodo.3462407
23. Leys, R. 2017. *The Ascent of Affect: Genealogy and Critique*. Chicago, IL: University of Chicago Press. 10.7208/chicago/9780226488738.001.0001
24. Massumi, B. 2002. *Parables for the Virtual: Movement, Affect, Sensation*. Durham, NC: Duke University Press. 10.1215/9780822383574
25. Matheron, A. 2020a. Ethics and politics in Spinoza (remarks on the role of Ethics IV, 37 Scholium 2). In *Politics, Ontology and Knowledge in Spinoza*, 114–123. Edinburgh: Edinburgh University. 10.1515/9781474440127
26. Matheron, A. 2020b. Passions and institutions according to Spinoza. In *Politics, Ontology and Knowledge in Spinoza*, 136–162. Edinburgh: Edinburgh University. 10.1515/9781474440127
27. Moreau, P-F. 2011. Imitation of the affects and interhuman relations. In *Spinoza's Ethics: A Collective Commentary*, ed. M. Hampe, U. Renz, and R. Schnepf. 167–178l. Leiden: Brill.

28. Negri, A. 1999. *Insurgencies: Constituent Power and the Modern State*. Minneapolis, MN: University of Minnesota Press.
29. Rawls, J. 1971. *A Theory of Justice*. Cambridge, MA: Harvard University Press.  
10.4159/9780674042605
30. Sajó, A. 2011. *Constitutional Sentiments*. New Haven, CT: Yale University Press.  
10.12987/9780300168617
31. Santambrogio, M. 2024. Whose constituent power is it? *Biblioteca della Libertà* 59(239):41–56.  
10.23827/BDL\_2024\_8
32. Schmitt, C. 2008. *Constitutional Theory*. Durham, NC: Duke University Press.  
10.1515/9780822390589
33. Schumpeter, J. 1943. *Capitalism, Socialism and Democracy*. London: Routledge.
34. Spinoza, B. 1994. *A Spinoza Reader: The Ethics and Other Works*. Princeton, NJ: Princeton University Press. 10.1515/9780691209289
35. Spinoza, B. 2002. *Complete Works*. Indianapolis, IN: Hackett.
36. Tosel, A. 2008. *Spinoza ou l'autre (in)finitude*. Paris: L'Harmattan.
37. van Asseldonk, M. 2022. Who, the people? Rethinking constituent power as praxis. *Philosophy and Social Criticism* 48(3):361–385. 10.1177/01914537211017581
38. Williams, C. 2010. Affective processes without a subject: Rethinking the relation between subjectivity and affect with Spinoza. *Subjectivity* 3(3):245–262. 10.1057/sub.2010.15