

SPINOZA'S REVOLUTIONS IN NATURAL LAW

ANDRE SANTOS CAMPOS

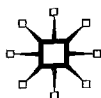


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Andre Santos Campos
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First published 2012 by
PALGRAVE MACMILLAN

Palgrave Macmillan in the UK is an imprint of Macmillan Publishers Limited, registered in England, company number 785998, of Houndmills, Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

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ISBN: 978–0–230–34869–1

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

A catalog record for this book is available from the Library of Congress.

10 9 8 7 6 5 4 3 2 1
21 20 19 18 17 16 15 14 13 12

Printed and bound in Great Britain by
CPI Antony Rowe, Chippenham and Eastbourne

Acknowledgements

As many non-fiction writers and Oscar-winning actors are well aware, it is not an easy task to make a shortlist of the people that one is indebted to when preparing a specific product. If one considers all contributions toward the author becoming who he was at the time of writing are worth acknowledging, expressions of gratitude might become endless. In order to avoid such a fastidious undertaking, I shall only confess my indebtedness toward those without which this book could not possibly have existed the way it does now.

Thus, since some of the ideas and arguments here have appeared elsewhere, namely in my 'The Individuality of the State in Spinoza's Political Philosophy' (*Archiv für Geschichte*, vol. 92 (2010): 1–48) and in my *Jus sive Potentia* (Lisbon: CFUL, 2010), I would like to thank the readers for their reports and the editors for permission to reprint.

Furthermore, I am grateful to Professors Viriato Soromenho-Marques, Leonel Ribeiro Santos and M. J. Carmo Ferreira, at the University of Lisbon, for their insightful comments and support. I am also indebted to Priyanka Gibbons, my managing editor at Palgrave MacMillan, for believing in this project and in my ability to accomplish it. In addition, I cannot thank Professor Diogo Pires Aurélio (New University of Lisbon) enough for being the best Spinoza teacher and mentor one could possibly have. Finally, I would especially like to acknowledge Teresa Mósca for her overwhelming continuous encouragement – or, if for nothing else, just for being who she is.

Abbreviations

Texts by Spinoza

- E* *Ethics*, in Spinoza, *A Spinoza Reader: The Ethics and Other Works*, trans. and ed. Edwin Curley (Princeton: Princeton University Press, 1994)
- TTP* *Theological–Political Treatise*, trans. Michael Silverthorne and Jonathan Israel, ed. Jonathan Israel (Cambridge: Cambridge University Press, 2007)
- TIE* *Treatise on the Emendation of the Intellect*, in Spinoza, *Complete Works*, trans. Samuel Shirley, ed. Michael L. Morgan (Indianapolis: Hackett, 2002)
- PPC* *Principles of Cartesian Philosophy*, in Spinoza, *Complete Works*
- CM* Appendix Containing Metaphysical Thoughts to the *Principles of Cartesian Philosophy*, in Spinoza, *Complete Works*
- KV* *Short Treatise on God, Man, and His Well-being*, in Spinoza, *Complete Works*
- TP* *Political Treatise*, in Spinoza, *Complete Works*
- Ep* *Correspondence*, in Spinoza, *Complete Works*
- G* *Opera*, ed. Carl Gebhardt, 4 vols (Heidelberg: Carl Winters Universitätsverlag, 1972)

References to the *Ethics* follow the most common system of abbreviation: part number, followed by proposition (P), corollary (C), scholium (S), definition (D), demonstration (Dem), axiom (Ax), explanation (Expl), postulate (Post) or lemma (L) number. (For example, *E1p28dem*= *Ethics* I, Proposition 28, Demonstration.) References to the *Opera* are cited by volume followed by page number – whenever I quote any of Spinoza's works by referring to the *Opera*, it means that I do not endorse entirely the available English translations. Other works are cited by section number followed by page numbers in the *Theological–Political Treatise* and in the *Complete Works*.

Other texts

- CSM* Descartes. 1985. *The Philosophical Writings of Descartes. Vols I and II*, ed. and trans. by John Cottingham, Robert Stoothoff,

- and Dugald Murdoch (Cambridge: Cambridge University Press)
- EW Hobbes. 1839–41. *The English Works of Thomas Hobbes of Malmesbury*, ed. William Molesworth, 7 vols (London: John Bohn)

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Introduction

Spinoza studies seemed to revolve almost exclusively around metaphysical issues for centuries. In these last few decades, this situation tended to change – mainly prompted by French neo-Marxist studies in the 1960s – insofar as there has been recognition of an original political philosophy deeply rooted in Spinoza's ontology. Nevertheless, to this day only seldom have studies appeared focusing on the axis around which these two dimensions of the system are articulated – an axis that could be expressed in the formula 'law, or power', which by itself would epitomize at the outset a slogan for a radically new version of modern natural law. This book's first task is to expound and argue with Spinoza's conception of natural law from inside that axis. This makes it a book on Spinoza's natural law theory and, consequently, probably the first major book dedicated to his Philosophy of Law entirely from the viewpoint of his internal connection between metaphysics and politics. That is why it must be interdisciplinary in nature, going from basic metaphysical premises toward specific political purposes, and involving a reconstruction of concepts usually associated with the modern natural law tradition (such as the individual, right, law of Nature, the State, the social contract, freedom, etc.). Together, they represent the extent of Spinoza's revolutions in natural law.

The question that lies at the heart of this book is: how did the links Spinoza made between law and metaphysics contribute to produce a natural law theory that not only seems to have nothing to do with the traditional view on moral requirements of justice, but that also entails a new radical version of ethics, politics and law? This has possibly relevant consequences for our contemporary thinking. The quest for answers to this question must begin, following Spinoza's own method for philosophizing, with his explicit definitions of natural law. In them, law is

always presented as Nature's productive process through individuality, and it is from this basis that the current project is developed, aiming at the legal and political dimensions of Spinoza's philosophy as a sort of 'ontology of the law'.

In its progression, this study will display an attempt to show that Spinoza's conception of natural law equals a project of continuing causation, and that an individual natural right is the process of the making of oneself. Spinoza's major revolution in natural law will end up being the individual's transformation into a progressive process of individuation. And this ultimately implies a new conception of democracy – not one dismissive of political institutions, but rather one that is valid only insofar as it is a universal project for each human individual to actually increase his or her natural right. Justice is certainly a possible name to call these highest expressions of individuality in natural law. But it is not the only name. Spinoza's radical version of natural law, in fact, will spring from inside an already established and varied conceptual framework. That is where he will reveal himself a revolutionary thinker.

Revolutions as Inner Reconstructions

Spinoza's philosophy bears a complex relationship to common-sense language. Everybody who is capable of understanding – whether sage or vulgar – has open access to his systematic philosophy, which nevertheless still has many restricted areas where those who insist upon remaining in the realm of everyday common sense are not allowed. This occurs because, as Spinoza says at the end of the *Ethics*, the excellence culminating the system is rare and unreachable to most, but also equally difficult. Such a difficulty requires one's inconformity with one's own stationary situation in the realm of common sense, and one's empowerment beyond that realm. The difficulty does not merely consist in an arduous access to excellence, but also in the arduous acquisition and manipulation of those instruments allowing the access to excellence. Those instruments are mostly linguistic in nature, which means that entering Spinoza's philosophy entails the consideration that common-sense language's expiration date is passed and the need to overcome that language. Spinoza clearly seems to hold that concepts present in everyday linguistic usage are insufficient to develop his philosophical system. His philosophical exposition does not depend upon a census of the most common terms that can be adequately employed to express his thought, but rather upon an effort to overcome those common

terms enforced by general common sense – Spinoza's philosophy is at the outset an effort toward reconceptualization.

However, a simple terminological transformation carries the risk of enclosing the act of philosophizing. If philosophy can only unfold with the invention of a new language that is incapable of acknowledging its ancestry, then philosophizing will tend to think of nothing besides itself. Consequently, the philosopher also risks speaking to no one but himself. Such risks must be avoided if one is to build a systematic philosophy with open access for others. To reconceptualize is, on the contrary, to develop a new terminology whilst recognizing the presence of an older terminology that needs to be overcome – it is to conceptualize anew, from the old. The system's open access is thus assured by the recourse to common sense's old instruments, even though that systemic construction depends upon the attribution to those same instruments of a new functionality that is able to overcome the expiration date of the older. Reconceptualizing is thus synonymous with resignifying.

This presupposes that philosophizing is accompanied by continuous work on the remodelling of language. Each step in philosophy's unfolding must be accompanied by a conceptual instrument primarily present in common-sense language in order to invite those outside the system to accompany that unfolding. Simultaneously, the system's invitation to all those capable of understanding is accompanied by a warning concerning common sense's terminological insufficiency, and thus entails a process of resignifying that is frequently a conceptual transformation. Spinoza's entire philosophy is thus more like a flipping over of common sense's terminology.

To flip over a given term is not simply to afford it a new meaning, but rather to afford it the opposite meaning that it held in common-sense language. This can be easily explained inside Spinoza's philosophy. Since language is for Spinoza nothing more than a set of inadequate images (*TIE* 89/24; *E2p47s*), the persistence of commonplace meanings represents the persistence of such inadequacy (something like the stationary condition of the ignorant man). Truth's development through philosophizing entails the precise opposite of that stationary condition, and consequently also the precise opposite of all the main terminological meanings present there. Spinoza still considers at this point that philosophical language is nothing more than a given set of images, but now inadequacy is highly degraded and the remodelling of language progresses toward an almost complete reflection of truth.

This flipping over of a term's meaning into its exact opposite is explicit throughout Spinoza's works, even though its dependence upon

continuous work on the remodelling of language remains merely implicit. That is why this flipping over is often interpreted either as a simple terminological ambiguity (Alquié, 1981, 132) or as a hidden strategy for juxtaposing two different languages through a trick that uses equivocation in order to prudentially encrypt Spinoza's genuine philosophical thought (Strauss, 1988, pp. 142–20). However, there is in Spinoza neither terminological ambiguity nor the juxtaposition of two opposite languages. To assume ambiguity entails the recognition of the two opposite meanings' equal importance, whereas Spinoza only resorts to a second meaning that flips over the first precisely because the latter is highly insufficient and inadequate. Furthermore, to juxtapose two opposite languages for the purpose of dissimulating a philosophical thought's clandestine intentions entails the recognition of two already complete, different languages that crash into one another, whereas Spinoza's philosophizing is not static inside one particular conceptual framework but rather consists of an intellectual itinerary following a continuous conceptual clarification.

What mostly concerns Spinoza is the true nature of things, that is, philosophy's actual contents in formation, rather than merely learning the proper meaning of words.¹ Because he acknowledges that common-sense terminology reflects inadequately those objects and themes to which it points, Spinoza intends to correct it, by flipping them over. He performs thus a *semantic revolution*.

Spinoza's main intention is not to subvert what has already been given by common sense through an intellective movement for the devaluation and consequent destruction of the old terminology. To subvert is to change from the bottom (to undermine), that is, to flip over the foundations into a ceiling and the ceiling into the foundations through an impetus pressed exteriorly to that which is being subverted. Spinoza goes further in his semantic revolution: when searching for the true nature of things, he begins by penetrating into common sense's terminology, and then he corrects it insofar as he progresses in that search. A philosophical system's construction with open access for all requires the usage of everybody's language² in order to grow, from its inside, in the understanding of truth. If Spinoza's philosophical exposition shows a linguistic poverty or a 'lack of vocabulary' (*Ep* 61/776), that is due to his penetration into common-sense language's 'lack of vocabulary'. Spinoza's terminological flipping over is not just a subversion, but mostly an *inner reconstruction*.

This is basically the means through which Spinoza's philosophizing unfolds – it intends to destroy an already present structure and to put

a new one in its place, whilst maintaining the exterior appearance of what was there. Much like Descartes's famous metaphor comparing old belief systems to an old house that must be pulled down and whose remnants will be used to build an entirely new one (even though for Descartes it is doubt, rather than conceptual inadequacy before a true idea, that actually razes the old house) (CSM I, 125), Spinoza sets out to build a new house where an older stands, not simply by learning new ways to use old materials but especially by providing a new and stronger foundation to an apparently old façade. Just as an architect can renovate an old building by reconstructing it anew whilst still preserving its (improved) façade, Spinoza also believes he can reconstruct anew something old whilst preserving the (improved) façade of the old. That is his endeavour in a conceptual framework. That is the specific process of his conceptual inner reconstruction.³

It is in this primary sense that Spinoza can be termed a revolutionary and radical thinker – revolutionary because he reconstructs anew; radical because his reconstruction can sometimes be the exact opposite of what existed previously. However, Spinoza's radical revolutions in the Enlightenment are not simple ruptures with the past, but rather inner reconstructions of emerging modern traditions. He uses concepts that have specific traditional meanings, albeit with totally new (and often contrary) meanings. The inner reconstruction of a tradition's main concept will consist in the identification of its fundamental groundwork in order to empower it through a *reconstitution* of meaning from which adequacy may arise. That is basically what Spinoza does with several of his concepts, such as *Nature*, *God*, *individuality*, *soul*, *good*, *imagination*, *freedom*, or *power*. And that is exactly what he ends up doing with the natural law tradition.

A natural law tradition

There are two points implied in the statement that Spinoza performs an inner reconstruction of the natural law tradition. The first is that there is such a thing as a natural law tradition. The second is that Spinoza can be considered its member. Both points are, however, controversial.

With regard to the first, there seems to be an overall impression that all those theorists since the Stoics talking about natural law explicitly formed a much more coherent conceptual framework than in fact they did. The reason for this is probably the prominence, over the centuries, that certain specific elements common to natural law theories had in legal and philosophical excursions. But this impression is somewhat

misleading. When early Greek authors began talking about the relation between Nature and law under the banner of natural law, they were concerned with establishing an ethical context for individual action from the perspective not of political citizenship, but rather of a cosmological view of Nature – the foundation for Stoic ethics, for instance, was a common human participation in the order of Nature. Some Roman jurists such as Ulpian ended up providing legal definitions of natural law in conformity with this Stoic view: *jus naturale* was what Nature determined all animals to do; *jus gentium* was the rational law of peoples; and *jus civile* was institutionalized positive law. But others, such as Gaius, considered natural law not as a moral principle in a cosmological context developed alongside a legal system, but rather as the determinative element of legitimacy in the concept of the law itself: *jus naturale* and *jus gentium* were one and the same thing, insofar as they constituted gradual determinations of one same basic principle of law to be posited in *jus civile*. So, even at the outset, natural law theories differed with regard to the disciplinary range of the concept – some dealt with natural law as a moral theory, others as a legal theory.

Later on, the disputes went even further. Alongside its importance as an element of Roman law, natural law began to appear in the works of some early Christian thinkers, such as Clement of Alexandria and Augustine, in a reformulation of Stoic natural order. This opened the way for a conception of natural order within a monotheistic framework, and hence for the entrance of natural law into theology. The Middle Ages presented several different facets to natural law – either as an element determinative of valid positive law inside the influence of Roman law; or as a theological explanation of God's ordinances to men; or as a mixture of both in the canonists' earlier determinations of valid Church law. Thomas Aquinas, for instance, probably ended up providing the most elaborate medieval natural law theory, by articulating in it the theological with the metaphysical and the juridical, the theoretical with the practical, the moral with the political. The cosmological perspective of natural law provided by the early Stoic view was at this point replaced by an entire theological perspective stretching beyond morality and law.

With the Renaissance and early modernity, natural law became even more elastic due to several changes taking place. Firstly, teleological conceptions of Nature supported by Aristotelian premises and theological creationism began to fade away in favour of mathematical and mechanistic views, which entailed that natural science could no longer simply find its justification in theology, but rather in a demonstrable

method. Secondly, insofar as theological foundations became insufficient for theoretical knowledge, they also became insufficient for practical knowledge, which meant that morality, law, and politics also needed to find their justification in a demonstrable method – they had to be rational rather than just theologically volitional, that is, epistemologically centred on an intellectual subject rather than on a theological divinity. Thirdly, religious conflict broke out throughout Europe, implying the necessity for the supporters of a universal morality to construct a moral groundwork that was common to all the dissenting religious movements – and that eventually entailed developing a moral philosophy that was independent of religious faith. All these changes produced the need to find a common natural ground for political life: a common human (rational) nature. Natural law's conceptual framework provided exactly that, even though in the Catholic context some authors such as Francisco Suarez and Fernando Vasquez talked about it still inside Aristotle's and Aquinas's shell.

Hence, the advent of modern approaches to natural law shifted its range once again – the main perspective was no longer cosmological nor theological but rather individualistic. Moreover, its interdisciplinary character was once more put to the test: natural law's fault-lines were simultaneously philosophical, moral, theological, metaphysical, political, scientific, and legal. And natural law's elasticity was also historically relative, since these fault-lines varied profoundly from place to place and throughout the following centuries.

This makes it difficult to simply assert the existence of a natural law tradition. Even the Protestant modern natural law theorists from the 17th and 18th centuries hardly form what could be termed undoubtedly a tradition, for two reasons: firstly, because they differ in the contents of natural law as a moral theory, and secondly (and perhaps more importantly), because they have different conceptions of Nature underlying their natural law theories. This produces tensions and problems between the different uses of natural law, rather than a conceptual coherence.⁴

Furthermore, this brief historical survey shows how natural law seems to be a large conceptual umbrella under which many different theories and standpoints fall. It can cover either a set of deontological statements conformed with a pre-established model of natural order (pre-established by a transcendent God or by demonstrative reason), or commandments imposing an idea of justice validating legal and political orders, or a legal or moral projection of values within modern contractarianism, or simply any theoretical construction of a 'law' whose 'naturalness' has enough substance to consider it a 'natural law theory'.

However, as Norberto Bobbio rightly put it (Bobbio and Bovero, 1979, 15), when today's scholars mention natural law, they tend to refer to the rebirth, development and diffusion of a classical and medieval conceptual framework that took place in Protestant Europe during the 17th and 18th centuries. On the one hand, the fact that there is no coherent usage of this framework even during this period means there is no tradition in the sense of a unified theoretical school of thought. But on the other hand, the fact that there is a specific conceptual framework is exactly what justifies the existence of common elements in those theories: the framework establishes a sort of formal tradition of natural law.

The recourse to a modern conception of natural law, despite its elasticity, always implies the attempt to account for a foundation of a given realm (whether morality, politics, or even metaphysics) by means of juridical concepts derived from classical Roman law, such as law, obligation, right, contract, and property. Consequently, one can say there is a natural law tradition, enclosed by a deontological conceptual framework. Insofar as this conceptual framework is shared in a multi-religious context, it is wider than the mere confessional separation between Protestant natural law theories and Catholic natural law theories – it is common to all. But because the actual contents of this formal framework vary immensely, commentators often differ on the inclusion or exclusion of some philosophers in the natural law tradition, precisely because they regard the latter as a specific coherent body of doctrine. This helps explain why Spinoza is considered by some to be a natural law theorist and by others a prelude to legal positivism.⁵

Spinoza as a natural lawyer

With regard to the implication that Spinoza belongs to a natural law tradition when he reconstructs it, what matters the most is not so much his usage of juridical and deontological concepts associated with classical Roman law, but rather the full meaning of the association he performs between law and Nature. When Spinoza talks about law, this reference cannot simply be interpreted in the general context of traditional juridical concepts. Instead, it must be interpreted primarily in the general context of his overwhelming conception of Nature.

Philosophy is for him the dynamics of human understanding within reality's causal productivity – it is a systematic thought focusing continuously on what is and exists inside an infinite and perfect whole. This whole he calls Nature. Hence, a study of any given concept with a philosophical dimension will always be a quest for what is natural in it

or for determining how much naturalness it actually expresses, regardless of the scientific discipline in which that concept is inserted, since all knowledge is then knowledge of Nature. It is not possible to disconnect the search for what is real in any given philosophical concept (such as the law, for instance) from an ontology of Nature or a systematic metaphysics.

Spinoza is concerned with providing a notion of law explicitly associated with his conception of Nature mostly in his political tracts. In the *TTP*, when the book becomes more about politics than about scriptural theology, natural law is said to be 'the beginning' and functions as the explanatory groundwork for politics; in the *Ethics*, natural law stands only explicitly where politics appears, in part IV, and it is never really important in the ontology of part I, in the physics and the psychology of part II, in the anthropology of part III, or in the ethics of part V; in the *TP*, natural law is the main subject matter of the chapter opening up the philosophical development of what politics actually is, which means it is a fundamental notion of a *political* treatise and not so much of a *legal*, *metaphysical* or *moral* treatise. From this perspective, it might seem that Spinoza's natural law concerns only his political thought. So, where should one focus when studying Spinoza's natural law? On his systematic metaphysics or on his political thought?

This disciplinary indeterminacy of Spinoza's conception of natural law follows from the similar methodological indeterminacy inside the philosophical system that Spinoza's political thought suffers from nowadays in Spinoza scholarship. Until the early 20th century, Spinoza's political thought was generally regarded as a mere democratic version of Hobbesian politics, until authors such as Gioele Solari (1949) and Leo Strauss (1997) endeavoured to bring down the curtain on the separation between Spinoza's political thought and his ontology of Nature. The subsequent reaction led Spinoza's political thought so far from Hobbesian philosophy that it actually fused it with his ontology of Nature – whilst his political tracts were previously seen as mere amendments to Hobbes's, now they were diluted into the pure ontology of the *Ethics*' first parts (Curley, 1988, pp. 4–6). Once the dust was settled after this shift, it was possible to discover in Spinoza's philosophy the presence of an original political line of thought, especially due to French commentators in the 1960s influenced by Louis Althusser's studies. The *TTP*, some portions of part IV of the *Ethics*, and the *TP* were then considered actual relevant political texts rather than mere derivations making explicit what was already implicit in the metaphysical texts. Such a refocusing on Spinoza's political texts, on the one hand, allowed his

philosophy to be viewed as one containing an original political dimension in the history of modern political thought, and on the other hand, made it impossible to approach such a political thought without the recourse to his metaphysics.

This new relevance attributed to Spinoza's political texts did not entirely solve his political thought's disciplinary indeterminacy among commentators. In fact, some took the exact opposite road to those diluting Spinoza's political thought into his metaphysics: they chose instead to claim that Spinoza's metaphysics and ontology were diluted into his political thought. Thus, if Spinoza's God were understood less as a productive immanence and more as a demolition of transcendence, it would be a mere metaphysical instrument to politically subvert theocracy's God; if Spinoza's Nature were understood less as an overall necessitarian inclusion of being and existence and more as a demolition of the creational idea of causality, it would be a mere metaphysical instrument to politically subvert the God of the revealed religions; and if Spinoza's notion of the soul were understood less as the body's idea in action with an expressive eternity and more as a personal identity perishable with the body, it would be a mere metaphysical instrument to politically subvert the post mortem framework of rewards and punishments legitimizing theologians (Stewart, 2006, pp. 156–182).

Both these extremes that either undervalue or overvalue Spinoza's political thought seem to depend upon some misleading ideas. Those diluting Spinoza's political thought with his metaphysics do not seem to understand how his thinking on politics actually resorts to multi-disciplinary concepts, such as immanence and necessary causality, for instance, in order to apply them to politics as fundamental pillars overcoming the gap between the realm of metaphysics and the practical. If one is to consider that Spinoza's political thought is primarily and foremost in his metaphysical texts, then not only are his political tracts deemed almost unnecessary, but also the road is made clear for reducing that political thought to the mere creative ability of commentators and interpreters – in this case, there is no actual original political thought, but rather only metaphysics applied to politics. But if one considers that there is some original political thought to be found primarily and foremost in his political texts, which in turn are able to manipulate and develop certain concepts established in the metaphysical texts, then politics becomes one important element in an interconnected system of philosophy – a system that is not partitioned into several isolated shelves, but one in which several concepts are interchanged from scientific discipline to scientific discipline.