

Rights as an Expression of Republican Freedom. Spinoza on Right and Power

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By striking contrast with many forms of modern liberalism and libertarianism, the republican political tradition does not start from the assumption that individual humans are the bearers of moral rights, rights that other individuals and states are in some way bound to respect. Rather, republican theorists begin from the notion of freedom as non-domination, and ask themselves how a society can create a way of life in which individuals are not subject to the arbitrary wills of others. To put the point another way, they ask themselves what rights individuals need to possess in order to realise the goal of living freely. But these rights are instrumental, and are created within political society. Instead of functioning as an independent set of moral requirements by which individuals and political communities are bound, they flow from a conception of freedom that is also not a prior moral entitlement, and not in that sense a right. Needless to say, republicans are convinced that it is a good and desirable thing to live freely; but they do not agree that one is independently entitled to do so. Like the more specific rights on which it depends, the capacity to live freely can only become a right within a republic, where individuals are provided with adequate protection against domination.

This contrast between republican and rights-based approaches is perhaps clearest in the strand of republican thought developed in the Italian city republics and culminating in Machiavelli's *Discorsi*. Here, even the terminology of *diritti* is absent. Assuming that a free life is a good thing, Machiavelli asks how certain distributions of powers to act can generate the capacity to live freely. The contrast is less clear, however, in two later strands of republican theory that accompanied the republican political experiments in England and Holland during the seventeenth century. Both these traditions make use of the language of rights, though they employ it in different ways. The first is exemplified by the English author, Algernon Sidney, who claims, in his *Discourses on Government* published in the 1698, that our entitlement to live freely is guaranteed by an antecedent natural right to liberty, itself backed up by a moral law decreed by god or nature. Broadly speaking, a notion of divinely ordained natural right is here fused with a republican conception of freedom, so that both play a part in justifying arrangements that protect us from domination. One justification for

civil laws is that they provide us with something we value, namely the ability to live as free persons; another is that we have a God-given natural right to live freely. Tyrannies therefore not only deprive us of a benefit, but also violate the law of nature decreed by God.

A second way of accommodating rights within republican discourse, and the one I shall concentrate on, makes no concession to natural law conceived as a set of divine decrees, and stands apart from the historical process of employing natural rights to shore up republican liberty. Instead, it appeals to a naturalistic conception of rights as powers to act, and portrays the project of realizing freedom as a matter of redistributing and creating rights that enable us to live freely. From a republican point of view this seems a promising stance, and its most wholehearted early-modern exponent is, I think, Spinoza, who developed and defended it in Holland, in his *Theologico-Political Treatise* of 1670.

Of these two approaches, the one employed by Sidney was undoubtedly the more insurgent; the eighteenth-century abounds in theorists who are inspired by the republican idea of freedom but also appeal to divinely ordained individual rights. By contrast, it is arguable that Spinoza was the last defender of his approach, which was eventually overtaken by liberalism, and has become unfamiliar and even alien to our ears. We no longer seem to have a use for the idea that rights are simply powers to act, and usually reserve the term for claims that we take to possess some sort of value. From a republican point of view, however, there is something valiant about Spinoza's refusal to compromise with the natural law tradition, whether in politics or metaphysics. So rather than dismissing or ignoring his position, as many commentators have tended to do, I am going to examine it. I shall start by briefly summarising it. I shall then go on to consider whether it can be defended against four hefty objections. I shall end with some brief speculations about why Spinoza's position lost out to a more eclectic form of republicanism that incorporates a familiar and moralized conception of rights.

In nature, Spinoza tells us individual things strive to maintain themselves, and manifest this striving or *conatus* by exercising the powers they possess. When two stones collide, each maintains itself by exercising its power not to be crushed; or when a woman is thirsty she exercises her power to maintain herself by drinking a glass of water. In the same fashion, as a Dutch proverb illustrated in an engraving by Pieter Breughel has it, big fish maintain themselves by eating little fish; and as

Spinoza now adds, each of these individuals, whether, stone, woman or fish, does what it does by the right of nature or by right. (III/189).¹ If we now apply this doctrine to the case of human beings in a state of nature where there is no government and no law, we find that each person exercises their power to maintain themselves by right, unbound by any obligation or constraint. Individuals are not bound to respect one another. Nor are they bound, as Spinoza emphasizes, ‘to live according to the laws of a sound mind, any more than a cat is bound to live according to the laws of a lion’s nature’ (III/190). Like a lion or a fish, a human being can rightfully do anything that lies within their power, whether it is wise or foolish, sane or deranged. (III/189-90).

This minimalist conception of what it is to act rightfully in the state of nature may seem a deeply unpromising basis on which to build an account of rights as they operate within a political community. But Spinoza insists that it will serve. Within the state, as much as in the state of nature, he claims, an individual subject’s right extends as far as their power to act. Furthermore, the same is true of a sovereign or ruling body. For example, ‘the magistrate of a town has only as much right over his citizens as his power exceeds their power — as happens everywhere in nature.’² So what distinguishes political society from the state of nature is not that a new conception of right comes into existence when the state is formed, but rather that some agents’ existing rights or powers to act are blocked off, others are redistributed, and new rights are created. Within the state, a sovereign body acquires the power, and thus the right, to destroy or diminish rights that existed in the state of nature, by preventing or dissuading agents from acting in certain ways. Equally, it has the power to create new rights by giving itself and its subjects powers they didn’t possess before. It remains the case that agents have the right to do anything that it is in their power to do, but what they are able to do, and thus what they have a right to do, has changed.

People who have experienced the gap between the rights formally accorded to human beings in contemporary charters and legislation and the more limited benefits that many of these rights in fact deliver may find that this view has certain attractions. We are all too familiar with the difficulty of devising rights that actually generate the powers they are intended to create, as when laws against rape founder because the

¹ Pieter Breughel the Elder. Signed preliminary drawing 1557.

² Spinoza, Letter to Jarig Jelles, 2nd June 1674. Letter 50, IV 238/9.

penalties of testifying against rapists are too burdensome, or when positing a right to food becomes nothing short of a bad joke. Civil rights are sometimes little more than formal entitlements, and for many people the same can be said of human rights, for example the right not to be tortured or the right to healthcare. One of the strengths of the view that rights are powers to act is that it does not rest content with this state of affairs. Rights, it suggests, are not merely entitlements. They are practical powers and a measure of what we are actually able to do. To have a right is to possess a realisable power to act in a particular way. If we take this notion seriously, ensuring that the citizens of a republic are free will be a matter of creating a distribution of rights or powers to act that actually enables each of them to act in accordance with their own will, undominated by the arbitrary will of anyone else. Moreover, insofar as that power is lacking, so too is the right. An advantage of Spinoza's view is therefore that it draws on the notion of rightful action to explain how freedom can and must be an attainable, practical power. At the same time, however, the view is open to a string of objections that threaten to undermine it. To vindicate his position, Spinoza must confront and answer them.

A first objection derives from the fact that we usually think of rights as stable claims; but, according to the view Spinoza advocates, they fluctuate with our powers. (In some parts of the world, for example, most women have a right or power to get an abortion, though in others they do not. Even in the former jurisdictions, a woman who is reasonably robust may have that right or power, while one who is terribly depressed and isolated may not.) The worry is that this variability deprives rights of their value. To live freely in the manner that Spinoza defends, we need to possess stable rights on which we can rely. But if our rights alter with our powers, from day to day and year to year, stability is not a feature they can possess.

There are, I think, two ways to respond to this worry on Spinoza's behalf. First, conceiving of rights as powers to act draws our attention to an important aspect of what is involved in the project of creating free ways of life. In order to be free from domination, people need to have a wide range of reasonably stable powers to act. And to make our powers or rights serve the purpose of guaranteeing freedom, we have to find ways of stabilizing them. Rather than assuming in advance that rights are stable, or that they ought to be so, we need to consider how to make this true. We need to alter the powers that we possess, replacing unstable by more stable powers, and as Spinoza's reflections on ancient and modern republics reveal, this will be an

extremely complex process. To return to the initial objection, the lack of stability that characterizes many of our rights or powers to act is not so much a criticism as a statement of fact and a political challenge.

We also need to remember, however, that stabilizing our rights is not invariably advantageous. To be sure, the overall goal of a republic is to give all citizens a secure right to live freely. But the security of the particular powers that constitute this right should be judged against this aim, and when rights are measured in these terms some may turn out to be *too* stable. If freedom ultimately consists in being able to live according to one's own will insofar as this is compatible with the common good, then freedom itself will be a changing force. When previously-accepted forms of domination come to be recognized for what they are, existing ways of life will need to change. Some hitherto secure powers will need to give way in the face of an expanded conception of what liberty requires. If, then, the stability of our rights is not invariably a good thing, the fluidity of Spinoza's powers to act may not always be a disadvantage.

A second criticism of Spinoza's conception of a right focuses on the claim that it deprives rights of any secure location. We tend to assume that rights are primarily vested in individuals, but if a right is viewed as a power to act that in turn depends on the powers or rights of many other agents, its location becomes less clear. Perhaps 'your' right to criticize your employer, supported as it is by the law, by the solidarity of your colleagues and by your friends who buoy you up in moments of discouragement, is really 'our' right or power, where the question of exactly who 'we' are remains to be addressed. One of the great strengths of Spinoza's analysis is I think its acknowledgment of the interdependence of human beings, and thus of political actors. As he explains in the *Ethics*, individuals can only survive with the help of external things of many kinds, human and otherwise; and as he stresses in the *TTP*, there can be no recognizably human way of life without a division of labour and many forms of co-operation. While some rights or powers to act arguably belong to us as individuals (perhaps my current power to raise my arm is one of these), many of the rights we value only exist within networks of co-ordinated powers, embracing many individuals. Once we acknowledge this, we shall be better able to see that locating powers to act in individuals is a sort of shorthand, a convenient way of trying to sum up a complex process. Rather than resisting the recognition of our mutual dependence, as many rights theorists do, we should welcome it. Rather than

assuming that rights or powers to act are properties of individuals, we should allow ourselves to appreciate and take into account the multitude of conditions on which they depend.

Spinoza's receptivity to the many causes that shape what we are and determine what we can do opens up the possibility of a broad investigation of the conditions of freedom. To endow people with rights or powers to act that will strengthen their ability to resist domination and thus enhance their liberty, one must of course attend to the design of political and civil institutions. As the TTP explains, the Hebrew Republic was destroyed by a flawed division of theologico-political authority, instituted by Moses just before he died. However, because the effectiveness of institutions depends on the attitudes and emotional dispositions of the people who run them, institutional design is not enough. As well as having the institutional power or right to act in certain ways, officials need the power to exercise their roles in a humane and effective fashion. They need, for example, to be disposed to attend to the demands of claimants, to interpret their claims with some sympathy and imagination, and to find ways of realizing them. Here Spinoza's insistence that our rights or powers to act depend on, and vary with, the condition of our bodies, is particularly illuminating. To take a simple case, an official with the flu may be unable to think straight, and thus be unable to exercise the powers that her job expects of her. When ill health is endemic in a society, this will have a bearing on the extent to which whole classes of officials are able to exercise their powers, and simultaneously on the extent to which whole classes of claimants are subject to arbitrary power.

This much will probably seem obvious; but Spinoza's analysis of our passions and their role in motivating us to act also invites us to explore in greater detail the ways in which our bodily relations shape and limit our rights. If an official cannot encounter a claimant without feeling fear, contempt or disgust, the *Ethics* implies, her power to act on the claimant's behalf may be reduced, as institutionalized racism and sexism illustrate. Or if a claimant inspires a lack of confidence, so that the official is unable to regard her as a credible witness, the same sort of alteration will occur. This type of responsiveness is, moreover, mutual, and also afflicts the claimant. A claimant who is afraid of officials and expresses her anxiety in her posture or slowness of speech, or a woman who hates officials and unconsciously expresses her contempt for them, runs the risk of being dismissed as incompetent or undeserving. Her right to

whatever it is that she is claiming will be less secure than the right of an individual whose bodily presentation arouses benevolence or sympathy in the official they are dealing with. To make the rights of a class of claimants more *equally* secure, a community has to find ways of minimizing or compensating for these variations. In roughest outline, it needs to find ways of allowing claimants to strengthen their rights by helping them to acquire the power to circumnavigate the embodied obstacles that stand in the way of their effective powers to act.

Where rights are weak and not securely realizable, there is perhaps a temptation to think that this is because agents are simply failing to exercise powers that they already possess. For example, one might think, a prejudiced official probably already possesses the power and right to act fairly if she chooses, just as a frightened claimant already has the power or right to look the official in the eye. There is consequently nothing more to be done. The relevant rights or powers are already in place and it is up to agents to exercise them properly. But Spinoza regards this as a mistake. As his account of the passions indicates, the way that another body affects us at a given phase of our lives is not something we can change on the spot – though we may be able to learn to change it. If I am thoroughly prejudiced, I do not currently have the power or right to act in an unprejudiced way. If I am lazy, I do not at this moment have the power to bestir myself. Before I can do so, my powers to act will have to change, and this is partly a matter of changing the way that my body interacts with others. In sum, then, we need to learn to see our rights as created by the relations between many embodied individuals, human and otherwise, and manifested in many powers to act. The objection that they are not securely located in a single human being is well taken.

A third criticism of Spinoza's analysis of rights starts from the observation that, if rights are powers to act, they will come in degrees. Not only will they not be firmly located in individuals. They will also be powers that networks of agents may create more or less fully, and which can consequently be more or less effectively and securely realized. While this may sound odd, I think we're now in a position to see that this is an implication Spinoza will accept. Building freedom and the powers or rights on which it depends is a complex social and historical process, and can only be achieved by stages. Moreover, the fact that a right to worship freely, say, is not completely secure and is still limited by certain forms of domination, does not force us to say that it doesn't exist at all. As a complex set of powers to act, many of which

may come in degrees, this right as a whole can be stronger or weaker, more or less fully realized.

To summarise the argument so far: in the TTP we find Spinoza addressing in its full complexity the question of whether a republican theorist, committed to the view that the primary goal of political life is freedom conceived as the absence of slavery or domination, has any need for the notion of a right. As we have seen, his answer is designed to draw us away from many of the assumptions that run through the natural law tradition. Rather than accepting that our rights are stable, located in individuals, and absolute, we should be prepared to accept that the only rights we possess, our powers to act, are fluctuating, collective and come in degrees. The overriding advantage of this outlook is that it directs our attention to the practical business of politics – to the project of creating rights that will secure our freedom.

Whether or not this argument is compelling, a yet more challenging objection remains to be addressed. Spinoza's view faces what is commonly viewed as the overwhelming objection that, if rights are simply powers to act, they have no evaluative content and, more specifically, no moral content. On the one hand our rights include powers to act that we would normally regard as far too trivial to describe as rights, such as the powers to walk down the street or put a bowl of eggs on the table. On the other hand, they include powers to harm others that we would normally regard as violations of our rights. On the Spinozist view, a man who has a power to rape turns out to have a right to do so. But surely this can't be where we want to end up.

For many of us, the power to walk down the street is one we are able to take for granted, and since it's not under threat, there may seem little point in describing it as a right. It's just one of a multitude of things we're free to do, one of a multitude of cases in which we are able to act in accordance with our own wills. Nevertheless, characterizing it as a right reminds us of some of the points we've just explored. Although we often fail to notice it, our power to walk down the street has to be created and maintained, and is to this extent part of a wider network of powers. (This includes the powers of road makers and road menders, traffic police, suppliers of walking sticks, and so on.) The right is only as stable as this network makes it, and the network, like the right, comes in degrees. For a person with severe arthritis or a victim of sexual slavery, the right may not be a right at all. For some streets and some times of night, it may not be a secure power for any of us. Trying to separate valuable

rights from trivial powers to act is not straightforward, and Spinoza's conception draws attention to this fact.

The objection that the Spinozist view licenses a right to rape is, however, more challenging. As the example shows, in defining a right simply as a power to act Spinoza rejects the common assumption that, in order to acquire the status of a right, a power to act must be directly or indirectly of moral value. Someone who accepts this assumption, and also accepts the uncontroversial premise that rape is morally wrong, will conclude that we have no grounds for characterising the power to rape as a right. And yet this is precisely what Spinoza does. Within his analysis there is no means of excluding powers that are of no moral value from the realm of rights. Moreover, and as a result, he is not in a position to adopt the familiar view that rights are matched by obligations. The fact that a man has a power to act does not in itself oblige others to allow him to exercise his power. For example, the fact that he has the power or right to rape does not oblige others to permit or help him.

There are, I think, two lines of reply to this objection, one deeper than the other. The first focuses on the assumption that rights are morally valuable, and asks whether Spinoza is alone in espousing a position that allows it to be contravened. Do rights as they are standardly construed really meet this requirement? It is arguable that they do not. Rights are at their strongest, for example, in the arena of property, where they're used to uphold vastly inequalitarian arrangements that harm many people. So although Spinoza's view has distasteful implications, it is not alone in countenancing rights that are harmful. Furthermore, it has the advantage of distancing us from the presupposition that rights claims are intrinsically morally authoritative. If we conceive rights in Spinozist terms as powers to act, we have to ask ourselves which rights we want to protect and why. We have to face the fact, for example, that in some circumstances men do have a right, in the sense of a power, to rape. If we want to destroy that right we have to generate powers to act that will rule it out.

While this argument has a certain rhetorical force, there is a vital issue that it fails to address. Although Spinoza applies the notion of a right in a way that encompasses destructive and harmful powers to act, he nevertheless needs to be able to distinguish rights that are valuable from those that are destructive. For him, the difference does not lie in a distinction between rights and powers; nor does it lie in antecedent moral norms decreed by God. Instead, it arises from within political

society, as communities generate shared conceptions of the good. So although rights or powers to act may be good or bad, there is a means to determine which are which, and thus to criticize some rights while praising others.

According to Spinoza, this process of generating moral norms is rooted in the disposition of human individuals to act on their desires, either to realise states of affairs that they think will bring joys or satisfactions, or to avoid states of affairs that they think will bring dissatisfaction or sadness. In acting, we do what we can to avoid passions such as grief, fear or despair, and try to cultivate broadly pleasurable affects such as love, hope or self-esteem. This deep-seated pattern of motivation, itself a manifestation of our *conatus*, brings with it a grasp of a distinction between good and evil. As Spinoza puts it, ‘we judge something to be good because we strive for it, will it, want it.’³ To want or strive for something is to view it as good, and to want or strive to avoid something is to view it as bad. So in pursuing states of affairs that answer to our desire for satisfaction of various kinds, we are already operating with a conception of the difference between good and evil, and are striving to attain ends that are – by our own lights – good. The conceptions of good and evil with which we work are not, of course, exclusively moral ones; individuals may desire things for their novelty, sublimity or sensuousness, and when they do so they will call them good. But the habit of evaluating states of affairs makes space for moral assessments, as for example when an individual strives to bring about a state of affairs on the grounds that it would maximize overall utility, or on the grounds that it would be virtuous. In this respect, our moral judgments are strictly comparable to our other evaluative judgments, and both are the mirror image of our desires.

In the state of nature, Spinoza argues, the evaluations we make have very little purchase. Individuals decide for themselves what is good or evil and have only contingently shared standards against which to measure their desires and debate their disagreements. However, the situation is different in the state, where common standards can emerge. In legislating and enforcing laws, sovereign and people determine for the community as a whole what range of actions is generally regarded

³ ‘It is clear that we neither strive for, nor will, neither want nor desire anything because we judge it to be good; on the contrary, we judge something to be good because we strive for it, will it want it or desire it.’ *Constat itaque ex his omnibus, nihil nos conari, velle, appetere neque cupere, quia id bonum esse iudicamus; sed contra nos propterea aliquid bonum esse iudicare, quia id conamur, volumus, appetimus atque cupimus* (E III P9s).

as desirable and thus good, together with a range that is regarded as bad. And once these common standards exist, they in turn become the subject of debate, struggle and investigation, as a polity creates ways of life that answer to its developing conception of its common good.

What effect does this transformation have on agents' rights or powers? In the first place, it gives both a sovereign and its subjects new rights. For example, the sovereign acquires the right or power to legitimate or condemn actions in the light of common norms; and as Spinoza points out, the more widely the sovereign's judgments are shared and accepted, the greater is its power or right. Equally, individual subjects acquire the power to appeal to common or public norms in order to assess the powers or rights of specific agents, including the sovereign. Finally, both sovereign and subjects acquire some right to contest public norms, for instance by arguing that they fail to realize the goods that they are designed to provide, or that there are some desires – and thus goods – that they neglect. Political communities therefore generate conditions in which it is possible to judge actions in the light of shared normative standards and endow a class of rights or powers to act with value. A community will create conditions, for example, in which it is no longer up to the rapist or his victim to judge whether the power he exercises is good or bad. Rather, the rapist's power is evaluated in the light of common standards; and in a republic this will involve considering whether the power contributes to or undermines a way of life in which people are not subject to the arbitrary wills of others.

It is therefore within the state that it becomes possible to distinguish rights that are morally valuable from ones that are morally disreputable. Moral norms concerning what is good for us as members of a community emerge from our social and political practices, and confer specific rights or powers to act. Once a set of standard is in place, a community will use it to reinforce rights that it regards as beneficial and obstruct those it views as damaging, by creating appropriate networks of rights or powers.

Attractive as this naturalistic analysis of the basis of morality may be, the authority of the norms that are used to assess rights or powers remains open to question. Whereas natural rights theorists tend to ground the normative force of rights on some external source such as God or the law of nature, Spinoza's view seems to be a purely conventionalist one. A monarchy, for example, may arrive at one set of norms and a republic at another. Rights that are held to be valuable in the

first may be regarded as destructive in the second. And while each moral outlook may be the subject of disagreement and debate, there is so far nothing deeper than social norms to vindicate either of them.

To some extent, Spinoza embraces this view as an accurate reflection of our ordinary condition. In attempting to work out what values we should cherish, we are indeed thrown on our collective social resources, whatever they may be. The ends and political arrangements that a particular community takes to be good will reflect its history and experience, its knowledge and habits, and will to this extent be subjective. However, Spinoza is by no means committed to the view that all conceptions of the good life are equally authoritative. On the contrary, he contends that there is truth of the matter about what human beings are like, and that, by using our capacity for reasoning, we can come to understand what it is. Equipped with this rational knowledge or understanding, we put ourselves in a position to judge what kind of life is ultimately most satisfying, and to work out how best to achieve it.

The distinction between valuable and destructive rights can therefore be made at two levels. Within particular communities, rights can be measured against local norms. In addition, rights or powers to act can be judged by the standards of reason, and thus by appeal to objective truths. In some cases, the claim that freedom-producing rights are valuable may be grounded on little more than habit; but when it is made by people who fully understand the benefits of freedom and the deprivations that arise when it is not protected, it expresses a truth that cannot be gainsaid. Freedom really is valuable, and when we strive for it, we strive for a goal that is objectively good.

The processes I have been outlining transform rights from the bare powers that exist in the state of nature into something more familiar: into powers to act that are sometimes morally right or wrong, that are sometimes secure, that sometimes take the form of claims, and that are sometimes matched by obligations. But although this makes Spinoza's account of rights more recognizable, it retains a distinctive feature that needs to be kept in mind. If a right is a power to act, one cannot possess a right without possessing the power to exercise it. One cannot, for instance, be said to possess a right to walk on the beach unless one actually has the power to do so. So a right, as Spinoza conceives the matter, is not a protestation about how things ought to be. ('I have a right to walk on the beach and you are wrongly stopping me from exercising it.') Rather, it marks a fact about how things are – a fact about the powers

that actually exist and the actions that agents are actually able to perform. Instead of setting out in advance what liberties we ought to have, the language of rights indicates how far we have got in the struggle to create conditions in which we can live freely.

I have tried to show that Spinoza defends a coherent view of a right that is consonant with the assumptions of a classical form of republicanism, consonant in particular with the assumption that the goal of political life is to sustain conditions in which people can live freely. Keeping this end in view, Spinoza suggests, republics endow rights or powers to act with value when, and insofar as, they regard them as powers that people need to be able to exercise in order to uphold their freedom. The normative status of a right is therefore not given in advance, but measured by its power to contribute to a form of liberty that is, as Spinoza says, the very point of the state. Coming as it does from Spinoza's pen, we should perhaps not be surprised that this view fell on deaf ears. But there is a story to be told about why it was rejected, and how it came to be marginalized.