

剑桥政治思想史原著系列（影印本）

CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT

# 法哲学原理

## *Elements of the Philosophy of Right*

Hegel

黑格尔

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Edited by

ALLEN W. WOOD

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中国政法大学出版社

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*Elements of the  
Philosophy of Right*

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# 剑桥政治思想史原著系列

## 丛书编辑

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在政治理论领域，“剑桥政治思想史原著系列”作为主要的学生教科丛书，如今已牢固确立了其地位。本丛书旨在使学生能够获得从古希腊到 20 世纪初期西方政治思想史方面所有最为重要的原著。它囊括了所有著名的经典原著，但与此同时，它又扩展了传统的评价尺度；以便能够纳入范围广泛、不那么出名的作品。而在此之前，这些作品中有许多从未有过现代英文版本可资利用。只要可能，所选原著都会以完整而不删节的形式出版，其中的译作则是专门为本丛书的目的而安排。每一本书都有一个评论性的导言，加上历史年表、生平梗概、进一步阅读指南，以及必要的词汇表和原文注解。本丛书的最终目的是，为西方政治思想的整个发展脉络提供一个清晰的轮廓。

本丛书已出版著作的书目，请查阅书末。

CAMBRIDGE TEXTS IN THE  
HISTORY OF POLITICAL THOUGHT

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## Editor's introduction

Hegel was born on 27 August 1770 in Stuttgart, in the south German state of Württemberg, son of a middle-class civil servant. His professional career, pursued entirely outside his home state, did not begin until he was over thirty, and was interrupted between 1806 and 1816. His eventual rise to prominence was meteoric: Hegel was offered a professorship at the University of Heidelberg in 1816, followed by an appointment two years later to the prestigious chair in philosophy at the University of Berlin which had had Fichte as its only previous occupant. Hegel occupied this position until his death from cholera on 14 November 1831. The influence of his philosophy began to decline even before his death, but its impact on Prussian academic life was perpetuated through the activity of some of his students, especially Johannes Schulze, who was Privy Councillor in charge of education from 1823 until the 1840s.<sup>1</sup>

Hegel's first lectures on right, ethics and the state were delivered in 1817, during his first autumn at Heidelberg. As his text he used the paragraphs on 'objective spirit' from his newly published *Encyclopaedia of the Philosophical Sciences* (1816) (EH §§ 400–452).<sup>2</sup> His second series of lectures came a year later in Berlin. He soon formed the intention of expanding his treatment of this part of the system in a longer text, which probably existed in draft well before his third series of lectures on right and the state were delivered in 1819–1820.

A fateful turn of political events in Prussia forced him to delay publication of this new work. Since the defeat of Prussia by Napoleon in 1806–1807, a reform movement within the government had been taking the country away from absolutism and toward constitutionalism.

After the defeat of Napoleon in 1815, this made Prussia an object of suspicion and alarm throughout the relatively less progressive continental states, especially Austria and Russia. In the summer of 1819, the cause of reform was decisively defeated by its opponents within the feudal nobility (see Preface, note 18). In September there was a conference of German states in Carlsbad. It imposed censorship on all academic publications and set forth guidelines for the removal of 'demagogues' from the universities. This resulted in the dismissal of several prominent academics, including Hegel's old personal enemy J. F. Fries, but also in the arrest of some of Hegel's own students and assistants (see Preface, notes 6, 8, 11, 12, 15, 18). In the light of the new situation, Hegel revised his textbook on right, composing a new preface in June, 1820. Published early in 1821, it was to be his last major work.

### Images of Hegel's political thought

From the beginning the *Philosophy of Right* was an object of controversy. The earliest reviews, even those written by men Hegel had counted among his friends, were almost uniformly negative.<sup>3</sup> Hegel's attack on Fries in the Preface was interpreted as showing unqualified approval of the academic repression. His declaration: 'What is rational is actual; and what is actual is rational' was read as bestowing an unqualified blessing on the political status quo (see Preface, note 22). Many could see nothing in Hegel's book except an attempt to ingratiate himself with the authorities. As Fries himself put it: 'Hegel's metaphysical mushroom has grown not in the gardens of science but on the dunghill of servility.'<sup>4</sup>

The earliest attacks on the *Philosophy of Right* viewed it solely in relation to the immediate political situation. Later critics in the liberal tradition followed their interpretation, but gave to the image of Hegel as conservative sycophant a broader philosophical significance.<sup>5</sup> Right-Hegelian interpretations of Hegel's political thought under Friedrich Wilhelm IV and German nationalist and statist interpretations during the Bismarck period tended only to confirm the idea that Hegel's political thought consorts well with the spirit of absolutism and the Prussian *Machtstaat*.<sup>6</sup> In the first half of our century the same image of Hegel naturally led critics to see him as a forerunner of German imperialism and National Socialism.<sup>7</sup> Together with the

thought that the roots of Marxism lie in Hegel's philosophy, this secured for Hegel a prominent if unenviable place in the popular demonology of totalitarianism.<sup>8</sup>

There were always those, however, who insisted that Hegel was fundamentally a theorist of the modern constitutional state, emphasizing in the state most of the same features which win the approval of Hegel's liberal critics. This was always the position of the Hegelian 'centre', including Hegel's own students and most direct nineteenth-century followers.<sup>9</sup> This more sympathetic tradition in Hegel scholarship has reasserted itself decisively since the middle of this century, to such an extent that there is now a virtual consensus among knowledgeable scholars that the earlier images of Hegel, as philosopher of the reactionary Prussian restoration and forerunner of modern totalitarianism, are simply wrong, whether they are viewed as accounts of Hegel's attitude toward Prussian politics or as broader philosophical interpretations of his theory of the state.<sup>10</sup>

### Hegel and the Prussian state

Hegel's political thought needs to be understood in relation to the institutions and issues of its own time. Yet this is something even Hegel's contemporaries themselves were often unable to do. The difficulty and obscurity of Hegel's writings posed problems for them, just as they have for subsequent readers. The Preface of the *Philosophy of Right*, with its immediate relation to events of the day, provided the earliest critics with an easy and obvious way of grasping, labelling, and categorizing its contents. From Hegel's attacks on Fries and his evident attempt to placate the censors, they inferred that he was an opponent of the Prussian reform movement, siding with the reaction's repressive policies toward intellectual life generally and the universities in particular. In the light of these conclusions, they judged (or prejudged) the political theory presented in the rest of the book. Had the critics studied the actual contents of the *Philosophy of Right* more closely, however, they could not have reconciled them with the idea that Hegel's defence of the state is an apology either for the conservative position or for the Prussian state as it existed in 1820.

In 1815, under the reform administration of Chancellor Hardenberg, King Friedrich Wilhelm III solemnly promised to give his people a written constitution. The political victory of the conservatives



in the summer of 1819 ensured that the promise would never be kept, and it was a firm tenet of the conservative position that it never should be kept, that it never should have been given in the first place. Yet earlier in the year both Hardenberg and the progressive Interior Minister Wilhelm von Humboldt drew up constitutional plans, providing for representative institutions, in the shape of a bicameral estates assembly. These plans are strikingly similar to the Estates as described by Hegel in PR §§ 298–314 (see § 300, note 1; § 303, note 1; § 312, note 1).

The Prussian officer corps and the higher levels of the civil service were open only to the hereditary nobility. Reformers under the administration of Chancellor Karl Freiherr vom Stein (1808–1810) had attempted without success to open them to the bourgeoisie. In Hegel's rational state, all citizens are eligible for military command and the civil service (PR § 271, note 2; § 277, note 1; § 291 and note 1). Hegel advocates public criminal trials and trial by jury, neither of which existed in Prussia during his lifetime (PR § 228 and note 1).

Hegel's rational state does strongly resemble Prussia, not as it ever was, but Prussia as it was to have become under the reform administrations of Stein and Hardenberg, if only they had been victorious. Where Hegel's state does resemble the Prussia of 1820, it provides for the liberalizing reforms which had been achieved between 1808 and 1819 (PR § 206 and note 1; § 219 and note 2; § 288 and note 1; § 289 and note 1).

Hegel was no radical, and certainly no subversive. In relation to the Prussian state of 1820 he represented the tendency toward moderate, liberalizing reform, in the spirit of Stein, Hardenberg, Humboldt and Altenstein (who had arranged for his appointment to his chair in Berlin). Hegel did not have to be ashamed of publishing his views (until the middle of 1819, most of them were even the official position of the monarch and his chief ministers). But they were diametrically opposed to the views of Prussian conservatives on some of the largest and most sensitive political issues of the day.

If Hegel was not a conservative, does that mean that he was a 'liberal'? It does mean that Hegel was a proponent (usually a cautious and moderate one) of many social and political policies and tendencies that we now recognize as part of the liberal tradition. But the term 'liberalism' normally connotes not only these policies, but also a deeper philosophical rationale for them, or rather a plurality of

rationales which to some degree share a common spirit and social vision. The vision is individualistic, conceiving society as nothing but the outcome of the actions and interactions of human individuals pursuing their individual ends. The spirit is one which tends to be suspicious of grand theories of human destiny or the good, preferring instead to protect individual rights and freedoms, and living by the faith that human progress is most likely if individuals are left to find their own way toward whatever they happen to conceive of as the good. In line with what has just been said, it is also a moralistic spirit, for which individual conscience, responsibility and decency are paramount values. The power of this vision and this spirit in modern society can perhaps best be measured by the fact that 'liberalism' in this sense is the common basis of both 'liberalism' and 'conservatism' as those terms are now used in everyday political parlance, and by the fact that liberalism's principles sound to most of us like platitudes, which no decent person could think of denying.

Hegel does not see liberalism in this sense as a foe, since he sees its standpoint as expressing something distinctive and valuable about the modern world. But he does regard its standpoint as limited, and for this reason potentially destructive of the very values it most wants to promote. He regards this standpoint as salvageable only when placed in the context of a larger vision, which measures the subjective goals of individuals by a larger objective and collective good, and assigns to moral values a determinate, limited place in the total scheme of things. In this sense, Hegel is a critic of liberalism, even its deepest and most troubling modern critic. This is what gives the greatest continuing interest to Hegel's ethical thought and social theory.

## Freedom

The *Philosophy of Right* is founded on an ethical theory which identifies the human good with the self-actualization of the human spirit. Hegel's name for the essence of this spirit is *freedom* (PR § 4). But Hegel does not mean by 'freedom' what most people mean by it. Most people, according to Hegel, think that freedom consists in *possibilities* of acting, but freedom is really a kind of *action*, namely one in which I am determined entirely through myself, and not at all by anything external (PR § 23). Even in the case of free action, Hegel thinks that most people identify it with 'arbitrariness' (*Willkür*), with doing

whatever we please (PR § 15,R) or with venting our particularity and idiosyncrasy (PR § 15A). Hegel regards this view as shallow and immature; he insists that we are free only when we overcome 'particularity' and act 'universally' or 'objectively', according to the 'concept' of the will (PR § 23).

Free action is action in which we deal with nothing that is external to our own objective nature. That does not mean that freedom consists in withdrawing from what is other than ourselves. On the contrary, Hegel insists that 'absence of dependence on an other is won not outside the other but in it, it attains actuality not by fleeing the other but by overcoming it' (EG § 382A). Thus Hegel describes freedom as 'being with oneself in an other', that is, actively relating to something other than oneself in such a way that this other becomes integrated into one's projects, completing and fulfilling them so that it counts as belonging to one's own action rather than standing over against it. This means that freedom is possible only to the extent that we act rationally, and in circumstances where the objects of our action are in harmony with our reason. The most spiritual of such objects is the social order in which we live: just as Hegel's treatment of individual human psychology falls under the heading of 'subjective spirit', so his treatment of the rational society, in the *Philosophy of Right*, constitutes the sphere of 'objective spirit' (EG § 385). Freedom is actual, therefore, only in a rational society whose institutions can be felt and known as rational by individuals who are 'with themselves' in those institutions.

Hegel's name for a rational system of social institutions is 'ethical life' (*Sittlichkeit*) (PR §§ 144–145). Corresponding to 'objective' ethical life (the system of rational institutions) is a 'subjective' ethical life, an individual character which disposes the individual to do what the institutions require (PR §§ 146–148). The ethical disposition is Hegel's answer to the Kantian separation of duty from inclination, and more generally to the moralistic psychology which supposes that unless we are moved by impartial reason to follow moral principles adopted from a universalistic standpoint, we will inevitably adopt the utterly selfish policy of maximizing our own interests. On the contrary, Hegel is convinced that the most potent, as well as the most admirable, human dispositions follow neither of these two patterns. A rational society is one where the demands of social life do not frustrate the needs of individuals, where duty fulfils individuality

rather than suppressing it. In such a society rational individuals can promote their self-interest to a satisfactory degree without having to maximize it, and they need not make great sacrifices in order to give priority to right and duty or to show concern for the good of others. Because our social life is in harmony with our individuality, the duties of ethical life do not limit our freedom but actualize it. When we become conscious of this, we come to be 'with ourselves' in our ethical duties. Such duties, Hegel insists, do not restrict us, but liberate us (PR § 149).

We might put the point by saying that for Hegel I am free when I 'identify' myself with the institutions of my community, feeling myself to be a part of them, and feeling them to be a part of me. But Hegel would deny that such feelings constitute freedom unless they are a 'certainty based on *truth*' (PR § 268). That is, the institutions of the community must *truly* harmonize the state's universal or collective interest with the true, objective good of individuals; and individuals must be *conscious* of this harmony. Of course there is no freedom at all in a society whose members 'identify' themselves with it only because they are victims of illusion, deception, or ideology.<sup>11</sup>

### Personhood and subjectivity

Liberals are usually proud of the fact that they mean by freedom what most people mean by it, not what Hegel means. They usually think freedom is the absence of obstacles to doing as we like, whether our choices are good or bad, rational or arbitrary. Confronted with Hegel's doctrines, they often think that his praise of freedom is a dangerous deception; they fear that he wants to restrict freedom as they mean it in the name of freedom as he means it. Such fears are largely unfounded. Hegel's ethical theory is not based on freedom in the ordinary sense, but it does not follow from this that Hegel's theory is hostile or even indifferent to freedom in the ordinary sense. On the contrary, Hegel thinks that in the modern world, people cannot be free in his sense unless social institutions provide considerable scope and protection for arbitrary freedom.

This is because Hegel thinks that, in the modern world, we are conscious of ourselves in new ways, and that we cannot be 'with ourselves' in social institutions unless they provide for the actualization of our self-image in these respects. First, we think of ourselves as

*persons*, indeterminate choosers, capable of abstracting from all our desires and qualities (PR § 5), and demanding an external sphere for the exercise of our arbitrary freedom (PR § 41). This sphere begins with the person's external body and extends to all the person's property (PR §§ 45–47). The category of 'abstract right' applies to such a sphere of arbitrary freedom. It is called 'abstract right' because in protecting the rights of persons we must abstract from the particular use they make of these rights, even from its bearing on the person's own interests (PR § 37). Abstract right is a variety of freedom in the Hegelian sense because it involves 'being with oneself' in the external objects which one owns. The rationality of the modern state requires that the abstract right of persons be safeguarded; this is the primary function of legal institutions (PR § 209,R).

Modern individuals not only regard themselves as arbitrarily free choosers, but they also see themselves as giving meaning to their lives through the particular choices they make. So regarded, individuals are *subjects* (PR §§ 105–106). Subjects derive what Hegel calls 'self-satisfaction' from their role in determining for themselves what will count as their own particular good or happiness (PR §§ 121–123). Their sense of self-worth is bound up with the fact that they are aware of leading a reflective life, shaped through their own deeds. Subjectivity is also the sphere of morality, in which individuals measure their choices by universal standards and reflect on their actions from the standpoint of conscience.

Hegel gives the name 'subjective freedom' to the variety of 'being with oneself in an other' in which the 'other' is the individual's own actions and choices. Modern individuals cannot be free in the Hegelian sense unless social institutions provide for subjective freedom in several ways. Modern ethical life must provide for individual self-satisfaction by enabling people to shape and actualize their own determinate individualities (PR § 187). Thus the state must respect my right as an individual self to direct my own life, and provide for this right in the form of its institutions (PR §§ 185R, 206R). It must also honour moral conscience (PR § 137R) and hold me responsible for my actions only in so far as they are the expression of my subjectivity (PR §§ 115–120). A state which fails to do these things is to that extent a state in which individuals cannot be free or 'with themselves'.

For modern individuals, Hegelian freedom cannot exist unless

there is room for freedom in the ordinary sense. Hegel wants to replace the ordinary concept of freedom with his concept not because he is opposed to freedom in the ordinary sense, but because he thinks that starting with his concept of freedom enables us to see *why* freedom in the ordinary sense is objectively a good thing for people to have. In that way, Hegel's view is not at odds with those who value freedom in the sense of the unhindered ability to do as we please. On the contrary, Hegel's ethical theory shows how their position can be justified.

At the same time, Hegel's view also proposes to tell us something about *when* freedom in the ordinary sense is objectively valuable, and when it is not. Like John Stuart Mill, Hegel thinks the ability to do as we please is good not in itself but because it is required for the achievement of other vital human goods. The chance to do as we please is valuable when it is necessary for or conducive to freedom in the Hegelian sense; otherwise, it may be worthless or even harmful. Hegel's view implies that freedom in the ordinary sense should be protected when it belongs to the rightful sphere of some person or when it is conducive to a subject's self-satisfaction or to the actualization of that subject's individuality. It also implies that in a case where doing as we please is not conducive to these goods, there is no reason to value such freedom at all.

Hegel does not believe that we can decide in the abstract and irrespective of a structured social context when freedom in the ordinary sense falls within our right and serves to actualize our individuality. He does name certain things which are central to our personality, and hence belong without exception to our inalienable and imprescriptible rights: the right to our own body and free status (PR § 57); the right to hold private property (PR §§ 45–49); and the right over one's own ethical life, religion, and conscience (PR § 66). But he does not agree with Kant that we should try to construct our social institutions so that they maximize the amount of personal freedom which everyone can enjoy according to a universal law.<sup>12</sup> Instead, Hegel thinks that the precise content of our right as persons and subjects depends on a system of rational institutions, apart from which we cannot even be sure what 'maximal personal freedom' might mean, much less determine how it might be achieved.

It is the function of positive law, for example, to make right determinate. Our rights as persons have validity only when they are expressed

in law. Conversely, however, Hegel holds that positive laws are obligatory only to the extent that they agree in content with what is in itself right (PR §§ 209–213). Although personal rights are not determinate except within a system of law, Hegel does think that some laws (e.g. those establishing slavery or forbidding persons to hold private property) are plainly unjust in the context of any system of law. In such cases, he agrees with the natural law tradition that those laws do not obligate us.

Hegel's liberal critics are in the habit of saying that he does not believe in founding a social order on the conception of individual rights. The element of truth in this assertion is that Hegel thinks personal right, apart from a developed system of ethical life, is an empty abstraction; he believes that a social order founded (as in liberal political theory) on such abstractions will be unable even to protect individual rights, much less to actualize the whole of concrete freedom. In fact, Hegel thinks that the greatest enemy of personal and subjective freedom is a 'mechanistic' conception of the state, which views the state solely as an instrument for the enforcement of abstract rights; for this sets the state up as an abstraction in opposition to individuals. In Fichte's theory, for example, Hegel sees the state as a police power whose only function is to supervise and regulate the actions of individuals through coercive force (NR 519/124). The only real guarantee of freedom is a well-constituted ethical life, which integrates the rights of persons and subjects into an organic system of customs and institutions providing individuals with concretely fulfilling lives.

Hegel is not an enemy of what liberals value in the name of freedom, but his agenda regarding freedom is not the liberal one. He believes there are limits to the state's legitimate power to interfere in the conduct of individuals, but he insists that these limits cannot be drawn precisely (PR § 234). This does not bother him because he does not share the liberals' fear that the state will inevitably trespass into the rightful territory of individual freedom unless we guard the boundaries jealously. On the contrary, Hegel maintains that the 'enormous strength' of the modern state lies in the fact that the state's 'substantive unity' rests on the principles of 'subjectivity' and 'personal particularity' (PR § 260). An inevitable tendency to violate these principles could belong only to a state which is inherently self-destructive, out to destroy the source of its own power.

From Hegel's point of view, a more serious threat to freedom in modern society is what he calls the 'principle of atomicity', the tendency in modern life for individuals to be only abstract persons and subjects, who fail to actualize their personality and subjectivity in a fulfilling social context. If people insist too stubbornly on their rights or withdraw too far into their subjectivity, Hegel believes that they become alienated from the common social life, without which nothing they do has any significance for them. This is a threat to people's freedom because it means that they cannot be 'with themselves' in their social life; it renders them powerless to make their lives their own. Where this is so, people's options, however vast and unhindered they may be, are all alike hollow and meaningless to them; wider choices only confront them with an emptiness more vast and appalling.

Hegel's primary aim in the *Philosophy of Right* is to show how personal right and subjective freedom can receive real content through the institutions of the modern state. In other words, it is to show us how the modern state is after all the actuality of concrete freedom (PR § 258). This state as Hegel describes it differs little from the state which liberal theories try to justify, but Hegel's state is not the same as theirs because his justification is different. Hegel's state is about different things, serves different human needs, sets itself different ends.

### Civil society

Human beings have not always known themselves as persons and subjects. These conceptions, according to Hegel, are historically quite recent, and are still geographically restricted. They are products of European culture, deriving from the tradition of Greek ethical life and Christian spirituality. But they did not become actual even in European culture as long as there was slavery or serfdom, or property and economic relationships were bound by feudal fetters and encumbrances, or states were subject to ecclesiastical authorities or treated as the private property of an individual or a family. Personality and subjectivity were not actual in the democratic Greek polis, or the medieval Church, or the feudal state of the early modern era. They have become actual only in the modern state which arose out of the Lutheran Reformation and the French Revolution.



The modern state contains one specific institution which separates it decisively from earlier and less developed social orders: Hegel's name for it is 'civil society'. Prior to Hegel, the term 'civil society' (*bürgerliche Gesellschaft*, and its cognates in Latin, French, and other languages) was generally interchangeable with the term 'state'. 'Civil' society was the realm of citizens (*Bürger*, *cives*, *citoyens*), in contrast to 'natural' society or the family.<sup>13</sup> Hegel, however, distinguishes civil society from both the family, the private society based on love (PR § 158), and from the state, i.e. the public community based explicitly on reason and aiming at collective or universal ends. Civil society is the realm in which individuals exist as persons and subjects, as owners and disposers of private property, and as choosers of their own life-activity in the light of their contingent and subjective needs and interests. In civil society, people's ends are in the first instance purely private, particular and contingent (PR § 185), not communal ends shared with others through feeling (as in the family) or through reason (as in the state).

In other words, civil society is the realm of the market economy. Hegel holds that individuals are given their due as free persons, and achieve actuality as subjects, only when they depend on themselves for their own livelihood and welfare (PR § 182). He is a strong partisan of the view that the collectivized or state-run economy is a pre-modern institution, incompatible with the modern principle of individual freedom.

At the same time, civil society is not simply identical with the market economy. As a member of civil society, the individual has a determinate social identity signified by the term *Bürger*, not in the sense of the French word *citoyen* but in the sense of the French word *bourgeois* (PR § 190R). A *bourgeois* for Hegel is much more than a self-interested, calculating *homo economicus*. Hegel's study of the science of political economy (in the writings of people such as Adam Smith, Say and Ricardo) convinces him that people's collective market behaviour possesses a kind of collective rationality, which is none the less real for being unintended (PR § 189R). This 'inner necessity' forms the unconscious basis of genuine social relationships between people, and gives rise to a 'principle of universality' within civil society, harmonizing with the principle of free individuality (PR §§ 182–184). Civil society is not merely the natural result of people's free and self-interested behaviour (a conception Hegel had earlier satirized under