

Introduction: Freedom and History in Hegel's Philosophy of Right

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G. W. F. Hegel's *Elements of the Philosophy of Right or Natural Law and Political Science in Outline* (*Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse*), to give the work its full title, was, according to its title page, published in 1821, though the actual year of publication appears to have been 1820.¹ This work was conceived as a 'textbook' (*Lehrbuch*) designed by Hegel to fulfil 'the need to provide my audience with an introduction to the lectures on the *Philosophy of Right* which I deliver in the course of my official duties' (PR *Preface*, 9[11]). The audience in question was made up of Hegel's students at the University of Berlin, where he had already begun to lecture on the same topic in the winter semesters of 1818–19 and 1819–20, and would do so another three times, in 1821–22, 1822–23 and 1824–25, if one excludes the series of lectures he began to deliver in the winter of 1831 that was soon cut short by his death in the same year. Hegel had also lectured on the same topic at the University of Heidelberg in the winter semester of 1817–18, by which time he had published the first edition of his *Encyclopaedia of the Philosophical Sciences in Outline* (*Enzyklopädie der philosophischen Wissenschaften im Grundrisse*), which introduces some of the central concepts developed in the published version of the *Philosophy of Right*. The latter is, in fact, described as 'a more extensive, and in particular a more systematic, exposition of the same basic concepts' found in the *Encyclopaedia* in the section on 'objective' spirit (PR *Preface*, 9[11]). It consists of consecutively numbered paragraphs to which in many cases Hegel has added remarks 'so as to clarify on occasion the more abstract contents of the text and to take fuller account of related ideas [*Vorstellungen*] which are current at the present time' (PR *Preface*, 9[11]),

¹ See Hans-Christian Lucas and Udo Rameil, 'Furcht vor der Zensur? Zur Entstehungs- und Druckgeschichte von Hegels Grundlinien der Philosophie des Rechts', *Hegel-Studien* 15 (1980), 91–92.

together with a preface and an introduction. Additions drawn from student notes were subsequently added to the edition of the *Philosophy of Right* that formed part of the edition of Hegel's works undertaken after his death by some of his students.

Although Hegel regarded the function of the Preface to the *Philosophy of Right* as 'merely to make external and subjective comments on the point of view of the work to which it is prefaced' (PR *Preface*, 23[28]), this preface and some claims found in the additions to the main paragraphs of the *Philosophy of Right* derived from student notes of the lectures have played a major role in the reception of the work. Already in 1857 Hegel was said to deserve the title of 'the official Prussian philosopher of the Restoration and of the state',² in particular on the basis of the following claim made in the Preface: 'What is rational is actual; and what is actual is rational' (PR *Preface*, 20[24]). This so-called *Doppelsatz* is here interpreted to mean that whatever exists must, merely in virtue of the fact that it exists, be considered rational and in this respect good. Thus, the Prussian state, in which Hegel happened to be living at the time, must be considered rational and good in virtue of its mere existence. Although this type of interpretation of the *Doppelsatz* ignores Hegel's technical use of the term 'actual' (*wirklich*) or 'actuality' (*Wirklichkeit*), and the way in which he carefully distinguishes it from the notions of factual being (*Dasein*) and existence (*Existenz*) (EL § 6R),³ it came, in the wake of two world wars, to characterize the twentieth-century Anglophone reception of Hegel's political philosophy. Hegel became, in fact, more than simply a reactionary figure and apologist for the Prussian state: he was even held to be an advocate of unlimited state power and the historicist doctrine that the rightness of something is determined by its historical success, making him a forerunner of modern totalitarianism.⁴ It took until the early 1970s

² Rudolf Haym, 'Extract from *Hegel and his Times* (1857)', in Robert Stern (ed.), *G. W. F. Hegel Critical Assessments*, Vol. I, trans. Julius Kraft, (London: Routledge, 1993), 221.

³ This distinction opens the way for a reading of the *Doppelsatz* that stresses its progressive nature, in the sense of demanding the transformation of existing states whenever they do not measure up to the demands of reason. See Michael O. Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge: Cambridge University Press, 1994), 52–83. Insofar as it emphasizes the dynamic nature of Hegel's notion of reason, and the need for reason to be actualized in the world, this type of interpretation of the *Doppelsatz* finds support in an alternative formulation of it which Hegel is recorded as having offered: 'What is rational becomes actual, and the actual becomes rational' (VRP 1819/20, 51).

⁴ This tendency culminates in Karl Popper's denunciation of Hegel's philosophy published in the final year of the Second World War, which also charges Hegel with being a nationalist. See K. R. Popper, *The Open Society and Its Enemies, Volume II, The High Tide of Prophecy: Hegel, Marx, and the Aftermath* (London: Routledge & Kegan Paul, 1945), 25–76.

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for a full-length study that provided a corrective to this one-sided picture of Hegel's political philosophy to be published in English.⁵

More recently, the tendency has been to discuss Hegel's *Philosophy of Right* in terms of a concept that forms a central liberal value and is typically assumed to be strictly opposed to totalitarianism, namely freedom.⁶ It appears difficult, in fact, to explain how any serious engagement with the text could arrive at the conclusion that Hegel was an enemy of freedom, as is implied by the view of the *Philosophy of Right* as the model of a proto-totalitarian state, when he himself makes clear in the Introduction that freedom is both the subject and the object of this work, by defining right as 'any existence [*Dasein*] in general which is the *existence* of the *free will*' (PR § 29). There is also the following statement:

The basis of right is the *realm of spirit* in general and its precise location and point of departure is the *will*; the will is *free*, so that freedom constitutes its substance and destiny and the system of right is the realm of actualized freedom, the world of spirit produced from within itself as a second nature. (PR § 4)

Hegel clearly thinks, then, that for a law, social practice or institution to count as an instance of right in the strict sense of an object of the 'philosophical science of right' (PR § 1), it must somehow represent a way in which the free will gives itself existence and thereby actualizes itself. In this respect, the concept of right has for Hegel a normative dimension: for something to count as an instance of right it must meet certain standards. Right cannot, therefore, be identified simply with whatever happens to exist. Rather, if any law, social practice or institution is to count as a legitimate one which imposes genuine obligations on individual or collective social or political agents, it must meet the condition of being a way in which the free will gives itself existence, in the sense that such a will is able to actualize itself through this law, social practice or institution, making the law, social practice or institution in question into an enabling condition of freedom. One must assume, then, that Hegel's *Philosophy of Right*, as a 'system' of right, aims to present all such legal, social and political conditions of freedom as forming a unified whole, a task that will demand showing how each sphere of right necessarily relates to the other ones.

⁵ Shlomo Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972).

⁶ Paul Franco, *Hegel's Philosophy of Freedom* (New Haven: Yale University Press, 1999); Frederick Neuhauser, *Foundations of Hegel's Social Theory: Actualizing Freedom* (Cambridge, MA: Harvard University Press, 2000); and Alan Patten, *Hegel's Idea of Freedom* (Oxford: Oxford University Press, 1999).

The importance Hegel clearly attaches to the concept of freedom promises to provide a corrective to accounts of his social and political philosophy that emphasize certain claims that feature in what is, after all, only a preface or in some of the additions that derive from student notes of Hegel's lectures, rather than from a text that Hegel himself intended for publication. These include claims that suggest the existence of an all-powerful state with a quasi-divine status, such as the one that '[t]he state consists in the march of God in the world' (PR § 258A) and the one that we should 'venerate the state as an earthly divinity' (PR § 272A). The centrality of the concept of freedom to Hegel's *Philosophy of Right* is not by itself sufficient, however, to counter the view of Hegel as an essentially anti-liberal or even proto-totalitarian political philosopher, for it is precisely his 'positive' notion of freedom that has been claimed to justify this view of his philosophy. According to Isaiah Berlin, this notion of freedom involves ideas of self-mastery and self-direction that entail the existence of a real and higher rational self, on the one hand, and an inauthentic and lower irrational self, on the other. This in turn allegedly justifies coercing others into doing what they would have done if they had obeyed their real and higher self instead of obeying commands prompted by the mistaken beliefs and desires of their lower self.⁷ According to Berlin, it is, moreover, natural to view this task of coercing others as one that is performed by an authoritarian state. When applied to Hegel, however, this account of the alleged perils of a positive concept of freedom confronts at least two major difficulties, leaving aside the question as to whether Berlin's characterization of positive freedom is even a fair one.⁸ First of all, Hegel identifies certain spheres of right in which something very much like Berlin's preferred negative concept of freedom, insofar as it involves freedom from coercion, including state coercion, is recognized and protected. Secondly, Hegel arguably has good reasons for seeking to develop a concept of freedom which complements, rather than displaces altogether, this negative concept of freedom.

Regarding the first point, the spheres of right in which negative freedom is recognized and protected are abstract right and civil society especially, whereas Hegel's 'positive' concept of freedom is present in the sphere of morality and is then given a social and political content in some

⁷ Isaiah Berlin, *Two Concepts of Liberty* (Oxford: Clarendon Press, 1958).

⁸ Arguably, however, it is not a fair one, because in order to establish a connection between totalitarianism and the positive concept of freedom Berlin can be seen to introduce ideas that are wholly independent of the latter. See Allen W. Wood, *Hegel's Ethical Thought* (Cambridge: Cambridge University Press, 1990), 42 and Raymond Geuss, *Outside Ethics* (Princeton, NJ: Princeton University Press, 2005), 69–70.

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of the institutions of civil society and in the state, or, to be more precise, through the relation in which individuals stand to these institutions and to the state. Abstract right is 'abstract' or 'formal' because 'it is not a question of particular interests, of my advantage or welfare, and just as little of the particular ground by which my will is determined, i.e. of my insight and intention' (PR § 37). Rather, all 'particularity' is ignored, making it possible to conceive of individuals as equal and identical legal subjects, each of which has the right to be treated as a person, that is to say, as an 'abstract and free "I"' (PR § 35R), and is the bearer of a set of rights, each of which follows from the concept of personality. These rights include the right of private property and the right to enter freely into contractual relations with other persons. Given this abstraction from all concrete ends and interests, the obligations that persons have towards each other and the obligations that the state has towards each and every person are purely negative in character, assuming as they do the form of the general prohibition '*not to violate* personality and what ensues from personality' (PR § 38). The actualization of this form of right presupposes a legal system, which applies laws and judges individual cases of alleged violations of right, an agency concerned with law enforcement and the detection, investigation and prevention of crime, and other administrative and legislative bodies that operate at the level of the political state. These institutions, as essential parts of Hegel's account of civil society and the state, form moments of that which he terms 'ethical life' (*Sittlichkeit*).

Negative freedom is therefore respected within Hegel's state, in that the latter recognizes the legitimacy of a legally and institutionally guaranteed sphere of personal freedom in which individuals are free from coercive acts on the part of others and also on the part of the state, at least so long as they do not violate the rights of others to enjoy their own sphere of personal freedom. Although Hegel regards abstract right and the institutions that actualize it at the level of ethical life as negative conditions of freedom, in the sense that one could not be free in an external sense if one's actions were subject to arbitrary interference, whether it be actual or potential interference, on the part of others, he criticizes this negative concept of freedom on account of its one-sidedness. On reflection, this concept of freedom can, in fact, be understood as in some sense incompatible with the notion of freedom itself.

When the negative concept of freedom is taken to be the only genuine form of freedom and the need for it to be protected by means of law and by the state is also granted, we would appear to have a scenario in which freedom is limited for the sake of freedom, in the sense

that each person's freedom from constraint, and thus the opportunity to act according to his or her own desires, whatever they happen to be, requires the real or potential limitation of the freedom of others to act according to certain desires that they might have. The purely negative character of this form of limitation means that what is rational (i.e. law understood as something to which all rational agents could agree insofar as they are concerned with securing their personal freedom) can 'appear only as a limitation on ... freedom ... and not as an immanent rationality, but only as an external and formal universal' (PR § 29R). This purely external form of limitation contradicts the notion of freedom in the sense that it implies that one is limited by something purely external to oneself at the same time as one takes oneself to be free in the negative sense of not being subject to constraint. In this way, Hegel appears to want to argue that direct forms of coercion, especially the application of physical force, are only the most obvious forms of a lack of freedom. Is there, then, a form of freedom in which the idea that freedom is limited can be thought together with the idea that one remains free despite this limitation of one's freedom in a purely negative sense? Hegel thinks that it is possible to conceive of such a form of freedom only if that which is rational, and in virtue of its rationality of general validity ('universal'), can be understood not as an 'external' limitation on one's freedom but, rather, as in some sense a matter of *self*-limitation or *self*-determination.

This type of freedom is found at the individual level in morality, where we have a series of forms of agency in which freedom in the negative sense is limited through an act of self-limitation or self-determination. One example of this is when a moral agent restricts itself in the sense of ruling out other possible courses of action through the act of willing one end (and thus the means to it) rather than other possible ends. Through such an act this agent becomes, moreover, responsible for one set of consequences rather than another set of possible consequences. There is also an act of self-determination or self-limitation when an agent subjects itself to a set of norms that obliges it to act (or not to act) in certain ways rather than in other ones. In both cases, a fundamental right of the subject is satisfied insofar as the agent is genuinely able to recognize itself in its actions and their consequences, or in the norms which it obeys, in the sense that it can view them as products of its own will. This is to honour 'the *right of the subjective will*' and the idea that 'the will can *recognize* something or *be* something only in so far as that thing is *its own*, and in so far as the will is present to itself in it as subjectivity' (PR § 107). Hegel's recognition of this

right of the subjective will leads him to stress the importance of the subjective dimension of freedom, as when he speaks of 'the right of subjective freedom', which consists in finding satisfaction in an action through being able to recognize it as expressive of one's own particular self (PR §§ 121, 124, 124R). Although the notion of self-determination is clearly present in Hegel's account of the moral standpoint, *pace* Berlin nothing I have said so far suggests a justification of state coercion based on the idea of making individuals do what they would have done if they had obeyed their real and higher self instead of obeying the commands prompted by the mistaken beliefs and desires of their lower self. Rather, Hegel develops what can be seen as a much richer concept of freedom in comparison with Berlin's reductive notion of freedom, which identifies genuine freedom as nothing more than being able to act in accordance with one's given desires in the absence of external constraints, by drawing attention to the importance of the subjective aspect of free agency and by seeking to explain how individuals can remain free even when their freedom is at the same time limited or subject to constraint.

Hegel makes claims that nevertheless support the idea that in order to be truly free the subjective aspect of free agency must have as its object something that conforms to certain objectively valid standards. He does not, therefore, treat existing desires or beliefs as in themselves authoritative. The sheer givenness of these desires and beliefs means, in fact, that the content of the will 'is not derived from its own self-determining activity as such' (PR § 15R). Here we can see the importance of the idea of a free will which is not immediately determined by the desires and beliefs that it just happens to have, as well as the importance of the idea that being truly free requires willing the right kind of content. The correspondence between the subjectivity of the free, undetermined will and the objectivity of the content of its willing forms the 'abstract concept of the Idea of the will' which 'is in general *the free will which wills the free will*' (PR § 27). It is only, however, when 'the will has universality, or itself as infinite form, as its content, object, and end' that 'it is free not only *in itself* but also *for itself*' (PR § 21). In the same paragraph, moreover, Hegel appears to treat the notions of 'self-determining universality', the will and freedom as different expressions of what is essentially the same idea. It is only when its content is of a universal kind, then, that the willing agent can become fully conscious of its freedom, in the sense of being able to recognize itself in that which limits its will. This demand for the will to be able to recognize itself in a content of a universal kind signals a clear way in which existing desires and beliefs can be measured against a standard

that is independent of them: they must in some sense be compatible with, or correspond to, that which has a universal status.

In the later paragraphs on morality, Hegel argues with reference to the alleged failures of Kant's moral theory and the moral subjectivism of appeals to conscience alone to determine the content of duty that it is only at the level of ethical life and in the state that 'substantial' freedom becomes genuinely possible (PR § 149, § 149A, § 257). While both abstract right and morality adopt the perspective of individuals and abstract from the determinate social context which forms the implicit background to their views of themselves, of others and of the world in which they act, this social context is made explicit at the level of ethical life. Here the individual is in each case viewed as part of a larger whole, whether as family member, as an economic and social agent in a condition of mutual dependence or as a citizen. As the member of a larger whole, the individual not only stands in essential relations to others but also is dependent on them, regardless of whether or not he or she recognizes this fact, so that once again the will is limited or constrained.

Given this social context, the claim that Hegel's *Philosophy of Right* opens the way to forms of state coercion justified on the basis of making individuals do what they would have done if they had obeyed their real and higher self is surely both an exaggerated and a misguided one. First of all, as we have seen, Hegel allows some space for acting on the basis of given beliefs and desires, irrespective of their precise nature, so long as doing so does not violate the personal freedom of others. Secondly, this area of negative freedom itself presupposes constraints on what individuals may or may not do, and it must, if necessary, be maintained by means of coercion exercised by the state or an alternative body capable of fulfilling this function. Here Hegel is not self-evidently wrong to think that individuals would be freer if they did not experience such necessary constraints on their freedom in the negative sense of the term as limitations with which they cannot identify themselves as free agents. These constraints on their wills can be regarded as universal not only in the sense of deriving from laws that are valid for and apply to all individuals, but also in the sense of being constraints imposed on social agents by the demands of social cooperation and the need to live peaceably together within the same legal and political community. Thus explaining how the will can remain free at the same time as it is subject to constraints will require providing an account of how individuals can identify themselves with, and for this reason freely endorse, these social constraints as well as any formal

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legal ones. Otherwise essential features of their social world will remain purely external forms of constraint.

Among such social constraints on freedom understood in a purely negative sense, Hegel includes practices, norms and forms of association that arise largely spontaneously in civil society as a result of individuals seeking to satisfy their needs by means of acts of production and acts of exchange with others. This shows that for him the fact of human interdependence by itself means that the extent to which human beings are not subject to constraints of one kind or another, and are therefore able to act on the basis of given desires and beliefs without suffering any form of interference, must be thought to be very limited indeed. Thus, one restricts the realm of freedom to a severely limited sphere of human existence and actions when one reduces the idea of freedom to the negative concept of it. Hegel, in contrast, endeavours to understand how such constraints can be understood as compatible with the idea of freedom. Moreover, Hegel views both human needs and their objects as social in character (and in this respect 'universal') and for this reason as not being fixed (PR §§ 190–192). It is therefore not clear how being able to act on the basis of given desires or beliefs in the absence of constraint is sufficient to explain the possibility of freedom. Rather, these desires or beliefs are themselves determined by society, and thus by factors beyond an individual's immediate control; and if society were organized differently from how it happens to be organized, people's beliefs and desires could in some significant cases turn out to be very different from what they currently happen to be. The acceptance of the authority and incorrigibility of given desires and beliefs in any statement of what freedom essentially is – such as being able to act in accordance with these desires or beliefs, given the absence of any external impediments to doing so – in this respect begins to look questionable.

Hegel has some good reasons, then, for seeking to develop an alternative concept of freedom which complements, rather than displaces altogether, the negative concept of freedom favoured by Berlin. This concept of freedom is one that Hegel associates with the idea that the object of the will is in some way the will itself 'and therefore not something which it sees as *other* or as a *limitation*' (PR § 22). With this form of freedom 'the will is completely *with itself* [*bei sich*], because it has reference to nothing but itself, so that every relationship of *dependence* on something *other* than itself is thereby eliminated' (PR § 23). The object of the will is not literally itself, however, and it is not the case that there is no dependence whatsoever on its object. A careful reading of the first passage suggests, in fact, that the object is the will itself only in the sense that something independent of the

will can be viewed in such a way that the subject or agent can in some sense recognize itself in this object, even though it constitutes a limit to its act of willing and thus constrains it.

As we have seen, the particular form that any such constraint on willing assumes in a collective and communal body made up of members of the same society and the same state includes practices, norms and forms of association connected with the generation and satisfaction of needs in a condition of interdependence, as well as laws and the institutions of the state. The way in which individuals may recognize themselves in that which at the same time acts as a constraint on their wills may therefore vary, assuming such forms as the following ones: an emotional identification with other individuals, as in the family; treating with respect others with whom one shares the same legal or social space because one recognizes one's own status and character as a person in them; the sense that one's particular ends are best realized by acting in conformity with generally recognized norms and through participation in certain forms of human association; and insight into the essentially rational character of certain laws and institutions. Thus, although the objective 'ethical substance and its laws and powers are ... an object, inasmuch as *they are*, in the supreme sense of self-sufficiency' (PR § 146), making them in this respect independent of the wills of individuals,⁹ they are not 'something *alien* to the subject' in the case of genuine ethical life; rather, 'the subject bears *spiritual witness* to them as to *its own essence*, in which it has its *self-awareness* and lives as in its element which is not distinct from itself' (PR § 147). For Hegel, it is not, however, simply a matter of understanding *how* relations between individuals, whether direct relations or institutionally mediated ones, can be thought in such a way that the constraints generated by these relations are compatible with the idea of freedom. Given the role of institutions and the state in particular in Hegel's *Philosophy of Right*, it is also a matter of demonstrating *what* institutions and what *kind* of state could explain the possibility of this compatibility of freedom and constraint. Moreover, the role of institutions and the state shifts the question from one concerning relations between individuals to one concerning the relation between individuals and the institutions of the state.

⁹ This independence is not absolute, however, since ethical life 'has its knowledge and volition in self-consciousness, and its actuality through self-conscious action' (PR § 142). Yet, even if the institutions of ethical life depend on individuals when it comes to their existence and effective functioning, they do not depend on any particular individual, and in this sense individuals remain 'accidental to them' at the same time as 'these powers have their representation, phenomenal shape, and actuality' in individuals in the way indicated above (PR § 145).