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David Gray Carlson

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BOOK REVIEW

The Hegelian Revival in American Legal Discourse


Reviewed by David Gray Carlson**

After a century of dormancy, interest among philosophers in Hegel's work has surged since the 1950's. The reasons for this renewed interest are well-documented.1 Hegel's treatment of binary oppositions, language, and logic has a startling, modern ring, even though his chief works date back to the Napoleonic era. Among other things, Hegel can be credited with developing the methodologies we now associate with deconstruction. Indeed, to the extent deconstruction has become an important part of modern legal education, it ought to be seen as a wing of the Hegelian revival in American law schools.2 In addition, Hegel's theory of contract law far surpasses the mainstream quasi-utilitarian or libertarian theories in its account of personal autonomy.3 These latter theories of contract rest on prudential arguments—that is, people tend to or ought to prefer to have a contract law. Hegel, following Kant, would have denounced such theories as violating the autonomy of the individual because they founded the need for contract on mere inclination or desire—heteron-

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* Professor of Political Science, Yale University.
** Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University. The author wishes to thank Ken Casebeer, Richard Hyland, Michel Rosenfeld and Jeanne Schroeder for reading a draft of this essay.


2. Deconstructionists sometimes dissent from Hegel's totalization. See infra notes 50-52 and accompanying text.

omous externalities inconsistent with genuine subjective freedom.4

Hegel’s work also powerfully critiques the role of the individual in the state, in a way that could have profound implications for legal scholarship, now in a state of severe crisis. A positivist retrenchment threatens the growth of human rights, while a surge of libertarian dogmatism threatens to elevate economic rights to a constitutional dimension. Meanwhile, from the left, the critical legal studies movement denounces legal rights as divisive of a natural communal solidarity.

In the background of this debate is the controversy over the status of the natural law of liberty. Natural law has become an embarrassment to rights discourse,5 and few scholars today attempt to ground liberty in nature, assuming instead that such rights exist only as a matter of positivism. The reason for this position is epistemological. How can you prove these natural rights exist, or what their scope is? Unfortunately for legal scholarship, the same epistemological skepticism that has ravaged natural law theory is now at work on positivism as well, apparently reducing legal discourse to political or conventional exchanges of no scientific worth.

Hegel’s theories have much to contribute to a discourse that has broken down into a seemingly nihilistic impasse. Hegel thought science could demonstrate the worth of the individual. His philosophy of right attempted to demonstrate that history necessarily culminates in freedom, with individuals who enjoy their freedom in unity with others, joined by a world spirit of which each is a representative. All of this Hegel claimed to demonstrate with rigor. If correct, his work is obviously of the utmost importance to modern discourse.

For this reason, Steven Smith’s book, Hegel’s Critique of Liberalism: Rights in Context, could hardly be more timely. In his book, Smith demonstrates prodigious knowledge not only of Hegel’s principal works but also of his other lesser known books and essays. Of particular value to contemporary legal scholars is that Smith is a very careful reader of the liberal philosophers, whose influence in American law schools far outweighs that of Hegel. Smith’s book is written to bring home Hegel’s importance to persons steeped in official mainstream jurisprudence. As a result, legal scholars unfamiliar with

4. See Taylor, supra note 1, at 32; Benson, supra note 3, at 1099 (“To impose a duty to perform ... [w]e must elaborate a form of will that, consistent with autonomy, cannot be changed as one pleases ...”).

Hegel's work will find Smith's book to be a congenial introduction to a difficult philosophy.

Hegelians will also find the book intellectually engaging. Smith offers some exceedingly interesting comments and reactions to Hegel's formidable system. Smith does not and cannot, in a short book, provide a rigorous deconstruction of Hegel's fantastic claim to have discovered the end of history. Rather, Smith provides the reactions of a careful scholar with entirely American intuitions to the methodology Hegel demands for political science. Smith's book is comparable to a detailed architectural review, a personal reaction to a formidable edifice.

The book's first chapter, "Why Hegel Today?," expresses some frustrations with liberal philosophy. Primary among them is the absence of community from the orthodox liberal account. Smith sees the liberal self as highly abstract, and not fully integrated into a society in which historical selves must realize their freedom. As a result, the liberal portrait of personality is "void of moral content. Only by abstracting from everything we already know about ourselves, our lives, and our histories will we be in a position to provide a solid and unimpeachable ground for choosing between moral principles."

A chapter entitled "The Origins of the Hegelian Project" then contrasts Hegel with philosophers who preceded him, starting with Descartes, whose rationalism is readily accessible to American sensibilities, and proceeding through Montesquieu, Rousseau and Kant. Smith devotes a great deal of attention throughout the book to grounding Hegel's methodology in Platonic and Aristotelian thought.

The chapter on Hegel's critique of Hobbes and Locke is especially rewarding for non-Hegelian readers. Particularly useful is Smith's emphasis on the extent to which these seminal contributors to middle-of-the-road American liberal philosophy were dedicated to a natural-law origin of human rights. Thus, "rights are justifiable claims that belong to individuals as such. Individuals are not indebted to government or political society for their rights; rather government has its origins in the rational desires of individuals to protect and defend their preexisting rights as human beings." Smith argues that the natural law of Hobbes and Locke is grounded in the principles of egalitarianism, individualism, voluntarism, reductionism, and universalism. All of this Hegel condemns as "the empirical

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7. Id. at 5.
8. Id. at 61.
approach," by which he means that "they [Hobbes and Locke] attempted to derive human rights from certain purportedly natural needs or desires that all human beings have in the prepolitical state of nature." Smith describes Hegel's critique of natural law theory as follows:

The problem is that insofar as it aspires to be a theory of rights at all, empiricism cannot establish what it wants to prove. For if empiricism wants to be more than just a description of what rights we happen to enjoy, it must have some way of showing these rights to be necessary and universal. It must, in other words, have some way of showing that these rights are rooted in certain permanent features of human nature. But, according to Hegel, this is just what empiricism is incapable of showing. For categories like "necessity" and "universality" are not given in experience or discoverable through observation but must be gleaned through other means. In Hegel's own language, empiricism is incapable of distinguishing between the necessary and the contingent.

Hegel, who always honors the partial truths that other philosophies capture, is able to praise this empiricism for emphasizing the centrality of experience in any epistemology. But in the end, experience alone is insufficiently critical of its product. David Lamb very lucidly demonstrates why this is so. As Hegel tells us, concepts work by virtue of their limits. That is, if we know something affirmative, we impliedly know what it is not. Yet, if experience is limited by reference to things that are, then non-being is by definition not experienced.

If someone claims to have knowledge of an object by virtue of its properties something should be known about the properties it does not have. But these properties are not given in the immediacy of perception and are external to the simple consciousness depicted in the present phenomenal standpoint. Yet for a percept to possess determinate properties in its own right it must possess properties which are not given in passive perception, since only in the posses-

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9. Id. at 64.
10. Id. at 67-68.
11. "For the main lesson of Empiricism is that man must see for himself and feel that he is present in every facet of knowledge which he has to accept." G.W.F. Hegel, The Logic of Hegel § 38 (William Wallace trans., 2d ed. 1975) [hereinafter Lesser Logic].
12. See David Lamb, Sense and Meaning in Hegel and Wittgenstein, in Hegel and Modern Philosophy 70 (David Lamb ed., 1987); see also G.W.F. Hegel, The Difference Between Fichte's and Schelling's System of Philosophy 95 (Walter Cerf & H.S. Harris eds., 1977) ("Thus [the intellect's] posings and determinings never accomplish the task; in the very positing and determining that have occurred there lies a nonposing and something indeterminate, and hence the task of positing and determining recurs perpetually.").
Perception, then, pretends to supply the subject with an unmediated connection to reality, but this pretense is a falsehood. As Smith puts it: "Hegel's point is that there is an irreducible circularity at the core of empiricism which does no more than put back into nature what it took out in the first place." As a result, "empiricism tends merely to reinforce existing prejudices."

Against the empiricists Smith juxtaposes the Kantians, who put forth universalization of principle as the foundation of right. Here, Smith covers the familiar critiques of Kant's categorical imperative, its antihistoricism and lack of content. Drawing on the work of Hannah Arendt, Smith writes poignantly about how Adolph Eichmann, the director of the holocaust, was able to claim that his actions were consistent with Kantian moral philosophy.

Hegel felt that Kantian theory would lead to the cult of the beautiful soul that "lives in dread of staining the radiance of its inner being by action and existence." Hegel abhorred this withdrawal from community life and considered Ethical Life (Sittlichkeit) a cornerstone of his own philosophy of right. Rather than accepting the establishment of a negative freedom without content, Hegel's own theory attempts to establish a positive concept, where the good is proven. This good is the unity between self and other which can only be achieved in Sittlichkeit, or "universal self-consciousness." Thus, as Smith writes, "freedom does not imply a world ungoverned by any regulative principles but a world inhabited by subjects capable of supplying these principles themselves." "The will is not something..."
prior to its actions. Put another way, a person cannot be totally detached from the kinds of commitments he has made. The will is always embedded in real life in an objective world of political and legal institutions which reach their fruition in the idea of the state."  

22 This observation relates to Hegel's belief that freedom is realized only through social means, in Ethical Life where individuals constitute each other in relations of mutual respect.

In contrast to the Hegelian dialectic of freedom through commitment, the negative freedom of liberal philosophy associates free will with arbitrariness. That is, freedom means that the will is free to do anything it chooses. Yet, without some vision of the good—a vision liberalism is unable to supply—the will is helpless and, rather than being autonomous, is in fact the total slave of inclination—something the will has imposed on it externally.  

23 To Hegel, this enslavement to inclination represents the antithesis of freedom.

The unity between self and other, which constitutes freedom for Hegel, is not simply given to individuals, as negative freedom postulated by liberal philosophers is given to state-of-nature individuals. It is not, as Smith puts it,

just tautologically posited to make sense of the modern state, but is historically constructed through a process of labor and struggle. Unlike a contemporary legal philosopher, Ronald Dworkin, who lays down a right to equal concern and respect and then goes on to describe the kinds of social and political institutions necessary to sustain that right, Hegel deduces the concept of right from what it means to be a person.  

24 Personhood is developed, in Hegel's view. It is an achievement of history, not an a priori given. Thus Hegel, along with Nietzsche, is able to recognize tyranny as a necessary historical development.  

25 This recognition allows Hegel to come to terms with the dark side of our

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22. Id. at 111.
23. Id. at 108.
24. Id. at 122.
25. Id. at 9; see Friedrich Nietzsche, On the Genealogy of Morals, Second Essay, in ON THE GENELOGY OF MORALS AND ECCE HOMO 96 (Walter Kaufmann ed. & Walter Kaufman & R.J. Hollingdale trans., 1967). This is not to say that Hegel is nostalgic for these days of tyranny. As he said in the PHILOSOPHY OF MIND:

The real fact is that the whole law and its every article are based on free personality alone—on self-determination or autonomy, which is the very contrary of determination by nature. The law of nature—strictly so called—is for that reason the predominance of the strong and the reign of force, and a state of nature a state of violence and wrong, of which nothing truer can be said than that one ought to depart from it. The social state, on the other hand, is the condition in which alone right has its actuality; what is to be restricted and sacrificed is just the willfulness and violence of the state of nature.
history—an embarrassment to liberal philosophers with their hypothetical bargains between equals.\textsuperscript{26} Also, because Hegelian personhood is a historical achievement and not a given, it constitutes a legal, rather than a prelegal, idea. On this view, jurisprudence has a dynamic relation with selfhood and is not merely the degraded instrument of pregiven individuality.\textsuperscript{27}

This is not to say that Hegel believed that history was destined to progress. I think he would acknowledge that history can retrogress, that mankind can destroy itself and so impede the progress of Geist. In fact, when Hegel teaches that personhood is an historical achievement, he means that any given concept in history can be logically deconstructed into its less adequate antecedents, or logically projected toward its more adequate forms. Thus, Hegel's famous master-slave dialectic is not meant to be an historical account of how masters and slaves interact. Rather, it is a logical argument from the concept of mastery and slavery, and a projection forward of mutual recognition that these two extreme concepts imply.\textsuperscript{28}

Smith seems pessimistic about the effect of Hegel's system on subjectivity as we experience it:

Hegel sticks to the belief that following a period of estrangement there will come one of reconciliation and synthesis. This reconciliation with reality he regards as the practical or pedagogical function of philosophy . . . But it is not clear, except as a necessity of logic, why this period of reconciliation is likely to occur at all. At a practical level, the skeptical shattering of tradition and customs is more likely to lead to the intensification of feelings of estrangement and anomie than to lead to the acceptance of fate. Furthermore, the increase in our powers of self-reflection and autonomy is more likely to lead to the cultivation of eccentricities and personal peculiarities than to a revivified sense of community. There is arguably nothing more to connect the first and second negations of this process than mere wishful thinking (emphasis added).\textsuperscript{29}

The key here is the emphasized reference to logic. What Hegel says is

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\textsuperscript{26} Although it is usually overlooked, Rawls has the same appreciation for the fact that a benevolent democracy is built on the blood spilled by a generation of tyrants. See John Rawls, A Theory of Justice 542 (1971). That he mentions this point in a single paragraph suggests that he views this idea as an embarrassment, something not to be emphasized.

\textsuperscript{27} Arthur J. Jacobson, Hegel's Legal Plenum, in Hegel and Legal Theory 97 (Drucilla Cornell et al. eds., 1991).

\textsuperscript{28} See Michel Rosenfeld, Hegel and the Dialectics of Contract, in Hegel and Legal Theory 228 (Drucilla Cornell et al. eds., 1991).

\textsuperscript{29} Smith, supra note 6, at 192.
\end{flushleft}
true of the concept of personhood logically. The effect of logic on living human beings is not something Hegel ever chose to predict.

Because Hegel thinks personhood is logically or scientifically generated, it is necessary to view Hegel as another type of natural-law theorist. Hegel's natural law, however, is different from the one that liberal philosophers rely on. The Hegelian law of the self is defined by its dependence on the other and on the sociality of freedom. In Hegel, the natural law of the individual is dialectical. The individual is not separate from law but mutually constituted by it. Individuality in Hegel's system is an achievement, not a presupposition.

For legal scholarship, the meaning of Hegel's natural law of personhood has proved controversial. Thus, Richard Hyland has argued vigorously that the Philosophy of Right is all form and no content, and that Hegel's work cannot provide us with practical advice. Kenneth Casebeer asserts that Hegel spawns a “labor” theory of meaning, where the work of the individual is to strive toward self-generated meaning, rather than succumbing to an unmediated, alien meaning. Without such work, Casebeer implies, Hegel cannot supply a practical program for overcoming the subject-object distinction that Casebeer sees as the worker's fundamental obstacle. This interpretation too stops short of deriving a meaning from Hegel's system, other than the general need to strive for meaning.

In contrast, Drucilla Cornell takes the natural law of the person as a basis for practical legal change—for example, the repeal of the employment-at-will doctrine of labor law. But in doing so, she must make use of the ends-means prudential reasoning which is distinctly non-Hegelian. Cornell explains her break with Hegel:

Of course, if we break with Hegel's system in the name of an inevitable indeterminacy, we can no longer argue that there is a dynamic telos which inevitably leads to the actualization of dialogic reciprocity in the modern democratic state. Instead, we must

30. Smith refers to this as a "crypto-state-of-nature" theory. See supra note 6, at 115.
31. Hyland, supra note 1, at 1741.

What moral theory can do and should be trusted to do is clarify the universal core of our moral intuitions, thereby refuting value skepticism. What it cannot do is make any kind of substantive contribution. By singling out a procedure of decisionmaking, it seeks to make room for those involved, who must then, under their own steam, find answers to the moral-practical issues that come at them . . . . Moral philosophy does not have privileged access to particular moral truths.

rely on rational commitment to this ideal, because it allows us to synchronize most effectively two of our deepest political and legal ideals, freedom and equality. Of course, this synchronization is not perfect. But this inevitable imperfection does not mean that we cannot argue for its relative success in comparison with competing principles . . . 34

At the level of such prudential advice, the argumentative progression in Cornell's critique of employment-at-will is not necessarily logical, but depends on a constant progress of essentialized meanings attributed to legal programs. Therefore, Cornell's argument for a “reasonable cause” rule in lieu of employment-at-will is open to counteressentializations, making the issue, in the end, formally undecidable. Cornell can isolate a particular feature of her favored legislative program which seems to conform to Hegel's natural law of the person. However, Richard Posner35 and Jonathan Macey36 can isolate some other particular of their employment-at-will program from a utilitarian or libertarian perspective, which also conforms to Hegel's concept. Who wins this argument is a matter of intuition. Or, to say the same thing differently, this mode of decision is necessarily outside of Hegel's logic.37 This is by no means a criticism of Cornell's project; rather, it is a recognition of what it means to draw regulative ideals from Hegel's system—a major theme in Cornell's work.

Smith seems to agree with the Casebeer-Hyland view that Hegel cannot be translated into a determinate program of political action:

The accusation that Hegel merely rationalizes, and hence legitimates certain contingent historical institutions, thus conferring a purportedly timeless validity on them, is a more difficult charge to answer . . . . The idea of working out some “ideal theory,” such as Marx's notion of “true democracy” or “human emancipation,” and then using this theory as a criterion for judging existing insti-

37. Commenting on this style of argument, Hegel writes:

[T]he Idea is the unity of the Notion and objectivity . . . it must not be regarded merely as a goal to which we have to approximate but which itself always remains a kind of beyond; on the contrary, we must recognize that everything is actual is only in so far as it possesses the Idea and expresses it. It is not merely that the object, the objective and subjective world in general, ought to be congruous with the Idea, but they are themselves the congruence of Notion and reality; the reality that does not correspond to the notion is mere Appearance, the subjective, contingent, capricious element that is not the truth.

GREATER LOGIC, supra note 16, at 756.
tutions and as a norm for future society is entirely foreign to Hegel's approach. Instead, he attempts to bring out the rationality that is already there within existing institutions and forms of life, including the monarchy. 38

But Smith does defend Hegel from the critique that he can have no impact on politics whatsoever:

Hegel did not believe that the philosophical or conceptual understanding of reality leaves it untouched. Reality is changed by being apprehended [because] reality is in part made up of our interpretations, so that to change our interpretations of the world is to change the world. 39

Similarly: "The Hegelian state is not neutral vis-à-vis its citizens. Its goal is the positive one of promoting a form of Sittlichkeit in which all citizens can share;" but "[r]ather than offer an ethical program in terms of rules and principles, Hegel is concerned to offer a theory of ethical relations. These relations precede the will and provide it with a determinate content and focus."

Whatever intrusions Hegel's theory of the person makes upon policy arguments, the thing that alienates most modern philosophers about Hegel is his claim to have discovered the one true total system into which everything else fits. 41 Today we are trained to doubt such totalities and Smith is among the skeptics. He views Hegel's totalization as "an embarrassing weakness," though "it remains possible to salvage his useful political insights from their speculative wrapping." 42 Indeed, Smith claims that "Hegel's demand for metaphysical closure remains an obstacle to the fuller realization of liberal ends and purposes." 43

Smith's critique certainly fits in with the modern prejudice about totalities. Indeed, the very word "totality" recalls twentieth century fascism or communism, both of which are commonly laid at Hegel's doorstep. 44 These charges have been amply refuted, though, most

38. SMITH, supra note 6, at 156.
39. Id. at 192-93.
40. Id. at 130.
41. Drucilla Cornell writes:

Hegel's closed circle of the Absolute is also a prison for the individual, because there can be no transcendence of the system. The system establishes an order from which no one can keep his distance; nothing henceforth is exterior. Ontology enforces the status quo in the name of a tired, cynical realism: "This is all there is."

42. SMITH, supra note 6, at 134.
43. Id. at 233.
44. The most notorious attempt to do so is KARL POPPER, THE OPEN SOCIETY AND ITS
recently in Smith's fifth chapter: "The Hegelian Rechtsstaat." 45

In fact, Hegel's totality seems rather benign, a system at such a high level of abstraction that its application to microproblems is quite impossible. Hegel's totality seems to have about as much of a relationship to fascism as does the astronomical concept of "the universe," which has so far proved large enough a concept to encompass a very free notion of subjectivity.

In Hegel's defense, it should moreover be pointed out that his master epistemological work, the Greater Logic, covers 844 pages in English translation. The work carefully moves through the stages of quality, quantity, measure (the conjunction of the prior two), 46 essence (in which the negativity of determinate being is purged), subjectivity, objectivity and the Idea. The notorious closure of Hegel's totality occurs only in the very last twenty pages. Until that point, the system is rife with contradiction and movement.

The usual critique of Hegel's totality is that it is a thought or a concept, like any other philosophical theory; and, being a concept, it implies its negativity. That is, the concept implies a limit, though—something beyond—in which case it is hardly a totality. 47 Hence the totality contradicts itself. Indeed, in the Greater Logic, Hegel denounces concepts that purport to be infinite—false totalities—and uses this very argument to discredit such claims. 48

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45. Of these charges, Smith says:

Hegel's own preferences for constitutional government and his support for the liberalizing reform movements of Hardenberg and von Stein have, arguably, more in common with the ideas of such figures as Locke, Montesquieu, and Kant than with those of the enemies of liberalism on both the left and the right. Smith, supra note 6, at 132.

46. Together, these three stages comprise the realm of being, that is, the realm of non-selfsubsistent dependence on the other.


48. See Taylor, supra note 1, at 240. Hegel writes: "The infinite is ... being which has restored itself out of limitedness. The infinite is, and more intensely so than the first immediate being; it is the true being, the elevation above limitation." Greater Logic, supra note 16, at 137. Hegel is being sarcastic here; the infinity in question is rife with contradiction:

Since both the finite and the infinite itself are moments of the progress they are jointly or in common the finite, and since they are equally together negated in it and in the result, this result as negation of the finitude of both is called with truth the infinite. Their difference is thus the double meaning which both have. The finite has the double meaning of being first, only the finite over against the infinite
Yet Hegel claimed his total system was immune from these deconstructive critiques which he himself exquisitely developed early in the Logic. The modern assumption that Hegel’s totality is false may thus be right, but until it is proven that Hegel’s totality is based on logical errors, the assumption is nothing but an unsubstantiated prejudice.

Hegel is entitled to insist that his system be defeated through a demonstration of its weakness. Whether or not it ultimately can be vindicated is uncertain.\(^49\) Hegel, meanwhile, has proven a fecund critic of other philosophies, and even critics like Smith recommend that “rather than condemn Hegel to the dustbin of history, it remains possible to salvage his useful political insights from their speculative wrapping.”\(^50\) Smith’s book, which focuses on Hegel’s political and legal theories, is a welcome addition to the Hegelian renaissance in legal academics.

**APPENDIX**

This appendix attempts to set forth how Hegel’s totality achieves an immunity from his own critique of determinate being. If this immunity can be shown, the postmodern critique of Hegel fails.

This demonstration is best made by reference to Hegel’s doctrine of essence. Now essence is only the halfway mark—the end of the Objective Logic. But in essence are the seeds of the concepts that make Hegel’s totality possible.

To grasp how essence works, we will need a lightning tour through the early chapters of the Logic. Hegel starts (arbitrarily, as he admits) with being, a category chosen on the assumption that every thing has it.\(^51\) In its purity, being is without determination, and it ends up as pure nothing. Yet this identity of pure being and nothing which stands opposed to it, and secondly, of being the finite and at the same time the infinite opposed to it. The infinite, too, has the double meaning of being one of these two moments—as such it is the spurious infinite—and also the infinite in which both, the infinite and its other, are only moments. The infinite, therefore . . . is . . . the process in which it is deposed to being only one of its determinations, the opposite of the finite . . . and then raising . . . itself into the affirmation of itself and through this mediation becoming the true infinite.

\(^{49}\) Id. at 148.

\(^{50}\) In the Appendix, infra, I briefly describe Hegel’s totalizing move and how it purports to be immune from the criticism just presented.

\(^{51}\) Smith, supra note 6, at 134.

\(^{51}\) Greater Logic commences with an amusing essay, “With What Must Science Begin?” In this essay, Hegel admits that “here at the start . . ., philosophy is . . . some assumed, unjustified conception.” Greater Logic, supra note 16, at 72-73; see also id. at 827. But the entire system will eventually vindicate his choice of a beginning—pure being and pure nothing. Id. at 827-31.
constitutes a modulation—a movement that is becoming. This movement, a “third” in violation of the rule of the excluded middle, introduces determinacy and so constitutes a determinate being separate from pure being and nothing. Hence, determinate being is born. A determinate being implies a limit, and a negative Other beyond that limit. This relation of determinate being to negativity Hegel calls quality.

In order to have integrity as a being, the determinate being tries to deny it is constituted by the Other. It tries to characterize the Other as a separate determinate being. This “being-for-self” is expropriated for itself, but it is also awarded to the Other. Hence, we have the idea of multiplicity growing out of pure quality. Quality has become quantity.

Pure quantity represents the identity of being-for-self and being-for-other. As such, it is indifferent to quality. But quantity tries to be the same limitless concept that pure being tried to be, with the same result. Determinateness is necessarily introduced to distinguish quantity and quality. (This occurs because pure quantity, indifferent to being, implies infinite multiples of beings. Yet, this continuous string also implies a qualitative difference between the beings). This new determinate quantity is quantum.

Because quantum implies both discreteness and continuity, the single unit in the continuum is number. Number consists of an amount of units. Thus, fifteen is really fifteen ones (or perhaps three units of five or one group-of-fifteen). Number, then, is always a ratio, or a relation between two quanta.

At first, a ratio is a direct ratio—an indeterminate relation between unit and amount. But such a ratio is a relation between two indeterminate quanta \((15 = a \times b)\). These indeterminate quanta must resolve into determinate quanta, but can only do so with external assistance. Thus, externally we can assert \(a = 3\) to find that \(b = 5\).

But there is a limit to this external manipulation of the sides of the ratio. For instance, the unit might be lowered to an amount infinitesimally approaching zero, in which case the amount becomes inin-

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52. Late in Greater Logic, Hegel writes:

the other is essentially not the empty negative, the nothing, that is taken to be the usual result of dialectic; rather is it the other of the first, the negative of the immediate; it is therefore determined as the mediated—contains in general the determination of the first within itself. Consequently the first is essentially preserved and retained even in the other. To hold fast to the positive in its negative, in the content of the presupposition, in the result, this is the most important feature in rational cognition.

Greater Logic, supra note 16, at 834.
nately large, but the unit cannot become zero without destroying the ratio altogether. Hence, the ratio has a self-subsistence against external manipulation.

This self-subsistence implies a more perfect, self-reliant form, known as the ratio of powers. The ratio of powers is the equality of unit and amount \((a \times a = 15)\) and a provisional being-for-self. This return of quality into quantity constitutes measure.

Since quanta turn out to be qualities, and since the ratio is made up of quanta each of which has being-for-self, measure is a relation between two qualities (a relation between \(a\) and \(a\), where \(a \times a = 15\)). This ratio has being-for-self (which will be the hallmark of essence) but the sides of the ratio are still related numerically to each other. “[T]heir self-subsistence also rests essentially on quantitative relation and quantitative difference; and so their self-subsistence becomes a transition of each into the other, with the result that measure perishes in the measureless.”

This measurelessness represents indifference to external manipulation of quanta. The unity of quality and quantity become genuinely self-reliant—indifferent to the Other that is the hallmark of being—and hence the unity passes over into essence. In other words, essence is the negation of the being that is constituted by its Other.

Essence is the stage in which the determinate being’s self-destructiveness is first contained. Here we have a glimpse of Hegel’s totalizing move, the point after which Hegel himself feels immune from the standard critique of his totalization.

First, essence is the negation of being, and hence stands opposed to it. The two—essence and being—are equal. At this point, essence is not yet essence but merely the essential, which has equal dignity to “unessential” being. As such, these opposites are in the realm of determinate being and are maintained only by virtue of an external constitution. But being has been negated already. It is repulsed being-for-self. As the negation of essence, being is “in and for itself a nullity.” That is, it is non-essence or illusory being.

Illusory being, then, stands over against essence, but, says Hegel, it is not necessary to show that illusory being withdraws into essence. Being in its totality has already done so, in negative form. It is only

53. Id. at 330.
54. Id. at 395.
55. Id. at 397. That is, being self-destructed into quantity, measure, etc., and is now in essence, even while it was negated by essence. This simultaneous destruction-and-preservation is what Hegel called Aufhebung—often translated as sublation. See id. at 107 (“What is sublated is not . . . reduced to nothing. Nothing is immediate; what is sublated . . . is the result of mediation; it is a non-being . . . which had its origin in a being.”).
necessary that illusory being's determinations come from essence. If so, then essence is immune from the critique of determinate being.

This is derived as follows: Essence is the non-being of being. But the "indifference which this non-being contains is essence's own absolute being-in-itself. The negativity of essence is its equality with itself or its simple immediacy and indifference." Being has thus preserved itself in essence, and "[t]he immediacy of the determinateness in illusory being over against essence is consequently nothing other than essence's own immediacy." The determinations upon which illusory being is founded thus come from within essence. From now on, essence is immune from the critique that it expels its own negativity, thereby creating a competing being. That is, to be self-contained, essence must sublate the determinateness which is the disease of determinate being. This is accomplished if illusory being's determinations are shown to be inside essence. Such containment is termed movement. And when essence moves, it is reflection.

Now, since essence is the negation of being and illusory being is the negation of essence, and since illusory being’s determinations (i.e., negations) come from essence, essence negates itself. Essence "consists, therefore, in being itself and not itself and that, too, in a single unity." As the unity between itself and not itself, essence is immune from the critique of being. Essence no longer necessarily implies its Other—in the sense of an Other that is radically exterior. Determinate being is now contained.

This is not to say that essence is the totality. So far we are only half way through the Logic. Rather, we have seen only that essence has movement within it and does not go forth from itself; and hence this movement of necessity returns to itself. Hegel calls this movement "reflective." At this point, "there is no other on hand, either an other from which or into which immediacy returns; it is, therefore, only as a returning movement, or as the negative of itself."

Essences now "appear as free essentialities floating in the void without attracting or repelling one another." Essences are obviously

56. Id. at 397.
57. Id.
58. Id.
59. As Rodolphe Gasché reminds us, the etymology of "reflection"—from the Latin reflectere, means both "to bend" or "to turn back" and "to bring back." Rodolphe Gasché, The Tain of the Mirror: Derrida and the Philosophy of Reflection 16 (1986) (emphasis added). The "bringing back" aspect of reflection is the key to essence’s self-substience.
60. Greater Logic, supra note 16, at 400.
61. Id. at 401.
62. Id. at 407.
not the whole system. Indeed, their immunity from the decay that awaits determinate being "does not exempt them from transition and contradiction." 63 Because essence is both equality-with-self and difference-with-self, essence modulates between these two extremes until it becomes ground—the return of reflection to itself after it negates itself. Essence is the identity of identity and difference. 64 But essence can be viewed as a kind of sub-system which illustrates how determinate being can be contained. Thus, Hegel frequently refers to essences as "totalities." 65

Alan Brudner writes persuasively in defense of Hegel's totality against the claim that the totality implies its negation:

To assert the claims of the other against . . . a totality that has made room for the rebellion of difference is to assert once again the fixity or absoluteness of the other and so to deny it as difference. In this way, the radicalization of protest through the abstraction of the negative turns round into its opposite, for it is now indistinguishable from the complacent self-regard of the isolated individual. The one-sided fidelity to death turns into its denial. 66

That is, those who insist on dragging the totality back into the sphere of being, where otherness defines it, are guilty of privileging the other—of not attending to Hegel's claim to have contained the other within essence and all the other advanced forms of individuality. 67

Rodolphe Gasché, in his masterful study of reflection, concurs:

Any attempt to challenge absolute reflection through some notion of immediacy is bound to fail. . . . [It] disregards the fact that such a reflection, which starts with something alien to it, is what Hegel called external reflection, and thus one moment in the dialectics of

63. Id. at 411.
64. Hence, Hegel's attack on the proposition $A = A$. Id. at 413 ("[i]dentify . . . in its very nature is . . . to be different.").
65. Id. at 474-75, 486, 504, 506-07, 509, 511-12, 527. Interestingly, when essence has finally completed its development—all the while self-subsistent and self-contained—subjectivity emerges. This is the standard liberal selfhood that most liberal philosophers take for granted. Yet Hegel has literally produced it from pure nothing. Id. at 577-83. See GASCHÉ, supra note 58, at 62 ("Hegel's critique of reflection, and his intensification of it to absolute reflection by elevating the major these of reflection to the level of the Concept or Notion, represents a radical completion of subjectivity, freedom, autonomy, self-certitude and certitude, transcendentality, and so on.").
67. See Michel Rosenfeld, Deconstruction and Legal Interpretation: Conflict, Indeterminacy and the Temptations of the New Legal Formalism, 11 CARDOZO L. REV. 1211, 1218-19 & n. 24 (1990) ("Turning the tables on Derrida, one could characterize his deconstructive enterprise in Hegelian terms, as an ontological privileging of difference which makes it irreducibly transcendent thus preventing its sublation . . . within a totality encompassing both self and other.").
reflection, which develops into absolute reflection where that dualism is superseded.68

Gasché's project is to portray Jacques Derrida as not criticizing Hegel's totality from the vantage point of determinate being. Gasché tries to explain Derrida's critique of Hegel rather as one that recognizes a totality, but a totality that is "heterogeneous" and honors but does not privilege difference.69 So portrayed, postmodern thought is shown as recognizing "the logical superiority of speculative thought over all attempts to criticize it in a reflexive mode from a position erroneously considered to be outside it."70

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68. GASCHÉ, supra note 58, at 74 (footnote omitted).
69. Id. c. 6. Thus Gasché remarks
   Derrida's Other . . . is an alterity that has nothing of an essence or truth. Instead of being one essential alterity, it is irrevocably plural and cannot be assimilated, digested, represented, or thought as such, and hence put to work by the system of metaphysics . . . . Derrida's Otherness is, consequently, neither a lack . . . nor the still meaningful reverse side of the positivity of the Hegelian Concept or Notion. The Otherness of unconditional heterology is more and less than negativity.
   Id. at 103.
70. Id. at 79.