

But what's it got to do with *law*?

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ABSTRACT. Hegel's idea of a dialectical and speculative logic sets reason the practical–theoretical task of deriving thought's logical foundation: a dynamic and incomplete mapping of logical space. That task involves a derivation of the categories of metaphysics and a critique of the 'logic of the understanding', the classical formal logic which Kant described as a complete and perfect science. This paper engages Hegel's attribution of personality to the absolute Idea in the final chapter of the *Logic*.

1. Introduction

For Kant, designating the Old Testament creation myth as 'the fall' bespeaks a moral point of view, a point of view for which the history of nature begins with goodness for it is the work of God, but that of freedom begins with evil for it is the work of man.¹ The comment — in marked contrast to his metaphysics of right — is facetious, made in the context of an ironic refutation of Herder's view that humankind derives its destiny from nature and therefore needs no master.² Yet Kant was sure of his moral ground on other grounds, so his comment can serve to cue a contention.

There is a wrong of law and it works to maintain this moral point of view. It maintains judging, blaming and shaming, not only as *law's* response to harm and suffering but, prescriptively, 'imperationally' in Bentham's term, as the proper response *of us all*. It holds thought numb. For whether, in legal thought, the prescription is disowned and displaced to morality or utility in the instant of its issue or represented as authorised or as balanced by it, this wrong secures law's right — indeed its obligation — never to allow itself to be surprised in thinking itself as right.

¹ [Kant 1991] at 227.

² [Reiss 1991] at 197.

If a legal theory seeks to engage the politics of law, it does not much help to shift moral into ethical points of view for the ethos in question is already shaped and formed by this wrong. The basis and actuality of that shaping and forming must be taken into account and that, in my view makes it necessary to think the ‘wrong’ of the wrong of law before law has asserted its jurisdiction over it.

Yet is it not just this necessity that is rendered impossible by the actuality referred to? How, short of a transcendent or god-like or sectarian standpoint can conscious and self-conscious thought step outside the environment which has shaped and formed it? What can there be that is before a law which is the law of and for a particular social formation — call it ‘global capitalism’ — and which, as part of being what it is and doing what it is does, claims its right as the universal which justifies its enforcement? What is to be expected from such an idea as the wrong of law (right)? That the judge, just as she is about to sentence the thief, experiences an epiphanous revelation of cultural guilt and sentences herself to a ten years hard-labour?

Surely then the theorist of law who acknowledges that what is reasonable is actual if not that what is actual is reasonable can only set about pointing out in one mode and another “how pitiful and full of contradictions” actuality is? Surely she should join a young Marx in reproaching Hegel for reproaching “ordinary consciousness for being discontent with the satisfaction of [his] logic, for being unwilling to see actuality dissolved into logic by arbitrary abstraction?”³

My reservation on these ‘surelys’ begins with their premised rejection of the second stanza of Hegel’s formulation of the relation between the actual and the reasonable.⁴ The social relations and institutions of European modernity (‘ethical life’ (*Sittlichkeit*) in Hegel’s terms) are doubtless intended by the phrase and a distinction, built in by Hegel at the logical level, between the concepts of ‘existence’ and ‘actuality’ such that the former is “in part mere appearance (*Erscheinung*)”,⁵ can hardly be thought to dispose of the problem without a great deal more.⁶ Rather, I go back

³ [Marx 1970] at 64.

⁴ [Hegel 1991] at 20; [Hegel 1821] at 33. [Hegel 1975] §6 at 9; [Hegel 1830]: “What is reasonable is actual; and what is actual is reasonable.”

⁵ [Hegel 1975]; [Hegel 1830] at §6.

⁶ The conceptual distinction is one thing: its application, assigning this to appearance and that to actuality is another.

here to a more basic, metaphysical assumption of Hegel's thought, the unity of being (or extension) and thought, which while complemented by the equally basic premise of his idealist dialectic, namely the idea that thought separates itself from extension — flies free to lead and mislead — opposes the analytic separation of actuality and Idea that is vested in the “imperative ‘ought’”.

A ‘materialist’ dimension of Hegel's dialectic, especially evident (as Lenin comments) in his *Logic*,⁷ is lost if only one side of this formulation is taken. The materiality of fetish phenomena — strange objects of thought's own creation — in and to human thought and action is ignored, or, what is hardly better, characterised as an illusory appearance located in religious belief or other primitive social practices. Reasoning (or thinking) that is structured by the predicative form of (some) languages, inevitably and inescapably creates such ‘objects’ when it turns a predicate or concept into a subject or object: when it turns ‘is red’ to ‘redness’ for example. It is a mode of abstraction which Hegel deploys.⁸ This is the theoretical target of Marx's comment quite as much as the reactionary character of the Estates is his political target. The theoretical question here is: if these objects are inevitably and inescapably created, what is the point of calling them arbitrary?

The development that will answer that question came after Hegel and after Marx. Shifted from grammar to mathematical logic, this mode of abstraction — passing from a concept or predicate to its extension — leads and lead Frege, all unawares, into paradox.⁹ For classical logic then, nothing could be more arbitrary, for such paradoxes in that logic yield antinomies that trivialise it: make everything and anything provable and foil what any formal logic must maintain, a truth preserving capacity. But then, as the new discipline thrived, it also emerged that classical logic was not the only formal logical system and then that arithmetic itself was incomplete and incompleteable and then that classical first order logic is undecidable.

This goes very wide and very fast. It can only be taken as a stroke or squiggle indicating an approach which aligns Hegel's abstract idea of and

⁷ [Lenin 1914] at 231.

⁸ This claim is supported in [Kerruish 2006] at 34f and related to Frege's ‘ideal calculus’ in [Kerruish and Petersen 2006] at 72.

⁹[Kerruish and Petersen 2006] at 70f.

for a formal science of logic to contemporary mathematical logic.¹⁰ But it has to be there, and that so soon, because the approach is born of the persuasion that thinking or reasoning which would get at the ‘wrong’ of the wrong of law before law has asserted its jurisdiction over it should go by way of Hegelian dialectic. What there can be that is before the law, to put it contentiously, is thought’s dialectical and speculative logical foundation

This ‘before’ is not temporal and the ‘foundation’ is not a substrate which guarantees the certainty of existing knowledge. The foundation is the result of a practice of formal reasoning that takes account of assumptions and seeks to establish dependencies. It shares with any foundational approach a belief in and concern to investigate the objectivity of scientific knowledge, but concepts of objectivity are relative to the conception of foundation to which the enterprise is committed. A dialectical and speculative logical foundation is intensional (not extensional), sceptical (of established scientific knowledge) and gappy. It includes the objectivity of illusion within its concept of objectivity and starts out from an unavoidable ambiguity or double-character of ‘objects’ that foils favourite notions of classically foundationalist thought, such as denotation (reference), pre-set type-distinctions and banned ‘use-mention confusions’.

If an eye is had to developments in twentieth century and contemporary mathematical logic, to the struggle in foundations of logic and mathematics that the appearance of paradoxes in set theory and higher order logic set in train, and to the development of logics which can handle and put paradoxical objects (‘fixed-point constructions’ or products of logical self-reference) to effective use, it is Marx not Hegel who on the theoretical or logical side of things sticks to a classical position. That does not make Marx wrong and Hegel right or vice versa, but it does open a space between the theoretical and political dimensions of Marx’s critique of Hegel’s thought. With all sympathy for Marx’s political inclinations, my persuasion is that getting at the ‘wrong’ of the wrong of law, before law has asserted its jurisdiction over it, needs go by way of an up-dated but not inverted version of Hegelian dialectic.¹¹

This paper engages a problem met along that way: the personality of the absolute Idea. It is quite some time ago since, bringing Hegel’s

¹⁰ See *ibid* and [Petersen 2007]. See further below at n.103.

¹¹ [Kerruish 2007] esp. at 44f.

Phenomenology of Spirit reading of the *Antigone* together with his reconstruction of the person as the subject of formal right or legality in *The Philosophy of Right*, I argued that Hegel would not have portrayed the state as it is without reproducing the justificatory mumbo jumbo that surrounds it and its law.¹² I remain of that view though I would now want to say first, that ‘justificatory mumbo jumbo’ is a bit rough, if only because of a difference and intrigue between justification and legitimation in legal reasoning;¹³ second, that I did not there consider the *Philosophy of Right* in the light of the problem mentioned and since met. If ‘personality’ inheres in the absolute Idea then, given first that the absolute Idea *is* thought’s dialectical and speculative logical foundation and, second, that personality is a basic concept in Hegel’s notion of legality (or Abstract Right), how can it be contended that that foundation is ‘before the law’?

That is the question of this paper. The approach I have taken has been to engage it, in the text of the 1812–16 *Science of Logic* so to speak, blindfolded; as if unaware of the meaning and role of ‘persons’ in Hegel’s legal and political philosophy and as if his ‘derivation’¹⁴ of thought’s logical foundation were not influenced by views already formed on the realisation of that foundation in ethical life. My aim has been to make sense of the presence of ‘personality’ in the *Logic*, in terms of its (the *Logic*’s) subject-matter — the determinations of pure thought — and the foundational claim Hegel made for it. The following three sections of the paper pursue that strategy. The concluding section, takes off the blindfold and attempts an answer to the question.

2. Tarrying with the absolute Idea

The first paragraph of the concluding chapter of the *Logic* ‘The Absolute Idea’ reads in full:

The absolute Idea has shown itself to be the identity of the theoretical and the practical Idea. Each of these by itself is still one-sided, possessing the Idea itself only as a sought-for beyond and

¹² [Kerruish 1996] at 171.

¹³ [Kerruish 2008] at 16f.

¹⁴ Hereafter I shall drop the scare quotes from ‘derivation’ when that term is applied to Hegel’s reasoning. I include them here to indicate the difference from formal logical derivation as it is now done.

an unattained goal; each therefore is a *synthesis of endeavour*, and has, but equally has *not*, the Idea in it: each passes from one thought to the other without bringing the two together and so remain fixed in their contradiction. The absolute Idea, as the rational Notion that in its reality meets only with itself, is by virtue of this immediacy of its objective identity, on the one hand the return to *life*; but it has no less sublated this form of immediacy, and contains within itself the highest degree of opposition. The Notion is not merely *soul*, but free subjective Notion that is for itself and therefore possesses *personality* — the practical, objective Notion determined in and for itself which, as person is impenetrable atomic subjectivity — but which, none the less, is not exclusive individuality, but explicitly *universality* and *cognition*, and in its other has its *own* objectivity for its object. All else is error, confusion, opinion, endeavour, caprice and transitoriness; the absolute Idea alone is *being*, imperishable *life*, *self-knowing truth*, and is *all truth*.¹⁵

“Hegel”, J. N. Findlay writes with an imperturbability as remarkable as the passage cited, “may be forgiven the extreme gorgeousness of this passage: its import is perfectly clear”.

To conceive things with adequacy and truth is to see them as having no other meaning or function but to call forth the intellectual and practical efforts of conscious persons, beings who are and must remain atomically separate in their self-enclosed personality, but who also share an endless open horizon of rational enterprises, for which the rest of the world provides no more than the stepping-off place or the stimulus. There is no reference here to any absolute, timeless or supra-individual experience: the Absolute Idea is merely the categorial form of self-conscious Spirit, something we all exemplify when we admire art, practise religion or cultivate philosophy.¹⁶

One of the things I appreciate in Findlay’s Hegel interpretation is his enthusiasm for his subject: for Hegel’s “surpassing, saving, philosophical genius” as he puts it elsewhere.¹⁷ Perhaps that can come only from

¹⁵ Ibid at 824; 327–8.

¹⁶ [Findlay 1958] at 265.

¹⁷ [Findlay 1971] at vii.

sympathy with each of the modes of the absolute Idea.¹⁸ Findlay gives a sense for the passage which makes enough sense to approach it, but it is a troubling sense. The absolute Idea is the categorial form of self-conscious spirit. With this I agree. But does the idea of there being such a form entail the intellectually raised, elevated attitude to the material world, to that which sustains life and knows death as ‘no more than a stepping off place’ for the aesthetic, religious and philosophically cultivated pursuits of some? That may have been Hegel’s attitude, even his motivation. But I do not think it is necessarily entailed by the idea of thought’s dialectical and speculative logical foundation.¹⁹

I make sense of the absolute Idea in the first place by relating it back to the standpoint of absolute knowledge reached at the end of *The Phenomenology*. As the ‘result’ of the theory of knowledge or justification or counter-epistemology which *The Phenomenology* is, it is a standpoint or epistemic position which takes as proven the refutation of an oppositional disjunction between knowing subjects and known objects. It is also the abstract concept of a pure science of logic, conceived but not yet realised.²⁰ In this latter dimension it sets Hegel to the practical–theoretical task of deriving that foundation: the work of the *Logic*. The opening claim for the absolute Idea as having ‘shown itself to be’ the identity of theoretical and practical reason can be read as the accomplishment or result of the *Logic* or, as the following sentence indicates, that of its last transition, the overcoming of one-sidedness of theoretical cognition (the Idea of the true) and practical volition (the Idea of the good) taken as distinct and separate ways of thinking.

Tied back to that transition the claim responds to the third of Kant’s four cosmological antinomies in his first *Critique* — of causation (necessity) and freedom — and the transition is in partial correspondence with

¹⁸ Hegel’s system covers three realms, logic or pure reason, nature and spirit. Nature and spirit are modes of the *existence* (*Dasein*) of the absolute idea. Art, religion and philosophy are different modes in which it apprehends itself and gives itself an adequate existence. Philosophy shares their content and end but, “it is the highest mode of apprehending the absolute Idea, because its mode is the highest mode, the Notion” ([Hegel 1969] at 824; [Hegel 1816] at 328).

¹⁹ What might a “resource conscious” (cf. [Troelstra 1992] at 2) logic in its care for assumptions bring and mean for the way in which the resources of the material world are dealt with?

²⁰ [Kerruish 2006] at 33f.

the task which Kant set himself in his *Critique of Judgement*, restoring unity to philosophical reason split between its theoretical and practical exercises in consequence of the resolution (*Auflösung*) of that antinomy.²¹ It is however only a partial correspondence because Hegel's point of departure — the “absolute” or “presuppositionless” beginning of the *Logic* — presupposes or is based on his satisfaction with the *Phenomenology*'s refutation of a Kantian standpoint. If, in terms of a theory of knowledge or justification that is brought down to refutation of the subject-object distinction, the identity of theoretical and practical reasoning will not, as in Kant, rest in *judgement* but in a dynamic inherent in reason itself: a dynamic inherent in ‘logic’ conceived as an organon or tool for the “production of objective insights” rather than as a canon of reason.²²

Dieter Henrich claims that as Hegel's thought moved on from its earlier grounding in ethical relations, it involved a renewal of Leibniz's vision of logic as *characteristica universalis*.²³ In a comment in the *Logic* Hegel does not separate that vision from the *calculus ratiocinator*, “a language of symbols in which each notion would be represented as a relation proceeding from others or in its relation to others” and dismisses at least the latter as an “immature” idea.²⁴ Should then a ‘renewal’ be claimed here? Is the method of doing logic part of the conception of logic? For Hegel, while a distinction between the exposition and treatment of his new science and the actual practice of derivation is marked in the structure of the text, the answer must be yes. The method is internal to the conception. Exposition of the “true method” of philosophy falls *within* the “treatment of logic itself” (theory) but is *outside* the actual derivations (practice) which deploy the method.²⁵ Whether then a ‘renewal’ is properly claimed rather depends on whether the claim makes company with Hegel's dis-

²¹ Cf. “The task assigned to the *Critique of Judgement*, as its Introduction makes explicit, is to restore unity to philosophy in the wake of the severe “division” inflicted upon it by the first two *Critiques* ([Lyotard 1994] at 1). And further at 39f. for an elegant summary of relations with the antinomies of the first *Critique*.”

²² [Hegel 1969] at 590; [Hegel 1816] at 23.

²³ [Henrich 1976] at 211.

²⁴ [Hegel 1969] at 685; [Hegel 1816] at 147.

²⁵ “The exposition of what alone can be the true method of philosophical sciences,” Hegel has written in the general Introduction to the *Logic*, “falls within the treatment of logic itself; for the method is the consciousness of the form of the inner self-movement of the content of logic” ([Hegel 1969] at 53; [Hegel 1812] at 51).

missal of mathematical methods in favour of philosophical hermeneutics or not. Henrich, a student of Gadamer, evidently does make such company and not without cause. Hegel *did* imagine his logic as a purely formal and universal science and, consistently with the theory/practice distinction within logic noted, he turns, shortly after the paragraph cited to consider the method of his logic, designated as the “universal aspect of the form”.²⁶

Now this again threatens to run wide because it is the very point on which I think a radical revision of Hegel is needed if his idea of thought's speculative and logical foundation is to be brought to bear on contemporary theory. It is however fully germane to the cited paragraph because Hegel's conception of ‘logic’ as a formal and universal science takes us back to the sense in which the opening claim is, but is not *just* a reference back to the final transition; not *just* a response to Kant's third antinomy but also a summary statement of the whole endeavour and accomplishment of the *Logic*. The continuation of the paragraph brings this out. The practical-theoretical character of the task set by the standpoint of absolute knowing, to use another metaphor, is a dynamic and mutable mapping of logical space, a mapping that follows and finally totalizes over all the steps of an expansive, self-moving form, the absolute Idea. The rest of the chapter is written from this standpoint.

If the *Logic* is thought to end with the transition from the Idea of the good to the absolute Idea, this chapter hardly comes into the way in which the absolute Idea is thought. The critical move in the transition is the practical Idea grasping its own limitation and in so doing giving up its own view or opinion (*Ansicht*) of itself as having all truth and value within itself.²⁷ The absolute Idea is then the self-corrected Idea of the good and ‘end’ as *telos* and end as *fnis* come nicely together.

In this result *cognition* is restored and united with the practical Idea; the actuality found as given is at the same time determined as the realized absolute end; but whereas in questing cognition this actuality appeared merely as an objective world without the subjectivity of the Notion, here it appears as an objective world

²⁶ [Hegel 1969] at 825; [Hegel 1816] at 329.

²⁷ “[W]hat still limits the objective Notion” Hegel writes, “is its own *view* of itself, which vanishes by reflection on what its actualization is *in itself*. Through this view it is only standing in its own way, and thus what it has to do is turn, not against an outer actuality, but against itself” (ibid at 822; 325–6).

whose inner ground and actual subsistence is the Notion. This is the absolute Idea.²⁸

If however it is thought to end at the conclusion of the final chapter the perspective on the absolute Idea of that chapter comes into play. The description in the paragraph beginning the chapter amplifies the passage just cited, opening onto the the modes of the absolute Idea previously noted. The chapter then turns to a consideration of method which leads, at the *very* end, into the passage to nature or the thinking of ‘being’ as nature.²⁹ Equivocation on where or when the *Logic* ends, matches equivocation on where or when it begins and both concern the distinction, noted in the context of Henrich’s claim, between the science or theory of logic and its practice of derivations.³⁰

As a practice of derivation the *Logic* ends with the transition to the absolute Idea, but as a science of logic it ends only with the transition to the philosophy of nature: when, having completed the practical-theoretical task set by the standpoint of absolute knowing, that is having opened and entered the logical realm and explored it for its fill of determinations of pure thought, it then closes it by elucidating how it comes about that it has done what it has done. “By virtue of the nature of the method just indicated, the science exhibits itself as a *circle* returning upon itself, the end being would back into the beginning, the simple ground, by the mediation”.³¹ On the basis and ground of this closure, of a last result, the passage to nature is obtained.

In conclusion there remains only this to be said about this Idea, that in it, first the *science of logic* has grasped its own Notion . . . But in the Idea of absolute cognition the Notion has become the Idea’s own content. The Idea is itself the pure Notion that has itself for its subject matter and which, as running itself as sub-

²⁸ Ibid at 823; 327. Cf. Gillian Rose’s re-writing of the *Logic* as a phenomenology of philosophical consciousness within which the absolute Idea is the idea of absolute ethical life and the final chapter is taken as a justification of the abstractness of the end in [Rose 1981] ch.6.

²⁹ [Hegel 1969] at 843; [Hegel 1816] at 353.

³⁰ It would be in accordance with something of a fashion in philosophy and social and legal theory to give that distinction in terms of object theory and metatheory; doing logic and talking about, reflecting on it. Since I think the distinction much abused I don’t use it.

³¹ [Hegel 1969] at 842; [Hegel 1816] at 351.

ject matter through the totality of its determinations, develops itself into the whole of its reality, into the system of the science [of logic], and concludes by apprehending this process of comprehending itself, thereby superseding its standing as content and subject matter and cognising the Notion of the science. Secondly, this Idea is still logical, it is enclosed within pure thought, and is the science only of the divine *Notion* . . . Because the pure Idea of cognition is so far confined within subjectivity, it is the *urge* to sublimate this, and pure truth as the last result becomes also the *beginning of another sphere and science*.³²

The expression is anthropomorphic, the passage to nature is notoriously 'dark',³³ 'the divine Notion' is reminiscent of the 'mind of God before he created the world' *but* the salient point is to say that the *Logic* ends only when it has reached a concept of 'logic'. *That* question is still debated, still a theatre of ideological debate and to my mind still a very basic theoretical question.³⁴

My question is for the sense and function of 'personality' in here. If it is taken for granted principle of the whole enterprise of Hegelian philosophy which without even a show of a deduction, pops up as an attribute

³² Ibid at 843; 352.

³³ See e.g. [Wandschneider 1990].

³⁴ In contemporary terms, Hegel's conceives logic as a theory of concept formation. That this is not the standard conception of formal logic is admitted, but that it is in no sense 'logic' at all is not. On the contrary, both Frege and Gödel, hardly insignificant figures in the development of contemporary mathematical logic, seem to have held this view. Hao Wang, after noting the defensibility of the traditional (within mathematical logic) view that first order predicate logic is logic 'properly so called' ([Wang 1996] at 16) suggests that a theory of pure concepts can be envisaged as also part of logic. This view of logic, Wang contends, agrees with "Frege's intention and Gödel's declaration" (ibid at 170), that is, "what Frege wanted logic to be" and (it seems) the following: "Logic is the theory of the formal. It consists of set theory and the theory of concepts . . . set is a formal concept. If we replace the concept of set by the concept of *concept*, we get logic. The concept of concept is certainly formal and, therefore, a logical concept . . . A plausible conjecture is: Every set is the extension of some concept . . . The subject matter of logic is intensions (concepts): that of mathematics is extensions (sets)" (Gödel, ca. 1976) (ibid at 247 and further at 264f). Gödel's further comment, as reported by Wang, that "[f]or the empiricist, the function of logic is to allow us to draw inferences" (ibid at 267) brings out what I take to be the case, that conceptions of logic are also expressions of metaphysical commitments. On this last point see [Troelstra 1991] at 1, and on the 'what is logic' question [Wang 1994].

of what has been deduced — and that as universality and cognition — then Marx’s characterisation of the Idea as a demiurgos that is outside the system is not to be wondered at. One might rather wonder what the point of the whole long, tedious business of writing the *Logic* is. Evidently I don’t defend Hegel’s method, but short of making method everything (or nothing), that does not answer the question. Tarrying is barely begun and my question divides into the sense and function of ‘personality’ in the passage opening the chapter ‘The absolute Idea’ and the conditional: is it a or even the taken for granted principle of Hegel’s philosophy?

3. Between the Objective and Subjective Logics

There are very few references to personality in the *Logic* prior to its final chapter. It is certainly not a category of the Objective Logic. If it can be said to figure at all within the practice of derivation of the *Logic*, that would be as a principle inherent in the moment of individuality in the Notion. Apart from that, so far as I can see, there are just three other references. The first, in a remark on Spinoza and Leibniz in the Doctrine of Essence, a second in the Introduction to the Subjective Logic, and a third in the chapter ‘Mechanism’ in the Subjective Logic. The first, made pursuant to criticism of Spinoza’s “standpoint of substance” asserts that as a consequence of its defects “substance lacks the principle of personality”.³⁵ The second, designates individual personality as a moment of the Notion in Hegel’s use of that term. The third, is not more than a mention of the person and personality as possible objects of mechanical processes in thought and human behaviour as distinct from physical interaction. It makes the observation that “personality is an infinitely more intense *impenetrability* (*Härte*) than objects possess”³⁶ but apart from that it is not a significant reference and I shall not deal further with it.³⁷

The Spinoza comment in the Objective Logic follows the first chapter ‘The Absolute’ of the last section ‘Actuality’ of its second book, ‘The Doctrine of Essence’. It is appended to the sub-section of the chapter on ‘The Mode of the Absolute’. That is, as Hegel defines it, the absolute’s

³⁵ [Hegel 1969] at 537; [Hegel 1812] at 672.

³⁶ [Hegel 1969] at 716; [Hegel 1816] at 187.

³⁷ Other examples are used in the *Encyclopaedia Logic* ([Hegel 1975]; [Hegel 1830] §195).

“own reflective movement, a *determining*; but a determining which would not make it an *other* but only that which it already *is*”.³⁸ Spinozism is defective, Hegel asserts, because it is an “external thinking” which contains and dissolves all determinateness in *one* substance, an indivisible totality, reducing all images and distinctions to mere *positedness*. *Determinateness is negation* is the “absolute principle of Spinoza’s philosophy” Hegel writes and he affirms it as the “true and simple insight” which establishes the unity of substance. But Spinozan negation stops short at determination, does not proceed to “self-negating negation” and while seeing thought as contained in substance holds it as such “only in its *unity* with extension, that is not as *separating* itself from extension, hence in general not as a determinative and formative activity, nor as a movement which returns into and begins from itself”.³⁹ One consequence is that “substance lacks the principle of *personality* — a defect which is the main cause of hostility to Spinoza’s system”. The other is that cognition remains a matter of external reflection which “does not derive from substance that which appears as finite, the determinateness of the attribute and the mode, and generally itself as well” but takes the determinations as given, traces them back to the absolute but does not begin from the absolute. Hegel’s criticism of Spinoza is inseparable from his objection to Spinoza’s employment of axiomatic method. “Profound and correct” as Spinoza’s definition of substance as ‘cause of itself’ and as that the essence of which includes existence is, it is, so Hegel, a *mere* definition, immediately assumed or taken as given as is characteristic in mathematics and “other subordinate sciences”.⁴⁰

The second reference to personality occurs, a few pages into the Introduction to the Subjective Logic, as Hegel seeks to give the reader a sense for his use of the term ‘Notion’. As deduced in the Objective Logic, the reader is told, it is really the Notion of the Notion (*der Begriff des Begriffs*: the concept of concept): a usage divorced from ordinary understanding but having been proven by “immanent deduction” not the worse for that. But then Hegel admits that it should be recognizable in principle in what others say of it, and to this end, writes:

³⁸ [Hegel 1969] at 535–6; [Hegel 1812] at 671.

³⁹ *Ibid* at 536; 672.

⁴⁰ [Hegel 1969] at 536–7; [Hegel 1812] at 672–3.

The Notion when it has developed into a *concrete existence* that is itself free, is none other than the *I* or pure self-consciousness.⁴¹

In Hegel's usage, this *I* is given as a pure self-related unity achieved by abstraction from all determinacy and content, as universality;

As such it is *universality*; a unity which is a unity with itself only through its *negative* attitude, which appears as a process of abstraction, and that consequently contains all determinedness dissolved in it.⁴²

Secondly, in its self-related negativity, as absolutely determined individuality "opposing itself to all that is other and excluding it — it is *individual personality*."

This absolute *universality* which is also immediately an absolute *individualization*, and an absolutely determined being, which is a pure positedness and is this *absolutely determined* being only through its unity with the *positedness*, this constitutes the nature of the *I* as well as of the Notion. Neither the one nor the other can be truly comprehended unless the two indicated moments are grasped at the same time both in their abstraction and also in their perfect unity.⁴³

It must be emphasised that the context here is explanatory of the sense of Hegel's use of 'Notion'. The derivation of the Notion has been done and the reference to its development into a free and concrete existence is a reference to that derivation. It is not a phenomenological remark but a logical one, indicative of the stage which the *Logic* is at in its business of moving through successive determinations of the absolute, each of which, will show its untruth — until the absolute Idea is reached.⁴⁴ We, readers, are being addressed at a stage that is between the Objective Logic and the Subjective Logic. Hegel is, as ever, concerned to say that these titles are mere matters of aid and convenience,⁴⁵ but if no type-distinction is to be supposed here, the topic does change, has changed with the 'immanent deduction' of the Notion. It is then a 'concrete exis-

⁴¹ [Hegel 1969] at 583; [Hegel 1816] at 13–14.

⁴² Ibid at 583; 14.

⁴³ Ibid.

⁴⁴ The absolute Idea then would be the grasping of that truth.

⁴⁵ Ibid at 575; 3.

tence' relative to being and essence but, as the concept of concept and as only just emergent from the sphere of essence, it is a first, most *abstract* form of the Idea.⁴⁶ What now remains to be done is

the *second* aspect, to the treatment of which this Third Book of the Logic is devoted, namely the exposition of how the Notion builds up in and from itself the reality that has vanished in it.⁴⁷

This will go through the moments of the Notion, universality, particularity and individuality and the forms of the Notion's activity (subjectivity), judgement and syllogism, into its categories of objectivity, mechanism, chemism and teleology, before making its transition into the Idea — the realised, true or adequate concept of concept.

It is now, in the first part of this sequence, the moments of the Notion, that it might be possible to say that personality finds its place within the practice of the *Logic*.⁴⁸ Hegel's standpoint is that universality, particularity and individuality/the individual are distinguishable moments of the unitary and (relative to substance) concrete Notion. That is, it would seem, its concreteness at this stage. After sections on the universal and the particular concepts, individuality appears first as the return from the otherness to universality which particularity is into "an *other* again" which however, is not other to the Notion, but its reinstating itself as "self-identical, but in the determination of *absolute negativity*".⁴⁹ This return, so Hegel, is twofold, since the negative in the universal which is a particular is a "twofold illusory being", both within the universal and, through

⁴⁶ "The present standpoint to which this development has lead is that the form of the *absolute* which is higher than being and essence is the *Notion*. Regarded from this aspect, the Notion has *subjugated* being and essence, which from other starting points include also feeling and intuition and representation, and which appeared as its antecedent conditions, and has proved itself to be their *unconditioned ground*" (ibid at 591; 25).

⁴⁷ Ibid.

⁴⁸ Thomas Hoffmann comments that the *Logic* "knows" the concept 'I' and "so to say" the "pure concept of the person", but that the full concept of personality can never be contained in the logical realm. An actual competence of defining itself logically via the non-logical (nature) belongs to that 'full concept' and this can only be matter for the philosophy of spirit ([Hoffmann 2004] at 404).

⁴⁹ [Hegel 1969] at 618; [Hegel 1816] at 60. Terry Pinkard calls attention to the section headings of the Chapter, 'The universal concept' and 'The particular concept', in contrast to the third subsection 'The individual' ([Pinkard 1979] at 222). I attach a different significance to this than he does, but agree that it is of significance.

a reference outwards, a determinate. *Either* the return goes through ‘abstraction’ which forms ever broader generalities by dropping particulars — “abstraction which lets drop the particular and rises to the *higher* and the *highest genus*’ — *or* in tune with the Notion, it goes through “the *individuality* to which the universal in the determinateness [of the particular] descends”.⁵⁰ We have here a doubling in ways of concept formation in the sense of forming universals, which Hegel now characterises in normative or justificatory register as false and true ways of abstracting.⁵¹ The universals formed by the first mentioned ‘false’ way of abstraction (which might be termed ‘generalisation’ and matches, I think, what is often thought of as abstraction), become ever more destitute of content. This way of abstracting is an external activity “which holds its universal *away* and *opposite* it”; treats the negativity of the universal as a mere condition, because it “despises” the individuality in which, actually, the Notion grasps and posits itself.

Life, spirit, God — the pure Notion itself, are beyond the grasp of abstraction, because it deprives its products of singularity, of the principle of individuality and personality, and so arrives at nothing else but universalities devoid of life, spirit, colour and filling.⁵²

What follows now is an analysis, made from premise of the “indissoluble” unity of the Notion, of what happens as the dialectic of the twofold illusory being within the particular plays out. The subject-object of the sequence is throughout the Notion, moving, restless, further determining itself in a play of its moments: a play within which individuality is productive, effective of a concrete content, “the individual”. This now is the loss of the Notion; its entry into actuality, to become a “*one* or a *this*”.⁵³ The Notion then, not only returns to itself through individuality, but loses itself in the individual. Abstraction, as “the *soul* of individuality” is the negativity immanent in the universal and the particular and through it they become the individual. As this negativity, individuality is *differentiation* which, reflecting the difference between the universal and

⁵⁰ Ibid at 619; 60.

⁵¹ “Here is where the false path branches off and abstraction strays from the highway of the Notion and forsakes the truth” (ibid).

⁵² Ibid.

⁵³ Ibid at 621; 63.

the particular into itself, fixes it. The individual becomes *a-being-for-self*, a this or a one which is *exclusive* of the many other ones, the plurality which, just as much as exclusivity, is within it. As a Remark on the relevant paragraph of the *Encyclopedia Logic* makes clear, ‘the individual’ at this stage is not yet determined to an individual thing or human. It is *just* a ‘this’ or a ‘one’.⁵⁴ It cannot be conceived only pointed to and as the loss of the Notion results in its original partition (*ursprüngliche Theilung*) to posit itself as judgement (*Urtheil*).⁵⁵

Hegel can be allowed his claim to have the true approach to concept formation. It is not different in character from, for example, Derrida’s claim that deconstruction is justice:⁵⁶ an expression of commitment to the value of a philosophical endeavour being pursued. That the value claim here is truth rather than justice may be thought to distinguish a logical from an ethical endeavour, or an explicitly foundational approach from one which sees itself as neither foundational nor anti-foundational.⁵⁷ Its content is a claim to be thinking with the Notion in its self-determining, self-realising activity. The critical point is the Notion’s return to and loss of itself in the individual and the resolution of this contradiction in the transition to judgement.⁵⁸ Hegel’s logic is a logic of action, here the action of the Notion in its first self-determining move. The implication, as regards the principle of individuality and personality said to be absent from the way of forming universals which takes only one side of thought’s doubled return from particularity to universality is doubtless that this principle is not lacking from thought that follows the path of the Notion. *Why* that is so is also indicated: the Notion ‘descends’ into individuality which, if conceptually distinct from personality, has one and the same

⁵⁴ [Hegel 1975]; [Hegel 1830] §163R.

⁵⁵ *Ibid* at 622; 65.

⁵⁶ [Derrida 1989] at 15.

⁵⁷ *Ibid* at 8.

⁵⁸ Should it be thought, anachronistically to my mind, that Hegel’s use of an either–or here brings the truth-values of classical, first order predicate logic into his thinking, the game is up. Hegel has lost his challenge to classical logic, the matter having been wisely adjudicated by philosophers who would gladly believe, although they know not why, that *there is no alternative* to classical logic ‘at the meta-level’. “We are facing a *transcendental* explanation of logic ‘*The rules of logic have been given to us by Tarski, which in turn got them from Mr Metatarski*’ something like ‘*Physical particles act in this way because they must obey the laws of physics*’” ([Girard 1999] at 220).

principle. As individualization, it is an act or function of the Notion, on which individuals and persons depend.

If it is asked at this point, what the difference between individuals and persons is, no answer is found in this passage. If, for the question is an important one, we go back to the passage in the Introduction to the Subjective Logic in which Hegel gives the sense of his use of ‘Notion’, part of an answer is given: neither the Notion nor the *I* can be comprehended, so Hegel tells us, unless the latter in its two moments as universality and as individual personality are grasped ‘at the same time’ in their abstraction (or separatedness) and unity. It is only however *part* of an answer because implicitly, what is being asked is whether it is not the normativity of this thought, the *principle* of individuality and personality, in which there is no difference — in which the difference is suppressed or alternatively from which it has not yet emerged — that is, so to speak, leading the dance.

A provisional balance may be drawn thus: the second part of the question posed at the end of the previous section of this paper — is the principle of personality a or even the taken for granted principle of the whole enterprise of Hegelian philosophy which, without even a show of a deduction, pops up as somehow or another within the the absolute Idea? — should be modified to acknowledge the normative unity of individuality and personality. On the other hand the difference between individuals and persons remains a question. We have come far enough to say that there is a derivation within the practice of the logic for the ‘individual’ part of ‘individual personality’ and to see that it is produced within the dynamic of moments of the Notion. *But* personality finds its place here only by virtue of a normative principle which ties the *dubiously* logical notion of personality to traditionally logical notions of universality, particularity and individuality. It is only from the passage in the Introduction to the Subjective Logic that we gain the sense in which Hegel regards *individual personality* as inhering in his use of the Notion. To that should be added the metaphysics of the comment on Spinoza: the affirmation and critique of the standpoint of substance. Neither the one nor the other disposes the dubiously logical character of personality for both are discursive: the former a matter of meaning; the latter of standpoint, the epistemic or ethical (political, religious or moral) attitude, commitment or certainty which precedes the practical undertaking of the *Logic*.

This provisional balance or partial answer brings a shift. The following section proceeds from the view that this is *why* personality appears in the *Logic* as contextualized by the retrospective on method in the chapter on the absolute Idea. Personality and its realisation in persons *is* a presupposition of the *Logic*, legitimately so, as at least included in the standpoint of absolute knowing reached at the end of the *Phenomenology*. The question thus becomes whether it gains a recognizably logical disposition.

‘Legitimately so’ that is, on a reading of the relation between the *Phenomenology* and the *Logic* that takes the former as the openly presupposed theory of knowledge or justification which calls for the practical-theoretical task of the *Logic*.⁵⁹ That is then to take the standpoint of the *Logic* and it should be acknowledged here that, particularly within the post-structuralist Hegel reception, it is a common view that the *Phenomenology of Spirit* stands rather outside the system (of which the *Logic* is undoubtedly part) or does not quite fit it.⁶⁰ Legitimacy is a tricky thing and there is need for caution here if I am not to beg my own question. The relation between the political philosophy of the *Philosophy of Right* (equally part of the system) and the foundational endeavour of the *Logic* is also implicated. Bluntly (too bluntly for Nancy’s thought on it): is the answer to the questions I have been posing not staring us in the face as the person of the Hegelian monarch? Is it not *only* the blindfold assumed that blinds me to this obvious truth? I can only say: to a point, yes, but as one which forecloses on the question I am asking, it is not one I accept.

Moreover, and further adding the burden of caution, if my standpoint is that of the *Logic*, my approach has a revisionary perspective for which Hegel’s ‘logical’ method is not adequate to the practical-theoretical task called for by the theory of justification of the *Phenomenology*. The risk here is of missing a clear sense in which personality as possessed by the absolute Idea is an insert made to ‘ground’ in groundlessness the person and dignity of the constitutional monarch.⁶¹ Subsumed under an ‘inadequate’ method the political reaction of *The Philosophy of Right* is not properly accounted for and my question is again begged, or perhaps

⁵⁹ [Hegel 1969] at 68; [Hegel 1812] at 71. See further [Kerruish 2006] at 33-4.

⁶⁰ E.g. [Nancy 1993] at 121-2.

⁶¹ Cf. [Hegel 1991] §279 and 279R (at pp 317-8), and §280 and 280R; [Hegel 1821] (at pp 381-3).

rather it is already answered and it is *only* my revisionary alignment Hegel's idea, quite contrary to his views on the matter, to mathematical logic that removes the problem. This would be like saying: 'Ah yes, there is this unfortunate political dimension of Hegel's philosophy, but it is taken care of by methodological considerations.' That is not at all what I think and not at all what I am saying. But it is proximate and should that be doubted a reminder that, historically, it was logical positivism and empiricism or some versions of neo-Kantianism with their 'overcomings' of metaphysics in which logic's shift from philosophy to mathematics gained its first philosophical reception.⁶² The 'recognizably logical disposition' referred to must then be at least translatable into Hegel's thought.

4. Opening and Closing the Logical Realm

The chapter on the absolute Idea is a review of the method that has been used to derive the content of the *Logic*: the absolute Idea. It ends with the Idea's passage or transition to nature: a transition, we are told that is neither a becoming nor a further determination of the Notion as in the transitions of the Subjective Logic. It is an act — "the Idea *freely releases* itself [from the enclosure of pure thought] in its absolute self-assurance and inner poise" — in which no transition takes place.⁶³ What the review of method contributes to this 'transition', it would seem, is that absolute self-assurance and inner poise. No doubt it is an immanent characteristic, already 'there' within the absolute Idea and only brought to expression by reflection on how, from immediate, contentless 'being' in its identity and difference with 'nothing', the absolute Idea has unfolded itself as the unity of theoretical and practical Ideas. Yet, as we have seen, this reflection does yield a 'last result': the Idea "concludes by apprehending this process of comprehending itself, thereby superseding its standing as content and subject matter and cognising the Notion of the science".⁶⁴

⁶² [von Wright 1994]; [Friedman 2000] ch.3 and differently [Rose 1981] ch.1. But cf: "One bad effect of logical positivism is its claim of being intimately associated with mathematical logic. As a result other philosophers tend to distance themselves from mathematical logic and therewith deprive themselves of the benefits of a way of precise thinking. Mathematical logic makes it easier to avoid mistakes — even for one who is not a genius" (Kurt Gödel per [Wang 1996] at 173–4).

⁶³ [Hegel 1969] at 843; [Hegel 1816] at 353.

⁶⁴ Above p.91.

It is on the strength of this result that the ‘transition’ takes place: as a closing of the logical realm and an opening of that of nature; or as the formation of a concept of the science of logic and the opening of nature *to philosophy* (as against Newtonian physics). In either description, it would seem that the transition is a necessity of ‘system’: of the system of (pure) logic and the system of philosophy.⁶⁵ In more metaphysical terms the transition is the transformation of the absolute Idea from its logical or universal mode to its mode of existence as nature.

A second explicit reference to personality occurs in the context of consideration of the method as a “*system of totality*”. On the one hand, so Hegel, what has been observed is an advance or progress of the dialectic whereby each determinateness, each result is a new beginning. Cognition “rolls on from content to content” each content becoming “*richer and more concrete*”. The result “contains its beginning” and enriches it.

The *universal* constitutes the foundation; the advance is therefore not to be taken as a *flowing* from one *other* to the next *other*. In the absolute method the Notion *maintains* itself in its otherness, the universal in its particularization, in judgement and reality; at each stage of its further determination it raises the entire mass of the preceding content, and by its dialectical advance it not only does not lose anything or leave anything behind, but carries along with it all it has gained and inwardly enriches and consolidates itself.⁶⁶

This expansion, positively, is a wealth of content to which the universal is communicated by the method.

But the relationship also has its second negative and dialectical side. The enrichment proceeds in the *necessity* of the Notion, it is held by it and each determination is a reflection-into-self. Each new stage of *forthgoing*, that is of *further determination*, is also a withdrawal inwards, and the greater *extension* is equally a higher *intensity*. The richest is therefore the most concrete and most *subjective*, and that which withdraws itself into the simplest depth

⁶⁵ Cf. “[Hegel] does think this: that the truth is total or it is nothing (and this is what the word ‘system’ means for Hegel: it is the holding together of the whole of truth)” ([Nancy 2002] at 8).

⁶⁶ Ibid at 840; 349.

is the mightiest and most all-embracing. The highest most concentrated point is the *pure personality* which, solely through the absolute dialectic which is its nature, no less *embraces and holds everything within itself*, because it makes itself supremely free — the simplicity which is the first immediacy and universality.⁶⁷

I find pure personality as a highest most concentrated point utterly dubious, but what is salient here is its place and role in the *Logic*. As ‘pure personality’ I take it to be Hoffmann’s ‘so to say pure concept of the person’,⁶⁸ a further specification of the personality which the absolute Idea has that is made or reached in the course of this review or consideration or reflection on method.

To begin with the method is described in various ways. It is the universal aspect of the form which the absolute Idea is. It is the manner of the process of cognition that this formal science of logic is. This formal science has demonstrated, that any content given from outside, assumed as self-subsistent, is not so. “Its entire course, in which all possible shapes of a given content and of objects came up for consideration, has demonstrated their transition and untruth.”⁶⁹ The method has thus emerged as “*the self-knowing Notion that has itself* as the absolute, both subjective and objective, *for its subject matter*, consequently as the pure correspondence of the Notion and its reality, as an existence (*Existenz*) that is the Notion itself”.⁷⁰ It is the movement of the Notion itself.

‘To begin with’: that is, to begin with the reflection on method at or after the end of the *Logic*. Actually, we have been told, before ever it began, in the Introduction to the work as a whole, that “the method is the consciousness of the form of the inner self-movement of the content of logic”.⁷¹ We have been told that the simple and essential insight

is the recognition of the logical principle that the negative is just as much positive, or that what is self-contradictory does not resolve itself into a nullity, into abstract nothingness, but essentially only into the negation of its *particular* content, in other words,

⁶⁷ Ibid at 841; 349.

⁶⁸ Above at n.48.

⁶⁹ [Hegel 1969] at 826; [Hegel 1816] at 330.

⁷⁰ Ibid.

⁷¹ Above n.25.

that such a negation is not all and every negation but the negation of a specific subject matter which resolves itself . . .⁷²

And we have been told that Hegel is absolutely certain — self-assured one might say — of his, that is of philosophy's, hitherto unfound method:

I could not pretend that the method which I follow in this system of logic — or rather which this system in its own self follows — is not capable of greater completeness, of much elaboration in detail; but at the same time I know that it is the only true method.⁷³

It is less Hegel's *certainty* that his method is the only true method, than his equivocation that is of interest here. The system in its own self rather (more) than Hegel in his own self follows the method. This, for surely it is this on which the self-realising, self-justifying or demiurgos-like character of the Idea rests, is "a point that must not wait to be established within *logic* itself but must be cleared up *before* that science is begun".⁷⁴ Hegel thinks it has been cleared up: by the *Phenomenology*. There the dialectical method was applied to consciousness. Here it is to be applied to shapes (*Gestalten*) of consciousness.⁷⁵ And now, to come back to the concluding chapter, that that has been done, what remains for consideration is how it was done and, equivocally, who or what did it.

In Gillian Rose's re-writing of the *Logic* as a phenomenology of philosophical consciousness, the last chapter of the *Logic* is taken as justifying the merely abstract level at which the unity of the theoretical and practical Ideas has been established. "The end" she writes, referring to the transition from the Idea of the good to the absolute Idea,

is abstract like the beginning.

The first paragraph of 'The Absolute Idea', the last chapter of the *Logic*, and the rest of the chapter, admits and *justifies* this abstraction in the exposition of absolute method.⁷⁶

The end (*that end*) is abstract like the beginning for it is in both cases a concept or Notion and, further, as 'Notion of the science [of logic]' it has *superseded* its standing as content and subject matter, and returned into itself. This justificatory function of the reflection on method removes the

⁷² [Hegel 1969] at 54; [Hegel 1812] at 51.

⁷³ *Ibid.*

⁷⁴ [Hegel 1969] at 586; [Hegel 1816] at 18.

⁷⁵ [Hegel 1969] at 53–54; [Hegel 1812] at 51.

⁷⁶ [Rose 1981] at 201.

explicitly *unjustified* character of the *resolve* or *decision* (*der Entschluss*) to begin,⁷⁷ and replaces it with *this* other or second ending which, by virtue of the “method of truth”

knows the beginning to be incomplete, because it is a beginning; but at the same time it knows this incompleteness to be a necessity because truth only comes to be itself through the negativity of immediacy.⁷⁸

It is thus that, “by virtue of the nature of the method” the end is wound back into the beginning.⁷⁹ In this dimension the method takes its description as the movement of the Notion: its going out of and returning into itself.

Yet if it is by virtue of the nature of the method that this, so to say, happens, pointing out *that* it happens is what Hegel is doing here. Considered under that description, and keeping in mind that Hegel thinks this to be part of the science of logic *and* that logic is foundational to a systematic philosophy, its abstraction stands in no need of justification. On the contrary, abstraction, in one manner (Hegel’s) and another (traditional formal logic) or another (Kant’s transcendental logic) is the activity of thinking that logic is. I suggest then that the reflection on method is not only justificatory and that it works also, a closure that constitutes the independence or autonomy of the logical realm.⁸⁰ This closure is of the kind that is meant when a class or universe of objects (say ‘number’) is

⁷⁷ “Here [that is, on the presupposition of *The Phenomenology* (VK)] the beginning (*das Anfangende* — literally that which begins) is made with being which is represented as having come to be through mediation, a mediation which is also a sublation of itself; and there is presupposed pure knowing as the outcome of finite knowing of consciousness. But if no presupposition is to be made and the beginning (*der Anfang*) itself is taken *immediately*, then its only determination is that it is to be the beginning of logic, of thought as such. *All that is present* (vorhanden) *is simply the resolve*, (*der Entschluss*) *which may also be considered as arbitrary, that we propose to consider thought as such* (my emphasis). Thus the beginning (*der Anfang*) must be an *absolute*, or what is synonymous here, an *abstract* beginning: and so it *may not presuppose anything* must not be mediated by anything nor have a ground; rather it must be itself the ground of the entire science” ([Hegel 1969] at 69–70; [Hegel 1812] at 73).

⁷⁸ [Hegel 1969] at 841; [Hegel 1816] at 350.

⁷⁹ Above at p.90.

⁸⁰ Alternatively, the distinction being grasped at here is between the justificatory function of logic as foundation and the practice of logical derivation.

said to be closed under a particular function (say subtraction) so as to include within the class or universe, the values of that function (negative numbers). It is then an inclusive function or operation which brings 'objects' — possibly 'strange' ones; certainly the antinomies which classical logic wants to and must exclude from its universe — into a realm.⁸¹ Certainly Hegel will have no truck with mathematical methods. Certainly the admittedly justificatory function of the reflection on method works a closure of the kind that excludes that manner of abstraction which takes the 'false path' of dropping particulars and thus deprives its products of the principle of individuality and personality.⁸² But just as certainly, the logical realm for Hegel has an autonomy, a being, essence and life of its own.

Hegel has elicited this autonomy in the Introduction to the Subjective Logic.

[T]he Notion is to be regarded not as the act of the self-conscious understanding, not as the *subjective understanding*, but as the Notion in its own absolute character which constitutes a *stage of nature* as well as of *spirit*. Life, or organic nature, is the stage of nature at which the Notion emerges, but as blind, as unaware of itself and unthinking; the Notion that is self-conscious and thinks pertains solely to spirit. *But the logical form of the Notion is independent of its non-spiritual and also of its spiritual, shapes* (my emphasis). The necessary premonition on this point has already been given in the Introduction. It is a point that must not wait to be established within *logic* itself but must be cleared up *before* that science is begun.⁸³

The 'necessary premonition' given in the Introduction, refers to the remarks on method and the relation between the *Phenomenology* and the *Logic* in terms of the subject-matter to which the method is applied.

To my mind, the sense in which Hegel thinks the autonomy of logic is both the least understood and the most difficult to credit aspect of

⁸¹ This is then the difference between re-writing the *Logic* as a phenomenology of philosophical consciousness and reading it, for its abstract idea of thought's dialectical and speculative logical foundation, which gains contemporary relevance by alignment to contemporary mathematical logic.

⁸² Above at p.96.

⁸³ [Hegel 1969] at 586; [Hegel 1816] at 18.

Hegel's idea of thought's dialectical and speculative logical foundation. If we are back here to the equivocations, of beginning and ending *and* of who or what follows the method *qua* "consciousness of the form of the inner self-movement of the content of logic", we also have the context of the, no less difficult, designation of 'pure personality' as the highest most concentrated peak of a process of enrichment and expansion that proceeds, in its second dialectical side "in the *necessity* of the Notion." Its withdrawal inwards to the highest most concentrated point that is 'pure personality' *happens* for Hegel "because [the Notion] makes itself supremely free". It *yields* "the simplicity which is the first immediacy and universality"⁸⁴ and it *is* the ungrounded "ground of the entire science".⁸⁵

To my mind this is Hegel's logical disposition of the normative principle of individuality and personality: the principle *lacking* from Spinoza's system; lacking in *all* thinking that takes the 'false path' of despising the individuality into which the concept descends, *present* in the "higher standpoint" of Kant's first *Critique*, but only as a moral and psychological principle and, as such burdened by subjectivity.⁸⁶ Hegel's (even 'higher'!) standpoint, with debts to and struggles with Fichte, is the *Phenomenology's* standpoint of absolute knowing. The absolute dialectic which is the nature of pure personality is pure self-reference. Figured again in the last description of the method as "the pure Notion that relates itself only to itself",⁸⁷ it has the sense of pure self-determination ('it makes itself supremely free'): a capacity or power exhibited in the Idea's transition to nature.

⁸⁴ Above p.102.

⁸⁵ Above at n.77.

⁸⁶ "The complete transformation which philosophical thought in Germany has undergone in the last twenty five years and the higher standpoint reached by spirit in its awareness of itself have had but little influence as yet on the structure of logic" ([Hegel 1969] at 25; [Hegel 1812] at 13). The twenty five years takes us back to the second edition of Kant's *Critique of Pure Reason*.

⁸⁷ [Hegel 1969] at 842; [Hegel 1816] at 352.

5. Threads of Wrong in Right

Was der Geist will, ist, seinen eigenen Begriff zu erreichen, aber er selbst verdeckt sich denselben, ist stolz und voll von Genuss, in dieser Entfremdung seiner selbst.⁸⁸

“The basis of right is the *realm of spirit* . . . its precise location and point of departure is the *will* [and] the will is *free* . . .”.⁸⁹ As immediate, as the “*inherently individual* will of a *subject*” the free will has personality for its concept and what distinguishes a person from the subject that it also is, is that it is conscious of itself as a completely abstract ‘I’.⁹⁰ The juridical person is only the subject-object of abstract right or legality, the barest most minimalistic and formal moment of right: legalism indeed if taken as the be all and end all of law, which is most certainly not how Hegel takes it. Personality, developed to the absolute right of the state as its personality, has its truth and actuality as a person, the monarch, indeed the hereditary monarch.⁹¹

Personality (and subjectivity in general), as infinite and self-referring, has its *truth* — and indeed its proximate and immediate truth — simply and solely as a person, i.e. as a subject which has being for itself; and that which has being for itself is also and simply *one*. The personality of the state has actuality only as a *person*, as *the monarch*.⁹²

It is less the political concept of sovereignty that motivates my concern with personality in Hegel’s system than the role of personality in determining the basic juridical notion of ‘wrong’. How the relation between the *Philosophy of Right* and the foundational endeavour of the *Logic* is thought, depends on the relation between the *Phenomenology* and the *Logic*. Further, even given the limitations of Hegel’s actual accomplishment as regards his aim of replacing metaphysics by a formal science of logic, in principle the categories of abstract right or legality as abstract

⁸⁸ [Hegel 1837/40] at 91. “What Spirit wants is to attain its own concept, but it stands in its own way, is proud and full of self-satisfaction in this alienation from itself” (my translation). Cf. [Hegel 1991] at 55.

⁸⁹ [Hegel 1991]; [Hegel 1821] §4.

⁹⁰ *Ibid* §§33–35.

⁹¹ *Ibid* at §279.

⁹² *Ibid* §279R.

universals which become concrete in the ethical life of a particular time and place have and retain a shaping force in legal theory.⁹³

Developed via the concepts of the free will and its accidental embodiment in human subjects to the full concept of personality, the ‘truth’ of personality as the first category of legality is a person, an individual, an ‘I’, which, like the Notion of the *Logic*, ‘makes itself supremely free’: “I am finite, yet totally pure self-reference and thus know myself in my finitude as *infinite, universal and free*”.⁹⁴ My social and cultural identity as a person is gained, as Hoffmann puts it, in the actual capacity to define myself ‘logically’ against what is not-logical, nature.⁹⁵ a capacity that all humans have but which, Hegel thinks, has been most fully realised in the course of the social and cultural history of Europe. It is Spirit embodied in social relations and institutions of European ethical life.

As constitutive of the concept and basis of legality, personality brings with it modern law’s imperational moment: “*be a person and respect others as persons*”⁹⁶ and that, as both reasonable and actual turns what is abstractly wrong into what is abstractly right. Force or coercion (*Zwang*), so Hegel, abstractly considered, are contrary to right. But since the merely natural, uncivilised will is itself a force against freedom, a second coercion aimed at canceling it out is necessary. As an imperative of freedom and reason the *right* of “pedagogic coercion, or coercion directed against savagery and barbarism” to bring (presumably) children and ‘savages’ to personhood rests on it.⁹⁷

Speaking, as for Hegel I should, in my identity as an Australian citizen the question that has prompted this paper, the problem met along the

⁹³ If the aim of the *Philosophy of Right*, namely the reconciliation of subjective freedom with the state as the historical embodiment of objective freedom, is read as the aim of the system, then my methodological blindfold will appear perverse. To my mind however this reading, in all innocence of fetish phenomena as a dialectic of form and content in the sensuous-supersensuous or social realm, substitutes a consequence of the system (or if you will a particular result) for the system. As I read him, Hegel reconceives objectivity from the premise of subject-object interpenetration established by the *Phenomenology* so as to include the objectivity of illusion. The legitimacy of the state falls under such an illusion. It is a fetish phenomenon.

⁹⁴ *Ibid* §35.

⁹⁵ [Hoffmann 2004] at 404.

⁹⁶ [Hegel 1991]; [Hegel 1821] §36.

⁹⁷ *Ibid* §93R.

way of getting at the ‘wrong’ of the wrong of law,⁹⁸ could be thus phrased: what has personality as attributed to the absolute Idea to do with the dead bodies of the peoples whose ‘cancellation’ just over two hundred years ago grounded the state of which it is my highest duty to be a member?⁹⁹ What has it to do with continuing destruction of a culture intimately bound into the environment from which it emerged? Hegel tells me that all this suffering and harm is necessary, ‘right’ indeed and not just in its limited juristic sense but “as the actual body of all the conditions of freedom”.¹⁰⁰ He tells me that the derivation of this concept is to be found in his *Philosophy of Spirit*.¹⁰¹ It is a derivation I do not accept, logically or politically.

But now how in the face of all this could it ever be contended that an updated but not inverted version of Hegelian dialectic is needed to think the ‘wrong’ of the wrong of law before law has asserted its jurisdiction over it? Certainly, by revising Hegel on the issue of the method needed to realise his idea of replacing metaphysics by a new science of logic, that is to present such a foundation. It is Hegel who said:

Philosophical thinking in general is still concerned with concrete objects—God, nature, spirit: but logic is concerned only and solely with these thoughts *as thoughts*, in their complete abstraction”.¹⁰²

⁹⁸ Above p.84.

⁹⁹ If it is objected here that pedagogic coercion is not aimed at death, I would say that the objection abides with a distinction between intended and unintended consequences of action which generates the exculpatory notion of ‘collateral damage’ or suffering for which no-one is responsible. Cf. [Veitch 2007] at 86f discussing Hobbes’ distinction between injury and damage.

¹⁰⁰ [Hegel 1971]; [Hegel 1845] §486.

¹⁰¹ In the finite realm of Objective Spirit, the concept of right, freedom, receives “*the form of Necessity* (ibid §484). Its actuality is the unity of the rational and the individual or single will. Since this principle (of unity) belongs to thought “the content has its right and true character only in the form of universality.” It (the content) is law (*Gesetz*) “when invested with this character for the intelligent consciousness, or instituted as authoritative power”. It exists as custom (*Sitte*), as the “habit, temper and character” of a people when, in the course of their history their practices of social and cultural life have been “freed from the impurity (*Unreinheit*) and fortuitousness” of practical feelings and drives (ibid at §485).

¹⁰² [Hegel 1969] at 34; [Hegel 1812] at 24.

The question of method is the question of how, with what means and according to which procedures, that abstraction ('complete' it need not be) can be attained? Hegel's judgement that the German language and the resources of philosophy are adequate to the practical-theoretical or practical-technical task of realising his idea is that of a partisan for philosophy's mastery or sovereignty of logical space in a war with mathematics.¹⁰³

But that answer does not encompass the full measure of the matter. A merely methodological (neo-Kantian or formalist) resolution of the problem of this paper is not what I am proposing and would miss my mark: legal persons and the principle of abstract equality *as a problem* of the modern form of law; a problem as tricky and as basic to questions of the value of law as are commodities in theories of economic value. Let me put it this way: how is it that fetish phenomena attaching to commodities under the label 'commodity fetishism' have acquired the indelible sense of 'bad' fetishes, while similar phenomena attaching in legal and ethical discourse to persons attract no such prejudice? One could of course blame Marx for that. Theoretically, however, given only a willingness to acknowledge the problem, one place to begin would be the "responsibility transference" facilitated by the discursive construction of economic and political spheres as discrete, with its consequences for legal thought.¹⁰⁴ Put shortly and in terms of my question: is it not that once and as a condition of the law asserting its jurisdiction over the meanings of 'right' and 'wrong', legal persons with their indissociable tie to property (for

¹⁰³ Revising that judgement entails an alignment of Hegel's idea to mathematical logic: not a formalisation of his *Logic*, but the construction of a formal system of mathematical logic that takes the *name* 'dialectical and speculative' in acknowledgement of its inspiration ([Kerruish and Petersen 2006] at 76). The method substituted is that of strict formalisation, largely developed in the Hilbert school of mathematics in the early decades of the last century. Proof theory — the logic of logic as it has been called — rather than a philosophical hermeneutics becomes the theoretical home of the practical-theoretical or practical-technical endeavour ([Kerruish 2006] esp. at 53f). As regards Hegel's 'war with mathematics', perhaps Tarik Kochi's idea, presented in the context of a war of ideas in theories of war, of a praxis of recognition aimed at "recognising the ethics of the other's war" ([Kochi 2009] at 249f), adapted to educational praxis would bring some hope to the misery of philosophical receptions of traditional logic's mathematical turn.

¹⁰⁴ [Veitch 2007] at 60f.

the observation of which Hegel could be blamed!) become sacred objects: 'good' fetishes?

To get at that question at the level of metaphysics and logic, the inquiry of this paper has been pursued in metaphysical and logical terms. Pretending unawareness of the determinations of personality in Hegel's legal and political philosophy, I have inquired after the sense and function of personality as attribute of, or as attributed to, or as always already inherent in the *Logic's* absolute Idea, seeking answers in its terms.¹⁰⁵ What came out is not what I expected. I expected to find a conceit: an *ex post facto* attribution that would function to contain (in the sense of hold within itself) contradiction and take care of the 'reason' part of a political constitution which, for Hegel is the existence of reason in history. What came out is that personality, as possessed by the absolute Idea, is a presupposition of Hegel's logic, a presupposition of the 'higher standpoint' of philosophy inaugurated by Kant's *Critique of Pure Reason*, which relies for its logical disposition on the reflection on method. That reflection yields the 'other' end of the *Logic* and the sense in which, for Hegel, the science of logic ends only when a concept of 'logic' has been reached. Hegel's judgement on method was poor. A reflection on method as that which brings to the surface 'pure personality' as the ungrounded ground of Hegel's system and, bringing closure to the logical realm, yields a concept of 'logic' is ingenious. In so far as, in contemporary terms, that is a concept of logic *qua* theory of concept formation, it is 'recognizably logical' in a philosophical sense.¹⁰⁶ The integration of 'pure personality' into the science of logic that is worked by this reflection falls away with revision of Hegel's method. The reflection on method in closing the logical realm and opening that of nature to philosophy does not fall with it. What does fall away is its justificatory dimension. Confined, as I think that is, to justifying Hegel's 'presuppositionless' or 'absolute' beginning of logic, it becomes redundant if no such beginning is claimed. What appears in its stead is the question of my title set into a conception of logic as theory of concept formation that will *replace* metaphysics using

¹⁰⁵ The determinative moments of jurisdiction, application, decision and final determinations of the laws, are absent from the logical realm (cf. [Hegel 1991]; [Hegel 1821] §3).

¹⁰⁶ That is heresy in a mainstream fed by basic logic courses dealing only with classical propositional and first order predicate logic, but as noted it is a concept that is not without its famous protagonists.

methods deployed in contemporary mathematical logic. That is a project, of Hegelian inspiration with some chance of succeeding where Hegel failed.

It may well be asked: does not Hegel's theory of law and the state depend on that integration for its claim to be logically founded? If that dependency falls away with the revisionary alignment envisaged are we not left with strategies of bringing Hegelian dialectic to bear on critical legal theory, such for example, as are pursued by Nancy or Gillian Rose: strategies that pursue the negative dialectic, the 'restlessness of the negative' or the aporetic reading of a 'broken middle' but drop or re-write the positive or speculative dialectic of the *Logic* in that totalisation of the concluding chapter that yields its 'last result'?¹⁰⁷

I think that the justificatory and legitimitative endeavour of the *Philosophy of Right* is dependent on that integration. It is also the case that I am indebted in different ways, to both Nancy's and Rose's appropriations of Hegel's thinking. The negative dialectic traces the limitation of 'right' determined by existing relations and institutions of ethical life. It is however my persuasion that a positive or speculative dialectic which affirms a logical foundation gives the possibility of conceiving the 'wrong' of the wrong of law before law has asserted its jurisdiction over it. That is a possibility which the justificatory and legitimitative deployments of personality and its instantiations in the *Philosophy of Right* opts to subordinate. It *is*, as Badiou says "the path of thinking, that is its method" that displays the conception of logic as the theory of concept formation. But it is *not* "nothing other" than method.¹⁰⁸ In my understanding of

¹⁰⁷ Cp. [Badiou 2009] at 142–4. Badiou's summary of this passage departs from mine in the claim that "what displays the Whole within thought is *nothing other* than the path of thinking, that is its method" (142, my emphasis). Badiou wants "in the name of a materialist dialectic to do justice to our father: the master of the 'idealist' dialectic" (141). 'Our father' is not a name on which I wish to call and masters belong to hierarchies of authority in schools and sects. It is the very opposition between materialist and idealist dialectic, vested as I think it is in the metaphysics which Hegel sought, unsuccessfully, to replace with his science of logic that I would like to dissolve. That metaphysics, so far as I am concerned is the old wardrobe. My differences with Badiou are metaphysical, logical and political. Badiou, as I understand him, proposes Zermelo Fraenkel set theory as fundamental ontology. Extensionality is an axiom of this theory ([Badiou 2005] at 60–61) whereas the *failure* of extensionality is basic to the foundation proposed here. See further below at p.115. A modest consideration of Badiou's thought in legal studies is found in [Widen 2008].

¹⁰⁸ [Badiou 2009] at 142.

it, dialectical reasoning thinks its object as inseparable from the subjective, active component of its having been thought and (the question of method) of how it has thought it. That is Hegel's insight and Marx credits it as such. Contra Hegel, that is not altered if mathematical means and methods are deployed in formal logic. Mathematics is 'external' to philosophy, as Badiou puts it, but I would add *in the current, ruling, disciplinary and institutional division of intellectual labour*. I take that as a problem of our times which will not last for ever. I do not think that theory alone can change that but I do think it incumbent on theory to think through and past the twentieth century's philosophical receptions of logic's mathematical turn. Basic to that, to my mind, is Hegel's *idea* of thought's speculative and logical 'foundation' as a composite of theory of knowledge or justification and logic as theory of concept formation. The remainder of this paper attempts to fill out somewhat these ideas.

My premises are that the *realisation* of Hegel's idea of thought's dialectical and logical foundation becomes the mathematical logical enterprise of constructing a formal system of dialectical and speculative logic and using it for a derivation of categories in a sense of 'derivation' conforming to contemporary mathematical logical practice. The possibility of actually replacing metaphysics by logic (rather than a hermeneutic reconstruction) lies there in mathematical logic practice.¹⁰⁹ Now, that is, within my own legal theoretical enterprise: taking 'metaphysics' as encompassing what has latterly been sundered,¹¹⁰ ontology *and* epistemology, 'standpoint' comes in to this idea of foundation. Acknowledging Kant's inauguration of German idealist philosophy with the increased reflexivity of his 'Copernican Revolution'¹¹¹ but as re-worked by the *Phenomenology*, it is a standpoint that accepts the standpoint of absolute knowing reached at the end of the *Phenomenology*, reading it as having a double character: (counter-)epistemological and (abstractly) logical.¹¹²

¹⁰⁹ For these premises I am reliant on the work of Uwe Petersen.

¹¹⁰ By the almost indelible imprint of neo-Kantian thought on twentieth century philosophy in the Kantian tradition.

¹¹¹ Referring to [Kant 1929] at 22; [Kant 1781/87] at 20.

¹¹² [Kerruish 2006] at 33. "It is a standpoint of a journeying consciousness which has experienced a range of attitudes to its desires and their reversal, and knows itself as the recollecting totality of that experience. It is also the abstract concept of a pure science, of 'logic' in Hegel's sense, conceived but not yet realised by a derivation of the determinations of pure thought."

“[E]verything turns on grasping the True not only as *Substance* but also as *Subject*” Hegel writes in the Introduction to the *Phenomenology*.¹¹³ Pursuing first the logical dimension of this standpoint, reaching back then to the second, third and fourth sections of this paper with their focus on Hegel’s *Logic*, let me come back the critique of Spinoza and the charge that his philosophy lacks the principle of personality. That critique is followed up in the *Logic* by a ‘refutation of Spinozism’. Placed in the Introduction to the Subjective Logic, this passage complements engagements with Kant and his successors in delineating the standpoint of that second book of the *Logic*. In it, Hegel affirms the criticisms made in the Spinoza comment but takes aim at those critics of Spinoza who pursue an external critique from assumptions that are inconsistent with those made by Spinoza.¹¹⁴ Its point is to affirm his, Hegel’s, exposition of substance as the “sole and genuine refutation of Spinozism” and this involves recognising the standpoint of substance as intrinsically rich enough to yield the freedom and self-subsistence of the self-conscious subject; as indeed “essential and necessary” and to that extent true, *but* defective in the manner previously discussed. It is then a standpoint that must be raised “to the higher one through its own immanent dialectic”.¹¹⁵ Substance thus becomes “something higher, the *Notion*, the *subject*”.¹¹⁶

Hegel’s claim that the standpoint of substance is essential and necessary, and only defective in not being “the highest standpoint”; his assertion that the “true system” cannot stand in a relation of mere opposition to it but “as the higher, must contain the subordinate system within itself”,¹¹⁷ use a figure of elevation that signals, at best, a conviction of the value — for Hegel it is truth — of his own approach.¹¹⁸ Related as it is to a critique of Spinoza which is inseparable from the latter’s use of axiomatic

¹¹³ [Hegel 1977] at 9–10; [Hegel 1807] at 22.

¹¹⁴ The thing is not furthered, as Hegel puts it, by attacking one’s opponent “where he is not” ([Hegel 1816] at 11). Pashukanis, citing Marx’s critique of bourgeois economy, makes a similar point when he writes of the need to “venture into enemy territory” ([Pashukanis 1978] at 64).

¹¹⁵ [Hegel 1969] at 581; [Hegel 1816] at 11.

¹¹⁶ *Ibid* at 580; 9.

¹¹⁷ *Ibid* at 580; 10.

¹¹⁸ Hegel is by no means alone in this usage. Claims, commonly enough made, regarding the ‘depth’ or ‘profundity’ of a particular insight deploy the same rhetorical figure. A certain egalitarian ethos characteristic of frontier or colonial settler societies, will condemn such claims. ‘I’m as good as you mate’ as they say in Australia. I suggest

method, it is discordant. There is however a different and critical point at stake. Going back to my premises: extensionality *fails* in a formal system of dialectical and speculative *mathematical* logic.¹¹⁹ And returning: acknowledging the differing meanings of 'extensionality' in mathematical and metaphysical contexts I nonetheless relate that failure to Hegel's criticism of Spinoza (without the 'self-negating negation' of his method).¹²⁰ Thought separates itself from extension.¹²¹ In my terms, thought, in its freedom, flies free of the mundane world, leads and misleads, and it is this with which Kantian and Hegelian dialectic and Marx's fetish phenomena in differing ways have to do.¹²² In formal logical terms the failure of extensionality demands an intensional logic the *construction* of which, while seeking to minimise assumptions, makes no claim to an 'absolute' or 'presuppositionless' beginning of logic.

Hegel did make that claim. He was consciously and strongly committed to it. As far as I can see it is part and parcel of his rejection of mathematical methods and reasoning and, as twice remarked, his Spinoza critique is inseparable from it.¹²³ That is more than discordant. It is cause for revision. *But first*, if the charge laid against Hegel is as noted, vicious circularity or impredicativity, that is not an issue in a formal system of logic which can handle and put antinomies generated by logical self-reference to constructive use. *And second*, the event of paradoxes turning up at very basic levels of mathematics and logic had not yet happened in

this is an ethos born of denial of the societal hierarchy established by appropriation of the lands and non-recognition of the law and culture of indigenous peoples.

¹¹⁹ [Petersen 2000] and cf. [Petersen 2007] at 128f.

¹²⁰ Above p. 93. Whether that criticism does justice to Spinoza I cannot say.

¹²¹ Where Hegel's beginning gives inspiration to the formal logical system referred to is, specifically, in the idea of two concepts ('being' and 'nothing' but the names are irrelevant) which are extensionally equal (both empty) but intensionally different, that is, contrary to set theoretical and logical orthodoxy, equal but not identical. The construction of two such objects is the proof of the failure of extensionality in the system referred to. If there are superficial similarities in my approach and Badiou's this difference should dispel them.

¹²² [Kerruish 2007].

¹²³ According to Stephen Houlgate, Hegel's mathematician colleague, one Pfaff, thought Hegel's system viciously circular and recommended an artificial system of notation and the explicit formulation of a limited number of postulates or premises as admitted presuppositions ([Houlgate 2006] at 72). Though I wonder at the notion of 'vicious circularity' being about at that time, the point is that the problem of a presuppositionless beginning was squarely put to Hegel.

Hegel's time and he had no occasion to think *that* it had happened *within a mathematical enterprise*.

That changes things quite a lot if account is now taken of the standpoint of absolute knowing in its epistemic dimension as that of a journeying consciousness or subject.¹²⁴ One issue that comes to the fore is what, 'pure personality' as 'pure self-reference' in Hegel's *Logic* has to do with self-reference of the kind that gives rise to logical antinomies in a broad but contemporary sense.¹²⁵ A second point, and the one I pursue here, is a further *experience* of Spirit which can be taken into account quite consistently with this aspect of Hegel's standpoint of absolute knowing and, as I will contend, his idea of 'foundation'. That is where revising Hegel's views on method is not at all outrageous and one might rather wonder why philosophers have failed to do so.¹²⁶ Staying away from that particular side-track (interesting as it is), I am saying that Hegel's idea of 'foundation' is a composite of a theory of justification (the *Phenomenology*) and a theory of concept formation (the *Logic*) *requiring an effective method for its realisation*, that is, an actual derivation of categories. Such a science would not leave everything in its place.¹²⁷

The theory of justification and concept formation — the counter-epistemology that is Hegel's *Phenomenology* and his logic — which method serves (or disserves), joined in the idea that substance becomes subject, are the theories which maintain the contention that thought's dialectical and logical foundation is before the law. Once the differing undertakings of a theory of knowledge and logic as theory of concept formation are acknowledged the apparently aporetic or paradoxical claim that makes the *Phenomenology* the presupposition of a presuppositionless logic¹²⁸ dissolves. Thought flies free of the mundane world. It flies free and creates figures and fantasies, concepts and illusions. It leads and it misleads. It is in excess of the material, habitual, finite world of everyday life. It cannot escape its own being as being at odds with itself but it can, by artifice, bracket out the world it has flown and abide with its own makings and

¹²⁴ Above n.112.

¹²⁵ On the hazards of depictions of self-reference see [Petersen 2007] at 97f.

¹²⁶ One party stays with Hegel's bad judgement on method and the other wipes him from the 'canon' of (analytic) philosophy on account of it.

¹²⁷ Has not left everything in its place. The first derived category after 'being' is modality ([Petersen 2000] and see below, this volume p.178).

¹²⁸ [Hegel 1969] at 69–70; [Hegel 1812] at 73.

doings. If this is the impulse to turn metaphysics to a science of logic that will replace metaphysics, the bracketed space, 'the formal' is the excess objectified, separated by artifice from material life.

Hegel, seeing only through a glass darkly, utilizes the formal mode of abstraction which turns a concept or predicate to an object or (grammatical) subject: the *substantivierte Aussageform* (propositional form turned noun) as Henrich describes it.¹²⁹ Yet in his certainty as regards method and his equivocation of who or what follows his method, he seems want to deny the artifice deployed. Marx's *logical* quarrel with Hegel goes to this artifice, but is devolved, unfortunately to my mind, onto a metaphysical opposition of materialist and idealist dialectic, even as he grasps at their interplay in fetish phenomena. The *political* quarrel is of a different character. It is not reducible to logic, but the question here is how far normative commitments to one logic or another or, indeed, to 'logical pluralism', affect reasoning in political and thus legal theory. From the perspective of this paper, the relation between metaphysics/logic and politics should not be foreclosed by the classical view that formal logic, as empty of content, consists in universally valid 'laws of thought' applicable to each and every content.

As I have said, my political sympathies are with Marx. 'Pure personality' as the 'highest most concentrated point' of the absolute dialectic which is its nature is by no means an arbitrary 'container' of negative dialectic in Hegel's system. I would still say that Hegel could not have portrayed the state as it is without reproducing the justificatory and legitimative dimensions of its juridical and political discourse. I would now add that Hegel consciously reproduces an intrigue between justification and legitimation which is one of the techniques of constitutional reasoning.¹³⁰ The critical perception of the bad infinite of modern civil society is

¹²⁹ [Henrich 1978] and above n.8.

¹³⁰ "The *truth concerning right, ethics and the state*" is at any rate as old as its "*exposition and promulgation in public laws and in public morality and religion*. What more does this truth require, in as much as the thinking spirit is not content to possess it in this proximate manner? What it needs is to be *comprehended* as well, so that the content which is already reasonable in itself may also gain a reasonable form and (my emphasis) *thereby appear justified* (gerechtfertigt erscheine) *to free thinking*" ([Hegel 1991] at 11; [Hegel 1821] at 22). The enigmas of 'appearance' are built in. On the intrigue between justification and legitimation see [Kerruish 2008] at 16–24.

subordinated in that intrigue,¹³¹ as is the contempt of the particularity of actual persons that is inherent in legal personality.¹³² That subordinating moment in his thinking is not divorced from the first ending of the *Logic* with its affirmation of Kant's "absolute postulate" of the realised good.¹³³ Nor is it fully relieved by the reflection on method which constitutes the second ending. Hegel's commitment to 'personality' as the ungrounded ground of his system is inseparable from a philosophical narrative which as a philosophy of history is a (protestant) Christian theodicy.¹³⁴

That opens another front. So let me draw back here to an issue touched on throughout this paper: normative or ideological commitments in metaphysics and logic as they appear in contemporary mathematical logic.¹³⁵ For all the differences between logical and legal thought and practice, the situation there is not so different from that which pertains in law. Practitioners know the game and are interested in playing it. Metaphysical questions don't loom large or at all. Practice is pragmatic: if this system, this technique, that trick does the job, use it. Yet, if an ideology of pragmatism gains hold in the very disdain of such questions, or indeed as a commitment to logical pluralism, normativity enters mathematical logic in ways that have been more finely observed. With the emergence in the course of the twentieth century of a plurality of formal logical systems, or to put it otherwise, with the collapse of the idea that traditional or modern classical logic, even (perhaps especially) viewed as a normative discipline, is the 'one true logic' embodying universally valid laws of thought, normative or ideological commitments previously disguised by that idea appear as commitments to one logic or another. These commitments play out in full force in foundations of logic and mathematics. As A. S. Troelstra, a doyen of the Dutch school of intuitionist mathematics and mathematical logic puts it:

Constructivism is a point of view (or attitude) concerning the methods and objects of mathematics which is normative: not only does it interpret existing mathematics according to certain prin-

¹³¹ Ibid at §§244, 245.

¹³² Ibid at §35A; on both issues see [Kerruish 1996].

¹³³ [Hegel 1969] at 820; [Hegel 1816] at 323. For the designation of this postulate as Kant's (rightly or wrongly) [Hegel 1975]; [Hegel 1830] §55.

¹³⁴ For the influence of that narrative on the derivation of 'right' in the system see [Hegel 1971]; [Hegel 1845] §§481–2.

¹³⁵ In particular above p.117.

ciples, but it also rejects methods and results not conforming to such principles as unfounded or speculative (the rejection is not always absolute, but sometimes only a matter of degree: a decided preference for constructive concepts and methods). In this sense the various forms of constructivism are all 'ideological' in character.¹³⁶

Normative or ideological commitments, I am saying, can rule in default, in the vain belief that an approach is free of them, in indifference, in the self-satisfaction of successful practice, or they can be the subject of reflection as in Troelstra's equation and acknowledgement of them in his own attitude and approach. In that last case, as theoretical commitments they are, lived, learned, abandoned and modified. They bind by virtue of a theorist's own allegiances as an active component of the theory being done. They are honed in experience of success and failure in attaining or failing to attain desired goals, solving and failing to solve problems. They are ideal and they are practical. If the role and function of a method that facilitates mechanisation could be freed from its philosophical demons and demonization; if it might be admitted that purely technical innovations — things which do the trick, solve a problem, bring something new to light or life — *as* purely ('merely'?) technical are witness to and expressions of a power in artifice that is unknown to the artificer (including 'the master') and that they may thus make common cause with mystical and magical objects and phenomena against ideas of complete and certain foundations of knowledge and its anti-foundationalist mirror, would the opposition of materialist and idealist dialectic survive? How could it not if that is the commitment? True, but must that be or is it, actually, just an impoverished remnant of the old wardrobe of the metaphysics and logic of the classical world? These are *questions* and what to my mind is wrong is to close them down and blame instead: the law's necessity and then also its wrong.

¹³⁶ [Troelstra 1991] at 1. The term 'speculative' has its own sense in that foundational discussion. It means 'non-constructive' (roughly, provable only with the aid of *tertium non datur* or an equivalent) and a formal system of dialectical and speculative logic is, if anything, more strictly committed to constructivity than intuitionistic logic.

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