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The One and the Many

Richard Hyland†

à Pierre Macherey

I have finally changed my mind about computers. I used to regard them with pre-modernist disdain. I considered them to be just another triumph of technocracy, a symptom of the redefinition of thought as manipulation within pre-established channels. I was worried that they privilege novelty over organicity and mask the role of the body in the written word. So I have resisted my colleagues' suggestions that I have a computer installed in my office.

Of course, my refusal never ends the conversation. I am occasionally invited into a neighboring office so that the computer's features may be demonstrated to me. My colleagues explain that a computer removes the drudgery and makes work enjoyable. I tell them that I already enjoy my work, and that I especially enjoy guiding my blue felt-tip pen along the lines of my yellow legal pad. One of my special pleasures is to decide, every so often, after examining the breadth of the line and the resistance of the pen, that the point has become dull. I then discard the pen and start again with a new one, confident that the fine, crisp line will sharpen my thought. I ask whether I would continue to experience such pleasures if I were to begin writing on a computer. They respond that the computer is more efficient. I tell them that I find it very efficient to think about the next sentence while staring out the window at the city skyline. Is it more efficient, I ask, to come up with the next sentence by staring into the computer? They tell me that they can display different documents on the screen simultaneously. I politely explain that I can do the same thing on my desk.

This time they change their approach. They ask whether I know that, if I had a computer, I could put a question to it, in normal language, and the computer would almost immediately display documents that provide an answer. I hesitate for a second as I recall the question I was exploring when I was interrupted, then inquire about the sort of question that one is permitted to ask. As far as the law is concerned, any question you like, they tell me. All right, I say, what about this one: What does Hegel mean for the law? Well no, they say, of course you cannot ask that kind of question. Oh, I say, I'm sorry. I take another moment to reflect. This is astonishing.
In the midst of office conversation, we have come upon the sacred. There are certain questions that we are unwilling to entrust to computers, questions that seem to require a judgment and creativity of which only the human mind is capable. The question is why we choose to believe that there will come a point at which artifice can no longer play a role? This changes everything. What indeed would happen if such a question were put to a computer—how would the computer respond? I insist. My colleagues notice the curious role reversal. The stakes are no longer simply whether I should purchase a computer from my research budget. They are not amused, but they decide to oblige me. They select what they call a library and type in the family name of the great philosopher.

What comes up is quite interesting. There are decisions by an Oklahoma judge with the name of Hegel Branch, Jr., and a Montana trial judge named Joseph L. Hegel. There are parties to lawsuits with names like William and Aphrodite and Johnaquille J. Hegel and an Illinois lawyer by the name of Elizabeth A. Hegel. There is Hegel v. Hegel, 248 So. 2d 212 (Fla. Dist. Ct. App. 1971), a celebrated divorce case, and a suit by Eugene Hegel against an Ohio university for permitting his seventeen-year-old daughter to fall into errant ways. There are also a few references to the philosopher Hegel, and particularly to his views on punishment (that capital punishment is sometimes necessary to restore the dignity of the criminal and that the necessary quantity of punishment is indeterminate), as well as several random references to Hegel as support for general propositions (such as that humankind has failed to learn from history and that science proceeds by thesis, antithesis, and synthesis).

With one exception, that is all. The exception is a passage by Learned Hand. Hand’s text, which has been quoted numerous times in the cases, is from a tribute to his colleague Thomas Swan after Swan had served for twenty years on the Second Circuit. (Learned Hand, ‘Thomas Walter Swan,’ 57 Yale L.J. 167 (1947).) In the tribute, Hand praises Swan for his uncanny ability to find his way through thickets of legislative verbiage. The praise is immediately followed by Hand’s comparison of the Internal Revenue Code to Hegel’s prose. This, then, seems to be the most frequently cited passage about Hegel in American case law: In my own case the words of such an act as the Income Tax, for example, merely dance before my eyes in a meaningless procession: cross-reference to cross-reference, exception upon exception—couched in abstract terms that offer no handle to seize hold of—leave in my mind only a confused sense of some vitally important, but successfully concealed, purport, which it is my duty to extract, but which is within my power, if at all, only after the most inordinate expenditure of time. I know that these monsters are the result of fabulous industry and ingenuity, plugging up this hole and casting out that net, against all possible evasion; yet at times I cannot help recalling a saying of William James about certain passages of Hegel: that they were no
Uncertainty written with a passion of rationality; but that one cannot help wondering whether to the reader they have any significance save that the words are strung together with syntactical correctness. (Id. at 169.)

Suddenly, I have gained respect for the computer. It possesses an incredible potential for post-modernist subversion. The computer calls into question the belief that the individual's organic thought process is the sole mode of access to the verities. This passage from Hand is a very good answer to the question of what Hegel means for the law, yet I have never before run across it. Hand's name does not usually come to mind when one thinks of Hegel. This chance encounter, facilitated by the rigorously artificial associations of the computer, is just as illuminating as are insights from the conventional sources. Organicity seems to need the spice of artifice from time to time. But how is one to recognize when it is best to pull thought out of the body by means of a pen and when it is time to rely on the very different logic of the machine? And there is something even more uncanny about all of this. Hand's text demonstrates that this same issue—the proper balance between intentionality and organicity—is also at the core of American jurisprudence. To see it, all that is necessary is to follow the trail that Hand has left for us. It leads back to the extraordinary debates between idealism and pragmatism at the turn of the century, and particularly to William James' challenge to the idealism of Josiah Royce. Hand refused to attenuate the opposition or reconcile the two perspectives. He remained committed to the quest for knowledge, even as he recognized the need for action. In the end, Hand's thinking demonstrates that one version of the Hegelian Absolute is implicit in the way we do law in America.

One might wonder at the outset why Hand placed William James between himself and his judgment about Hegel's prose. The most probable answer is that, over fifty years earlier, Hand had been a spectacularly good philosophy student at Harvard College, had studied there with William James, and had heard James discuss Hegel. It is therefore of some interest that James had an exceptionally well-developed appreciation of Hegel's philosophy. In fact, James was obsessed with Hegel. In a note following one of his articles about Hegel, James transcribed a few of the sentences that he had recorded while he was engaged in what he called a nitrous-oxide-gas-intoxication. (William James, 'On Some Hegelisms,' in The Will to Believe and Other Essays in Popular Philosophy 196, 219-20 (Frederick H. Burkhardt et al. eds., Harvard U.P. 1979) (1897).) The transcription includes a fabulous Hegelian epiphany—There are no differences but differences of degree between different degrees of difference and no difference—that suggests that Hegel was at the very center of James' thought.

As Hand noted, James thought that the Hegelian mode of exposition was an abomination. The sentence that Hand remembered must have been spoken in class, for the precise statement does not appear in James' work. But there are plenty of sentences like it. But if Hegel's central thought is
easy to catch, his abominable habits of speech make his application of it to
details exceedingly difficult to follow. His passion for the slipshod in
the way of sentences, his unprincipled playing fast and loose with terms; his
dreadful vocabulary, . . . his whole deliberately adopted policy of ambiguity
and vagueness, in short: all these things make his present-day readers wish
to tear their hair—or his—out in desperation. Like Byron's corsair, he has
left a name 'to other times, linked with one virtue and a thousand crimes.'
(William James, A Pluralist Universe 44 (Frederick H. Burkhardt et al.

Perhaps it was because James was so annoyed by Hegel's prose that he
did not spend all that much time reading it. James owned a broken set of
the second German edition of Hegel's Werke but does not seem to have
underlined or annotated much of the text. (William James, Some Problems
of Philosophy 130 nn. 28.20, 28.30 (Frederick H. Burkhardt et al. eds.,
Harvard U.P. 1979) (1911).) In 1882, James attended a series of Saturday
afternoon lectures at the Hegel Club in Cambridge, where William T.
Harris, one of the preeminent American Hegelians, expounded upon the
Logic. (Ralph B. Perry, The Thought and Character of William James 168
(briefer version 1948).) But even Harris' lectures could not remove the
obstacles between James and Hegel's text. James rarely cited to particular
passages or quoted Hegel directly. In his copy of the Logic, James scrib-
bled next to one section: This is mere drunkenness. (James, Some
Problems of Philosophy at 144 n. 87.9.)

James was principally concerned not with Hegel himself but rather
with the overwhelming influence that idealism exercised on Anglo-
American philosophy at the end of the century. My principal amusement
this winter has been resisting the inroads of Hegelism in our University. . . .
It is a strange thing, this resurrection of Hegel in England and here, after
his burial in Germany. . . . Hegelism is absolutely sterile. (Letter from
William James to Charles Renouvier (Dec. 27, 1880), in 1 The Letters of
William James 207, 208 (Henry James ed., 1920) [hereinafter Letters].)
James, one of the founders of pragmatism—perhaps the major American
contribution to philosophy—conceived of his philosophy as an antidote to
idealism. In fact, almost everything he wrote was in some way designed to
combat the influence of the Hegelian Absolute. Without idealism, there
could have been no pragmatism, and, even today, pragmatism thrives on the
opposition. For example, Richard Rorty criticizes Hegelian dialectics in a
voice reminiscent of James: Hegel's so-called dialectical method is not an
argumentative procedure or a way of unifying subject and object, but sim-
ply a literary skill—skill at producing surprising gestalt switches by making
smooth, rapid transitions from one terminology to another. (Richard Rorty,
Contingency, Irony, and Solidarity 78 (1989).) It is therefore useful to see
how James summarized the opposition between Hegel's theory and his
own.
For James, the most pregnant of all the dilemmas of philosophy was that between monism and pluralism: Is the world one or is it many? (James, Some Problems of Philosophy at 61.) Hegel was to him a representative of the monist school, and James certainly recognized—perhaps it is more accurate to say that he was haunted by—the advantages of monism. First, as the monists believe, the attribute One confers value and dignity on the world. (Id. at 71.) To be One is more wonderful than to be many . . . . (Id. at 62.) The vision of an underlying connection among all phenomena produces a sense of religious stability and peace. (Id. at 71.) Second, the monist vision of the connection of everything with absolutely everything else seems to be an indispensable condition of the world’s rationality. (Id.) The whole is what yields the parts, not the parts the whole. (Id.) If the whole produces the parts then the universe is tight, [as] monism claims, not loose; and you must take the irreducible whole of it as it is offered, or have no part or lot in it at all. (Id.) Finally, monism provides the universal perspective from which a single Knower can simultaneously embrace all elements of the whole. The many exist only as objects for his thought—exist in his dream, as it were; and as he knows them, they have one purpose, form one system, tell one tale for him. This notion of an all-enveloping noetic unity in things is the sublimest achievement of intellectualist philosophy. (William James, Pragmatism 71 (Frederick H. Burkhardt et al. eds., Harvard U.P. 1975) (1907).)

However, James was even more keenly aware of monism’s vices. To begin with, monism conceives of the world as it must exist to the one infinitely knowing Mind, yet it provides no account of why finite individual minds experience the world differently. Second, monism is unable to resolve the problem of evil. For pluralism, evil presents only the practical problem of what must be done to eradicate it. For monism, the problem is structural—if the world is perfect, how does imperfection seep into its parts? How might evil, error, and ignorance be explained? Finally, since monism cannot account for change, it destroys the possibility of freedom. In the world as we perceive it, change is an essential ingredient. Yet if the Absolute is eternal, then the inherently ephemeral world of the senses is an illusion. Moreover, if the world, just as it is, is necessary, then possibility and novelty are pure fantasy. Thus, our freedom too is an illusion, since the notion of freedom implies that the future may really produce something not already implicated in the past. (James, Some Problems of Philosophy at 72.)

Against this conception of monist or absolute idealism, James attempted to defend his version of pluralism. Pluralism means taking perceptual experience at face value. It accepts the common-sense view of life, as something really dramatic, with work done, and things decided here and now. (Id. at 73.) Pluralism means a universe unfinished, with doors and windows open to possibilities uncontrollable in advance. (Id.)
Pluralism is melioristic: The world . . . may be saved, on condition that its parts shall do their best. But shipwreck in detail, or even on the whole, is among the open possibilities. (Id.)

This pluralist opposition to monism is one of pragmatism's essential features and, still today, structures the pragmatist attitude. For example, Rorty reads Habermas as a modern Hegelian and chooses to debate him about the comparative advantages of pluralism and monism. Habermas wants to preserve the traditional story (common to Hegel and to Peirce) of asymptotic approach to foci imaginarii. I want to replace this with a story of increasing willingness to live with plurality and to stop asking for universal validity. (Rorty, Contingency, Irony, and Solidarity at 67.)

Where James got his Hegel, since he did not get him straight, was from the work of Josiah Royce, James' Harvard colleague and life-long friend. Because Royce tended to focus almost exclusively on those aspects of Hegel's thought that are representative of monism, James understood Hegel in the same way. For James, Roycean monism was the very model of absolute idealism. The most persuasive arguments in favor of a concrete individual Soul of the world, with which I am acquainted, are those of my colleague, Josiah Royce . . . . (William James, The Varieties of Religious Experience 358 n. 13 (Frederick H. Burkhardt et al. eds., Harvard U.P. 1985) (1902).) As a result, James decided to devote his energy to wrestling with Royce. But with the help of God I will go at it again this winter, when I settle down to my final bout with Royce's theory, which must result in my either actively becoming a propagator thereof, or actively its enemy and destroyer. (Letter from William James to Dickinson S. Miller (Nov. 19, 1893), in 2 Letters 17, 18.) Later, he admitted as much to Royce himself. You are still the centre of my gaze, the pole of my mental magnet. When I write, 'tis with one eye on the page, and one on you. When I compose my Gifford lectures mentally, 'tis with the design exclusively of overthrowing your system, and ruining your peace. I lead a parasitic life upon you, for my highest flight of ambitious ideality is to become your conqueror, and go down into history as such, you and I rolled in one another's arms and silent (or rather loquacious still) in one last death-grapple of an embrace. (Letter from William James to Josiah Royce (Sept. 26, 1900), in 2 Letters 135, 136.) James' deep-seated aversion to monism led him to challenge Royce's assertion that the world, as it is, is perfect. In the course of the debate, Royce and James developed the two opposing conceptions of the role of human action that represent the poles in Learned Hand's thinking about the law, and, in fact, continue to structure much of the discussion in present-day American jurisprudence.

What troubled Royce was a nagging pessimism about whether life is worth living that he acquired from reading Arthur Schopenhauer. Life would be bearable, Royce thought, only if the immorality of the world as we experience it could somehow be reconciled with a sense of the moral
perfection of the universe. In order to resolve this dilemma, Royce turned to the work of Hegel. As far as Hegel’s style was concerned, Royce agreed wholeheartedly with James. [Hegel’s] style in his published books is not without its deep ingenuity and its marvelous accuracy, but otherwise is notoriously one of the most barbarous, technical, and obscure in the whole history of philosophy. If his lectures are more easy-flowing and genial, they are in the end, and as a whole, hardly more comprehensible. (Josiah Royce, *The Spirit of Modern Philosophy* 196 (1892).) Nonetheless, Royce decided to employ the Hegelian conception of the Absolute to demonstrate the triumphant rationality that reigns above all the conflicts of the spiritual world. (Id. at 262.)

The existence of sin suggests that the world is imperfect. Sin is moral defeat. Royce believed sin to be inevitable in a world of serious moral effort, just as losing a game is part of the life of every athlete. The only question is whether the dissonances created by sin can somehow be understood as moments in the eternal perfection of the whole. (Id. at 456.) Royce began by distinguishing between two types of evil—external evil (such as death, pain, and weakness of character) and the inward experience of the evil impulse. (Josiah Royce, *The Religious Aspect of Philosophy* 454-55 (1885).) Because we know so little about them, it is impossible to know whether external evils are blessings in disguise or rather the work of a diabolical will. Royce therefore chose to reason from the inward experience of evil. Once again, he distinguished two possibilities. The first is the evil we find inside us, recognize in time, combat, and ultimately vanquish. Good will exists only in such an encounter with evil. We realize evil, we fight it, and, at the same time, we realize our fragment of the perfect divine life in the moment itself of struggling with the evil. . . . [I]n the moment of moral action I make [the evil impulse], even in the very moment of its sinfulness, a part of my good consciousness, in overcoming it. (Id. at 452.) Thus, [i]f moral evil were simply destroyed and wiped away from the external world, the knowledge of moral goodness would also be destroyed. (Josiah Royce, ‘The Problem of Job,’ in *Studies of Good and Evil* 1, 24 (1898).) In the choice against evil is the very life of goodness, which would be a pale, stupid abstraction otherwise. (Royce, *The Religious Aspect of Philosophy* at 453.)

What, however, of the evil impulse that conquers, of sin that triumphs over the individual’s efforts to do good? From the point of view of the individual, sin is moral agony, crime, and darkness. Nonetheless, Royce believed that even the tragedy of consummated sin could be understood, though not from the restricted perspective of the individual. What is needed rather is the point of view of the absolute Knower, the infinite Self. From that point of view, sin is a necessary element of morality, an element in the organic life of God. (Id. at 454.) Just as virtue needs temptation in order to prove itself, so the condemnation of sinfulness is what makes God holy.
Just because of that unity of the infinite Self which idealism teaches, God's organic perfection vindicates sin by scorning it, makes it a part of [the] moral order only by hating it, binds in the chains of [its] hatred all the countless ills of the finite world . . . . (Royce, The Spirit of Modern Philosophy at 460.) In this way, both sins and good deeds reveal themselves to be necessary. [W]hatever our sin, it is part of the moral order, only the moral order exists by conquering us, and we live only to be despised by the very Self that includes us. . . . But do we ourselves choose the good? Then once more we enter into the divine order, but this time as vessels of honor, as ministers of the good, as servants and not as enemies, as co-workers and not as rebels, as beloved and not as scorned. (Id. at 461.) As a result, [t]he existence of evil . . . is not only consistent with the perfection of the universe, but is necessary for the very existence of that perfection. (Royce, 'The Problem of Job' at 25.)

It is this reflection of Royce's that James identified with Hegel. James understood the essence of Hegel's thought to be a vision of a world in which reason holds all things in solution and accounts for all the irrationality that superficially appears by taking it up as a 'moment' into itself. (James, A Pluralist Universe at 43.) James did not object to the basic principle. He admitted that life often proceeds by dialectical paradox. Peace we secure by armaments, liberty by laws and constitutions; simplicity and naturalness are the consummate result of artificial breeding and training; health, strength and wealth are increased only by lavish use, expense, and wear. (Id. at 49.) From the point of view of the higher synthesis, it indeed appears that opposites are reconciled. The problem was not with the examples, but rather with the idealist conviction that this dialectical movement is the one, eternal, and necessary truth.

Much of pragmatism is at root a protest against closure. So, for example, in the realm of religion, James preferred the God of popular Christianity to the Hegelian Absolute. According to the Roycean conception, the world as it is is folded up into the all-encompassing understanding of the one absolute Mind. In it, we become but syllables in the mouth of the Lord. Since the whole sentence is divine, each syllable is absolutely what it should be, despite all appearances. In contrast to this Roycean construction, James believed that the Christian God is but an element of a pluralist system. God stands apart from humanity, just as do the devil, the saints, and the angels. [T]he only God worthy of the name must be finite . . . . The finite God . . . may conceivably have almost nothing outside of [it]self; [God] may already have triumphed over and absorbed all but the minutest fraction of the universe; but that fraction, however small, reduces [God] to the status of a relative being . . . . (Id. at 60-61.)

The purpose of James' challenge was to create space for dissatisfaction, criticism, and change. He challenged what he considered to be Royce's irrational attempt to legitimate the imperfection of the finite. The
ideally perfect whole is certainly that whole of which the parts also are perfect . . . . The absolute is defined as the ideally perfect whole, yet most of its parts, if not all, are admittedly imperfect. (Id. at 60.) James concluded that even nature, though governed by laws, leaves room for improvement. [W]e of the nineteenth century . . . already know nature too impartially and too well to worship unreservedly any God of whose character [nature] can be an adequate expression . . . . To such a harlot we owe no allegiance . . . . (William James, ‘Is Life Worth Living?’, in The Will to Believe and Other Essays in Popular Philosophy 34, 43.) So too with evil—much of it, but not all, can be understood and rationalized. We see indeed that certain evils minister to ulterior goods, that the bitter makes the cocktail better, and that a bit of danger or hardship puts us agreeably to our trumps. We can vaguely generalize this into the doctrine that all the evil in the universe is but instrumental to its greater perfection. But the scale of the evil actually in sight defies all human tolerance; and transcendental idealism, in the pages of a Bradley or a Royce, brings us no farther than the book of Job did—God’s ways are not our ways, so let us put our hands upon our mouth. (James, Pragmatism at 70.) As a result, nothing is to be gained by leaving evil there to be tripped over. The way of escape from evil on this system is not by getting it ‘aufgehoben,’ or preserved in the whole as an element essential but ‘overcome.’ It is by dropping it out altogether, throwing it overboard and getting beyond it, helping to make a universe that shall forget its very place and name. (Id. at 142.)

James’ insight was that, properly interpreted, even absolute idealism requires a pragmatist vision. The Absolute represents the purpose of thought and the quest for knowledge. The goal is to decipher the world, to decode it, to discover in each of the elements a piece of the whole. If the world is a whole, then finitude and even evil play their part. But even Royce was ready to admit that limitation and evil are there precisely to be overcome. In other words, absolute idealism can explain evil but not legitimate it.

James sought in his own way to reconcile the two perspectives—the quest for knowledge and the desire for action—and, at the same time, proposed his own answer to Royce’s question about whether life is worth living. On one level, James held that life is worth living when it is used to eradicate evil and improve the world. Life is worth living, no matter what it bring, if only such combats may be carried to successful terminations and one’s heel set on the tyrant’s throat. (James, ‘Is Life Worth Living?’ at 47.) This conclusion was in turn based on two convictions. First, James believed that the mere existence of a state of affairs in nature tells us nothing about its moral value. [W]e are free in our dealings with [nature’s] several parts to obey or destroy, and to follow no law but that of prudence in coming to terms with such of [nature’s] particular features as will help us to our private ends. (Id. at 43.) Second, something really can be accom-
plished by the blood, sweat, and tragedy of this life. *If this life be not a real fight, in which something is eternally gained for the universe by success, it is no better than a game of private theatricals from which one may withdraw at will. But it feels like a real fight—as if there were something really wild in the universe which we, with all our idealities and faithfulnesses, are needed to redeem . . . . For such a half-wild, half-saved universe our nature is adapted.* (Id. at 55.)

Moreover, on a different level, James believed that life has meaning even beyond the goal of eradicating evil. Life has whatever meaning we believe it has. In other words, it has a meaning that is rooted in faith and based on the fact that there is much about the world that we do not know. Meaning is not displayed on the surface of the world—indeed that is precisely what motivates our quest for knowledge. *Either there is no Spirit revealed in nature, or else it is inadequately revealed there . . . what we call visible nature, or this world, must be but a veil and surface-show whose full meaning resides in a supplementary unseen or other world.* (Id. at 43.)

The physical order is therefore only a partial order. Nothing can be proven about the rationality of the world from a dialectical examination of nature. This is precisely why faith and religion are important. *[R]eligious faith . . . means for me essentially . . . faith in the existence of an unseen order of some kind in which the riddles of the natural order may be found explained.* (Id. at 48.) Of course, the precise character of that unseen order is beyond our ken. *[O]ur science is a drop, our ignorance a sea. Whatever else be certain, this at least is certain—that the world of our present natural knowledge is enveloped in a larger world of some sort of whose residual properties we at present can frame no positive idea.* (Id. at 50.) Despite our ignorance, we choose to believe that life is meaningful, and this faith is what makes it so. It is often only our faith that a certain result can be achieved that permits us to achieve that result. Our faith produces a sense of unconquerable subjectivity, which in turn makes life worth living. *This life is worth living, we can say, since it is what we make it, from the moral point of view; and we are determined to make it from that point of view, so far as we have anything to do with it, a success.* (Id. at 55.)

In other words, James found room for both logic and passion. Logic helps us understand the world but is never able to provide absolute premises for action. Passion produces commitment, which in turn refocuses the quest for knowledge. In the end, what James most objected to about idealism was its thin and passionless logic. Compared to pragmatist considerations, it was *as moonlight unto sunlight or as water unto wine.* (James, *A Pluralist Universe* at 81.) The one-sidedness of the idealists' approach granted them insight into the Absolute but prevented them from understanding the role of passion in philosophy: *[P]hilosophy is more a matter of passionate vision than of logic—logic only finding reasons for the vision afterwards . . . .* (Id.) Thus, though both Royce and James had recourse to faith as the
means to reconcile understanding with action, the Roycean synthesis differed from the Jamesian. For Royce, action is given. The role of faith is to elevate us to the point of view of universality from which action can be truly understood. For James, faith is an element of action. It permits us to transcend the limits of our understanding and to reach the point of view of untrammeled subjectivity.

Because he lived a few years past James, Royce had the last word. William James died in August 1910. In June 1911, at the supremely solemn moment of the convocation of the Harvard chapter of Phi Beta Kappa, Royce reflected on the meaning of James’ work. (See Josiah Royce, ‘William James and the Philosophy of Life,’ in William James and Other Essays on the Philosophy of Life 3 (1911).) Royce was of course interested in underscoring the elements of James’ work that reached out to idealism, especially James’ belief in something beyond empirical reality. As Royce read him, it was because it is impossible to know all of the consequences of one’s acts that James was able to reconcile faith with action: ‘Every great decision of practical life requires faith, and has irrevocable consequences, consequences that belong to the whole great world, and that therefore have endless possible importance. (Id. at 41.) But Royce did not attempt to turn James into a philosopher of the Absolute. Royce saw in James a different kind of grandeur, namely that of the visionary who had forged an American perspective in thought: His form of pragmatism was indeed a form of Americanism in philosophy. (Id. at 35.) Royce believed that Americans are a people that is indeed earnestly determined to find itself, but that so far has not found itself. (Id. at 30.) James was a prophet who provided moral guidance for this restive people and who illuminated a path beyond the American tendency to judge all ideals by their practical results and cash value. This Americanism was James’ limitation, but also the source of his greatness. Royce suggested that, while he himself had been striving toward absolute knowledge, it was rather James who had achieved it. By formulating the sense of the American mission, by pointing beyond efficiency to a realm of faith and moral value, James, as national prophet, had become an agent of the Absolute.

By character and by habit, Royce and James differed from each other in almost every respect. (See Ralph B. Perry, In the Spirit of William James 1-43 (1958).) And they did not hesitate to comment on their differences in class. One member of the Harvard philosophy faculty remembered a class he had taken from James in 1890: There was a great deal about the monist and pluralist views of the universe. The world of the monist was described as a ‘block-universe’ and the monist himself as ‘wallowing in a sense of unbridled unity,’ or something of the sort. (2 Letters at 14 (quoting Dickinson S. Miller).) It is tempting to imagine the effect that the debate must have had on those who passed through the Harvard philosophy department at the time. The two scholars, both of surpassing erudition, and, after
Emerson and Jonathan Edwards, arguably the most important philosophers the Republic had produced, were intimate friends and neighbors, yet were joined in battle, and each, with ever greater insight, creativity, and subtlety, was defending one of the two conflicting visions that had animated the history of philosophy. The debate was larger than life, a gigantomachy, and a student would have found it difficult to conceive of the world apart from this contest.

The subsequent speculations of the students of Royce and James confirm how important those moments in Cambridge had been to them. Ralph Barton Perry, who studied at Harvard shortly after Learned Hand had graduated, spent the remainder of his life, including over forty years as a Harvard professor, investigating and describing James' path to pragmatism and defending a largely realist or pragmatist approach to questions of moral value. (See Ralph B. Perry, General Theory of Value (1926).) Following James' invitation to political commitment, Perry also reflected on questions of politics and the state. (See Ralph B. Perry, Puritanism and Democracy (1944).) William Ernest Hocking, Perry's Harvard colleague, also studied philosophy with the two titans shortly after Hand left Cambridge. (See Leroy S. Rouner, Within Human Experience: The Philosophy of William Ernest Hocking 15-31 (1969).) Hocking, who also was indelibly marked by the debate, chose to defend idealism. He did so by integrating within it some of James' pragmatist insights. Hocking's efforts produced momentary illumination, including one of the most appealing sentences I have ever read—"I will even go farther, and say that theory is false if it is not interesting: a proposition that falls on the mind so dully as to excite no enthusiasm has not attained the level of truth . . . ." (William E. Hocking, The Meaning of God in Human Experience at xiii (1912))—yet he was able to reconcile the two views only by a kind of prestidigitation: Thus, accepting fully the pragmatic guide to truth, we conclude that the only satisfying truth must be absolute,—that is, non-pragmatic. Wherewith, pragmatism ends in consuming itself; appears as a self-refuting theory. (Id. at 206.) Hocking was also eager to demonstrate the political relevance of his thought. (See William E. Hocking, Man and the State (1926).)

At the moment Learned Hand graduated from Harvard College, he too was doing his best to reconcile Roycean idealism with Jamesian pragmatism. Royce was one of those who had introduced Hand to philosophy during Hand's sophomore year. Required reading for the course included Royce's The Spirit of Modern Philosophy and James' Outlines of Psychology. (See Harvard University Catalogue 1890-91, at 83 (1890).) In his junior year, Hand took a year-long course from James and another from Royce; in his senior year, Hand took another semester from Royce as part of an almost full load of philosophy work. In the address Hand gave at graduation—he was chosen Class Orator for the 1893 Harvard Commencement—the theories of Royce and James appeared side by side.
Royce’s influence was present in Hand’s assertion that knowledge is possible only from the point of view of universality, which makes it possible to know the relations of things, the value of all the parts, and to subordinate oneself to the flavour of humanity. (Learned Hand, ‘Class-Day Oration [1893],’ in The Spirit of Liberty 3, 6 (Irving Dilliard ed., 3d ed., enlarged, 1960).) Also from the Roycean mold was a wonderful Hegelian metaphor of organicity: We like . . . to dream of a body of young men as a living thing, as a tree where all the branches are nourished by a single sap, and where each part is meaningless and incomplete except in connection with its fellows. (Id. at 9.) James’ influence appeared in Hand’s suggestion that human beings are more than creatures of reason—Life is not a thing of knowing only—nay, mere knowledge has properly no place at all save as it becomes the handmaiden of feeling and emotion—and in the earnest summons to yet unspecified action with which the address concluded—Let us beware, friends . . . we have business to transact . . . Some work then, some good work for ourselves and for others, for there is work to do and no place for drones! . . . Forty years hence it will have been decided. If we meet then, when the ranks are not full, when the ardour for the fight is not so fierce and the courage calmer, can we look back to some work done that will need no undoing? If we cannot then, God help us! (Id. at 4, 10-11.)

Hand wrestled with these two visions throughout his life and continually rejected any suggestion that they easily could be reconciled. What Hand could not muster was the faith that James and Royce had used to resolve the difficulties. For Hand, both life and the law involved an unsatisfying compromise between the limitations of human understanding and the obligation to decide and act. In another commencement address, given almost forty years later, Hand once again juxtaposed his Jamesian eagerness for accomplishment—Only he is free whose efforts are called out by what seems to him a good of itself, by the belief that he is impressing upon the stuff of this world some idea authentically his own—with a Roycean perspective on individual limitation—We are the workers in the hive; we shall not be missed, nor shall we be able to point at the end to any perceptible contribution. But the hive goes on, an entity, a living thing, a form, a reality. (Learned Hand, ‘To Yale Law Graduates [1931],’ in The Spirit of Liberty 84, 85, 89.) Occasionally, Hand projected the dispute into the past, seeing in Jefferson, for example, the prophet of the organic community of independent farmer families rooted in the land, where public affairs manage themselves, and in Hamilton the proponent of agreement resting on self-interest and a technological command over nature. (See Learned Hand, ‘Sources of Tolerance,’ 79 U. Pa. L. Rev. 1, 1-3 (1930).)

Just before his seventieth birthday, Hand explicitly took up the challenge that had so troubled James and Royce, namely the question whether suffering is merely an evil or whether it somehow may be justified. (See Learned Hand, ‘Liberty [1941],’ in The Spirit of Liberty 144.) The culti-
vated snob might argue, Hand noted, that life in fifth century Athens represented the apex of civilization. But what then is the response to someone who points out that the price of Attic perfection was the Stygian misery to which the slave population was condemned? Whereas Royce had used this type of question to illustrate the workings of the Absolute, and James saw in it the raw material that human beings use to give life meaning, Hand examined it from the perspective of his conviction that, though one might intuit an answer, it is impossible to decide between the conflicting visions. *Supposing that an ethical or hedonistic calculus were possible, and supposing that there were no other means than the exploitation of the exploited by which the lives of the Athenian citizens could have been what they were, and supposing that these were as perfect as both he and the cultivated snob seemed to agree they were; how [could he] guess which way the beam would tip if one put the lives of the citizens in one scale and the good things of which they deprived their slaves in the other? I should tell him that, though I was sure of the answer, I had always been a little baffled to know how such a balance could be struck.... And if he... were to answer... that injustice could never be right, and that there were some things which everyone knew, among which was that oppression and justice were inherently antithetical, I should not feel that he had thoroughly illuminated all the dark places.* (Id. at 148.)

It is perhaps not surprising that Hand formulated his jurisprudence in terms of the same opposition. When called upon to interpret and apply a statute, the Jamesian notion of purpose immediately came to mind. *We can best reach the meaning here, as always, by recourse to the underlying purpose, and, with that as a guide, by trying to project upon the specific occasion how we think persons, actuated by such a purpose, would have dealt with it, if it had been presented to them at the time.* (Borella v. Borden Co., 145 F.2d 63, 64-65 (2d Cir. 1944), aff'd, 325 U.S. 679 (1945).) But Hand was also willing to admit that notions of policy and purpose were mere illusions, and he justified his view with an insight he had from Royce—at the moment of decision, it is impossible to tell what the effect of any particular interpretation will be. *For example, although we can anticipate with some degree of assurance who will pay a steeply graded income tax and in what amounts, there is no way to tell what its indirect effects will be: what activities of the taxpayers in the higher brackets it will depress; if they do not work so hard, in what way they will occupy their newly acquired leisure; how any new activities they may substitute will affect others; whether this will be offset by a loss of the mellowed maturity and the wisdom of those who withdraw. Such prophecies infest law of every sort, the more deeply as it is far-reaching; and it is an illusion to suppose that there are formulas or statistics that will help in making them.* (Learned Hand, 'A Plea for the Open Mind and Free Discussion [1952],' in The Spirit of Liberty 274, 279.) As a result, Hand felt compelled to return to the text he
was interpreting. True, it is always proper to invoke the ‘policy’ of a statute as a whole as an aid to its interpretation; but that may prove a deceptive canon in practice. It should be remembered that a statute is generally the compromise between conflicting political interests, and that its ‘policy’ is as likely to be found in its limitations as in its affirmations, and is in any event primarily embodied in the language chosen. (Mirotznik v. United States, 64 F. Supp. 635, 637 (E.D.N.Y. 1946).) Purposive interpretation seems to respond to the personal desire to make a difference, in the manner of James, but, if unchecked, could easily result in an unguided projection of the judge’s own vision onto the text. Such a projection would conflict with Hand’s Roycean commitment to an understanding more universal than that of the individual judge. From this standpoint, the will of the people seems to require a return to the text and to the letter of the law.

It was with this set of glasses that Hand read the jurisprudential literature. To some it seems that a judge ought to look to his conscience and follow its dictates . . . . Others wish [the judge] to observe very strictly what they consider the law, reading it as though it were all to be found in written words, and never departing from the literal meaning. (Learned Hand, ‘How Far Is a Judge Free in Rendering a Decision? [1935],’ in The Spirit of Liberty 103, 103.) Hand believed that neither alternative is completely correct, and he struggled throughout his career to find the philosopher’s stone that could reconcile the two visions. Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning. (Cabell v. Markham, 148 F.2d 737, 739 (2d Cir.), aff’d, 326 U.S. 404 (1945).)

Hand was able to reflect most clearly about his struggle when he projected it onto Cardozo. At times to those of us who knew him, the anguish which had preceded decision was apparent, for again and again, like Jacob, he had to wrestle with the angel all through the night; and he wrote his opinion with his very blood. (Learned Hand, ‘Mr. Justice Cardozo,’ 52 Harv. L. Rev. 361, 362 (1939).) The written text of the law is designed to elevate judicial decision-making above daily care and prejudice to the standpoint of universality, but the law is sterile unless the judge reaches a decision as part of a personal quest for justice. Thus, the judge must both pose as a kind of oracle, voicing the dictates of a vague divinity and yet, at the same time, act as a builder who . . . contribute[s] [a] few bricks and [a] little mortar. (Id. at 361.) Hand was fascinated by Cardozo’s unerring intuition about how to reconcile the two elements of a legal decision and equally frustrated by his own inability to discover the secret. [T]here is no
vade mecum to guide us between a sterile literalism which loses sight of the forest for the trees, and a proper scruple against imputing meanings for which the words give no warrant. (New York Trust Co. v. Commissioner, 68 F.2d 19, 20 (2d Cir. 1933), aff'd sub nom. Helvering v. New York Trust Co., 292 U.S. 455 (1934).) Even the most painstaking study of Cardozo's opinions did not seem to help. In all this I have not told you what qualities made it possible for [Cardozo] to find just that compromise between the letter and the spirit that so constantly guided him to safety. I have not told you, because I do not know. It was wisdom: and like most wisdom, his ran beyond the reasons which he gave for it. And what is wisdom . . . ? I do not know . . . . (Hand, 'Mr. Justice Cardozo' at 362.)

The only solution Hand found to the dilemma was to try to situate himself midway between the two extremes. He formulated this goal in various ways. One was his concept of detachment. He suggested that judges remove themselves far enough from the stakes of the decision to be able to avoid personal prejudice, yet not ascend so high as to lose compassion with the parties before them. One ingredient I think I do know: the wise man is the detached man. By that I mean more than detached from his grosser interests—his advancement and his gain. . . . A wise man . . . is a runner stripped for the race; he can weigh the conflicting factors of his problem without always finding himself in one scale or the other. (Id. at 362-63.) Another idea was the notion of moderation. The judge should respect the rights of individuals while at the same time envisioning the problem from the point of view of the collectivity. What is the spirit of moderation? It is the temper which does not press a partisan advantage to its bitter end, which can understand and will respect the other side, which feels a unity between all citizens—real and not the factitious product of propaganda—which recognizes their common fate and their common aspirations—in a word, which has faith in the sacredness of the individual. (Learned Hand, 'The Contribution of an Independent Judiciary to Civilization [1942],' in The Spirit of Liberty 155, 164.)

A man's life, Hand wrote of Brandeis, like a piece of tapestry, is made up of many strands which interwoven make a pattern; to separate a single one and look at it alone, not only destroys the whole, but gives the strand itself a false value. (Proceedings in Memory of Mr. Justice Brandeis, 317 U.S. ix, xi (1942) (address of Hand, J.).) Hand could have been speaking of himself, for his own life was an attempt to weave together two conflicting threads of philosophical thought. And in this he is exemplary of American jurisprudence. In the end, when he compares the Tax Code to Hegel's prose, Hand is commenting upon the relationship between the pragmatist and the idealist visions in American law. By examining closely the movement of his text, this relationship can be glimpsed with rare clarity.

In my own case the words of such an act as the Income Tax, for example, merely dance before my eyes in a meaningless procession: cross-refer-
ence to cross-reference, exception upon exception—couched in abstract terms that offer no handle to seize hold of—leave in my mind only a confused sense of some vitally important, but successfully concealed, purport, which it is my duty to extract, but which is within my power, if at all, only after the most inordinate expenditure of time. The passage begins with a gorgeous example of Jamesian psychology—a description of the mind’s confusion as it first encounters a complex piece of legislation and is caught unawares in the production of meaning. The lack of understanding generates a pragmatist sense of duty: something must be done to resolve the difficulties. Yet, toward the end of a long life of statutory interpretation, Hand confesses that he is not convinced that success is possible. If adjudication means the discovery of the objective purpose and purport of a statute, the individual judge may be inherently unequal to the task. Faith is not enough. The uninterpreted words offer no reliable handle to the individual mind.

I know that these monsters are the result of fabulous industry and ingenuity, plugging up this hole and casting out that net, against all possible evasion . . . . Of course, the mere fact that the proper interpretation is not apparent from the scattered evidence does not prove that objective meaning does not exist. With the second sentence, the text begins to speculate in a Roycean mode. Hand suspects that, from the point of view of a higher rationality, of something quite beyond him—the product of whose fabulous industry and ingenuity the law may be—all the pieces may fit together, without any possibility of evasion. It is conceivable that, when viewed from sufficient distance, the statute displays a recognizable—and necessary—pattern. This is the Absolute. But here too one senses that Hand is not convinced. There is a Jamesian skepticism in the vocabulary, for it was James’ habit to call the Absolute a metaphysical monster or a monstrosity. (James, A Pluralist Universe at 26, 144)

. . . yet at times I cannot help recalling a saying of William James about certain passages of Hegel: that they were no doubt written with a passion of rationality; but that one cannot help wondering whether to the reader they have any significance . . . . At this point, as the thought of a passionate, complete, and monstrous rationality asserts itself, the speculative thought breaks off in mid-sentence. Hand must have sensed something almost unspeakable here, for it caused him to recall James’ doubts about Hegel’s prose. Why precisely this association? Part of it was simply a Jamesian commitment to relativism, both epistemological and political. Hand believed that there is nothing certain about human knowledge, not even in the natural sciences. Often we do think of law as though it was unique in its uncertainty; but that is not so. I was greatly interested recently to learn that there is the same infirmity in other branches of human activity, even in the case of physics, which we think is of all disciplines the most likely to have quantitative and absolute determinations. (Learned
Hand, ‘A Personal Confession [1958],’ in The Spirit of Liberty 302, 307.) In politics as well, there are no impregnable political absolutes, and thus, a flux of tentative doctrines is preferable to any authoritative creed. (United States v. Dennis, 183 F.2d 201, 207 (2d Cir. 1950), aff’d, 341 U.S. 494 (1951).) In fact, Hand’s colleague Jerome Frank invoked William James precisely in this context. The lands which, in our times, succumbed to dictatorship were those where anti-relativism was far more popular than in those which resisted the dictators, e.g., America, in which flourished the pragmatism of William James . . . . (Jerome N. Frank, ‘Some Reflections on Judge Learned Hand,’ 24 U. Chi. L. Rev. 666, 704 (1957).)

Even more important than James’ relativism may have been a thought related to the arguments with which James was able to defend the active life against Royce’s challenge: if there is an absolute perspective from which the world makes sense, judging is impossible. This is true in at least two senses. First, if the world is absolutely knowable, no judgment could be justified, in the end, unless made with total understanding. As a consequence, judges should really withhold judgment until they achieve enlightenment. Second, curiously, if a judge were to reach absolute knowledge, judgment would cease to have meaning, for both good and evil are reconciled as necessities in the bosom of the Absolute. Judging only makes sense if everything is not predetermined, if what the judge does can make a difference, if a personal quest for justice is not an absurdity. As a result, judges must continually set their course by the Absolute, and yet, in both senses, permit themselves to break away from it in time. Hand envisioned the proper relationship with the Absolute to be the kind of battle that was waged by those who had taught him at the Harvard Law School: In the universe of truth they lived by the sword; they asked no quarter of absolutes and they gave none. (Learned Hand, The Bill of Rights 77 (1958).) With regard to the knowability of the world, the desire for understanding is what guides research. Yet the judge must, in each case, reject the hope of coming to an absolute answer. A conscientious judge soon understands that, no matter how the case is decided, there are always good arguments on the other side. As far as the reconciliation of good and evil is concerned, judges must continually remind themselves that, though conduct can be explained, it need not necessarily be excused. In both of these senses, judging means alternatively yielding to and resisting the attraction of the Absolute.

... save that the words are strung together with syntactical correctness. Although Hand never consciously reconciled the two visions that pursued him, the final cadence of his text suggests that a resolution is possible. It is the idea that the only significance of the Tax Code, as of Hegel’s prose, is that they follow the dictates of language. On one level, this is truly an odd comment, both about Hegel’s prose and about the Internal Revenue Code. What is striking about both texts is precisely the fact that they seem
so remarkably removed from concerns of syntactical clarity. Both Hegel’s writing and the Tax Code occasionally attempt to emancipate themselves from the bonds of grammar in an attempt to reach an unfettered means of self-expression. Yet even those sentences are written within the confines of a particular language. The syntax governs from the background, from its higher, unchallenged perspective. 

> [W]hen justice requires, it is a question of filling the language as full as it will bear without bursting, or of pressing it so long as it will not quite break, though of course the words have their limits. (Gibbs v. Triumph Trap Co., 26 F.2d 312, 314 (2d Cir.) (Hand, J.), cert. denied, 278 U.S. 617 (1928).) Precisely because that structure cannot be escaped, there is no need to pay special attention to it. The law operates in a similar manner. It too provides a grammar that we are able to use, even if we do not understand it. The meaning of that structure—the Absolute—is not given to us. [T]he Absolute is mute; no tables come from Sinai to guide [us]; the brazen sky gives no answer to [our] prayers. (Learned Hand, ‘Democracy: Its Presumptions and Realities [1932],’ in The Spirit of Liberty 90, 101.) The Absolute remains an object of wonder, the goal of research, a monstrous passion—and the unspoken core of American jurisprudence.