

# The concept of "historical judgment" as a category of Hegel's philosophy of law

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**Abstract.** The authors of the article proceed from the fact that in the Hegelian philosophy of law, the discursive content of the notion "court of history" has not received a detailed explication, and it must be reconstructed on the basis of the entire context of Hegel's philosophy. Hegel's spiritual understanding of history is inextricably linked with his understanding of the role of Christianity in the history of mankind and in the formation of history itself as an integral process. According to the authors, in his Christology, Hegel connects together religious issues, the definition of the meaning of history and his interpretation of the essence of law and state. Thus, following Hegel, one can philosophically understand history ("Geschichte") as the highest court and rationally interpret the concept of the highest court as a category of philosophy of law. History, which contains the mystery of the "Sacred History", turns out to be the highest instance of law and state.

## 1 Introduction

Promoting the idea of the court of history, Hegel completes his philosophy of right both in its full version and in a concise presentation in the "Encyclopedia of the Philosophical Sciences" within his doctrine of the objective spirit. Such a result seems organically based on Hegel's general comprehension of the nature of the state.

As distinct from contemporary theorists of modern right, Hegel does not treat the state as a mechanism that formally and only externally inter-connects various institutions and governing bodies which pursue utilitarian goals. He understands the state as "life of self-aware freedom," not only expressing a certain higher moral idea, but being its direct embodiment: "The state is not a mechanism, but an intelligent life of self-aware freedom, a system of a moral world" [1]. According to Ostritsch [2], this determines the role of Hegel in resolving the old dilemma of law and morality – the modern relevance of his doctrine of

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state and law. A spiritualized state in Hegel's conceptual system should have an internal point of its self-determination, contain the beginning of subjectivity, which develops along with the historical formation of statehood itself, - Maslennikov and Revnova believe [3]. Hegel sees two principles in the state: the spiritual principle, expressed in its internal differentiation and in connection with a differentiated civil society; and the beginning of life, the soul of the state, which makes it possible for it to have integrity and to reproduce itself, i.e. sovereignty: "the state as a spiritual state is the unfolding of all its moments, but individuality is both soulfulness and the life-giving principle, with sovereignty containing all the differences". The subject of the process of criticized a state (government), according to Hegel, is spirit (Geist), i.e. the spiritual principle of man and humanity, which is also present in nature as its internal, hidden form. The substance of the spirit is freedom, and it is this knowledge that, in the spirit of its freedom, is embodied in stable forms of state and law. Hegel denoted this subjectivity of the state through the concept of sovereignty, similar to the subjectivity of civil society, previously manifested by the institute of the court.

Hegel's state sovereignty, unlike that of Kant, is interpreted in the framework of the tradition laid down by Jean Bodin. Confronting a direct polemics with Kant on this issue, Hegel does not accept the distinction between national and state sovereignty, neither does he accept the idea of world citizenship, a world government, nor any other political institution standing above individual sovereign states: "There is no praetor over states, in any case, their relations are regulated by arbitrators and mediators, and even then it is done occasionally, according to a special will". Therefore, it is natural that, according to Hegel, only History itself (Geschichte) can be the highest court in relations between states (including issues of recognition of their sovereignty). Neither any other state, nor a world government, nor even a world community can be their judge. It is only history that embodies supranational subjectivity and, for the world community, it is what the sovereignty was for the state and the institution of the court was for civil society. The spiritual substance of the individual, society and state, which Hegel defines as "universal spirit", exercises its rights "in world history as in the world Court".

Here, however, the question arises: if we should understand the reference to "the court and judgment of history" as a kind of metaphor or as a discursive notion, playing the role of a category in Hegel's philosophy of law? In the latter case, it will be necessary to admit that the contents of this concept was not disclosed in the "Elements of the Philosophy of Right" and thus it becomes subject to reconstruction, proceeding from the general logics of this particular and other works of the great philosopher. In fact, although Hegel introduces the concept of history into the text of his philosophy of right, he did not give concrete definition of this concept as a "judge", and therefore as the real subject, which in this case is a legal entity in its highest development. That means that Hegel does not give a definite answer to the question of what history really is – acting as a judge and as a subject. In its turn, this means that the explication of the contents of this concept, without being implemented in the "Elements of the Philosophy of Right", may be found in other discourses of Hegel's philosophy. For a number of reasons which might not be considered here, the contents in question could not be disclosed in Hegel's lecturer materials on the philosophy of history. However, it is amply presented in his lectures on the philosophy of religion. The interpretation of history (Geschichte) found in them allows 1) to fix the versatility of the Hegelian concept of history; 2) to position it in proper religious, political and legal dimensions, which makes it possible to reveal the contents in special terms, allowing the "history" (Geschichte) to be a "regulator", or a judge in legal relations; 3) relying on Hegelian Christology, to show the personal dimension presented in history as a kind of product of "crystallization" of its subjectivity.

## 2 Materials and methods

Considering the fact that the discursive contents of the concept of “the court of history” in Hegel’s philosophy got no extensive explication, it should be reconstructed in the general context of Hegelian philosophy, which involves the use of the methods of textual analysis and the methodology of system analysis and synthesis. The material for the application of such a complex methodological approach in reconstructing the concept of “the court of history” is the corpus of all Hegel’s works and, first of all, the texts most closely related to his philosophy of right and philosophy of religion, taking into account their historical, legal and basic historical-religious context.

According to Zakhartsev and Salnikov [4], since the categories of Hegel’s philosophy of law are developing categories, insofar as the category of “the court of history” can be adequately interpreted only through dialectical methodology, which discloses internal contradictory links in-between its universal and special contents, between its meaning as a result and as fundamentals in the development of the individual, the society and the state.

## 3 Results

In order to reveal the categorical contents of the concept of “the court of history”, first of all, we should point out the semantic differences between the concepts of “Historie” and “Geschichte” in Hegelian philosophical discourse. The concept of “Historie” was used by Hegel in the common sense of “historical only” (just only a story, *nur-historischen*, *bloss-historischen*). Thus, the great philosopher introduces into his system a thoroughly wider concept of “Geschichte”, which carries a much deeper semantic load than the ‘ordinary’ understanding of “Historie”. Historians of philosophy often pay attention to the religious context of this concept: “... the real essence of historicity was realized by human thought only in the Christian religion with its emphasis on the absolute instant moment of God’s act of salvation,” wrote Gadamer [5]. In German philosophy of the late Enlightenment, the specificity of the concept of “Geschichte” began to be determined in connection with the peculiarities of the historical character of Christ and the world-historical role of His “Sacred Story”.

History as “Geschichte” in Hegel’s interpretation is primarily a process of activity of the spirit, revealing actually in time its essential freedom [6]. But this is the activity that includes reflection, and therefore it inter-connects both the historical process and historical memory of a fact: “This movement is the path of liberation of spiritual substance – the act through which the absolute goal of the world is achieved in it. According to Hegel, the spirit, which initially exists only in itself, progresses to consciousness and self-awareness, and thereby to the disclosure and reality of its essence that exists only in-itself and for-itself...”. Since this development exists in time and in being, it represents history. It was precisely in treating history as a “manifestation of the spirit,” rather than a simple sequence of empirical events, that Hegel preferred the concept of “Geschichte” to the concept of “Historie”.

An example of how historians of philosophy pay attention to the religious context of this concept is presented in the table 1.

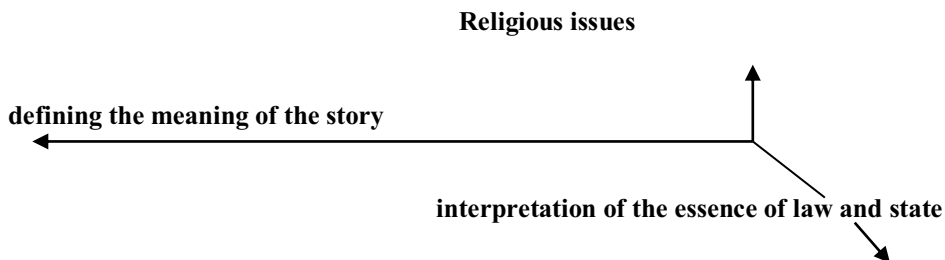
Hegel’s spiritual comprehension of history is logically linked with his interpretation of the role of religion, primarily Christianity, in the history of perfecting mankind and in the formation of history itself as an integral process. It is the “Sacred Story”, that is, the earthly history of Christ, being woven into the history of peoples, that gives, according to Hegel, an

inner meaning, elevating from “Historie” to “Geschichte”. Commenting on the Gospel, Hegel wrote: “In this way the Story of the resurrection and ascension of Christ is accomplished, so that the history gets a spiritual meaning”, through this “Sacred Story,” “people realized eternity of history, the eternity of movement that God Himself is” [7]. For Hegel, therefore, the most important part of the history of Christ is the story of how the divine nature is discovered in the Son of man. In this story, as it were, in a condensed, concentrated form, the previous history of the spirit is repeated, which for Hegel also consisted in the elevation of man to the divine. In this way, the divine history removes the main content of the global history of the spirit into itself and explicates it for further presentation. And in the form of presentation, it reveals the historical itself to consciousness. Christ in this story, Hegel noted, “is not a symbol – his subjectivity, his internal image, his self in essence are this very history, and the history of the spiritual does not appear in an existence that does not correspond to the idea, but in its own element” [8].

**Table 1.** The religious context of the concept of Geschichtlichkeit as interpreted by researchers [9].

“In the concept of historicity (Geschichtlichkeit), historical consciousness comes to self-image and self-expression, which for the first time becomes possible only with the formation of Christianity” (Rente-Fink, L., Schindler, Fulda)	“... the essence of historicity was realized by human thought only in the Christian religion, emphasizing the absolute moment of God’s act of salvation” (H.-G. Gadamer)	In German philosophy of the late Enlightenment, the specifics of the concept of “Geschichte” began to be defined in connection with the peculiarities of posing the question of the historicity of Christ and the world-historical role of His “Sacred history” (Fr.Ch. Oetinger, J.A. Bengel)
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In his Christology, Hegel links together religious issues, the definition of the essence and meaning of history and his interpretation of the fundamentals of the law and the state. The trinity of components is reflected in Fig. 1.



**Fig.1.** The triune components of Hegel’s Christology.

It is necessary to bear in mind that Hegel understood religion very broadly as a form of self-consciousness of the spirituality of all human activities. Peculiar features of human religious consciousness are manifested in arts, and in philosophy, and in practices of state building (in constantly updated and modern contents of Hegelian lectures on the philosophy of religion), and in many other areas of socio-cultural and subject-practical activities [10].

According to this Hegel’s understanding of religion, it is the relation of the absolute spirit to the difference between itself and finite mind, which develops up to forming a relationship of absolute spirit to itself: “This is – not only the relation of the spirit to the absolute spirit, but the absolute spirit in relationship to something that is already distinguished and logically meant on the other side; therefore, in a higher understanding, religion is the idea of the spirit related to itself, the self-consciousness of the absolute

spirit". The development of the spirit of the spirit of the universal to the spirit of the absolute is in the sphere of religious relations above all the emergence of the concept of the unity of religion and its identity. This formation is carried out as the development of the subjectivity of the substantial unity of the spirit. This is a process of self-mediation, the development of which in time constitutes the content of the Hegelian concept of history. At the same time, time is here a form of immediacy of the spirit, - Zakhartsev, and Maslennikov, and Salnikov believe [10]. It is essential that history itself, more precisely, historical itself, is also subject to the development process.

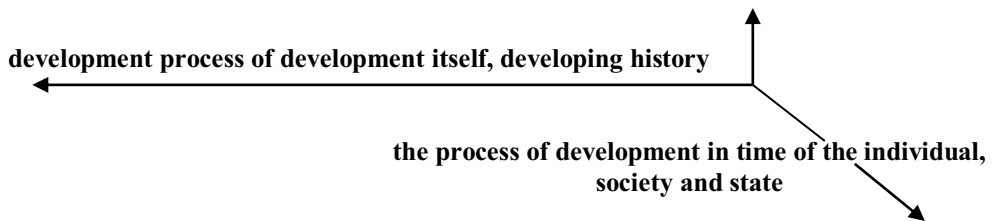
Brandom [11] and Pippin [12] also note that the Hegelian concept of spirit is too often interpreted as some kind of objective substance, forgetting that for Hegel, spirit is also a subject, and this concept itself in the discourse of Hegelian philosophy performs primarily a methodological function. The work of the interpreter with such a concept as a subject, of course, requires a special methodology, which includes thinking practices developed in a transcendental tradition, primarily Fichte. It is no coincidence that Gadamer [13] saw in the Hegelian concept of spirit the development of the content that is already inherent in the Fichte's concept of a pure "Ich". Without explication in the concept of the spirit of its content as a substance-subject, the objective definition of which also includes the subjective reflection of the thinker referring to this concept, it is impossible to understand Hegel's insistence on the unity of the concept and self-consciousness of religion, as well as his teaching on religion as "Self-awareness and absolute spirit. "Indeed, in this self-awareness of the absolute spirit, the self-awareness of the subject cognizing it must also be included. Without these nuances, the Hegelian doctrine of "Sacred History", its significance for becoming a subject of law and the subject of freedom, its significance for the development of history itself to the level of a subject of the "world court" will remain incomprehensible, - Maslennikov believe [14].

World history Hegel advocates, firstly, as a process of development in time of the individual, society and state; secondly, as a process of development of this development itself, i.e. as a developing history, which, as a result of this development, reaches its new form embodied in the "Sacred History," culminating in the death and resurrection of God. This refers to the historical difference in the realm of specific religions and the absolute religion. The latter is a full embodiment of the notion of religion. The transition from a specific to an absolute religion as a whole is marked by a transition from the universal to the absolute spirit, which significantly changes the status and nature of the historical phenomenon in the process of self-determination of the spirit. But even within the framework of the most specific religion, Hegel also distinguishes two stages of its development: there is the stage of natural religions and the stage of religions of spiritual individuality. And most importantly, these two processes of development at Hegel are essentially connected, therefore the "Sacred History" turns out to be both the source, the substantial element, and the outcome (Ausgang) of the development of world history. In its last quality, it mystically transforms world history, turning it into an independent subject. One of the images of this "transformed" history is law and the state, which has established itself in this history as "the rational life of self-conscious freedom, a system of the moral world". The processes of transformation of the world history of mankind, as a self-developing one, are presented in Fig. 2.

Hegel shows why, at the highest stage of the historical development of the spirit, we do find the image of a finite individual, a single person, who embodies the fullness of the universal spirit, moreover: the fullness of the divine principle. In the image of Christ, the finite spirit is revealed to us as the final of the absolute spirit itself. This finite is assumed by the spirit as the difference between its infinity and its finiteness. At the same time, his subjectivity, his consciousness and his will rise to the point of determining the divine, universal subjectivity. In Hegel's doctrine of "Sacred History," we find the image of the

completion of the historical process (taken here as the historical development of the spirit in the form of religious self-consciousness), which is not a completion as such, but rather the restoration of its integrity. This integrity of the historical process and its result, in which the historical finds its complete meaning and new life, is what Hegel constantly defined as the spirit (Geist). Hegel connects the spiritual transformation of history and man in the history with the image of Christ's death and His resurrection.

### The "Sacred Story" of God



**Fig.2.** The model of world history as "Sacred Story", according to Hegel.

According to Hegel, this is a true understanding of death, in which "the relations of the subject as such first appear", containing not only a person's understanding of the dialectics of the finite and infinite, eternal and temporary, unitary and absolute, but also an active inclusion in it. God assumes his absolute finiteness, incarnating in the finite person and removing this finite human nature through death. However, this finiteness is posited by the infinite itself, posited by a unity that distinguishes itself in multiplicity and returns from it back into unity, and therefore also includes the removal of itself as a finite. Death itself is denied through the Resurrection of Christ, which is precisely a spiritual act. Thus, the dialectics of the removal of the finite, laid down in the sphere of the final spirit (in the history of Christ as God and as a person, in the history of the individual), passes into the dialectics of the formation of the spirit as a social form of relations between people.

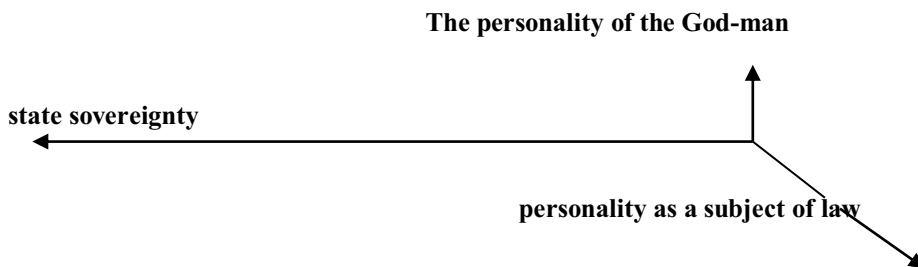
According to Hegel, "Death is the destiny of human limitedness". However, the image of Christ has already given the positive contents of the removal of these limitations – death. Therefore, the denial, death of the finite spirit is here the affirmation of the absolute spirit. "In this way, the story of the resurrection and ascension of Christ to the right hand of the Father is accomplished, so that history gets a spiritual meaning", - according to Hegel; "this death is the death of God, and it satisfies us because it depicts the absolute history of the divine idea – that which has been accomplished in itself and which is accomplished forever". The image of the "History", which in its captured form contains the world history of the absolute spirit in the form of a religious relationship, should become an objective image in society. "They must now complete this story, this process in-within themselves". Therefore, only after the suffering of the Cross, the death and Resurrection of Christ and the appearance of the "relationship of the subject as such," followed by the manifestation of the God of the Holy Spirit and the formation of a spiritually sanctified church community, does the real subject of the historical process and the subject of law form. And it is no accident that the law itself acquires its perfect and complete form precisely in the Christian Empire of Justinian.

This process, in Hegel' understanding, coincides with the transition of religious relations into the sphere of morality (Sittlichkeit), when the subject of religious relations is revealed as a subject of world-historical activity. The sphere of morality gets its complete embodiment in legal reality and in the state, which (if only it exercises itself in the forms of spiritual activity) should also be mediated by the movement of history, should embody the specific spirit of a nation, i.e. the spirit that, according to Hegel, is recognized mostly in a

religious form. The morality of the state and the religious spirituality of the state are thus mutually and strongly guaranteed by each other”. Neither the state nor historical activity can be true if they are formed on the basis of abstract principles, pseudo-religious inspiration or subjective arbitrariness of the person, if they do not grow on the basis of living practice of the spirit.

Thus, Hegelian historicism in the interpretation of law is no longer just a requirement for studying the historical premises of the formation of law, which, as premises alone, are something external to the subject itself. We will also find this kind of approach in the 18th century in the works of Ch.-L. Montesquieu and G. Vico. For Hegel, however, history in the sense of an objective expression of freedom of the spiritual principle of man is an internal definition of law itself. Hegelian historicism in law is, of course, a completely new approach to the interpretation of law, which also differs from the position of Fr. C. von Savigny. From these positions, Hegel consistently criticized the theory of the social contract that dominated in his time for its empirical assumptions. In the philosophy of empiricism, freedom is understood in a purely negative way as the limitation of a person’s will from any influence of external determinants. In this case, law can only be interpreted as a way of combining unlimited free will with external necessity. Law, according to Hege, is not only a social relation. Therefore, in addition to the “common will” of people, it also contains a universal content that refers to the highest fundamental principles of being. Following the tradition laid down by Plato, Hegel links the highest definition of the unity of being – an absolute idea – with the idea of good, or absolute Good. Law is based precisely on this recognition by man of the absolute goodness and on the recognition of his involvement in world harmony, which encompasses the unity of the diversity of world processes and phenomena. Hegel saw the source of this understanding of law in the historical development of the state, religion and church.

Thus, the history of the state and law, according to Hegel, is focused in the Personality, but this is the Personality of the God-man. This Personality in itself makes up the story – the “Sacred History”. It is its action that raises the “Historie” to the level of “Geschichte”, in which capacity history can really be a judge. Hegel begins his philosophy of law with the concept of Person as a subject of law and concludes with the concept of world history as the highest court of history between states regarding the recognition of their sovereignty, which is reflected in Fig. 3.



**Fig.3.** History of state and law according to Hegel.

But it turns out that this result itself – the world history has its own initial formative beginning – personality, namely the Personality of the God-man. Thus, we find in the final outcome of the philosophy of the law – the result of the development of its own beginning (the personality of a person in the system of relations of the law). An intermediate element of this development (Hegel would call it the average term of absolute inference) is the concept of state sovereignty.

## 4 Discussion

The topic of the article is updated in the framework of a broad discussion about international law and the transformation of the concept of sovereignty, raised by Jürgen Habermas in the course of a socio-philosophical understanding of the essence of European integration and the transformation of the “Westphalian model” of the state. The problem was posed by Habermas [15] precisely in the aspect of the opposition of the theoretical and legal positions of I. Kant and G.V.F. Hegel.

Based on Kant’s work “Towards Eternal Peace”, J. Habermas proposes a complex model of supranational statehood based on the institutionalization of the rights of the world’s citizens, as well as the expansion of the rights of international political associations and increasing their status through the development of legal institutionalization. Then “the division of sovereignty between the citizens of the European Union and the peoples of Europe should in fact be reflected both in consistently joint legislation and in the symmetrical responsibility of the European Commission to the Council of Europe and the European Parliament” [16].

Kant’s idea of world citizenship and the possibility of a transnational republic is opposed by Habermas to the position of G.V.F. Hegel, who since his early work “The German Constitution” defended the principle of invariability of the Westphalian model of the state.

The philosophical substantiation of the transformation of sovereignty by Y. Habermas corresponds to the concepts of a number of European jurists (Henseler H. etc.) who put forward the ideas of “divisible” sovereignty, sovereignty as a complex of competencies, asymmetric distribution of sovereignty. These ideas cause a critical attitude of those European scholars (LepoivreH.etc.)who are concerned about the conflict of interests in the clash of development of law on a regional or international basis, and require a deeper understanding of the historical and philosophical foundations of the concept of sovereignty.

In turn, the rethinking of the philosophical foundations of the concept of sovereignty forces European scientists to return again and again to the question posed by Habermas about the modern meaning of the correspondence polemic between Kant and Hegel on the issue of sovereignty and international law. So, Andrzej Przylebski in the article “Hegel and the idea of international law”, directly connects the problem of state sovereignty in the global world and the contemporary discussion around it with the struggle between the “Kant line” and the “Hegel line” in the doctrine of international law. At the same time, he starts from the approach laid down by an earlier discussion on this issue. A. Przylebski defines Hegel’s line as more realistic in comparison with Kant’s line.

Obviously, within the framework of this discussion, it is necessary to re-analyze and in more detail the Hegelian concepts of the state, sovereignty and international law, the construction of which in the “Philosophy of Right” is closed by Hegel’s arguments about the “court of history”. It seems to us that there is a certain gap in the analysis of the Hegelian concept of “the court of history”, which had not previously been interpreted as a philosophical category.

## 5 Conclusions

The “SacredStory” is actually included into the History, unfolding itself in time (“Historie”), twice: first – as an event of two millenniums of standing and stand – as the contents which is constantly actualized in the sacrament liturgy. It becomes history connecting time and eternity (“Geschichte”) when it includes the real relationship of man and God, the contents of which Hegel reveals through the dialectics of the absolute and universal spirit, the dialectics of subjectivity and objectivity of absolute self-awareness, the dialectics



of the personality as a subject of the law and as a subject of freedom. It is only in this context, following Hegel, we can philosophically understand the history (Geschichte) as the supreme Court and rationally interpret the concept of the High Court of history as a category of philosophy of the right.

History (“Geschichte”), the contents of which includes the mystery of the “Sacred Story”, turns out to be the highest instance of the law and the state.

Since the categories of Hegel’s philosophy of right are developing categories, modern philosophical discourse requires the expansion of research approaches to the reconstruction of the concept of “court of history”, as suggested by researchers Rubanov [18] and Panova [17], with the inclusion of the problems of subjectivation of the general and scientific cognitive process, as well as understanding the spiritual nature of language, which is based on the key questions of the co-essence of language and spirit. Future research will focus on these aspects of the problem.

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