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# Chapter 1

## **THEORY OF STATE**

### **1.1. CONCEPT AND CHARACTERISTICS OF STATE**

A state is a complex phenomenon. Since ancient times, attempts have been made to define the concept of “State”, but so far there is no commonly used and generally accepted idea of it. On the one hand, this is due to the multifaceted nature of such a phenomenon as a state, and, on the other hand, to the diverse and sometimes contradictory perception of the same state and legal phenomena by different thinkers. In particular, G. Kelsen, one of the founders of the Theory of Legal Normativism, explained the difficulties in defining such a category as a state by the fact that “...this term usually refers to a wide variety of subjects and phenomena”. At each stage of the human society development and existence, scientists, thinkers, philosophers gave their definition of state, which, perhaps, was objective, but only for that moment of history. As noted in the works by the Russian lawyer and specialist in civil law G.F. Shershenevich (1863–1912), “...the definition of state should answer the question “What is state in its historical reality and in all its historical manifestations”.

Since ancient times, as society developed, the state has been considered from different points of view. Thus, Aristotle, in his thesis “Politics”, considered state as the highest form of people union, and a perfect society embracing all other forms of society in itself is state which main purpose is the general welfare. Mark Tullius Cicero, in his treatise “On the State”, claims that “populus is not just any gathering of humans that has come together in any way, but gathering of many people connected by consent in matters of law and common interests”. German lawyer and jurist, Robert von Mohl (1799–1875), wrote that “state is a joint national life organized in a certain territory and under the highest authority”. Niccolo Machiavelli (1469–1527), Italian thinker, philosopher and politician, generally considered state regardless of its form as a relationship between the government and its subjects, based on fear or love of the latter. In XVI century, French philosopher Jean Bodin associated

the concept of state with the legal management of families and the fact that they had something in common with the supreme authority which in its activity should be guided by the principles of goodness and justice. In XVII century English philosopher Thomas Hobbes defined state as “a single person, an overlord, a sovereign whose will, as a result of the agreement between many persons, is considered the will of all, so that it can use everyone's power and ability for a common peace and protection”. The founder of Liberalism doctrine, D. Locke, represented state as “a common will, which is an expression of the prevailing force,” that is, the majority of citizens “being the part of a state”.

State, according to German philosopher G. Hegel (1770–1831), is the most perfect organization of public life in which everything is built on a legal basis, representing the realm of realized freedom, and “the first condition for state existence is the existence of a plurality of human individuals”. Also, according to G. Hegel, state “...is a rational, self-conscious and objectively conscious freedom existing in itself and for itself... A state is a spiritual idea manifested in the form of human will and its freedom”. In his work “Philosophy of Law”, “State” Section, G. Hegel develops his teaching and argues that “state is the actuality of the ethical idea — it is ethical mind qua the substantial will manifest and revealed to itself, knowing and thinking itself, accomplishing what it knows and in so far as it knows it”, which reflects the principles of its philosophical system, wherein state was presented as the product of spiritual human bonds.

A lawyer and a sociologist of Polish descent, L. Gumplovich (1838–1909), defined state as “organizing the dominant minority rule over the majority”, organizing rule in the interests of the ruling group. According to L. Gumplovich, during the state constitution the ruling class is formed from the winners, and the subordinate class — from the defeated, this contributes to the further social differentiation of society.

The views of Russian thinkers and lawyers of the first half of XX century on state are also important and interesting. A prominent Russian lawyer, philosopher N.M. Korkunov (1853–1904) wrote that the state is “a public union which is an independent, recognized coercive rule over free people”.

Russian philosopher, jurist and prominent public leader E.N. Trubetskoy (1863–1920) considered state as “a union of people ruling independently and exclusively within a certain territory”. In accordance with this concept, he identified three elements included in the state concept: an authority with signs of independence and exclusivity; a population of persons subordinate to this authority — the people; a territory.



Russian lawyer, civil law specialist and public leader G.F. Shershenevich (1863–1912) considered a state in a sociological context and wrote that it is difficult “to build the concept of state as a force, of state as a legal relation, but it is possible only with and only on the basis of the idea of it as a combination of force and will”. State authority appears in this case as “the will of some (ruling) people based on independent power to subordinate to themselves the will of others (subject)”.

In the Marxist Theory (Marx K., Engels F.), a state is considered in the context of its class-specific origin expressed in the organized violence of the dominant economic class.

This idea was also supported by V.I. Lenin (1870–1924) — the greatest Marxist theorist, a prominent political and government leader who wrote that “a state is a machine for oppressing one class by another, a machine to keep other subordinate classes in obedience to one class. The form of this machine can be different”, but, despite the system change, “the essence of class society remained: the society was based on class exploitation”.

During the Soviet period, this state conception remained unchanged and got a more class-specific pattern in Russia. However, with the formation of state socialist system, this idea changed somewhat, since in the USSR there were no antagonistic classes, and state reflected the interests of all working population. The political organization of authority gets a priority in determining state. For example, in the textbook “Theory of State and Law” published in 1985 edited by Professor S.S. Alekseev, the following definition is given: “State is a special organization of political power exercised by the economically ruling class (working population led by the working class in a socialist society), which has a special coercive apparatus and grants the binding force to its dictates for the population of the whole country”.

According to A.S. Pigolkin (2006), definitions of “state” can be divided into three groups:

- ▶ conception of “state as a union of people, as a community” (Aristotle, Hugo Grotius, Chicherin B. et al.);
- ▶ definitions based on the conception of “state as a mechanism, machine, tool” (Lenin V.I., Radishchev A.N. et al.);
- ▶ the concept of “identification of state and state apparatus” inherent in Western Political Science.

Here we provide several modern domestic definitions of **state** concept.

- ▶ “State is a special organization of power with a unique apparatus of management and coercion, reflecting and coordinating the interests of diverse communities, managing the society on the basis of social compromise”.

- ▶ “State is a single political organization of a society that extends its power to the entire territory of the country and its population, has a special management apparatus for that, issues the binding for all decrees, and has sovereignty”.
- ▶ “State is a geographically organized public and law-governed community of the population, formed on the basis of power and carrying out its activities under law using a special state apparatus”.
- ▶ “State is a form of political and law-governed society organization that acts and extends its power within a certain territory, has a special apparatus of state management and coercion, issues legal standards in order to ensure, implement and regulate private and public interests of certain segments of population and of society as a whole”.

Thus, the variety of definitions of the “state” concept is undoubtedly associated with the variety, complexity and constant historical evolution of this social phenomenon, which makes it impossible to give it a clear definition. At the same time, one can describe its properties on the basis of political, economic, sociological, religious and other factors existing at a particular stage of the human society development.

State as a complexly organized power-political system has its own specifics that are characteristic of pre-governmental unions of people, as well as for states that function at various stages of human civilization development. At the beginning of XX century, the theory of three elements (state characteristics) prevailed in Legal Science: territory, people, power. At present, it is generally accepted in domestic Legal Science to disclose the concept of the state by listing its major **characteristics**. These include: availability of public political authority, territorial organization of population, state sovereignty, comprehensive, obligatory nature of state acts, the state treasury. From time to time, the major characteristics of state may include a common language of communication, availability of the army, as well as a single defense system and foreign policy, etc. However, the above are only the secondary characteristics of state.

First of all, an essential and inalienable characteristic of state is the availability of **public authority**. According to F. Engels, state is characterized by the occurrence of a particular public authority which is isolated from society and does not coincide with the national population. In any state there are public authorities performing specific state functions. Along with the bodies issuing regulations, special managerial apparatuses (executive, regulatory, supervisory, accounting, etc.) shall be established in a state, as well as defense and enforcing bodies (courts, police, army, prisons, etc.). The system of public authorities constitutes the state apparatus in which certain people exercise managerial

functions. They do not participate in the process of material production; these people can occupy their positions by appointment, election, inheritance.

The necessary material attribute of state, without doubt, is the availability of **the population and the territory** where such population lives. State acting as the supreme public power exercises its functions within its competencies. A clearly defined outline of state's borders entails a territorial organization of the population which, in turn, gives rise to the citizenship institution and ensures the corresponding legal status for a foreign contingent. The managerial state apparatus has the structure and scope of competencies in accordance with the spatial territorial division. The expression of authoritative powers is the so-called "state mechanism", which represents a special apparatus for managing the population and is intended to guide society, establish and maintain a specific political regime, provide legal standards and implement them, and preserve state sovereignty. The system itself, the structural framework and competencies of public authorities can be very diverse depending on the state system. Still, we can distinguish some generalizing properties for their appointment, such as: border security, the availability of legislative, executive, judicial and punitive bodies, maintenance of civil society in the state legal environment. The latter, without doubts, represents the most significant state attribute, since without laws its very existence is impossible. The law ensures the legitimacy of the power itself, outlines the framework for the possible and proper behavior of civil society members, and promotes interaction between state itself and other states. The state-granted monopoly in taxes and their very existence is also the most significant characteristic of the state. Their main purpose is to maintain the state apparatus and financial support for certain policies in various spheres of state life: defense, economic, social, etc.

**Sovereignty** is the most significant characteristic of state and considered as independence and supremacy of public authority throughout its territory and independence in interstate relations within international laws. Currently, it is customary to distinguish the following three main features of sovereignty: independence, supremacy, and unity. Supremacy involves the extension of power throughout its territory, independent determination of the political direction, the system of legal relations, the legal status of state entities (government bodies, citizens, legal entities, public organizations, etc.). Independence implies independence of state relations in the world arena; however, being not absolute, it helps to establish its own foreign and sometimes domestic policy, taking into account international laws. The main condition for the stable existence and functioning of the state is the unity of sovereignty, belonging to it as a whole and combining the sovereignty of

territorial units (e.g., in the case of the Federation), the sovereignty of people, and the national sovereignty.

We have listed the main general features of state, but it should be noted that they do not give a complete and objective idea of the essence of state in the future of its civilizational development. With each historical stage in the development of statehood and human society, other features appear, and the old ones can acquire the new content.

Thus, **state** can be defined as a power-based and political organization of a society that has the public political power, the state sovereignty, a special management and coercion apparatus, the state treasury, and determines the legal system within a certain territory.

## 1.2. MAJOR THEORIES OF THE ORIGIN OF STATE

Similar to various definitions of state concept, there are many theories of its origin. In the Middle Ages, the **theological theory** of the origin of state dominated. Its prominent representative was Thomas Aquinas. In his writings, he considered the origin of state as an act of divine will. In light of this, state is eternal and inviolable, as well as the power of the ruler being the governor of God. Being a divine product social inequality implies the unquestioning submission to persons in authority, and economic and legal inequality is also predetermined by divine will. Later the theological theory of the origin of state gained traction in writings of representatives of Islam and Catholicism ideology.

Representatives of the **patriarchal theory** of the origin of law laid the foundation for substantiating their worldview doctrine on the collectivity of people, on their desire for communication and, ultimately, family foundation. As a result of further unification of people under the canopy of the family, and due to its growth and further unification of families, the state is formed. The state ruler acts as a patriarch (father), and he is not elected, since his power is of divine origin. The most prominent representatives of this theory were Aristotle, R. Filmer, E. Westermarck, D. Murdoch. This doctrine has received an interesting development in the writings of Chinese thinker and community leader Confucius (551–479 BC). In his understanding a state was a large family, in which the Emperor as the “Son of Heaven” possessed the unlimited authority of the “father”, and his subjects and population were considered as “children”. Similar to any family, the hierarchy of its members serves as a mandatory attribute of its stability where the elders must take care of the younger ones, and the latter must obey and respect the elders. In Russia, this theory gained traction

in writings of Nikolai Mikhailovsky (1842–1904), a sociologist, publicist, and prominent ideologist of “populism”. In the context of patriarchal theory, the author saw the purpose of the state in creating favorable conditions for the life of the whole population and not in the prosperity of its ruling elite, and not in the power of state itself in relation to other states.

In V–IV centuries B.C. the **contractual (natural-legal) theory** of the origin of state was generated, the founders of which were the sophists of Ancient Greece. This theory was further developed in XVII–XVIII centuries. According to its representatives, the state was formed as a result of a voluntary agreement (contract) of people pursuing the aim of the greater good. Until the contract, people lived in the “natural state” — primeval being. Then states were formed under the social contract. Fundamental provisions of the Contract Theory of Law are reflected in the works by G. Grotius (1583–1645), T. Hobbes (1588–1677), J. Locke (1632–1704), J.J. Russo (1712–1778), and among domestic authors — A.N. Radishchev (1749–1802). Each of them interprets the opinion about the “natural state” of people before the state formation and, accordingly, their motives and processes of agreement.

Another theory of the origin of the state is the **Theory of Violence**. It received the most significant development in XIX century. The top representatives of this theory were E. Dühring (1833–1921), L. Gumplovich (1838–1909), K. Kautsky (1854–1938). The main factors contributing to the origin of state, in their opinion, were military-political, namely the conquest of some peoples by others. The enslaved tribes had to be governed and forced to obey, which contributed to the state foundation. Thus, the state is perceived not as the result of logical society development from within, but as an external force.

The basis of the **Racial Theory** is the provision that, due to the physical and mental inequality of people, higher and lower races are formed. Higher races can develop civilizations and states as an organization of governance and domination over the lower races, since inferior peoples cannot have their own civilization. The founders of the Racial Theory were sociologist J. Gabino (1816–1882) (France) and German philosopher F. Nietzsche (1844–1900).

The **Materialism (class-specific) Theory** of the state origin was developed by K. Marx (1818–1883) and F. Engels (1820–1895); it was based on the fact that the state was a product of new economic conditions for the existence of human society, namely: introduction of the division of labor, private property, surplus product. All this totality contributed to the formation of classes opposing each other. State occurs as an objective result of deterring the confrontation between the classes of exploiters and exploited. According to F. Engels, the state serves the economically ruling class, which in turn entails the political rule.

This theory gained further traction in the works by V.I. Lenin (1870–1924), who wrote: “When classes appeared, everywhere and always along with the growth and strengthening of this division, a special institution was formed — the state.”

In XIX century, another theory of the origin of state got the final formation — **the Organic Theory**. The idea that state like a human body, consisting of individual cells and organs, has the same structure and functioning rules, can be found in the works by ancient Greek philosophers Plato and Aristotle. The most prominent representative of this theory was an English philosopher and sociologist Herbert Spencer (1820–1903) according to whom the state is a “social organism” similar to the human body. The state formation is possible with the unification of “parts”, which are people, and its existence is possible only as long as the human society exists. The power is seen as dominance over the constituent parts of the whole and should be aimed at organizing and ensuring the normal functioning and vital activity of state as a whole.

The **Psychological Theory** of the origin of the state is quite attractive. Its most prominent representative was L.I. Petrażycki (1867–1931) — Polish and Russian jurist, philosopher, sociologist and prominent public person. He reflected his ideas in the book titled “A theory of law and state in connection with the theory of morality” (1907). The main provisions of the psychological theory determine the origin and nature of the state as the realization of traits embedded in the human psyche such as the desire to imitate, dominate others or subjugate to others. One part of mankind has the need for an active rule, and another part, being in a dependent consciousness, only passively submits. All this is due to the common factors of human consciousness.

Analyzing the provisions of all theories of the origin of state, we can confirm that there is no general answer to the question. The state concept is variegated and diverse. Undoubtedly, its origin was a complex process combining social, economic, religious, national and other factors.

### 1.3. ESSENCE AND TYPOLOGY OF STATE

In the philosophical sense, the essence of the phenomenon is a combination of stable internal properties, relationships, common factors that characterize its features and originality. Being a quite stable category, the essence of state does not remain static and undergoes changes during the progressive mankind development. The most important criteria for determining the essence of any state are the holder of political power, political power structure and purpose, and whose interests it protects.

Currently, there are two main approaches to understanding the **essence of state**: class-specific and general social. The first was based on the Marxist doctrine of the class organization of state. The ruling class in both fields, political and economic, acts as a dictator in relation to other classes of civil society ensuring its dominance, exploitation and organized violence against them. The further historical development of human society in a humanistic direction has made adjustments to the essence of state, narrowing the absolutism of the minority power and expanding the social and economic base of state. The second approach, the general social one, involves turning state into an organizing force, capable of expressing and protecting not only private, but also common interests. This was also facilitated by the development and positive changes in the private property institution, which is increasingly being secured by state. The latter contributes to the inclusion of individual property in the national economic base of society. Thus, state got the ability to balance interests, prevent and resolve social conflicts by finding compromises and promoting social harmony.

The social purpose of state is not only close to the concept of state, but is also derived from it, since it reveals the main aims and objectives of the existence of state itself. Many scientific works, from ancient times to the present, disclose the social purpose of state. So, even Aristotle and Plato considered the social purpose of state as the affirmation of morality, and the founders of the Contract Theory of the origin of state claimed that its purposes are the “common good” (G. Grotius), security maintenance (T. Hobbes), and common freedom (J.J. Russo). Representatives of the Marxist theory consider the social purpose of state as the development of such system that legitimizes the oppression of one class by another, and the moderation of their clash.

Despite the multiplicity of worldviews on the social significance of state, the main purpose of state, according to most scholars is to serve society. According to L.A. Morozova, for this purpose state should:

- ▶ establish a certain system in the society and maintain it up to the application of coercion;
- ▶ ensure public peace and stability in the society, acting as a kind of social arbiter for different groups, segments of society in the conflict of interests, moderate these conflicts, and achieve a certain social compromise;
- ▶ ensure the protection of society against any criminal attacks within the country, as well as against external enemies and aggression;
- ▶ protect the individual against arbitrariness, create normal living conditions for all society members regardless of their direct participation in the

production of goods, take care of socially weak segments and groups of the population, that is, be social;

- ▶ act as a force integrating the society, seek peace and harmony in society, take care of the culture, education, art, and health care development, that is, to be, according to I.A. Ilyin, a “spiritual community”.

At present, it is safe to say that general democratic institutions such as the rule of law, separation of powers into branches, political pluralism, etc. are becoming the dominant in the state functioning.

The typology of states is their classification by types which are understood as general, system-forming features characteristic of a certain group of states and revealing common factors of their organization and development. This process contributes to the in-depth study of characteristics of the essence of state, which allows us to predict a model of its continued existence.

Currently, two approaches to the typology of states are used in Legal Science — formational and civilizational.

The formational approach is based on the unification of states within a specific social and economic formation. The main criterion for classification is the mode of production determined by the prevailing form of ownership for production means. The formational approach refers to the Marxist doctrine of state, which highlights five formations: primitive-communal (stateless), slaveholding, feudal, capitalist, and socialist. Each of the formations (except for primitive-communal) has a certain type of state that protects the economic system of society and expresses the interests of the economically dominant class. Accordingly, the Marxist theory determines the dependence of class essence, type of state, on the system of social and economic relations of one or another formation.

In the scientific literature, the formational approach has been criticized, and the following are most often referred to as its shortcomings:

- ▶ the theory of social and economic formations was mainly elaborated on the basis of European countries and did not take into account the specific development of eastern states;
- ▶ the development of states is considered as a one-line predictable, irreversible process in which one formation naturally replaces another, but this does not always correspond to reality;
- ▶ the provision on the gradual disappearance of state as an apparatus of class coercion and formation of communist independent management of society did not find any confirmations.

In the 1970s–1980s scientists began actively discuss the aspects of the civilizational approach to the classification of states. Analyzing the development



of states, the civilizational approach takes into account not only economic factors such as production methods and forms of property, but also spiritual and cultural factors which include religion, worldview, philosophy of life, specialties in customs and traditions, etc. The combination of these factors forms the culture of a certain state. In turn, the kindred, closely related cultures form the civilization.

Arnold Toynbee made a great contribution to the civilizational approach development having defined civilization as a stable community of people united by spiritual traditions, similar lifestyle, geographic and historical features.

Toynbee singled out major and local civilizations. Major civilizations have a significant impact on the development of the history of society and other civilizations. **Major civilizations include (included):** Sumerian, Babylonian, Hellenic (Greek), Chinese, Hindu, Islamic, Christian.

Local civilizations usually are limited by national boundaries and have no impact on the World history. Toynbee singled out about 30 of them, in particular American, German, Russian, etc.

The indisputable advantage of the civilizational approach is its orientation to the study of social values inherent in a certain society. In contrast to the formational approach, it is characterized by great multidimensionality, since it considers state not only as power and political organization that establishes the political dominance of one class over another but also as a great value for the society and the World culture.

In the Law study literature, some other criteria for state classification can be found, e.g., a religious criterion that distinguishes types of states by their relation to religion. It makes it possible to single out secular, clerical, theocratic, and atheistic states.

A secular state is characterized by the separation of all religious organizations from the state government. State acts as a guarantee of freedom of conscience and freedom of religion, ensures equality of all religious organizations before the law, and protects legitimate activities of religious associations.

Secular states include the Russian Federation, Germany, France, all CIS states, etc.

Clerical states include states in which a particular religion officially has the status of a state one, suggesting a close interaction between the state and the church, covering various spheres of public life. To date, clerical states include the United Kingdom, Norway, Sweden, Denmark, Spain, Japan, etc.

Characteristics of theocratic states:

- ▶ the state power lies in the hands of the church, religion has the official status;

- ▶ religious norms represent the main source of law and regulate all spheres of life;
- ▶ the head of state is the highest religious leader, e.g., the pope in the city-state of the Vatican.

Theocratic states include Iran, Pakistan, Saudi Arabia, Morocco, etc.

In atheist states, religious organizations were persecuted by the authorities. In particular, the church was deprived of property, religious organizations were banned or tightly controlled by state, clergy and believers were repressed, religious ceremonies and sacraments in public places, as well as publications of religious character, were prohibited. Examples of atheistic states include the Soviet Union, as well as some former socialist states such as Albania.

To date, in accordance with Article 14 of the Constitution, the Russian Federation is a secular state.

## 1.4. FUNCTIONS OF STATE

**Functions of state** are the main direction of activities of the entire state taking into account the specific historical stage of its development. Functions can be considered as main mechanisms of regulation and further impact on all life areas of the civil society and state as a whole (economy, politics including social, international relations, etc.), reflecting key directions and content of society management. Essential features of the functions of state, according to L.A. Morozova, include:

- ▶ steadily established objective activities of state in the most important areas of social life;
- ▶ direct connection between the essence of state and its social purpose which is realized in the state functioning;
- ▶ focus of state's activities on the fulfillment of major tasks and the achievement of goals arising at each historical stage;
- ▶ special forms of the implementation of state functions (legal and organizational) due to the use of specific management methods including imperative-compulsory ones.

The classification of state functions is possible for many grounds. In the legal literature, it is customary to classify by the following grounds:

- ▶ areas of state activities — internal and external;
- ▶ duration of the functions of state — permanent and temporary;
- ▶ social significance — core and non-core;
- ▶ principle of the separation of powers — legislative (law-making), managerial and judicial;