

# INTRODUCTION TO LAW

## Lesson 2

*The difference between society and the state*



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# The topics

- The difference between society and the state
- Content of the state
- Different concepts for the state
  1. Theories that consider the state as an idea
  2. Legal theories about the state
  3. Biological theories about the state
  4. Sociological theories about the state

# The difference between the society and the state

- Society and the state, and the relationship between them exists at every stage, at every phase of social development.
- According to the materialist concept, **the main factor affecting the essence of society is the mode of production (mėnyra e prodhimit).**
- The notion of society is linked to the meaning of economic and social formation.
- **The socio-economic formation** represents the organization of human society at a certain stage of its development.
- **Society** is thus the entirety of people, living within an economic-social formation.

# The difference between the society and the state

The elements of socio-economic formation are:

- **1. the totality of relationships in production**
- **2. their development based on a historical process.**
- By including each socio-economic formation within the historical framework, it means that the economic laws of one formation cannot be applied mechanically to the other, since they are not eternal laws.
- This is also the case with the state, which, acting within a given socio-economic formation, is subject to the laws upon which it is organized.

# The difference between the society and the state

- The **mode of production** (*the way the economy functions*) plays a key role in the content of the state and law, but even vice versa.
- However, besides the economic factors affecting the state and law, other factors also influence the state and the law, thus gaining relative independence from the economy.

We can mention here:

- **available resources, state wealth, geographic region, demographic factors, etc.**

# The difference between the society and the state

- **The state and the law are complex phenomena, which are influenced not only by economic factors.**
- But the state fails if it acts contrary to the direction of economic development.
- The state was born within society but gradually gained some independence from it.

The state always departs from society as a whole, but not from the ruling class.



# The difference between the society and the state

In the early societies, the state represented the largest part of society, but with the rise of social contradictions, the state started to represent the smaller part of society.

- In dictatorial regimes, the state is alienated from society.
- It is difficult for the state to represent all of the society.
- Although the establishment of an equitable, direct, and secret ballot (votim i fshehtë), the election system brings the state closer to the majority of the population.

Still, it cannot be said that the state represents

the whole society.



## The representation of all strata of society

- In fact, it is noted that in the parliaments of different countries, the number of representatives of the lower classes is decreasing.
- The representation of all strata of society in parliament depends on economic, political, cultural, and a variety of other factors.
- At the same time **this is one of the most important tasks of a democratic state and of a contemporary society.**



# The state-economy relationship

The relationship between the state and the economy is important for understanding the state-society relationship as well.

There have been several currents about this problem:

- ❖ **The first stream denies the link between the state and the economy.**
- ❖ Theological theory as well as Hegel's theory are included in this stream. According to Hegel, the state is "the embodiment of the absolute idea".
- ❖ There are other theories that consider the state as a creature of people that derives from their subjective ideas and is not related to economic conditions.

# The state-economy relationship

**The second stream acknowledges the connection between the state and the economy,** but in this report, **the main factors are the state and the law, not the economy.**

One of the representatives of this stream is **During**, who has emphasized the determinant role of the state and law in the economy.

During's opponent was **Engels**, taking the feudal state by analogy.

- ❑ The feudal state was unable to maintain the feudal mode of production and was disbanded (u shpërbë) by the new capitalist relationships.

# The state-economy relationship

- **The third stream** recognizes that there is a mutual and more or less equal influence between the state and the economy.
- Production could not be developed without certain social rules that constitute the law, and on the other hand, the law is a form where the economic relationships are expressed.
- The state and the law are interconnected with each other, and this is a logical, and non-historical relation.

Although the logical relation has its importance, **the historical relation cannot be left behind.**

- Historically, the primary role belongs to the economy as major economic changes result in changes in the norms of law.

# The state-economy relationship

- There is also a **fourth stream** that looks at the relationship between the economy and the state from a materialistic point of view.
- The proponents of this stream have overwhelmed the role of the economy in the state **by denying the role of the autonomy of the state and law and the impact of this autonomy on the economy.**

# Geographical factors

- Even geographical factors have played their part in both the form and the content of the state.
- Some ideologues have exaggerated the role of geographical factors.
- According to them, the fate of some states and their content depend largely on the natural conditions developed in these countries.

# Geographical factors

- The French thinker Montesquieu has compared the peoples (popuļt) of the North with those of the South.
- According to him, **the peoples of the North** are more industrious and have greater economic development than the peoples of the South who are more lazy and have not achieved this development.
- But history has shown that peoples' development has not always been the same.



# Geographical factors

- Regarding the geographical factors, there are authors who consider a particular geographic factor determinant for a given state. This stream is called **geopolitics**.
- Often geopolitics has left room for speculation. The concrete case is that of **Germany which had attributed a special role to the German state and people** in the period of rule of the European continent and the whole world.
- **Despite the weight of geographical conditions, they do not play a decisive role in the content and form of the state.**

# The state-society ratio

- Often the relation between state and society is misunderstood by some authors.
- One of them was Aristotle who failed to distinguish the state from other forms of social community.
- According to Aristotle: man is a political animal that aims to create a living community with other people.
- The state represents this community, that is, the political connection between people, and is free from problems related to the existence of people like food security, clothing, etc.

# The state-society ratio

➤ **Aristotle's family is understood in two ways:**

a. as a relationship between man and woman for the continuity of mankind;

b. as the relationship between the slave owner and the slave.

➤ This second relationship is based on the rule of the former (of slave owner towards the slave), as well as on his care for the latter.

➤ **The expansion of the family leads to the creation of a residential center that is a higher form of community.**

➤ The state comes as a refinement of the family and inhabited center, as an evolutionary continuation of them.

# The difference between the state and society

But continuously in the 18th century, there was a clear distinction between the state and society for two reasons:

- **Firstly**, the difference between the bourgeois society that was born in feudalism and the feudal state that prevented the existence of this society.

# The difference between the state and society

Labor

Mode of  
production

**Second,** the new bourgeois state gained some degree of independence from society.

This was noticed in the forms of **labor** and **the mode of production**.

In feudal society, these forms of labor and modes of production were of a political character and determined by privileges, orders, etc.,

**Under capitalism, these elements gained independence from the state.**



# Content of the state

Different concepts about state and state content

1. Theories that consider the state as an idea
2. Legal theories about the state
3. Biological theories about the state
4. Sociological theories about the state



# Content of the state

- The state is created because of the society's need for the existence of an organized power, equipped with coercive means, (mjete shtrëngimi) capable of governing the society, by imposing choices that the state considers reasonable by the means of legal norms.
- But the state carries social conflicts and reflects the superiority of it as a more powerful group over the other social groups.
- This superiority comes from various factors such as economic rule, citizen votes, the use of force, and so on.
- The political power provided by the state serves to implement a particular policy.

# The state as a political organization

- The state is an organized power that imposes its will on the whole society and pursues the implementation of that will.
- The state is an organization.
- **It is not the only organization in society, but the state is an organization that has a political character.**
- The parties are another political organization. Parties are not the state, they are only its guiding forces.
- The party is a part of the social group it represents, while the state represents the whole society.

# Content of the state

The term “state” is used in two ways:

1. as a political organization in society;
2. in the politico-geographical sense.

In the second sense, the state consists of 3 elements:

**The territory; the population; and public power operating in a given territory and population.**

The first two elements are more of the premise of being a state.

**It is the element of power that gives the state its real meaning, as a political organization exercising state coercion.**

## **Theories that consider the state as an idea**

According to these theories, the essence of the state is an idea that lies outside the real world and its laws and is independent of them.

There are 2 main variants of this theory:

- ❖ the state as an idea lies outside the real world and is only reflected in this world
- ❖ the state as an idea stands in the real world embodied in it, is in unity with it and is realized in this world. This is the variant of Hegel's idealism.

## *Theories that consider the state as an idea*

In both cases it is recognized that there are two types of phenomena in the world:

- phenomena of the spiritual nature (spirit, idea)
- phenomena of material nature.

Ideas are the content of the world, material phenomena are only the embodiment of the idea.

The most typical representative of modern idealistic theories is **Hegel**.

# **Theories that consider the state as an idea**

- The universal conceptual and material process is the process of developing an absolute idea that it exists independently of the real world.
- All that surrounds us is the reflection of the absolute idea. This idea is not rigid but it is moving, evolving.
- The state is seen not only as the highest form of development of this absolute idea, but also as a means of moral perfection of man.
- Hegel's definition of the state is "the realization of the moral idea".



## ***The criticism on these theories***

- This theory has been met with much criticism. The state itself is not the realization of an objective idea.
- **The state is a people's organization that realizes some ideas, but these ideas are created by the people themselves, based on the real conditions in which they live.**
- We can say that the state is an organism that serves the realization of a certain purpose, the protection of a certain mode of production.

# ***Legal theories about the state***

These theories are similar to theories that consider the state as an idea.

- **Legal theories consider the state as the realization of the legal idea; they see the state as a legal phenomenon.**
- The state has several elements such as economic, political, etc. but the most important is the legal element.
- The legal element makes it possible to distinguish the state from other similar organizations.
- These theories arose **in the second half of the 19<sup>th</sup>, and early 20<sup>th</sup> centuries**, as a result of the extraordinary strengthening of the legal elements of the state.
- **These theories are an expression of the creation of a rule of law.**

## *Legal theories about the state*

- One of the most widespread theories is that of Kelzen, **the theory of pure law or normativism theory.**
- Kelzen considers the state as a legal phenomenon and identifies it with the law.

For Kelzen, the law is composed only by norms, and the state is entirely a great set of norms that constitute the right, thus personification of the right as a whole.

# *Legal theories about the state*

- What's the difference between an act of violence perpetrated by the state and an act of unlawful violence perpetrated by a person?
- According to Kelzen they have no distinction. The distinction is given only by the legal norms that legitimize the act of violence perpetrated by the state.
- But Kelzen has not been able to deny the social side of the state, since he acknowledges the fact that law is a system of legal norms provided through the means of violence.

**The state is a legal organization and it differs from other organizations. All the functioning of the state is governed by law, yet the legal aspect of the state is not the only aspect.**

# **Biological theories on the state**

- In the 19th century, **biological theories** on the state were born, and the main idea of these theories is that the same laws that exist in the organic world apply to social and political life.
- The state, just like a human being, is a living organism, having the same functioning laws as individual organisms.

The state, unlike other organisms that are made up of cells, is composed of relatively independent individuals.

- We say **relatively independently** as both cells and humans cannot live without connection to other people.



## **Biological theories on the state**

There are different variants of biological theories on the state.

One of these variants compares the state to biological organisms in a figurative sense, **comparing state organs with the limbs or parts of the human organism.**



# **Biological theories on the state**

Some biological concepts are also found in **Plato's conception** of the state.

- ✓ Since the ancient period of republican Rome there was a legend according to which, the plebeians of Rome dissatisfied with the economic situation decided not to work and no longer have relations with the patricians and left on a hill near Rome.
- ✓ The patricians sent Senator Agrippa who commented on the situation as if one day the limbs of the human body refused to work for the brain and the body was paralyzed and died. This situation was also endangered by Roman society.
- ✓ The plebeians, convinced by Agrippa's words that the limbs should be subjected to the brain, returned to Rome and resumed normal life.

## **Biological theories on the state**

- Otto Girke is one of the most prominent representatives of biological theory.
- According to him, **the state is a specific type of social character and has a distinct personality.**
- It consists of people united around the same goal that does not change while those who change are the people.  
According to him, this state does not comply (përputhet) with individuals nor with their entirety.
- **It has its social will independent of the will of individuals.**

## **Biological theories on the state**

- Biological theories attempt to apply specific laws of biology to social life.

**Girkes' theory is distinguished from other theories as it recognizes the social specificity of the state.** According to this theory, the state will is a general social will.

- A novelty brought about by biological theories is the fact that **they emphasize the unity of the state on a social basis, not just on a legal basis,** thus **paving the way for sociological theories** about the state.

## Sociological theories about the state

- Sociological theories of the state consider the state as a social phenomenon and explain its content through specific links acting in **society**. This is the positive side of these theories.
- The conclusion of these theories is that the state is a **social organization created by people for the common good**.
- So, sociological theories are solidaristic theories.

# *Sociological theories about the state*

- The first variants of sociological theories have been addressed by **Plato** and **Aristotle**.
- According to **Plato**, the state is a social community that must protect common interests and morally uplift man.
- For **Aristotle** the state is a social community consisting of a cluster of **inhabited centers**. The human being needs the community and cannot live outside the society.

# *Sociological theories about the state*

- In the group of sociological theories is **the theory of solidarity** of the French lawyer Leon Dygi.
- According to him, **the state is an apparatus of violence as it has a group of rulers and a group of people who are ruled** (sundues dhe tË sunduar), and the function of this apparatus is related to social solidarity.



# *Sociological theories about the state*

- Given that there is a division of labor in society, people also have opposing and shared interests.
- As the division of labor deepens, the differentiation of society increases, conflicts increase, and interdependence between producers increases.

**This solidarity is based on social solidarity.**

The rules that preserve solidarity constitute the right while the state is a violent apparatus for the exercise of this right.