

V. Chirkin, Yu. Yudin, O. Zhidkov

# **Fundamentals of the Socialist Theory of the State and Law**

Progress Publishers

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**Progress Publishers  
Moscow**

Translated from the Russian by *Jane Sayer*

Учебное пособие по общественным наукам

О. Жидков, В. Чиркин, Ю. Юдин

**ОСНОВЫ СОЦИАЛИСТИЧЕСКОЙ ТЕОРИИ  
ГОСУДАРСТВА И ПРАВА**

*На английском языке*

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## FOREWORD

This work is a textbook on the fundamentals of the socialist theory of the state and law, intended for students of political science, constitutional law and political institutions, the philosophy of law and certain other humanitarian disciplines, as well as for anyone interested in the problems of the state and law.

The book considers the basic concepts and categories of the Marxist-Leninist theory of the state and law on the basis of a comparative study of the state and law under different socio-economic formations, as well as at the transitional stages from one formation to another.

The textbook is intended for readers not only in capitalist, but also developing countries, which Western literature often calls the Third World. In connection with this, the authors have tried to use illustrative material not only in the form of well-known traditional factual data and examples, relating to the countries of Europe and North America, but also of Asia, Africa, Latin America and, partly, Oceania. The theoretical analysis of the socialist state and law is also based on a study of the experience of the socialist states of Europe, Asia and Latin America.

The state and law are social phenomena that are inseparably interlinked. They emerge at one and the same time and develop in parallel; their historical fate is the same. The state is unthinkable without law; it needs law, which is an instrument of its policy, yet law is nothing without the state machinery capable of enforcing observance of rules of law. The objective, real link between the state and law predetermines the need to study them together. For this reason, the present course is called the theory of the state and law. It is called the general theory since it considers the general concepts and categories of, and the general regularities governing the development of the state and law, using specific material from different ages. In one, moreover

comparatively small book, it is impossible to reveal the full wealth of manifestations of these regularities, so the given textbook covers only the fundamentals of the theory of the state and law. Finally, the course is called the socialist theory, since, in contrast to all sorts of bourgeois conceptions, the explanation of state-legal phenomena is given from the positions of Marxist-Leninist methodology.

The textbook in no way aims to consider all 170 states that exist in the world today or the many hundreds that existed in the past, or to classify the current and the numerous past national legal systems. Life is considerably more complex than any scheme; there exists a multitude of transitional state-legal phenomena. The present book's task consists primarily in giving an idea of the basic concepts and categories of the science of the state and law, in arming the student with the necessary methodology for assessing phenomena of statehood and law independently, including any that may arise in the future.

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## Chapter I

### THE SUBJECT-MATTER OF THE GENERAL THEORY OF THE STATE AND LAW

#### 1. THE THEORY OF THE STATE AND LAW IN THE SYSTEM OF THE SOCIAL SCIENCES

*Society and science.* Human society, the various aspects of its organisation and activities, and the regularities governing its development are studied by many sciences. In contrast to the natural and technical sciences, these are called social, humanitarian sciences. Of particular significance in the humanitarian sciences is the ideological approach taken by the scientist in explaining the essence of social phenomena, and the methodological basis of the research. From the point of view of the methodological approach, there is a distinction between the bourgeois and the Marxist-Leninist science of society. The ideological basis of modern bourgeois science is still provided by varieties of philosophical idealism (pragmatism, existentialism, and others) or metaphysical materialism (mechanistic materialism, etc.). Idealism considers the mind, consciousness as the point of departure, as the basis of everything that exists, while matter is considered as secondary, derivative. This approach distorts the true state of affairs, for consciousness is a function of highly developed matter, the human mind. Metaphysical materialism provides the right answer to the question of the relationship between matter and consciousness, considering matter as primary, but it lacks the dialectical approach to reality, ignores the objective interlinks between phenomena, does not see the internal sources of the development of matter or the qualitative differences in the forms of matter (including the social movement of matter), and often reduces all development to quantitative changes.

The ideological basis of the Marxist-Leninist social sciences is dialectical materialism—the revolutionary philosophy of the working class. Its approach to cognising phenomena of the environment is dialectical, and its interpretation of these phenomena—materialistic. Marxist dialectics, having mastered and critically reworked the pre-Marxist philosophy of thought, sur-

mounted the one-sidedness of the approaches taken by bourgeois science. It studies objective reality from the angle of the interconnection and mutual conditionality of phenomena, which are constantly moving and developing from the lower to the higher, from the view point of the operation of the universal laws governing the transition of quantitative changes into qualitative ones, the unity and struggle of opposites, the "negation of the negation", and others. Marxist philosophical materialism is inseparably linked with the dialectical method. It proceeds from the fact that the world develops according to the laws of motion of matter, which is objective reality, regardless of our consciousness. From the point of view of materialism, the world can be cognised; there are no limits to the process of cognition, and the criterion of cognition is practice, above all people's social activities.

When applied to the cognition of social phenomena, dialectical materialism forms a special science—historical materialism, which studies the most general laws of the development of human society. Historical materialism proceeds from the fact that social being determines the social consciousness, that production relations are of decisive significance in the development of human society, and that people enter into production relations objectively, irrespective of their consciousness. "People must, first of all, eat, drink, have housing and clothing, before being able to engage in politics, science, art, religion and so on"<sup>1</sup> Engels said at Marx's funeral.

The aggregate of production relations constitutes the economic basis of society, on which the political and legal superstructure (including the state and law) is raised and to which specific forms of social consciousness correspond. In this way, ultimately the modes of production condition the social, political and spiritual processes of life, although the latter in turn exert an active reverse influence on the mode of production.

At a certain stage of its historical development, characterised by a specific type of mode of production and corresponding superstructure, society represents one socio-economic formation or

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<sup>1</sup> Karl Marx, Friedrich Engels, *Werke*, Band 19, Dietz Verlag, Berlin, 1962, p. 335.

another (the primitive-communal system, slave-owning, feudalism, capitalism, and so on). Having revealed the laws of the development and decline of socio-economic formations, historical materialism provides the researcher with the guideline allowing him to discover the objective links in the seeming chaos of events in the life of society. For this reason, it is of methodological significance for the theory of the state and law.

The first socio-economic formation in the history of mankind—the primitive-communal system—was a classless society. All subsequent ones, including the communist formation at the first stage of its development (socialism), are inseparably linked with a division into classes (slaves and slave-owners, feudal lords and serfs, bourgeoisie and proletariat, and so on). Moreover, under exploitative (presocialist) formations, the relations between the chief classes in society are antagonistic in character. The class that possesses the means of production holds the political power in its hands and dominates over the enormous majority of the oppressed working population.

The ideas of the economically and politically predominant class are the dominant ones in society. In bourgeois countries, as well as the countries of Asia, Africa and Latin America and Oceania that are developing in a capitalist direction, it is, therefore, the bourgeois ideology in its different versions that dominates in social science. The bourgeois world outlook reflects the views of a certain class of exploiters—the class of the bourgeoisie, and safeguards its interests. In the modern age, the age of mankind's transition from capitalism to socialism, however, this is a class with no future before it, one that is leaving the historical arena. For this reason, the bourgeois world outlook as a whole is reactionary in character, in spite of the progressively minded people to be found among bourgeois scientists.

In the socialist countries it is the world outlook of the most advanced class—the working class, that predominates and, in the course of building socialism, the other strata of the working people also go over to its ideological and political positions. Since this world outlook is linked with the ideology of the most progressive forces of society, to whom the future belongs, it correctly reflects the laws governing the development of human society, i.e., is genuinely scientific in nature. The world outlook that predominates in socialist countries is called Marxism-Lenin-

ism and the science—Marxist-Leninist, socialist science. Marxism-Leninism has put social science at the service of the working people, headed by the working class. In this lies the openly admitted partisan nature of the Marxist-Leninist theory, which is inseparably linked with its genuinely scientific nature. By force of all the above objective factors, these two aspects of Marxist-Leninist theory, including the theory of the state and law, act in organic unity.

On the basis and within the framework of a given ideological approach, the multitude of humanitarian sciences that study human society in its various aspects take shape. Some of these study it as just as part of their broader subject-matter, formulating the most general laws of the development of nature, society and human thought (philosophy). Others study the laws of the development of human society from the angle of the theoretical substantiation of the struggle to create the best possible social system—communism (the theory of scientific communism). One specific group of humanitarian sciences deals with individual aspects of the life of society. For example, political economy studies the laws of the production and distribution of material benefits under different socio-economic formations, i.e., the relations that make up, in their aggregate, the economic basis of society. Political science, which became widespread in the bourgeois countries after the Second World War, studies a certain part of the superstructure—the relations connected with the politics (political institutions, the political process and so on). Social psychology investigates the psychological features of the personality, psychological processes in society and so on.

This group of humanitarian sciences also includes the sciences of the state and law. The majority of these are branch disciplines, studying the structure and activities of state organs (such as the science of state administration) or legal regulation of specific groups of social relations (such as labour law). In each of these sciences there are, however, problems of the most general, principled significance, so there exists a generalising, integrating science that studies the state and law as a whole, answering the fundamental questions concerning the emergence, essence, and role of the state and law and the regularities governing their development. In the socialist countries this is usually the theory of the state and law.



*The subject-matter of the Marxist-Leninist theory of the state and law.* In bourgeois social science there is no individual integral science that studies the state and law specifically in their unity. In the higher educational establishments of some countries (Sweden, for instance), so-called state science is taught; in India there exists a discipline called "civil education", studying the state, relations between citizens and state organs and others. In many countries the philosophy of law, sociology of law, and encyclopaedia of law are taught. Yet all these disciplines study the state and law as isolated phenomena.

There is, of course, a place for such an approach. In the interests of specialisation, a given range of specific social phenomena may, and sometimes should, be separated out as a subject for study; one may abstract from certain links existing in objective reality. But this must be a scientifically justified abstraction, a specific method of research that still recognises the actual links. In bourgeois science on the state and law, however, such abstraction is, as a rule, absolute in character. Law is considered as a self-contained phenomenon that has always existed and will always exist in human society. With this approach, one of the chief features of law disappears—its inseparable link with the state, the specific nature of law as a special sort of social norms manifested at a given stage in the development of human society and, in contrast, for example, to morals created and sanctioned by the state power. Moreover, bourgeois scholars usually ignore the fundamental fact that the state and legal superstructure, like the other parts of the superstructure (morals, religion and so on), is rooted in the economic basis relations and is ultimately determined by the basis of society—the relations of production, distribution and exchange.

Socialist science takes a different approach to studying the legal superstructure. In socialist literature there also exist courses devoted specifically to the general theory of law, to the state and to its individual institutions. Their authors, however, first take account of the determining role of relations of production, and second, recognise the inseparable link between the state and law.

In the socialist countries, students in law faculties study a special methodological course in the general theory of the state and law. The subject-matter of the Marxist-Leninist theory of the