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The Era of Prefectures and Counties: An Inquiry into the Power Structure and State Governance in Ancient Chinese Society

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Translated by Wang Keyou

Abstract

In spite of all the vicissitudes that Chinese society underwent from the Qin (221-206 BC) to the Qing (AD 1644-1911) dynasties, the system of social government throughout this period as a whole was markedly different from that of Zhou. While the post-Qin dynasties adopted *fa* or laws to govern the nation, it was *li* or rituals that dominated in Zhou as a norm of social control. Hence the key to a fruitful inquiry into the administrative evolution of society from Zhou through Qing, a period spanning over two thousand years, lies in the investigation of the political shift from Zhou as a kingdom to Qin as an empire. Since *li* is a system of ritual propriety representing a consensus of both the upper and lower social strata on the constitution of state power, it is fundamentally different from *fa* due to its lack of a binding or coercive force. An artificial reorganization of society by a new form of social government called for a new political system known as *junxian zhi* (郡縣制), a bureaucratic system of centrally appointed local magistrates in “prefectures and counties.” The compulsory force of the law was guaranteed by the national army, and so a system of military officialdom ensured the command and monopoly over the army by the monarch. A fluid bureaucratic system, which enabled the ruling sovereign or monarch to delegate his authority to ministers and local officials, replaced the hereditary system of power by clan lineage. This paper begins with an analysis of the differences between the Confucians’ idea of rule by *li* and the Legalists’ idea of rule by law, and ends with a discussion on the birth and characteristics of the system of prefectures and commanderies.

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Keywords

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In the *Yiwenzhi* (藝文志, “Treatise of Classical and Other Literature”) of *Hanshu* (漢書, *History of the Han*), a brief mention is made of the Legalists, along with the various schools of thought (*Zhuzilue* 諸子略, “On the Philosophers”), to the following effect:

The Legalists, as a school of Chinese ideology, most likely emerged from the profession of judges known in Zhou (周) as *liguan* (理官), a general reference to officials charged with judicial functions in Zhou. These officials served to assist in or carry out the ritual system by administering rewards and penalties. This is indeed a point of credit to the Legalists. However, if they chose to enforce the law with excessive rigor and severity, there would be no room left for moral teachings and indoctrination of ethical values. And if the ruler sought to keep social order and regulate social conduct solely by penalties and legal decrees, with little regard for benevolence, humane care and kindness to win over the people’s hearts, then even the best laws would be counterproductive. The eventual outcome would be for everyone to turn against everyone else, each to hurt their dearest and most beloved, and consequently destroy the fundamental relations and traditional values that underlie the human society.

The above statement is made on the grounds that *fa* (法, written law or penal code) was a professional domain where the Legalists excelled, whereas *li* (禮) was the concern of Confucianists who upheld the ritual system of traditional mores and who advocated education for ethical values and moral influence. The Confucianist assertion, that penalties and legal decrees should not be taken as the exclusive means of governance, actually implies that Legalists should not be entrusted with major functions of the state. For, according to the established Confucian doctrine, governance of a nation ought to be based on the ritual system, whereas Legalists could only be employed to play auxiliary roles.

This was certainly a widely endorsed idea held by the Confucianists. Obviously, the core tenet of the comment on Legalists is to expound the relationship between Rites and Law while taking sides with the Confucian school, who believed that the worst of government was one of absolute punitive law

leaving no space for benevolence and humanity, while the best one was to employ the law to assist in the ritual codes. An instance of the worst government in history was the despotic Qin (秦), on which Confucian scholars made persistent attack throughout the Han dynasty. The best government was the system of Han, where rites played a dominant role and law was ancillary. Then there are those forms of government that lie between the two extremes: one being that of Zhou of the Ji Royal House (姬周) who adopted a full array of rites in government, and one being the Six Warring States where law predominated and rites were supplementary.

From this commentary on the Legalists, it can be seen that the original passage from *Han Shu* sums up a path of transformation of the ritual system over a thousand years. The judicial official was originally one functionary of the bureaucracy in charge of the Zhou rites, in other words, penalties and punishments were only a part of the larger ritual system. Towards the end of the Spring and Autumn Period, the Jin and Zheng states molded bronze tripod vessels to inscribe legal provisions and promulgated the first written, or codified, law. From then on, law became independent from rites and even began encroaching on the latter, resulting in the utter abandonment of Rites by the Qin rulers. It was not until the rise of Han that Confucianism mitigated the extremism of the Legalists and paved the way for a ritual-based government with law as its supplement.

The Chinese character 輔 *fu* (to aid, assist, or supplement) occurs as a key concept in the cited passage. The word is a verb which denotes a principal-auxiliary relationship between two entities. How should we understand the relationship between two entities, or, how should we distinguish the principal from the auxiliary? We must go back to the text itself to identify the denoted objects that await differentiation, namely, the *li* (禮, “rites,” “rituals,” “ceremonies,” moral codes or rules of social conduct) and the *fa* (法, “law,” “penalty” or “punishment”). The two concepts are held in contrast with each other precisely because they share some common ground. As the modern scholar Qu Tongzu (瞿同祖) remarks on this regard, “Confucianists and Legalists both take an ideal social order as their ultimate goal. They disagree only in how they view the ideal social order and how to achieve it.”¹ Confucianists prefer rituals while Legalists resort to law. What is the all-important divergence, then, between *li* (rites) and *fa* (law)? Qu Tongzu makes the distinction as follows:

1 Qu Tongzu, *Zhongguo Falyu yu Zhongguo shehui*, (Law and Society in Traditional China), (Beijing: Zhonghua Book Company, 2003), p. 292.

The Confucianists laid emphasis on a differentiation between the noble/humble, superior/inferior, senior/junior, and kin/alien aspects of social relations. Therefore, they had to resort to the rituals as a guardian of social order, because the ritual codes govern human conduct of a heterogeneous, idiosyncratic, and individualistic nature, rather than by the law which is reductionist and monolithic. The Legalists, on the other hand, tried to govern the state with a uniform and standardized law, which aims at equality and homogeneity. That is why they advocated the rule of law as opposed to a system of rites which treated people differently according to their superior or inferior social status, noble or humble position, senior or junior age, or closeness of relation to someone else. As the Confucianists and the Legalists started out from different premises, they naturally arrived at different conclusions. Rites and law, as two approaches of state government, remain two different sets of tools for maintaining social order in their respective modes of government.²

Qu sums up the difference between *li* and *fa* in that the ritual system allows for social disparity but law emphasizes social equality. This view seems quite flawless if it is considered from a purely logical perspective. However, if it is to be examined from a historical perspective, the argument of Qu is far from convincing. The essential value of Confucianism lies in its advocate of *ren* (仁, benevolence, humane conduct, kindness), which is to be realized through abiding by the *li* (rituals). In the *Yan Yuan* Chapter of the *Analects* (論語 • 顏淵), Confucius is quoted as saying: “Control yourself so that your words and conduct will conform to the propriety of rites, and in that one attains *ren*.”

Liu Feng (劉豐) summarizes the issue by rephrasing it as “*ren* (benevolence) being internal but *li* (rites) external,” meaning that *ren* is an inner quality while rites are outwardly observable proper conduct and behaviors towards others. In the same chapter in the *Analects*, Fan Chi (樊遲) asked Confucius what was meant by *ren* or “benevolence”, “compassion”, and Confucius replied, “It is love to man.”³ Since Confucianism strives for the love of *ren* by practicing the ritual *li*, then *ren'ai* (仁愛, “love and kindness”) naturally allows for some degree of inequality.⁴ Even if this inequality were erased, the outcome would not be any-

2 Qu, *Zhongguo Falyu yu Zhongguo shehui*, p. 309.

3 Li Zehou in his *Kongzi zai pingjia* (A Reassessment of Confucius) holds that the statement points out the basis of *ren*. See Li, *Zhongguo gudai sixiang shilun* (On the history of ancient Chinese thought), (Hefei: Anhui Wenyi Press, 1994), p. 22.

4 Fei Xiaotong gives the term as “chaxu geju” (hierarchical pattern) in his *Xiangtu Zhongguo* (*Rural China*), Beijing: Joint Publishing Company, 1985, pp. 21-28. [Cf. *From the Soil, the*

thing comparable to an equality before the law but what the Mohists advocated as *jian'ai* (兼愛, universal or inclusive love, impartial concern). Mo Zi (墨子) in his *Jian Ai* (*Universal Love* Vol. II) advised people to “regard the state of others as one’s own, the houses of others as one’s own, and see other people as one’s self.” In the latter chapter, *Fei Ru* (非儒下, *Anti-Confucianism* III), Mo Zi criticizes the Confucians for advocating discrimination among the near and the distant relations and among the respectable and the humble. Meanwhile, Meng Zi (孟子, Mencius) denounced Yang Zhu for his egoistic principle of “each one for himself,” which does not acknowledge the claims of the sovereign. Mencius also denounced Mo Zi for asking people “to love all equally,” which does not acknowledge the peculiar affection due to a father. But, according to Mencius, a person who does not even respect one’s own father could not have any reverence for his monarch, either, so that his conduct is no different from the behavior of beasts. (*Mengzi*, in reference to *Tengwen Gong* II)

To be sure, Mr. Qu has cited evidence for the Legalists’ egalitarian spirit of the law, as is evidenced by such statements by Hanfei Zi (韓非子) that law does not favor the powerful nor the noble, penalty does not avoid ministers, and rewards do not neglect the common people (*Hanfeizi*, in reference to *Youdu*). However, Li Jin takes the execution of law into issue. As he says, “When the Legalists boasted of legal indiscriminability, they were actually talking about the general applicability of the law, but the specific provisions of the applicable law were still discriminatory towards people of different positions.”⁵ In other words, Qu confused the concept of equality in its legislative sense with that of judiciary administration. Genuine equality in legislation means the law is formulated not for the exclusive interests and to intentions of a particular group, but for the benefit of all the members of society. Obviously, law-making by the Legalists had no equality of a legislative nature. In contrast to this, rites and the ritual codes, if interpreted in a judicial perspective, could bring justice to all, so much so that whoever violates it would invoke public condemnation. For example, in the *Shu’er Chapter* (述而) in the *Analects*, Confucius was informed of the impropriety of a prince who took for his wife a lady of the Wu State, who happened to have the same surname as his own. So even a prince would fall under attack if he had violated the ritual codes, as Confucius recognized, which demonstrates the impartial aspect of the ritual

Foundations of Chinese Society: A Translation of Fei Xiaotong’s Xiangtu Zhongguo, tr. Gary G. Hamilton and Wang Zheng. Berkeley and Los Angeles: University of California Press, 1992].

5 Li Jin, *Qin lü tong lun* (*A General Survey of the Legal System of Qin*), (Jinan: Shandong People’s Publishing House, 1985), p. 121.

system. Tong Shuye (童書業), a famous historian of the twentieth century, points out that the conception of ethics in the Spring and Autumn Period was different from later societies:

In his *Commentary on the Spring and Autumn Annals* (左氏書, or *Chun Qiu Zuo Zhuan*), Zuo Qiuming (左丘明) defined the virtues like *zhong* (忠 loyalty, commitment) and *jie* (節 moral principle or integrity) in largely the same sense as used in the Spring and Autumn period and the beginning of the Warring States. Commenting on Zhao Dun (趙盾) who committed regicide, Zuo quoted from Confucius and labeled him as a good official (*Second year of Xuan*), and commended him as “loyal” (*Eighth Year of Cheng*). In the early years of the Spring and Autumn era, Duke Zhuang of Zheng (鄭莊公) and King Ping of Zhou (周平王) exchanged hostages. Zuo remarked, citing sayings from the honorable Junzi (君子, noble person of moral integrity), that if honesty and trust do not issue from one’s inner heart, the exchange of hostages is pointless. But if they were willing to deal with the matter in genuine sincerity, and befriend each other through ritual propriety, no one could sow discord between them even if they had no hostages from each other. Zuo sang full praise of Duke Zhuang of Zheng, who urged the true monarch to issue orders to his own profit, and even led an attack on the king’s troops when he shot the king with an arrow in the shoulder. An official of Chen named Xie Ye (泄冶), who accused Duke Ling of Chen (陳靈公) for “publicizing sex,” was executed by the Duke. To this Zuo cites Confucius’ observation from the *Book of Poetry*, saying, “Common people who were wont to do evil things should not try and make judgments on others. That may have been said of Xie Ye.” (Ninth Year of Xuan in his chronicle) The master was insinuating that Xie Ye had invited trouble upon himself by making a fuss of nothing. These comments reflect a great difference in ethical values between that period and of later eras. In the “Fanli” (凡例, preliminary remarks), Zuo even noted that when a monarch was killed and his name entered into historical records, it reflected a judgmental commentary on the monarch for the atrocities he had committed; whereas if the name of a lowly official was recorded for the regicide, it would indicate a fault on the part of the official. (Fourth Year of Xuan) In *The Spring and Autumn Annals* it is stated, “A court minister of Zheng named Guisheng (鄭公子歸生) had to kill his monarch Junyi (君夷, i.e., Duke Ling of Zheng),” because Guisheng was not powerful enough (to oppose the regicidal scheme). To this the Junzi says, “A person with only love and compassion but no valor or mettle can never attain the path of

Benevolence.” In the *Spring and Autumn Annals* it is also recorded, “A person of the State of Song (宋) killed his monarch Chu Jiu (杵臼),” because the monarch had been a cruel tyrant. (*Sixteenth Year of Wen*) Attitudes like that frequently occur in earlier Confucian works, but could scarcely be found in post-Mencius eras.⁶

Fei Xiaotong (費孝通) takes a different view on the distinction between *li* (rites) and *fa* (law):

Li (Ritual) is the normative rule of proper conduct acceptable to a social community. Behaviors that conform to *li* are considered correct and appropriate. If viewed purely as a code of conduct, *li* does not differ much from *fa*, which is also a normative code for human conduct. They differ from each other in the forces or coercive power that enables their normative effects. *Fa* is enforced by state power, wherein the “state” is a political force. Before modern states came into being, tribal clans had been entities of political power. In contrast to *fa*, *li* does not need such physical force as empowered by state institutions to maintain itself. The normative force by which it keeps everything in order is acquired from traditional values.⁷

In brief, Fei argues that the doctrine of *li* draws its strength from traditional values to maintain social order, while *fa* takes its authority from political (governmental) forces. In other words, the two are distinct from each other by the nature of their powers. However, if examined logically, Fei is merely interchanging the two terms without clearly differentiating them. So our question remains, what is the difference between a tradition and a political power? We could point out their difference concisely by saying that *li* differs from *fa* in that the former is not as coercive or compulsory as the latter is. It is generally believed that a compelling force is one in “which one party compels the other party to comply with the will on its own side. A compulsory force is essentially a one-sided act of imposing one’s own will upon others against their free will. A compulsory force manifests itself not as an inner mental drive but as an outwardly physical force.”⁸ Compulsory force is by definition an act of subjugating

6 Tong Shuye, *Chunqiu Zuozhuan Yanjiu* (*A study of Zuo Qiuming’s Commentary on the Spring and Autumn Annals*), revised edition, (Beijing: Zhonghua Book Company, 2006), p. 245.

7 Fei Xiaotong, *Xiangtu Zhongguo*, p. 50.

8 Li Xiaoming, *Fei qiangzhi xingzheng lun* (*On non-coercive administration*), (Changchun: Jilin People’s Publishing House, 2005), p. 2.

others' will by forceful means. A prerequisite for the force of law to manifest itself is the existence of a human will that desires such compulsion to take place. It is well understood that law is employed as a normative means to keep social order by forcing itself upon someone's will. It is not so easy to understand, however, how rituals could function as a constructive social force that accord *with* people's will.

Rituals can act as an effective coercive force under the patriarchal clan system. Modern paleographer Qiu Xigui (裘錫圭) points to textual inscriptions on an excavated chime, a type of bronze musical instrument (unearthed in 1995), of the late Zhou dynasty, "Shushi ordered his household courtier named Ni to administrate his 'household affairs,'" an indication that "the clan chief had at his disposal all the property of the clan". Furthermore, Qiu points out that if we look at other texts, we discover that not only did the chief of a minor household (usually the father) and the chief of a small clan have rights of disposal over the property of their kinsfolk or clansmen, but the master of the imperial clan had rights of disposal of the whole nation. Under the patriarchal clan system, the structure of political hierarchy and of blood relations is the same. The king of Zhou (Son of Heaven) was the highest ruler of the whole clan, namely, the patriarch of the whole realm. The land as well as the population of the realm, at least in a nominal sense, all belonged to him. On the other hand, according to Qiu Xigui, the clan chief's rights over properties of the clan are radically different from the general claim of private property rights. The clan chief exercised his rights in the name of a representative to his clan. He had to "shelter" his clansmen as well as to "unite" them, which was regarded not only as a virtue but also as a duty that he must attend to.

The hierarchical nature of the Zhou rituals is revealed in two aspects of the system. One was its insistence on family inheritance of official posts. According to Qian Zongfan (錢宗範), "Families of the aristocrats could inherit office titles from their ancestors and retain the office from generation to generation. In other words, some official positions were held by the chief or patriarch of a certain clan of families perennially, and the kinsfolk of the clan could engage in occupations under the administration of their clan chief. Ancient expressions like "xue zai wang guan" (學在王宮, "learning is in the royal officials"), "guan you shigong, ze you guan zu" (官有世功, 則有官族 "If an official had ancestral exploits to his credit, then the whole family rose to officials") are instances of reference to the hereditary practice."⁹ In *Zuo Zhuan* in reference to

9 Qian Zongfan, "Xizhou Chunqiu shidai de shilu shiguan zhidu jiqi pohuai" (The Hereditary System of Salaries and Offices in Western Zhou and its Destructive Effects)," in *Zhongguo shi yanjiu* (*Journal of Chinese Historical Studies*), Issue No. 3, 1989.

the *Tenth Year of Xianggong* (《左傳·襄公十年》) is recorded that when Zi Kong (子孔) came into state power, he formulated codes to regulate the order of official ranks and the system of promulgating government decrees. Kong Yingda (孔穎達), citing from Fu Qian in his *Annotation*, said that all the ministers of former Zheng had obtained their official positions by inheritance, whereby a son could take over the official title of his deceased father. Zi Kong planned to change the practice by giving promotions to heirs of the nobility only step by step, starting from the lowest rank, and allowing them to work their way up to higher positions such as a cabinet minister. If the account of Fu Qian is true, then the reforms launched by Zi Kong had already begun to affect or undermine the second and much more crucial aspect of the Zhou ritual-based bureaucracy, that the ritual system as a hierarchical order should never be altered.

Towards the end of the Zhou dynasty, however, it became increasingly harder for the whole apparatus of the ritual system to sustain itself. According to Li Feng (李峰), the relationship between the King of Zhou and the aristocracy as court officials of the central government can only be described as something like “trading benefits for loyalty.” When the court’s geographical expansion ended during the early years of Western Zhou, the central government’s prolonged policy of granting lands to aristocrats had bit by bit drained up its assets, but in the meanwhile it had enabled the feudal vassals and noble lords in the Wei River region to grow into strong powers. As land in his realm could not regenerate itself, the King of Zhou was left with little amount of land to continue with the game of “trading benefits for loyalty” since most land had already been granted to his officials. It proved to be a suicidal strategy which led to the downfall of the Zhou Dynasty. By the end of the Western Zhou dynasty, in dealing with two different but equally important social relations, one between the royal family at the central government and the fief states as local governments, and the other between the monarch and the nobilities, the king was losing his control over the country, and consequently the foundation of the existing realm began to crumble.¹⁰ At the end of the Western Zhou Dynasty, King Li (厲) and King Xuan (宣) and others had attempted to turn the tide and restore the authority of the central government, as is reflected in documents of *Guoyu* (國語, *Discourse on the States*):

10 Li Feng, (tr. Xu Feng), *Xizhou de miwang (The Demise of Western Zhou)*, (Shanghai: Shanghai Guji Press, 2007), pp. 162-63.

Since King Li of Zhou started reforming the codes of Zhou rituals, there have been 14 kings to date.

Obviously, King Li launched major reforms at his time. Unfortunately, the documents of history are never reliable, because only two incidents about him can be found in the existent literature such as the *Chronicles of Zhou* (周語, *Zhouyu*) in *Guoyu*. In *Zhouyu*, King Li is described as a monarch who monopolized resources (“zhuanli”, 專利). According to Xu Zhuoyun’s (許倬雲) study, the alleged “zhuanli” by King Li had no explicit accusations made against him in the historical documents, but we can draw such conclusions from a lexicological analysis. First, the Chinese character for *li* (利, interests or benefits) denotes natural resources which are yielded from the hundred creatures and produced by heaven and earth. Second, it can also be interpreted as “benefit,” which was meant to be available to people of both high and lower classes. Third, when the country’s natural resources were monopolized by Rongyi Gong (榮夷公, duke of Rongyi) as entrusted by King Li, the feudal dukes suspended paying tributes to the central Court. Considering the situation of the royal court of Western Zhou, which must have been hard pressed by external threats and internal rifts, it could be imagined that the revenues of the court must have fallen short of its needs. When expenditure exceeded income, the royal court had to monopolize the country’s wealth-generating resources at the sacrifice of its people. It was a circumstance that was unavoidable, thus neither King Li nor his ministers should have been blamed for it. For all our rationale of the situation, it indicates that the pyramidal distribution structure of rights and interests among the feudal lords and their king was about to fall apart.¹¹

According to Zhao Boxiong (趙伯雄), all historical literature and metal inscriptions indicate that the King of Zhou had full sovereignty over all the realm “under heaven.” He was entitled to an absolute rule over the country, if only nominally, so that no one in the realm could deny his supreme position as the Son of Heaven. In this sense, the Western Zhou Dynasty was a state of political sovereignty. However, the central ruler of the realm could only exercise his sovereign power down to the administrative level of the feudal lords, i.e., the highest local ruler of the fief states, but could never penetrate into the bottom strata of the social structure. Part of the sovereign power was, in fact, shared among the fief rulers to whom the king had conferred his grants. The phrase “shou min shou jiangtu” (授民授疆土, “granting of population and of

11 Xu Zhuoyun, *Xizhou Shi (A History of Western Zhou)*, (Beijing: Joint Publishing Company, 1994), pp. 307-08.

territory”) refers actually to the transfer of rights from the king to his local government officials. The local fief rulers, on receiving the grants of such power, became independent rulers within their own territories. In fact, the fief rulers had become the incarnation of state sovereignty on their local fiefs. The sovereignty of the whole nation had been divided up, which may be termed as a “dispersal of sovereignty.” So, on the one hand, there was something of a supreme sovereign power over the realm, but on the other hand, the sovereignty was divided in its actual execution.¹² Sun Yao (孫耀) points out that the same is true among the feudal lords themselves as well as their ministers.¹³

As the sovereign of the Zhou Dynasty wielded his scepter as the “Son of Heaven,” then the territory under heaven, as interpreted in the view of the Clan Law (*zongfa*, 宗法), should be the common property of the whole clan, while the King alone had the supreme ruling power. In the perspective of modern property rights, an absolute right to “private property” means one can exercise the right at one’s own will to the exclusion of all others.¹⁴ Evidently, the Clan Law did not endow the King of Zhou with any absolute power over everything under heaven. To the contrary, it had imposed a restriction on the absolutism of the monarch. Therefore, when King Li (厲王 “King of Severity”) sought to monopolize the country’s resources (*zhuanli* 專利), he was actually turning a collective ownership of the realm by the whole royal clan into his private ownership by depriving other nobilities of all the common and shared possession, hence subjugating all property to his disposal and him alone. In other words, King Li was the first monarch in Chinese history to have sought private ownership of national property rights. In doing so, however, the despotic king undoubtedly undermined the Zhou royal court’s claim to rule over the nation. The state of the dynasty, then, when crippled by its own counterproductive policies, was left with nothing but brutal violence. Records in *Guoyu* (《國語 • 周語》) of King Li suppressing slander actually reflect his act of imposing the royal rights over the whole nation, whom he deemed as slaves and servants. When he made the country his own property and the populace his servants, a fusion of such economic and political egotism was on the verge of creating a monarchic autocracy, but the embryo of such absolute autocracy was incompatible with the patriarchal social setup of feudal China. This finally resulted in King Li’s exile. His end shows that absolute monarchy and the

12 Zhao Boxiong, *Zhoudai guojia xingtai yanjiu* (A study of the State Modality in the Zhou Dynasty), (Changsha: Hunan Education Press, 1990), p. 94.

13 Sun Yao, *Chunqiu Shidai zhi Shizu* (Aristocratic Families of the Spring and Autumn Period). (Shanghai: Zhonghua Book Company, 1936), pp. 32-38.

14 Karl Marx, *On Capital* (Beijing: The People’s Press, 1975), p. 695.

patriarchal system of the feudal society had become antithetical to each other during the period.

What is the reason, then, that even a supreme ruler of the Zhou, as the Son of Heaven, failed to seize for himself the power to cope with the rising threat of aristocratic families? It is because, compared with the autocratic emperors of later dynasties, the Zhou monarch was in want of legislative power. The monarch was entitled to supreme power over the country, with much of the legislation in his control, yet under the system of hereditary officialdom, the fundamental basis of legislation, namely, the legitimacy of the law maker, was grounded in the inheritance of ancestral official positions. The ancestor of an official title, a legendary name who was both a real person and a deity, had ordained his descendants to be in charge of the same office along with the legitimacy and rationality of all the laws derived from the office. In a sense, the legislative sources of any law did not dwell in any person of the contemporary age but belonged to some ancestral or divine-like figure of ancient times. The ancestry-based official position was never to be altered, not even when the dynasty collapsed, and no ordinary monarch could individually remove the tradition. This does not deny the possibility of removing the office of individuals or noble families, but in the face of the whole system of hereditary succession, even the supreme ruler of Zhou had limits to his power.

A turning point for this situation, which led to the decline of aristocratic power and the rise of absolute monarchy, was the molding of legal inscriptions, as recorded in *Zuozhuan* in the six and twenty-ninth year of Zhaogong's reign. This event was the beginning of an era when a ruler with the highest power in the feudal state attempted to make laws on his own. Recently, researchers compared the "Zhu xing ding" to western laws, and liken it to the Twelve Tables (*Duodecim Tabulae*) in ancient Rome. In this way, they regarded the appearance of codified law as significant progress in China's history. Contrary to this prevalent opinion, however, Qiu Feng points out that it was actually a crucial step taken in the transition from a system of "classical republic of aristocracy" towards one of absolute monarchy:

In the classical regime of China, the power for the formation and interpretation of law was one that had its own origin and which was parallel to but independent from the sovereign's ruling power. The genuine sense of case law lies in that the monarch possessed the power of rule but not the rights of discovering or interpreting laws.

Instead, the law was to be maintained and interpreted by a largely inherited body of aristocracy. Since their power was independent from the monarch, the law itself could grow and develop outside the domain

of regal power. Thus the power of the monarch was limited, for it lacked the wanton freedom of issuing laws. That is the feature of constitutional government of aristocratic republics in the classical periods.

In the states of Zheng and Jin, where statute laws had been adopted, an incipient form of the system of prefectures and counties, or commanderies and counties, was taking shape. In a certain sense, feudalism differs from the prefecture/county system in the same way that a republic of aristocracy politically differs from a monarchy. A system of prefectures and counties inevitably led to infinite power enhancement of the monarch. Under the system of monarchy, the ruling monarch could seize the power of the law after he had obtained (and then expanded) the power of government. This is the fundamental definition of absolute monarchism.

It follows that statute law came into being at the same time when autocratic monarchy made its debut in China. The author (of *Rujia falü chuantong*: Legal traditions of the Confucianists) points out that there is a statement in the *Ren Fa* (任法, Relying on law) Chapter of *Guanzi* which could be drawn as theoretical support for the legality of statute law, which affirmed the monarch as the creator of law and requires his subjects to comply with it: "The ruler creates the law; the ministers abide by the law; and subjects are punished by the law. All are subject to law." Law was no longer to be preserved and interpreted by a body of legal specialists who obtained their duty and title by inheritance, but rather came in the hands of the monarch as an instrument to carry out his rule. When the rulers of Zheng and Jin came into power of their fief states and issued the first statute laws, they were in effect declaring to the people that they must respect the law of the government and only the written laws issued by the rulers were authentic laws to conform to.¹⁵

If rites are employed to integrate the upper as well as the lower strata of society into morally obligated members in the construction of state power and social control, then in what way was Law exploited for the same goal of building state (sovereign) power and controlling society?

It is generally held that the ritual *li* serves as a high-end requirement for man to be a *junzi* (君子 prince, one of noble character, gentleman, etc.) whereas *fa* is a measure at the bottom end that calls for the need of penalty for human

15 Qiu Feng, "Kongzi fandui zhu xingding de xianzheng yiyi" (The significance of Confucius' objection to molding the bronze vessel of legal codes), in Chen Ming and Zhu Hanmin eds., *Yuan Dao* (*On the Daoist Way*), Vol. X, pp. 142-154 (Beijing: Peking University Press, 2005).

being as a species that acts out of self-interest. In the *Shixie Chapter of Hanfeizi* (韓非子 • 飾邪), it is stated that when a ruler and the ruled were in discord, the sovereign would speculate in paying and retaining his officials, and the officials would themselves calculate how to serve their monarch to their own interests. Therefore, the interaction between ruler and subjects was full of schemes and intrigues. Generally speaking, as he “looks upon everyone as an evil-doer,”¹⁶ he had to employ strict laws and harsh punishments to govern the state.

Since law is by definition based on some coercive force that exerts itself against someone's will, then the coercive power logically entails the existence of a will as well as another will that goes against it, or an agent that imposes its own will upon that of others. At the same time, the imposing will must have some compulsory force at its disposal, or else it would be incapable of prevailing itself upon other wills. Under the historical circumstances of those periods, the monarch was the only agent that met the two conditions for law-making. Since the monarch held a coercive force, he gained power to implement the law. In other words, law was created to serve the will and interests of the monarch, and it is implemented for his needs. In the pre-Qin system of thought, this conception of the law is expressed as *junshengfa* (君生法 “the king creates laws”). As was just quoted from *Guanzi*, “The ruler creates the law; the ministers abide by the law; and subjects are punished by the law.” In this way, the monarch kept himself above the law that he made. In the political reality of traditional China, hardly any political force was strong enough to counter-balance the power of the monarch, which resulted in the de facto state of the monarch staying above the law.

It is recorded in the *Shangjun liezhuan* (“Collected biographies of Lord Shang”) of *Shiji* (史記 • 商君列傳), that Shang Yang found it difficult to punish the prince who had violated the law, so he turned to punish the prince's teacher instead. This is evidence that the monarch could stay away from the teeth of the law. In extreme cases, a monarch could do whatever he wished with the nation without being restrained by any other force on the assumption that the monarch is incapable of committing errors (*Shusunong liezhuan*). With this freedom, a monarch grew into an autocrat, and the political system of the state evolved from power-sharing into one of centralization.

Fei Xiaotong, as quoted above, holds the view that *li*, or ritual based on traditional values, is a normative for social order derived from natural laws. In contrast, *fa*, which is based on the compulsory force of political power, takes the monarch as its gauge-point, so that it became a set of rules artificially made

16 Guo Moruo, *Shi pipan shu* (*Ten criticisms*), (Beijing: Dongfang Press, 1996), p. 390.

for keeping social order. The essential nature of political transformation from Zhou to Qin (shift from kingdom to empire) is a replacement of *li* by *fa*, or a normative shift from natural to artificial laws. The new artificial rules for social order brought about the necessity to reorganize the structure of the whole society. The political system that rose to the occasion was the *junxianzhi* (郡縣制), a system of central government by “prefectures and counties.”

The law, which presumes a certain coercive force, must be backed by the same enforcing act to become the new norm of social order. As armed forces constitute the enforcement of the law that guarantees a monopoly and command of the state’s armed forces by the monarch, the army’s loyalty to the “monarch-law” is key to the establishment of a new social order. Before Shang Yang (390–338 BC) carried out his reform in Qin, the six eastern states of Qi, Chu, Yan, Han, Zhao and Wei, east of Xiaoshan, had also tried some reforms of one kind or another, but the only successful one was the Legalist Reform conducted by Shang Yang in Qin. Shang Yang owed the success of his reforms to the wholehearted support of the army. And the key was a system of assigning land and titles to soldiers based upon their military exploits.

It should be after Shang Yang began his reforms that the plebeian class really gained access to titles of nobility. Sadao Nishijima (西島定生) summed up its significance with this remark: “The system of scaled hierarchies as an honor of prestige was extended to the common folk.”¹⁷ In his view, the basic relationship of the ruler and the ruled was a direct one, between the emperor and his subjects. In this case, only the emperor was conceived as the ruling sovereign, who had the right to manipulate all the people under his rule. In his capacity as top ruler in an autocratic hierarchy, the emperor was the supreme power. If we take note of this, we could make sense of the word *autocratic monarch* (tyrant, despot) as corresponding to the emperor.¹⁸

The introduction of the merit-reward system of military exploits set off a revolution in both the social and family structures. In the first place, the system rooted out the existence of traditional forces that gained their power from hereditary houses and clans. Second, it curbed the rising of new clan powers that may emerge from a long-standing tradition and become influential enough to counterbalance the emperor’s authority. That is why the Qin government, since Shang Yang implemented his reforms, had never been challenged by clan factions that might pose threat to the emperor’s rule. Third, the merit-reward system provided a channel of promotion for individuals of humble families and lower social origin to move up the social ladder.

17 Sadao Nishijima 西島定生, *Zhongguo gudai diguo de xingcheng yu jiegou* (*The formation and structure of ancient Chinese empires*) (Beijing: Zhonghua Book Company, 2004), p. 122.

18 Nishijima, *Zhongguo gudai diguo de xingcheng yu jiegou*, p. 447.

In a word, the new system of meritorious appointment left no room for any power inherited from tradition to continue its existence, with the exception of monarch itself, of course. The system brought about changes to the internal structure of noble families as well as their outward forms, leading to a disintegration of the old families and establishment of new ones. Since no family of hereditary influence was allowed in the new form of social administration, there was hardly any force to resist or rival the imperial and central government.¹⁹ On the other hand, individual peasants, freed from their binds as fiefs, gained huge confidence and enthusiasm on this new route of upward motion and became a dominant strength for Qin to overpower the rest of the principalities and unite the country. For that reason, we might rename the social changes caused by Shang Yang's Reform as a "fission" of social energy.

Reforms were also carried out in the six states east of Qin, though to various extents. A result of this widespread "fission of energy" was the emergence of scholars, orators, tacticians and strategists who tried to lobby and influence government power. It was imperative to put these split and atomized individuals under state control and eliminate what was called the *wudu* (five classes of "vermins" or "maggot") in *Han Feizi*. Tu Cheng-sheng (杜正勝) categorizes the reforms of Shang Yang in terms of "mapping military units onto administrative divisions" (*yi jun ling zheng* 以軍領政) and "neighborhood divisions" (*lü li shi wu* 閭裡什伍). The system was one that features an integration of regiment divisions of troops into the administrative, and applying military management to civilian society. In this way, the constituting units of the army were transferred to cells of social organization for civilian communities and neighborhoods.²⁰ However, a system of whistle-blowing, tipping-off and collective punishments based on households and neighborhoods displaced the social function of government by a regime of militarism, which led to an oppressive and ruthless society.

The modern Chinese character to refer to a county (*xian*, 縣) is actually not the same word as written for *jun xian* (郡縣), which is generally rendered into "prefectures and counties". In *Chunqiu Guliang zhuan* (春秋谷梁傳, *the Guliang Commentary on the Spring and Autumn Annals*), the character was written as 寰 (*huan*, "circle" or "enclosure") in the chapter covering the first year of Duke Yin of Lu (魯隱公元年) (722 BC). The word denotes the territories surrounding the royal capital city. Modern paleographer Li Jiahao (李家浩) gives an etymological explanation:

19 Zhang Jinguang, *Qin zhi yanjiu* (*A study of the Institutions of the Qin*), (Shanghai: Shanghai Guji Press, 2004), p. 468.

20 Tu Cheng-sheng, *Bianhu Qimin* (編戶齊民), (Taipei: Linking Publishing Company, 1990), pp. 126-139.

The *xian* (縣) of the Zhou Dynasty is a word that denotes the extensive territories that surround the capital of a state or a major city. It originated from homophonous Chinese character *huan* (還 or 環, “returning” or “circle”), which appeared in ancient variants as “寰” and “寰”. As a place name, these words are associated with *yi* (邑, city or township settlement) and gave rise to another derivative 鄆. When used in this sense, however, the *xian* (縣) is a loan character.²¹

The character of *huan* (寰), which means “areas surrounding the state capital,” was found in inscriptions on bronze wares of Western Zhou, which was written as *huan* (還, “return”) in a text entitled *Mian Hu* (免瑚):

The King was then at Zhou, and he ordered Mian (免) to be the Situ (司徒), or head of the Civil Affairs Ministry in charge of Lin, Yu and Mu, precincts around Zheng.

An inscription on the ancient vessel entitled 師旃簋 says that the King summoned an army officer of Shi and appointed him as Dazuo in charge of both the left and right regiments of troops from the precincts around Feng.

According to Li Jiahao, *Mian* (免) mentioned in the inscription was the name of a person living in the time of King Mu (穆王, 976-922 BC or 956-918 BC), who once had Zheng (鄭) as his second capital. Therefore, both Zheng and Feng (豐) were capital cities of Zhou. The character for “xian” in place names like Zheng-xian (County of Zheng) and Feng-xian (County of Feng) actually denotes the surrounding precincts around the country’s capital city. This is especially noteworthy with place names.

In the *Mian Hu* inscription, proper names such as Lin, Yu and Mu are counterparts of official titles under the Situ, who was principally responsible for civil administration and social welfare, and the three titles respectively denote specific positions in charge of woods, mountains and lakes, and animal-husbandry. As Situ was an official in charge of land resources, the King of Zhou appointed Mian to manage the affairs of forests, mountains and rivers as well as animals in these places. The assignment corresponds to similar accounts in the *Rites of Zhou* (周禮 *Zhou Li*).

In the second instance, the appointment of Shi (師) was the title of an army officer. Since military units in ancient times were organized in close relation to the soldiers’ residential communities, the troops stationed at “precincts around

21 Li Jiahao, “Xianqin wenzi zhong de xian (Xian in pre-Qin texts),” in *Zhuming zhongnian yuyuanxue jia zixuan ji* (A collection of self-selected essays by renowned middle-aged linguists), (Hefei: Anhui Education Press, 2002), pp. 28-29.

Feng” may have been recruited from local peasants in the suburban settlements around Feng. And as the title of Dazuo (大左) is higher in rank than Shi, the King of Zhou gave a promotion to the Shi officer as Dazuo to take charge of both the left and right regiments of Feng.

We could learn from the above that the character for *xian* (縣, a modern “county”) in textual materials pertaining to Western Zhou denotes a small district in terms of townships. However, with the Spring and Autumn period as well as the Warring States, what does the character refer to? On a bronze ware known as “Shu Gong Bo” (叔公罇) unearthed in the site of Qi of the Spring and Autumn period, there is an inscription where Duke Ling of Qi (齊靈公) offered his appointment to Shu Gong (叔公, presumably named Shu Yi 叔夷), a minister of the Duke:

“Gong,” said the Duke, “I grant to you the surrounding land of Mi Li (昧藪), in the suburb of the Capital Lai (*Lai du* 萊都), with its two hundred counties (*xian* 縣).”

According to Li Jiahao, the *du* 都 in ancient China could refer to a large district with walled cities in addition to the state capital city. As the *du* 都 in the inscription text is mentioned in contrast to *xian* 縣, the character should refer to the city or municipality of Mi Li, while the county (*xian*) should denote the vast stretches of land surrounding the municipal city. “Two hundred counties” means a district with two hundred smaller administrative divisions under its jurisdiction. Guan Zhong (管仲), who served as Prime Minister to Duke Huan of Qi (齊桓公), had made an administrative division by principalities (Guo 國) and wards (Bi 鄙), with the former including land areas adjacent to the capital, while the latter included distant fields that lay beyond the central confines. In *Guoyu's Qi Discourses* (齊語), the Bi (鄙, “ward”) was divided into four levels of administration, namely, *shu* 屬, *xian* 縣, *xiang* 鄉, and *yi* 邑, the last being the lowest grass-roots division. When the ruler of Qi gave grants of land ownership to his officials or revoked them, the size of the grants was measured in the number of *yi*'s that it covered. As for the *yi* in the county of Mi Li mentioned in the text of the *Shu Gong Bo* inscription, it might be even smaller administrative districts, such as is defined in the *Qi Discourses*, that were composed of thirty households.²²

22 Li Jiahao, “Xianqin wenzi zhong de xian,” (Xian in pre-Qin texts) in *Zhuming zhongnian yuyuanxue jia zixuan ji* (A collection of self-selected essays by renowned middle-aged linguists), (Hefei: Anhui Education Press, 2002), pp. 20-32.

In *Lüshi Chunqiu* (呂氏春秋, literally “Mister Lü’s Spring and Autumn Annals”, in reference to *Mengxia Ji* (孟夏紀, “Almanacs of Mengxia”) can be found the following statements:

[The King] bid the Situ to inspect his counties and wards; bid the peasants to cultivate their farmland and not to stay in the metropolis.

It can be seen that under the county/ward administrative system of *xian* (縣, “county”) and *bi* (鄙, “ward”), the farming area and agricultural population of the region were in the outer-lying counties (*xian*) and not within the central municipal districts (都). Therefore, the tax revenue and services were also collected from the rural counties rather than in the city districts. The local farmers were conscripted as soldiers in times of war. In the passage cited above from 師旃簋, which said that “He was to take charge the left and right regiments of Feng,” it can also be inferred that military service had been recruited from the counties to defend the city.

The character of *huan* (寰) refers to areas situated around the state capital, written as *ji* (畿). Analogous to that sense, all the royal estates under the capital’s jurisdiction should also be deemed as counties (*xian* 縣). Sun Yirang (孫詒讓) in his *Zhouli Zhengyi* (周禮正義, an *Exegesis of the Rites of Zhou*), specifically the *Xianshixia* section (地官·縣師下), sums up four major meanings of *xian* (縣) in the text of *Rites of Zhou*. In one sense, the character refers to the domain of administration under a county Preceptor (縣師) and a Judge (縣士). The *xian* was a general term for a royal estate at the fourth level under the central government.²³ Judging from the inscriptions on excavated bronze vessels, the usage of *xian* was indeed quite intricate. Apart from bronze inscriptions of the word written as *huan* (還) that we have cited in the above paragraph, the word was variably written, as 縣 (“township” or modern “county”) in Qi (齊, in present Shandong Province), as 還 or *qiong* (寰 “returning,” “circle,” “peripheral,” or “round-eyed stare”) in Yan (燕, Hebei Province), as 鄆 (“enclosed place”) in Sanjin (三晉, now in southern Shanxi Province),²⁴ as *xian* (縣) in Qin²⁵ and in Chu.²⁶ In comparison, the written form of *xian* as 县 for place names of Jin (晉) was well justified, for its sense is closest to what

23 Sun Yirang, *Zhouli Zhengyi*, Vol.III (Beijing: Zhonghua Book Company, 1987), p. 654.

24 Cf. Li Jiahao, “Xianqin wenzi zhong de xian,” (Xian in pre-Qin texts), pp. 19-27.

25 Cf. Yuan Zhongyi, Liu Yu, *Qin wenzi leibian* (Categorized compilation of texts in Qin), (Xi’an: Shaanxi People’s Publishing House, 1993). p. 261.

26 Cf. Li Shoukui, *Chu wenzi bian* (Compiled texts of Chu), (Shanghai: East China Normal University Press, 2003). p. 539.

is stipulated in the *Rites of Zhou*. For example, Wen (溫) was called a *xian* because it was squarely situated within the royal confines of the King of Zhou.

We have mentioned above *Zuo Zhuan* in reference to the 25th year of the reign of Duke Xi (僖公), where it is recorded that King Xiang (襄王) of Zhou granted to Duke Wen of Jin (晉文公, Duke Wen, named Chong'er, 重耳, 671-628 BC) some of his royal estates around the state capital. The King made this grant not only to show his appreciation of the Duke of Jin who had always supported him, but also to tactfully decline the Duke's request for the honor of a regal funeral on his death. Duke Wen received the places of Wen (溫, now in Jiaozuo 焦作 of Henan Province) and Yuan (原, present Jiyuan 濟源 of Henan Province) as his fiefs, and he had the name written as 鄆. So one would wonder if the special writing betrays a secret wish of the Duke to retain some of the original status of the central, royal estate. In *Zuo Zhuan* it is thus stated:

The Marquis of Jin asked a domestic servant named Bo Di (勃鞞) about the prospective candidate to be the magistrate of Yuan, and Bo Di answered, "In former years, Zhao Cui [趙衰 ?-622 B.C.], had followed you all along with a flask of food. Even he was traveling alone in hunger, he did not try to eat any of the food."

Masubuchi Tatsuo (増淵龍夫), based on this evidence, argues that the Duke of Wen "did not seem to assign the two of his fiefs to Zhao Cui (趙衰) and Hu Qin (狐溱) as private fiefs,"²⁷ and it was precisely for his intention to make the two counties part of the royal estates (*gongyi* 公邑) that he had to consider the degree of loyalty of the prospective magistrates. As the Chinese character for *shou* (守, "magistrate") stands for "guard" or "defense", it is obvious that the magistrate was to serve as the guardian of Yuan for the monarch. Based on such reasoning, Masubuchi Tatsuo draws two conclusions: "First, among the *y*'s (邑) that belonged to the monarch, some could be named as *xian* but others not. Second, of all the places that were called *xian*, some were directly affiliated to the royal estates of the monarch while others were not."²⁸ Therefore, through the central appointment of officials to govern these places, the ancient hereditary system finally came to an end and was replaced by a system of centrally assigned, mobile- or fluid-bureaucracy (流官制).

27 Masubuchi Tatsuo, "Shuo chungqiu de xian (On the xian of the Spring and Autumn period)," in *Riben xuezhe yanjiu zhongguo shi lunzhu xuanyi*, in *Selected Translations of Works by Japanese Scholars on Chinese History*, Vol. III (Beijing: Zhonghua Book Company, 1993), p. 194.

28 Masubuchi Tatsuo, "Shuo chungqiu de xian," p. 196.

A conclusion can be drawn from the discussions above, that the Prefecture/County system, as a uniformly centralized jurisdiction over all parts of the empire, put an end to the feudal pattern of government with autonomous kingdoms or principalities. It enabled an absolute central control of the land and labor resources in the empire to realize more efficient use of the two essential factors for agricultural production.

To put the whole nation under control of the state apparatus, Qin Shi Huang managed to monopolize the rights of land property, and utilized every means to tie the nation's population to their native land, so that the state power could exert direct authority over individual nationals in an atomized society. With the establishment of centralized official-appointment system and a recruitment system of civil service examinations, the tentacles of state power could reach well into the inner core of noble families and influential clans, forcing these feudal powers to submit themselves to the imperial power of the central government if they wished to maintain their prestige. On the other hand, the armed forces, comprising ordinary peasants in times of peace, and which were at the command of the central government, ensured equality of rights with everyone under the central government of a despotic power. In this way, all the intermediate forces or middle social strata in between the supreme ruler at the top and his individual subjects at the bottom were wiped out. This gave rise to a social structure with an all-mighty sovereign at one extreme and an entirely flattened or shrunken society at the other, with the latter being common herds composed of silenced individuals.

It was the administrative system of prefectures and counties that enabled the creation of a society of the three characteristics. In other words, the prefecture/county system constituted the fundamental social relations for two thousand years of imperial Chinese society from Qin through Qing. In pre-Qin feudal China, blood-relationships were the basis for social organization among the common citizenry as well as state power, whereas throughout the imperial history from Qin to Qing, the social administration of both personal relationship and state power was characterized by *junxianzhi*, a geo-politically based division of regional and local units administered by appointees of the central government. In the modern era, however, a new orientation of social development is on the rise, one that aims to break up the power-dominated social control and resorts to a cultural organization of social relations to reflect the human nature of society.