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The *Book of Lord Shang* on the Origins of the State

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In antiquity, the people resided together and dwelled herdlike in turmoil; hence, they were in need of superiors. So All-under-Heaven are happy having superiors and consider this orderly rule. Now, if you have a sovereign but no laws, it is as harmful as having no sovereign; if you have laws but are unable to overcome [those] who wreak havoc, it is as if you have no laws. Although All-under-Heaven have no peace without a ruler, they delight in flouting his laws: hence, the entire generation is in a state of confusion.[1]

How did the state come into existence? Is it essential to human society, or is it a product of certain social circumstances? Why do the people relinquish their freedoms for the sake of external coercive apparatus? How do the foundations of the state in the past reflect—if at all—on its desirable mode of functioning in the present? The rise of the modern state in the West triggered heated debates about these questions. For many thinkers of European modernity—from Thomas Hobbes to Jean-Jacques Rousseau, to Friedrich Engels—the question of the origins of the organized political community mattered a lot and had a direct bearing on their views of the contemporaneous state and its possible trajectory.

Unbeknownst to modern European theorists, similar debates about the origins of the state and of the ruler's power were launched twenty centuries earlier, on the opposite side of Eurasia. Chinese thinkers of the Warring States period (453–221 BCE) lived under conditions that bear a certain degree of resemblance to those of early modern Europe. Their age witnessed rapid and radical transition from the loose aristocratic polities of the

preceding Bronze Age (*ca*. 1500–400 BCE) to highly centralized and profoundly bureaucratized territorial states, each of which tried, to paraphrase Eric Hobsbawm, to reach "down to the humblest inhabitant of the least of its villages."[2] And much like in early modern Europe, the rise of the new state aroused a plethora of positive and negative emotions and generated heated debates, which included, among other things, putting forward conflicting perspectives about the state's origins.[3]

Among the debaters of that extraordinarily vibrant age, dubbed the age of the "Hundred Schools of Thought," the towering figure of Shang Yang (a.k.a. Gongsun Yang or Lord Shang, d. 338 BCE) is particularly important. Shang Yang was renowned not so much as a thinker as an extraordinarily successful—and hugely controversial—political reformer. He reshaped the political, social, and to a certain extent also economic and military structure of the state of Qin, turning it into the most assertive, arguably most oppressive, and undoubtedly politically and militarily most successful state of the Warring States period. The *Book of Lord Shang*, attributed to him (but penned in part by his later followers) summarizes the major arguments in favor of his reforms. It defends the radical overhaul of existent institutions, dismisses the moralizing discourse of Shang Yang's opponents as politically irrelevant, or, worse, subversive, and provides justification for the maintenance of a powerful state apparatus that imposes total control over subjects' lives.[4] This is the immediate context of chapter 7, "Opening the Blocked" ("Kai sai"), from which the above extract is cited. This chapter is an ideological centerpiece of the *Book of Lord Shang*. It provides one of the most sophisticated justifications of the absolute power of the state in the entire corpus of China's political texts.

The first section of the chapter deals with the genesis of the state. It starts with the following depiction:

> When Heaven and Earth were formed, the people were born. At that time, the people knew their mothers but not their fathers; their way was one of attachment to relatives and of selfishness. Attachment to relatives results in particularity; selfishness results in malignity. The people multiplied, and as they were engaged in particularity and malignity, there was turmoil. At that time, the people began seeking victories and forcefully seizing [each other's property].
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> 7.1

From the first phrases we can see the distinctiveness of Shang Yang's approach. During the Warring States period there were two major attitudes to the "state of nature" that preceded the formation of the state. The majority view represented most vividly by Mozi (*ca*. 460–390 BCE) depicted primeval society as plagued by intrinsic turmoil. Like Hobbes, Mozi considered pre-political society as a bestial situation of war of all against all, the only remedy to which was the establishment of the state. In contrast, a minority

view, most vividly evident in some chapters of the *Zhuangzi* (probably penned slightly later than the *Book of Lord Shang*), argued that the "state of nature" was an era of harmony and peace. According to this view, the creators of organized society were villains who destroyed the primeval idyll.[5] The "Opening the Blocked" chapter combines both approaches. Turmoil is not intrinsic to a stateless society. Whereas the matriarchal (or promiscuous) situation in which "the people knew their mothers but not their fathers" is not enviable, it is not deplorable either; after all, the "attachment to relatives" characteristic of that age was considered by many thinkers—most notably the followers of Confucius (Kongzi, 551–479 BCE)—as a normative state of affairs. However, primeval society could not sustain itself for long because of population pressure. When "the people multiplied," the intrinsic selfishness of human beings began endangering the social order. As the weaknesses of stateless society became evident, it had to be reformed:

> Seeking victories results in struggles; forceful seizure results in quarrels. When there are quarrels but no proper [norms], no one attains his natural life span. Therefore, the worthies established impartiality and propriety and instituted selflessness; the people began rejoicing in benevolence. At that time, attachment to relatives declined, and elevation of the worthy was established. In general, the benevolent are devoted to the love of benefit, whereas the worthy view overcoming one another as the [proper] Way.[6] The people multiplied yet lacked regulations; for a long time they viewed overcoming one another as the [proper] Way, and hence there again was turmoil.
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> 7.1

The kin-based order, which fostered selfishness, proved inadequate in coping with population pressure and the resultant struggles; hence, unidentified "worthies" intervened, replacing that order with the incipient stratified society based on the "elevation of the worthy." It was at this stage that morality was first taught to the populace, apparently calming the struggles and putting an end to the forceful mutual seizure of property of the earlier age. We witness, then, profound social, ideological, and political change. However, morality and social stratification alone could not resolve the fundamental problem of human selfishness, which brought about renewed competition for material wealth and social prestige. Hence, the new cycle of population increase resulted in a new deterioration of the social order, which required a more radical overhaul of society:

> Therefore, the sages took responsibility. They created distinctions among lands, property, men, and women. When distinctions were fixed but regulations were still lacking, this was unacceptable; hence, they established prohibitions. When prohibitions were established but none supervised [their implementation], this was unacceptable; hence, they

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> established officials. When officials were instituted but not unified, this was unacceptable; hence, they established the ruler. When the ruler was established, the elevation of the worthy declined, and the esteem of nobility was established.
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> 7.1

As the morality-based society proved to be inadequate in coping with its internal contradictions, a new form of sociopolitical system had to come into existence. This new system—the state—was generated by unidentified "sages" (i.e. the people on a higher intellectual level than mere "worthies"). Yet the sages did not create the state as a single act of genius intervention. Rather, its formation was a result of a lengthy process of increasing political complexity and social change. Overall, society evolved from an egalitarian, promiscuous, kin-based order to an incipient stratified order and then to a mature political organization based on property distinctions, prohibitions, and officials. This process was crowned with the establishment of a ruler, and it is only then that we can speak of a fully formed state. This is an extraordinarily sophisticated and dynamic model.

The above narrative differs from most other stories of state formation insofar as the ruler's role is concerned. In *Mozi*, for instance, the formation of the state was a top-down process. First the universal ruler—Son of Heaven—was established; then he created territorial distinctions in the realm and appointed local officials. In *Zhuangzi*, as well, the procedure was top-down; in this case, however, the state was the product of the power-hungry sages who were also its earliest rulers. In the "Opening the Blocked" chapter, in contrast, the ruler is the last to appear. He crowns the state formation rather than initiates it.

And yet, the ruler's role is crucial. "Unifying" the officials is the *sine qua non* for creating a properly functioning state. And it is not just unifying the officials. It is unifying the realm, first in a single state and then, as the text hints elsewhere (7.3), in All-under-Heaven. The unification of the entire known world was the common cherished goal of political thinkers of the Warring States period, the only way to ensure lasting universal peace.[7] The author of the "Opening the blocked" chapter shared this goal, but he reminds us that unity—first in a single state and then in the entire subcelestial realm—requires the unifier. By the very fact of his singularity, the ruler ensures the proper functioning of the political system. He is not the system's creator but its pivot. This is the rationale for concentrating all imaginable power in the sovereign's hands.

The author avoids eulogizing the state excessively. From his point of view, it is conceivable that during a lengthy prestate period there were no rulers, yet this situation was not necessarily unmanageable. However, once population pressure had generated social tensions, overall adjustment of the sociopolitical system became necessary, and the formation of the state became inevitable. Although moral education could, for a certain period of

time, moderate the intrinsic selfishness of human beings, it could not fundamentally alter it, especially when demographic growth brought about increased contention. Competition among the worthies became as unmanageable as the earlier contention among ordinary individuals. The narrative implies that morality simply became a veneer for the pursuit of selfish struggles. The sages' response was to preserve order through the creation of an effective political system that should not eradicate selfishness but only prevent it from damaging social life. They thus focused on the implementation of effective laws, regulations and prohibitions rather than on education. This is precisely what the *Book of Lord Shang* consistently considers the best remedy for social turmoil. The author summarizes:

> In the early ages, [the people] were attached to relatives and were devoted to themselves; in the middle ages, they elevated the worthy and rejoiced in benevolence; in the recent age, they esteem nobility and respect officials. When they elevated the worthy, they used the Way to overcome each other; but the establishment of the ruler caused the worthies to become useless. Being attached to relatives, they considered selfishness as the Way; but the establishment of impartiality and propriety caused selfishness no longer to be practiced. In these three cases, it is not that their affairs are opposite; it is that the Way of the people is base and what they value changes. When the affairs of the world change, one should implement a different Way.
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> 7.1

The fundamental presupposition of Shang Yang's theory is that everything is changeable. There are no immutable social norms, no immutable moral values. Everything—from kinship ties, to ethical norms, to political institutions—is bound to change once there is change in objective circumstances (such as population increase and the resultant struggle for insufficient resources). The ideas of Shang Yang's rivals—be they Confucians who advocated "attachment to relatives" or followers of Mozi who promulgated the "elevation of the worthy"—are not necessarily wrong. To the contrary, their ideas were relevant in certain historical circumstances. But in the current age of "esteem of nobility and respect of officials" what matters is power, and power alone.

This understanding is the backdrop for the subsequent discussion in the "Opening the Blocked" chapter. In different eras, distinct socio-political arrangements are viable; but in the current age, it is vital to realize that political power is based on coercion. "When the people are ignorant, one can become monarch through knowledge; when the generation is knowledgeable, one can become monarch through force" (7.2). This is the rationale for the author's two most controversial suggestions. The first is to commit all state resources (material, human, and even intellectual) to resolute war, which would end with the establishment of the new universal

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dynasty in All-under-Heaven—the only way for universal peace. The second is to impose merciless punishments on even slight offences so as to nip evildoing in the bud. Both recommendations appalled many of Shang Yang's contemporaries (as they appall most readers today), and he was well aware of it. Yet both are logically related to his view of the state's origins. In the current age of permanent warfare when "every state of ten thousand chariots [i.e. a large state] is engaged in [offensive] war, whereas every state of one thousand chariots [i.e. a medium-sized state] is engaged in defense" (7.3), the ways of peace and righteousness are blocked. Similarly, lenience toward law-breakers is not true righteousness—to the contrary, it generates turmoil and harms the people. The resolute employment of force both domestically and externally is the only way to peace and tranquility. The author defends the imposition of harsh penal laws as follows:

> If you instruct them through righteousness, the people indulge themselves; when the people indulge, there is turmoil; when there is turmoil, the people will be hurt by what they detest. What I call "punishments" is the root of righteousness, whereas what our generation calls righteousness is the way of violence . . . Thus, by killing and punishing, I return to virtue, whereas [what is called] righteousness corresponds to violence.
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> 7.4–7.5

This passage epitomizes Shang Yang's dialectical view of politics. He agrees with the moralizing thinkers (like the followers of Confucius and Mozi) that the ultimate goal of policy makers is to rule by "virtue" (*de*), which in the Chinese context means primarily reliance on moral and non-coercive methods of control. However, he never elaborates how this future "rule by virtue" will look, and whether or not it will require another radical modification of the sociopolitical order. What matters is the here and now: the road toward the goal of "returning to virtue" requires the employment of harsh and unpopular means of "killing and punishing." In the current age of "extra crafty" (7.2) people, one cannot ensure order through mere reasoning and hortatory proclamations. The absolute power of the state apparatus is the only means to make the people comply. And the ensuing compliance, in turn, is the only means to ensure the people's well-being. Recall the statement from the epigraph: "Although All-under-Heaven have no peace without a ruler, they delight in flouting his laws: hence, the entire generation is in a state of confusion." The people are the ultimate beneficiaries of the powerful state, but their selfishness prevents them from realizing that and causes them to flout the laws. In this situation, coercion is the only way to let the people enjoy a peaceful and tranquil life. The author explains in the final lines of the chapter:

> To benefit the people of All-under-Heaven nothing is better than orderly rule, and in orderly rule nothing is more secure than establishing the

> ruler. The Way of establishing the ruler is nowhere broader than in relying on laws; in the task of relying on laws, nothing is more urgent than eradicating depravity; the root of eradicating depravity is nowhere deeper than in making punishments stern. Hence, the True Monarch prohibits through rewards and encourages through punishments; he pursues transgressions and not goodness; he relies on punishments to eradicate punishments.
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> 7.6

The sophistication of Shang Yang's political thought is presented here at its best. First, ever since the demise of primeval kin-based or incipiently stratified order, society cannot function without a clearly pronounced hierarchical order headed by a ruler. Second, whereas the ruler is the pivot of the sociopolitical order, he cannot engender this order alone: he must rely on the legal system and especially on stern punishments, which will make his rule really effective. Third, although in principle the people "are happy" to be guarded by the ruler, they are intrinsically inclined to flout the laws; hence, unless they are overawed by stern punishments, they will damage the very order on which their peace and prosperity depends. The ruler-centered political system is a social must, and it has to be actively protected from members of society whose selfishness and narrowmindedness lead them to repeated transgressions. This is the rationale of Shang Yang's political model.

The final section cited above poses a curious question of the relation between the ruler and the law. Whereas in the "Opening the Blocked" chapter the law refers clearly to the ruler's tool, *viz*. the means to safeguard his position through overawing the subjects, this does not necessarily imply that the ruler stands above it. To the contrary, *fa* 法 which is translated above as "law," but which may refer also to more broadly understood impersonal standards, methods, and models to be followed, should normatively guide and even constrain the ruler. This emphasis on *fa* gained Shang Yang and his associates the name "the School of *fa*," which is translated, somewhat problematically, as "the School of Law" or "Legalists."[8] So does the ruler stand above the law or beneath it?

The answer is equivocal. On the one hand, from other chapters of the *Book of Lord Shang* it is clear that the ruler should subordinate his personal likes and dislikes to superior standards or laws (*fa*), which should never be violated (see, e.g. *Book of Lord Shang* 14.4). On the other hand, laws are neither eternal nor unchangeable. As the discussion above clarified, they are the product of certain historical conditions, and under new circumstances they should be radically altered. The exclusive right to alter the laws is that of the sovereign alone. In his position as the ~~exclusive~~ locus of political authority, the ruler has the right to change the law when appropriate. And yet, this should never be a whimsical change. Any twisting of laws for the sake of the ruler's selfish needs would invalidate the laws and undermine the very political system that is supposed to safeguard the ruler's absolute authority.

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In the final account, the *Book of Lord Shang* does not solve the contradiction between the ruler's superiority over the law in his position as an absolute sovereign and his subordination to the law as a normal (and possibly erring) human being. Shang Yang did not envision any institutional constraints on the ruler's authority, since those would dramatically impair the sovereign's power. The only means to correct an erring sovereign was through mild suasion. This was not enough, however, to solve the tension between the need to concentrate all the power in the hands of a single monarch and the tacit understanding that this monarch is prone to be a fallible individual. This tension remained the perennial weakness of China's monarchist ideology for millennia to come.[9]

Notes

1 *The Book of Lord Shang* 7.6. All citations from this text (*Shangjunshu*) follow Yuri Pines, *The Book of Lord Shang: Apologetics of State Power in Early China* (New York: Columbia University Press, 2017), indicating the chapter and the section's number.

2 Eric J. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth Reality*, 2nd ed. (Cambridge: Cambridge University Press, 2000), 80.

3 For comparing modern European and early Chinese theories of the origin of the state, see Yuri Pines and Gideon Shelach, "'Using the Past to Serve the Present': Comparative Perspectives on Chinese and Western Theories of the Origins of the State," in *Genesis and Regeneration: Essays on Conceptions of Origins*, ed. Shaul Shaked (Jerusalem: The Israel Academy of Science and Humanities, 2005), 127–63.

4 For a detailed study of this text, see Pines, *The Book of Lord Shang*.

5 For Mozi's and *Zhuangzi*'s views, see Pines and Shelach, "Using the Past," 131–3 and 140–2.

6 The Way ("*Dao*") is considered in early China as the summa of proper moral and political principles.

7 See Yuri Pines, *The Everlasting Empire: The Political Culture of Ancient China and Its Imperial Legacy* (Princeton, NJ: Princeton University Press, 2012), 11–43.

8 For the problematic of this designation compare Paul R. Goldin, "Persistent Misconceptions about Chinese 'Legalism,'" *Journal of Chinese Philosophy* 38, no. 1 (2011): 64–80 and Yuri Pines, "Legalism in Chinese Philosophy," in *Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta et al. *http://plato.stanford.edu/entries/chinese-legalism/* (First published 2014).

9 See more on this topic in Yuri Pines, *The Everlasting Empire*, 44–75.