

### 3. The State

The Spring and Autumn ruler and his senior warrior elite, with a modest palace staff, together did what was needful: the war and diplomacy of the time. In the Warring States, the structure of government grew larger. Efforts were made to keep that structure responsive to the will of the ruler, as well as effective in its task; this was accomplished by laws, and by an insistence on the chain of command: the ruler's orders should be obeyed at all levels. Some of the serving elite, who identified themselves as followers of Confucius, had other ideas: they disapproved of law and preferred a form of social control based on *lǐ* 禮 or ceremonial propriety. They held that rulers should be chosen like officials: by merit and not by heredity. By still others, the ruler's role was seen in a more aggressive way, one agreeable to the conquest agenda of the age. An incipient science appeared: a new understanding of nature as a system. All this intellectual ferment, which centered around the state and its purposes, made the late 04th century the Golden Age of early Chinese thought.

In the end, rulers were strengthened by the loyalty the state was able to develop among the people, and by the special relationship of rulers to Heaven. Alternatives to hereditary rulership were conceived, but none developed.

#### The 05th Century

**States** began to be defined in loyalty terms. In some early 05c texts . . .

**Hóumǎ** 侯馬 is a site near the old Jìn capital at which pits containing oath (or “covenant”) texts of c0496 have been discovered; similar finds were made at nearby Wēn-syèn 溫縣. See Weld **Covenant**.

. . . we find that people in large numbers are being made to swear allegiance to one subfaction within the House of Jàu, itself a clan within Jìn:

**3:1** (Hóumǎ 1.9, c0496). If Hú dares not to bare heart and vitals in serving his lord, or dares not to obey in all particulars Jyā's covenant and the commands issued at Dìng-gūng and Píng-sz, or . . . dares to work for the restoration of Jàu Ní and his descendants to the territories of the state of Jìn, or dares to adhere to a covenant with them, may the far-seeing former rulers [of Jìn] at once know of it, and may ruin befall my lineage.

These pressures within Jìn were to divide the state by the end of the century.

**Law** was now in operation among the general populace. Confucius, with his military heritage, preferred strict justice (punishment of the right people):

**3:2** (LY 4:11, 0479). The Master said, The gentleman likes justice; the little man likes mercy.

Justice must be uniform to be just. Exceptions and exemptions would spoil it.

Confucius' followers *were* prepared to dissent from erroneous verdicts, which to them implied a failure of the state, and not a fault in the individual:

**3:3** (LY 5:1, c0470). The Master said of Gūngyě Cháng 公冶長, He is marriageable. Though he has been in durance, it was not his fault. And he gave him his daughter to wife.

The adroitness to avoid being punished by a bad government, one which had not the Way, was desirable in one qualified to serve a good government:

**3:4** (LY 5:2, c0470). The Master said of Nán Rúng 南容,<sup>1</sup> When the state has the Way 道, he will not be cast aside. When the state has not the Way, he will keep clear of penalties and punishments. And he gave him his elder brother's daughter to wife.

**Lǐ** 禮, or ceremonial propriety, was preferred by the Confucians to law as a means of social control. Like law, it prohibited certain actions, but unlike law, it was positive: it enjoined certain attitudes, including respect between persons grounded in something other than fear. The historical Confucius had said:

**3:5** (LY 4:13, 0479). The Master said, Can one run the country with propriety and deference (禮讓)? Then what is the obstacle? But if one *cannot* run it with propriety and deference, what good is propriety?

Propriety is not ornament; it is the way government itself is supposed to work. Deference or unassertiveness (ràng 讓) is an aspect of lǐ behavior. The ideal warrior is energetic in action but indifferent to the *rewards* for action. Law, by contrast, is a conditioning of the many by external rewards and punishments.

**The Nature of the Ruler** was another current issue, and one that the Shī also addressed in depth. As with the folk Shī, these more courtly topics were subject to revision as time passed, and as the needs of the period changed.

The whole idea of a unified state was of Jōu origin, and Jōu rulers were the natural models for those who aimed at a Jōu-like supremacy. As between the *two* Jōu Kings, the precursor Wǎn-wáng was at first more highly esteemed; his merits were thought to overshadow Wǔ-wáng's merely military success against Shāng. The virtue of Wǎn-wáng was sometimes seen in lǐ or sacrificial terms:

**3:6** (Shī 268, undivided and unrhymed, 05c?).

Pellucid and shining bright –  
The ordinances of King Wǎn.  
He established the sacrifices,  
And now they have their fulfilment:  
The good omens of Jōu

This ritual persona would presently be replaced by a much more military one.

<sup>1</sup>LY 11:6 (c0360) makes him a member of the elite Nán'gūng clan, but the point of #3:3-4 is that Confucius, whose court rank was low, could not make exalted matches.

**The Tripartition of Jìn.** The rival clans of Jìn were six: the eventual victors, Jàu, Ngwèi, and Hán, plus the Jì 智, Fàn 范, and Jūng-háng 中行 clans. The last two were of little account; their lands were absorbed by the Jì in 0454. At the battle of Jìn-yáng in 0453, the Jì were destroyed by the other three, Jàu Syāngdǒ being the great figure among the victors. This caught the imagination of later ages: tales of revenge on behalf of the Lord of Jì gained a permanent place in the literature of lost causes.<sup>2</sup> In 0424, new rulers succeeded in Ngwèi, Hán, and Jàu, and these were acknowledged as Lords (hóu), that is, as rulers of their respective domains, by the still ceremonially important Jōu King in 0403.

Of the three, it was Ngwèi Wv́n-hóu (r 0424-0387) of whose reign tales of administrative excellence were later told. Lí Kwēi 李愷 of Ngwèi (05c) was later claimed to have produced the Fǎ Jīng 法經, a master canon of the laws of all the states, but that claim is clearly untenable.<sup>3</sup> An earlier claim was based on the text Lídǒ 李子 “Master Lí,” attributed to Lí Kwēi in the Hàn Dynasty; it credits him with inventing the ever-normal granary, but that policy is first mentioned in Hàn, and the Lídǒ was probably written to give it the sanction of ancient credentials.<sup>4</sup> Ngwèi may indeed have been ahead of the other Jìn states, Jàu and Hán, in the modernization process which seems to have begun in Chí,<sup>5</sup> but what its actual 05c legal and economic policies were, we do not now know.

Other traditions identify Ngwèi 魏 (under the name of Wèi 衛) with the process of textualization in the Confucian version of the Shī repertoire:

**3:7** (LY 9:15, c0405). The Master said, When I returned from Wèi to Lǔ the music was put right, and the Yǎ and Sùng found their proper places.

This passage was written by Dzvng Ywáen 曾元, Dzvngdǒ’s elder son, who had inherited Dzvngdǒ’s position as head of the Analects school. His younger brother Dzvng Shv́n 曾申 had succeeded Dǒ-syà in the proprietorship of the Shī, and the information in this passage is thus probably authentic. At least the earliest poems in the court (Yǎ) and ritual (Sùng) sections of the Shī were probably added at this time, along with many more poems associated with Wèi, which (as Shī 26-64) now make up a quarter of the entire Fvng section.

And so we come to the end of the 05c. Law and economic policy were making progress, though in ways that can no longer be precisely specified, and Confucian cultural propaganda was beginning to be organized in textual form.

<sup>2</sup>A famous example is the Vengeance of Yw-ràng; #4:58-59. For the lore of the later Roving Avengers, see Watson **Records** 3/409f (SJ 124) and Liu **Knight**.

<sup>3</sup>For its refutation, see Pokora **Canon**.

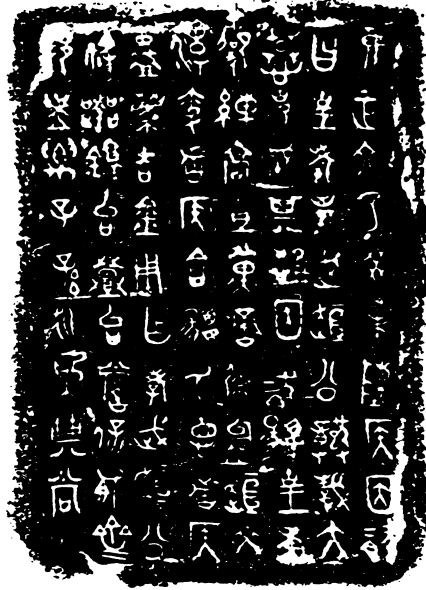
<sup>4</sup>For its acceptance in Latter Hàn (1c), see Swann **Food** 67. For the 20c American version of the 01c Chinese price equalization policy, see Bodde **Wallace**.

<sup>5</sup>In this light, the Battle of Mǎ-líng in 0343 (see p69 below) takes on something of the character of a symbolic trial of strength between the old East and the new Center.

## The 04th Century

Jìn had been divided in the 05c; the throne of Chí was usurped in the 04c.<sup>6</sup> But rulership was strengthened – by new concepts of rulership, new theories of the state, and a reshaping of legal practice. The revolutionary idea that there are laws of nature as well as laws of men, which might have been a challenge to the position of the hereditary rulers, became in the end a further source of strength.

**Chí.** The exile Chǎn 陳 clan, in Chí called Tyén 田, had become the power behind the Chí throne. In 0481 they killed the ruler, but let his heir succeed. In 0375 the ruler died *without* an heir. The head of the Tyén clan took the throne, and at his death was given the epithet Hwán-gūng. Here is the inscription on a bronze vessel with which the second Tyén ruler sacrificed to his father:



3:8 (Chí inscription, excerpt, 0357).<sup>7</sup> In the 6th month, on the cyclical day gwěi/wèi [#28], Yīn-dǐ, the Lord of Chǎn 陳, said, My August late father, the filial and martial Hwán-gūng: may his great desire be magnificently achieved! Let it be Yīn-dǐ who extols his August deceased father's glory; extends the line of the High Ancestor, the Yellow Emperor; fulfils and follows the work of Hwán of Chí and Wǎn of Jìn; summons the feudal lords to his court . . .

This is an open appeal for future domination of the entire Sinitic world.

<sup>6</sup>Not necessarily a bad thing for the state of Chí; see p38.

<sup>7</sup>For the full text and a discussion, see Doty **Bronze** 614f.

The work of “Hwán and Ẃn” (page 27f) was the unification of the states, and the Yellow Emperor was regarded as the ancestor of all the Sinitic peoples. To claim his as one’s ancestor was to claim ascendancy over all.

**Mǎ-líng.** In 0343, Chí defeated Ngwèi at Mǎ-líng, in Ngwèi territory. So encouraged was the Chí ruler that he proclaimed himself a King, taking the title of the Jōu rulers and implicitly annexing the former Jōu Mandate of Heaven. The Lǚ Confucians, defenders of Jōu tradition, expressed this outrage as the adoption by the Jì clan of ceremonies to which they were not entitled:

**3:9** (LY 3:1, 0342). The Master said of the Jì, Eight rows of dancers performing in his courtyard: if this can be borne, what cannot be borne?

Only the King was supposed to have that many dancers. Another denunciation:

**3:10** (LY 3:2, c0342). The Three Families used the Yūng song as a recessional. The Master said, "Assisting princes standing by / the Son of Heaven in majesty" – where in the halls of the Three Families was *this* drawn from?

**The King Ideal.** The Yūng song (Shī 282) celebrated the peaceful reign of the Jōu King; so did Shī 268 (#3:6). But in line with the 04c ideological shift<sup>8</sup>, later poems make Ẃn-wáng, not his son Wǔ-wáng, *himself* a conqueror:

**3:11** (Shī 241, excerpt, mid 04c).

241G . . . God said to King Ẃn:  
Take thought for your enemies,  
join with your brothers;  
with your scaling ladders,  
with your towers and rams,  
assault the walls of Ch́ng

This shows its lateness by its mention of 04c siege techniques. In another poem, Ẃn-wáng is portrayed not only as a victor, but as *a victor over Shāng*:

**3:12** (Shī 255, excerpt, mid 04c).

255G King Ẃn said, “Oh, alas!  
Oh, alas, you Yīn<sup>9</sup> and Shāng!  
It is not that God on High gave no blessings,  
but Yīn used not the ancient ways.  
Even if you lacked men old and wise,  
you had your laws and punishments.  
But to these you gave no heed,  
and the Great Command is now cast down.

The old ideal of cultural influence has here been replaced by an exclusively military image. Royal “virtue” consists only in the fact of military conquest.

<sup>8</sup>For the militarization of 04c culture, see further p99f, 113f.

<sup>9</sup>Yīn (the dynastic name used by Shāng in its later years) is here a poetic synonym.

**The Hegemon Concept** was also being rethought. The Dzwǒ Jwàn gives the hegemon three different titles, which suggest an increasingly violent ideal. The first, M'vng-jǔ 盟主, “Arbiter of Covenants,” corrects abuses of power:

**3:13** (DJ 9/26:14, excerpt, c0360). [The Jìn minister Jâu] W'vn-dǔ said to the Lord of Jìn, Jìn is Arbiter of Covenants. If any Lord infringe on another, then [Jìn] should interfere, and compel the return of the territory. Now, the towns taken by Wū Yw [and given to Jìn] are in this category, and to covet them is not to be Arbiter of Covenants. I beg to return them. The Prince said, Very well, but who can we send? He replied, Syw Lyáng-dài can do it without military force. The Lord of Jìn sent him.

The M'vng-jǔ gains his authority by virtue (DJ 6/7:8, 9/9:5, 9/26:7); he does not throw away the lives of the people (6/6:3a) or weary them (10/1:1).

The next title is Hóu-bwó 侯伯, “Chief of the Lords” or simply Bwó. He both supports and punishes. Small Sy'ng is being aided by Chí, Sùng, and Tsáu:

**3:14** (DJ 5/1:3b, c0334). In summer, Sy'ng moved to Yí-yí, and the Lords walled it. This was to relieve distress. In general, the Hóu-bwó relieves distress, shares catastrophe, and punishes the guilty. This is proper.

In a third set of passages, the hegemon is called Bà 霸, the term usually used for “hegemon” in Warring States theory. The Bà at one point is described thus:

**3:15** (DJ 4/1:5, c0318). To be friendly with states that observe the rules of propriety, to help those that have the potential for stability and strength, to complete the separation of those that are divided and disaffected, and to overthrow those that are full of disorder and confusion – this is how a Prince with the role of Hegemon proceeds.

The Bà functions not to preserve the states, but to weed out the weaker ones. Hegemon theory, like King theory, edged toward a mere-conquest concept.

**Methodological Moment.** These three titles might reflect a real evolution during Spring and Autumn, or it might reflect evolution of DJ theory. Which? We reason: If Chí Hwán-g'ung was always called a M'vng-jǔ, and Jìn W'vn-g'ung always a Hóu-bwó, and if later rulers were always Bà, we would have a plausible evolution in real time. But this is not what happens: Jìn W'vn-g'ung is identified by *all three terms* (M'vng-jǔ 9/31:6 and 10/29:5, Hóu-bwó in 5/23:8 and 10/9:3, Bà in 5/27:4 and 10/3:1). If all three terms are used of the same person, they cannot define different phases. It is then not the *hegemon*, but the DJ *theory* of the hegemon, that is evolving here.

Then the Hegemon concept was simply that: *a concept*, invented in the 04c to legitimize the idea of replacing the Jōu sovereign in his regulatory function, and to give theoretical support to increasingly aggressive contemporary rulers.<sup>10</sup>

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<sup>10</sup>For these DJ theory changes, see Brooks **Hegemon** and Brooks **Heaven**.

**Other Kings.** The Chí assertion of Kingship was imitated in other states: Ngwèi in 0334, Jàu in 0325, Chín in 0324, Yēn in 0320, and Sùng in 0318. Lǚ did not openly take that title, but it did make four ritual hymns which celebrated its ruler Syī-gūng (r 0659-0627) in ways that ranked him with the Jōu kings:

**3:16** (Shī 300, excerpt, late 04c).

300F Tàì-shān towers high;  
the Land of Lǚ looks up to it.  
It also possesses Gwēi and M̀ng,  
stretching to the Furthest East,  
as far as the states along the Sea.  
The Hwái tribes in submission come;  
none but is obedient.  
– Such are the deeds of the Lord of Lǚ.

These hymns became part of the canon: they are the present Shī 297-300.

Sùng, which *had* a royal past, produced five sacrificial hymns, supposedly from Shāng times; these were eventually included as Shī 301-305. With their inclusion, “Shāng” took its place beside Jōu as defining Sinitic culture.

**Predictions** were also used to authenticate contemporary rulers. By this time, the earlier pentagram system had been expanded into the present Yì:

**Yì** 易 “Changes,” 04c. A divination system of 64 hexagrams, expanded from the proto-Yì. The added text refers to higher culture: sacrifice, war, and Shāng events. Claimed to be a Jōu text, but archaeology shows that Jōu continued to use Shāng bone divination. Translated by Wilhelm.

The Dzwǒ Jwàn people moved from Lǚ to Chí in c0320, and there invented omens for Chí. One (DJ 3/22:1b), meant to legitimize the Tyén usurpation, described an Yì divination for the founder of the Tyén clan. The result was Hexagram 20 (觀), “View,” with the fourth line emphasized:

**3:17** (Yì, Hexagram 20 Gwàn 觀 “View,” 04c).

6. — Viewing his life.  
For a gentleman, no blame.  
5. — Viewing my life.  
For a gentleman, no blame.  
4. — — **Viewing the Splendor of the State.**  
**Favors being the guest of a King.**  
3. — — Viewing my life.  
Decide between advance and retreat.  
2. — — Viewing through a crack.  
Favors persistence by a woman.  
1. — — Youthful view.  
For a humble man, no blame. For a gentleman, humiliation.

The prediction of future greatness for the Tyén family is obvious.

**Philosophy of the State** first appeared in Chí, under the Tyén rulers. The earliest political thinkers are anonymously preserved in the Gwǎndǔ; later ones like Shǔn Bù-hài and Shǔn Dào left their names attached to their ideas.

The first questions asked by the Gwǎndǔ thinkers were about control:

**3:18** (GZ 3:1, excerpt, c0356). In a state of a myriad chariots, the soldiers must have leaders. Its area being extensive, the countryside must have administrators. Its population being large, the bureaus must have heads. In shaping the people's future, the court must have a policy . . .

**3:19** (GZ 1:4, excerpt, c0355). Put the state on a firm basis. Accumulate in inexhaustible granaries; stock in undepletable storehouses . . . Use the people 民 in nonconflicting offices. Make clear the road to certain death [punishment]; open the gate to certain gain [reward]. . .

The system should be efficient, without overlapping responsibilities. Society was controlled by rewards and punishments. The punishments were severe:

**3:20** (GZ 7:12, excerpt, c0350). [The ruler] is severe with the remiss and lazy, to shame them [and others]. He punishes those who break rules or make mistakes, to discipline them. He executes those who violate prohibitions, to terrify them.

**3:21** (GZ 7:13, excerpt, c0350). If [the ruler] is firm and consistent, the deviant and depraved will be fearful. When the deviant are changed and the depraved are reformed, no sooner will an order go out than the people will already be moving.

The system must not have a mind of its own; it must reflect the ruler's will.

In 0376, Hán conquered Jǔng, and moved its capital there. There presently appeared a philosopher of state who had been born in Jǔng, but who in his adult years is said to have served as minister to Hán. His doctrines . . .

**Shǔn Bù-hài** 申不害, c0400-0337, was a Legalist thinker and perhaps minister in Hán. A collection of sayings attributed to him (some of them genuine) still existed in Hàn. The Hàn work was later lost, and is now known only from quotations, which have been collected in Creel **Shen**.

. . . are concerned with how the ruler can avoid danger but still control the new bureaucracy. This art was later called shù 術 “skill, administrative adroitness.”

**3:22** (Shǔn Bù-hài #1:1, c0350). If one wife monopolizes a husband, other wives are thrown into disorder; if one minister monopolizes the ruler, the rest of the ministers are overshadowed. Thus a jealous wife has no difficulty breaking up a family; an unruly minister has no difficulty in breaking up a state. So the wise ruler has all his ministers come forward together like the spokes of a wheel, so that none can monopolize the ruler.

The human resources of the larger state need to be fully exploited – one cannot have only a few ministers – but also fully dominated. There must be no source of command, no center of power, other than the ruler.



Another comment on the danger of a single favored minister:

**3:23** (Shv̄n Bù-hài #1:2, c0350). The reason a ruler of men makes his walls and ramparts high and secures his gates and doors is to prepare against robbers and bandits. But the one who assassinates the ruler and takes his state does not necessarily do it by climbing over the walls and ramparts or battering down the gates and doors. He blocks off what the ruler knows, limits what the ruler hears, and thus monopolizes what he commands; he possesses his people, and he takes his state.

The ruler is always in danger. His safety lies not in the personal-valor heroics of Spring and Autumn, but in the more expert state structure of the 04c:

**3:24** (Shv̄n Bù-hài #1:3, c0350). Now, suppose that Wū Hwò or P'v̄ng Dzǔ were to bear on their back a weight of a thousand jyv̄n and carry in their bosom the value of a precious jade; let M'v̄ng B'v̄n<sup>11</sup> or Ch'v̄ng J'v̄ng wear a sword as sharp as Gān Jyāng and go along to guard him; if he travels by a deserted road, robbers will still plunder him. Now, the strength of the ruler of men is not as great as that of Wū Hwò or P'v̄ng Dzǔ, and his valor is not as great as that of M'v̄ng B'v̄n or Ch'v̄ng J'v̄ng, and the value of that which he is watching over is greater than that of a precious jade or a thousand of gold. Can he expect not to lose them?

The Dàuists of the Dàu/D'v̄ J'v̄ng group were also venturing into state theory. They advised working with fewer resources, and acting only inconspicuously. The extreme of inconspicuous action is undoubtedly wú-wéi 無爲, or *inaction*:

**3:25** (DDJ 10, c0337).

In supporting your soul and holding the One,  
can you be without divergence?  
In concentrating your breath and achieving Weakness,  
can you be like the newborn?  
In cleansing and cleaning your mystic vision,  
can you be without stain?  
In loving your people and governing your state,  
can you be without knowledge?  
When the gates of Heaven open and close,  
can you play the female part?  
In seeing and understanding in all four directions,  
can you be without activity 無爲?  
Give birth to them, rear them:  
give birth but do not possess,  
act but do not depend.  
Be chief, but do not manage –  
This is the Mystic Virtue.

<sup>11</sup>A swordsman of legendary ferocity, mentioned also in Mencius; Gān Jyāng was the most famous sword of antiquity, and so on with the others named in this passage.

**Philosophical Interactions.** Shv̄n Bù-hài's idea that wealth is hard to guard (#3:24) turns up recognizably in the DDJ:

**3:26** (DDJ 9, excerpt, c0335).

Gold and jade may fill the hall, but none can ward them.

These theories were not thought up in some vacuum; the theorists responded to each other's work, copying the good ideas or opposing the erroneous ones. Such was the interactive nature of the 04c Golden Age of Chinese Thought.

By way of exchange, DDJ ideas turn up in the *second* layer of Shv̄n Bù-hài, and were probably added in the generation after Shv̄n Bù-hài himself:

**3:27** (Shv̄n Bù-hài #1:5, c0318). One good at ruling will rely on stupidity, take his stand in inadequacy, adopt a stance of not daring, hide himself in lack of purpose (wú-shì 無事). He will hide his motives and conceal his tracks, and show the world a picture of inactivity (wú-wéi 無爲). Thus those near will be close to him, and those far away will cherish him.

If he shows people that he has too much, they will take it away; if he shows people that he does not have enough, they will give to him. The hard are broken; the endangered are sheltered. Who moves is insecure, who stays still is at peace.

Here is the image of a humble and unassertive ruler, who prospers solely through the spontaneous generosity and sympathy of his people. The Gwǎndǔ people adopted this tactic of attraction and conciliation:

**3:28** (GZ 2:25, c0317). To summon the distant, use “wú-wéi” 無爲 on them. To ingratiate the near, talk “wú-shì” 無事 to them. It is only the traveler who goes by night who really has it 獨有也.

The cynicism is obvious. The wise ruler “goes by night:” keeps his plans secret and operates in the dark; his purposes are unknown to those he persuades.

The DDJ people had earlier rejected expert knowledge, recommended by the statecraft experts of the time, as having a bad effect on the people:

**3:29** (DDJ 19, c0340).

Eliminate Wisdom 智, discard Eloquence 辯 –  
and the people will profit a hundredfold.

Eliminate Craft 巧, discard Profit 利 –  
and robbers and thieves there will be none.

Eliminate Transformation 化, discard Concern 慮 –  
and the people will again be filial and kind.

The part about robbers and thieves was later picked up by the Confucians . . .

**3:30** (LY 12:18, c0326). Jì Kāngdǔ was worried about robbers, and asked Confucius. Confucius replied, If somehow you were to have no desires, then even if you offered them rewards, they would not steal.

. . . who also believed in the cultural influence of the elite. Thus did ideas pass back and forth among rival schools in the late 04th century.

**The Problem of Conquest.** It had been thought that no conqueror could replace a local ruler because only a descendant could secure blessings from the ancestral spirits. Here the Prince of Y'w relies on that protection:

**3:31** (DJ 5/5:8, excerpt, c0316) . . . The Prince said, My sacrificial offerings have been abundant and pure; the spirits will not forsake me, but will sustain me. His minister replied, I have heard that the spirits do not accept the *persons* of men, it is their *virtue* to which they cleave . . . If J'in should take Y'w, and cultivate virtue, and on that basis present fragrant offerings, will the spirits vomit them out?

And in the story, his state is destroyed. Ritual protections no longer protected.

Nor did Heaven itself necessarily care about what lay below. The D'auists had put forth a picture of an uncaring universe and a similarly inactive ruler:

**3:32** (DDJ 5, excerpt, c0320).

Heaven and Earth are unkind:

they treat the Myriad Creatures like straw dogs.

The Sage is unkind:

he treats the common people like straw dogs . . .

. . . that is, without favoritism. Heaven simply does what it does.

**J'i-sy'ah.** The Ch'í invasion of Y'eh, urged by Mencius in 0315, led to disaster in 0314, when other states drove Ch'í from Y'eh.<sup>12</sup> In 0313, the King of Ch'í gathered six experts at J'i-sy'ah 稷下 and charged them to analyze the rise and fall of states. Three were from Ch'í, and three from other states. One was:

**Sh'eh D'au** 慎到, c0350-c0280, of J'au. Some parts of his work as known in H'an have been recovered from later quotations by Thompson.

Sh'eh D'au developed the D'auist idea of an uncaring universe:

**3:33** (Sh'eh D'au #1-2, c0310). Heaven has its light; it does not care about men's darkness. Earth has its riches; it does not care about men's poverty. The Sage has his virtue; he does not care about men's perils.

Though Heaven does not care about men's darkness, they can open up doors and make windows, and will surely obtain their own light thereby, so Heaven need not concern itself.

The Sage, like Heaven and Earth, provides a model for an orderly society.

**3:34** (Sh'eh D'au #6, c0310). That the Sage possesses the world is because he has received it, not taken it. The relation of the common people to the Sage is that they nourish him; they do not expect the Sage to nourish them, so the Sage need not concern himself.

Things happen naturally, but also sufficiently, in the impersonal universe.

<sup>12</sup>For Mencius and the Y'eh Incident, see further p135.

**Position.** The Sage's power does not depend on his personal qualities:

**3:35** (Shv̀n D`au #12-13, c0310). When [the exemplary good ruler] Y`au was a commoner, he could not bring order even to the people next door, but when [the archetypical bad ruler] Jy`e was Son of Heaven, he could bring confusion to the entire world. From this we may see that excellence is not enough of itself to cause the many to submit, but that situation 勢 and position 位 are enough to make even the excellent submit.

Sh̀ 勢 means the power latent in a situation. The ruler is not powerful; it is the ruler's position that is powerful. From this, it is but a step to the idea that the state could run on its collective ability, whatever the character of the ruler:

**3:36** (LY 14:19, c0310). The Master had spoken of W`ei L`ing-g`ung's lack of the Way. K`angd`z said, If so, why was he not destroyed? Confucius said, J`ungsh`u Y`w had charge of visitors and guests, Invocator Tw`o had charge of the ancestral shrine, W`angs`un Jy`a had charge of military strategy. That being so, how should he be destroyed?

Here is the root idea of a proto-constitutional sovereignty. It went nowhere.

**A D`auist Response.** Conventional statecraft theory sought to transform 化 the people, to make them orderly and dutiful. The DDJ D`auists objected:

**3:37** (DDJ 37, c0310).

The Way ever does nothing,  
but there is nothing that is not done.  
If lords and kings could keep to this,  
the Myriad Things<sup>13</sup> would be transformed of themselves 自化 .

Shv̀n D`au had a third idea: the concept of accommodation (y`in 因), or going along with an untransformed reality, administered by impersonal law.

**3:38** (Shv̀n D`au #28-29, c0310). It is the Way of Heaven that the results of accommodation are great, and the results of transformation are small. By 'accommodation,' I mean accommodation to the human reality.

No man but acts out of self-interest. If I alter men so as to make them act in my 我 interest, there will be no one whom I can employ.

The more a ruler shapes men to his personal wishes, the less the state interest can be carried out. Even in giving rewards, the ruler must not be personal:

**3:39** (Shv̀n D`au #61, c0310). If a ruler 君人 puts aside law and governs by himself, punishments and rewards, confiscations and bestowals, will issue in accord with the ruler's own wishes. Then those who receive rewards, however appropriate, will have hoped for more, and thus be unsatisfied; those who incur penalties, however appropriate, will have hoped for less, and thus be discontent.

Predictability is the basis of harmony; personal elements will wreck the system.

<sup>13</sup>All beings; here, all men.

The system must thus work like a machine. One way to make it do so is to organize not only the government, but the countryside:

**3:40** (GZ 5:6, excerpt, resuming #2:26, c0312). . . five assemblies 聚 are a county 鄉, four counties are a region 方, and are organized officially. When organization is complete, establish a town 邑.<sup>14</sup> Five families 家 are a group 伍,<sup>15</sup> ten families are a unit 連 . . .

The passage goes on to detail the obligation of each of these entities to supply a certain quota of material for the army: armor, men, or chariots.

**Law** was punitive in nature, and prescribed behavior even within the family. The oldest Mician tract already implies a working legal system, complete with an enforcement mechanism of sorts, protecting life and property:

**3:41** (MZ 17:1, excerpt, c0390). Suppose someone enters another's orchard and filches his peaches and plums. When others hear of it, they will think it wrong; and the high officials will punish him if they can catch him . . .

Researching law from supposedly ancient texts like the Shū . . .

**Shū 書** “Writings” or “Documents,” 04c-03c. Purported speeches of ancient rulers. Half the Shū were lost in Hàn; the present texts for those titles are 3rd century forgeries. Translated by Legge and Karlgren.

. . . requires care; specifically, it requires a certain amount of analytical technique. The two Shū texts most often cited as evidence for Jōu law, the Kāng Gàu and the Lǚ Syíng, actually focus on 04c and 03c legal issues.

**The Kāng Gàu 康誥** purports to be a speech of Jōu-gūng to his brother, who is enfeoffed in the former Shāng capital area. He is to judge the people, but by whose laws? The text says, by the laws of Shāng (also called Yīn):

**3:42** (Shū 37:11, excerpt, c0355) . . . Do you, in announcing verdicts, follow the penal laws of Yīn.

**3:43** (Shū 37:20, excerpt, c0355) . . . When I think of the people, I see they are to be led to happiness and tranquility. I think of the virtue of the former wise Kings of Yīn, whereby they tranquilized and regulated the people, and rouse myself to realize it.

But other parts of the same document say instead, by the laws of Jōu:

**3:44** (Shū 37:16, excerpt, c0278) . . . You must deal speedily with [such] persons according to the penal laws of Wǚn-wáng . . .

What is going on here?

<sup>14</sup>In contrast to the towns of mediaeval Europe, which were often horizons of economic opportunity, these Chinese towns are government control points.

<sup>15</sup>The term group (伍) is borrowed from military usage; see #4:61.

**Methodological Moment.** There is an internal contradiction in Shū 37. Where are its boundaries? In terms of Legge’s divisions, §1-14 and §20-24 assume continuity with Yīn (Shāng) traditions, whereas §15-19, which decree death for violations of filial piety (the respect a son should show to his father), invoke instead the laws of Jōu. The pattern looks like this:

A A A A A A A A A A A A A A A A **B B B B B** A A A A A

The aberrant segment is well-defined, making a good case for an interpolation. Also, (a) filial piety first became a high-profile issue in the late 04c,<sup>16</sup> and (b) as states continued to rule culturally diverse territories, it was probably difficult to retain local law, and necessary to impose the law of the central government, here symbolized by “Jōu.” The B interpolation updates A in both these senses.

That B is late also appears from external evidence. The 04c Dzwǒ Jwàn quotes only from the A section of our present Kāng Gàu, whereas Sywǎndǒ and other 03c texts quote from B as well as A. That is, no 04c text is aware of B. It follows that B itself is probably an 03c addition to A.

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**State and Family** were the two foci of personal obligation. They came into conflict in the late 04c, a conflict ultimately resolved in favor of the state. An early statement of the relation between state (gwó 國) and family (jyā 家) is:

**3:45** (LY 12:20, excerpt, c0326). Dž-jāng asked, how may an officer<sup>17</sup> be successful? The Master said, What do you mean by “successful?” Dž-jāng replied, In the state, sure to be known; in the family, sure to be known. The Master said, This is being known, not being successful. As for success: His character is straight, he loves the right; he inquires into words and observes appearances; he is considerate of those below him – in the state, sure to be successful; in the family, sure to be successful.

**Euthyphro.** The conflict between family and state had been explored in Plato’s early 04c dialogue Euthyphro, in which a son informs the state about a crime committed by his father; Socrates proves that Euthyphro (whose name means “upright”) does not really understand filial piety. Alexander conquered Bactria, the transfer point for the silk trade, in 0327, and imposed Greek culture on it. For the first time, Greek ideas were located where Chinese traders could encounter them, be intrigued by them, and spread them on their return.

<sup>16</sup>The 05c Analects (see Brooks **Analects**), though it discusses virtue at great length, never mentions filial piety; that value appears once in LY 11:5 (c0360) and then often in LY 2 (c0317). This does not mean that filial piety was a recent virtue, but only that filial piety *first enters the Confucian statecraft discourse* in the late 04c.

<sup>17</sup>“Officer” is shǐ 士, a term of military origin, later (as here) applied to literate civil servants. The translation “scholar-knight” is an attempt to capture this dual character, but the shǐ is not very similar to either the European scholar or the European knight.

Thus we have the story of “Upright Gūng,” which is about filial piety:<sup>18</sup>

**3:46** (LY 13:18, c0322). The Prince of Shv̄ said to Confucius, In our country there is a certain Upright Gūng. His father stole a sheep, and the son gave evidence against him. Confucius said, The upright ones in my country are different from this: a son will screen a father, and a father will screen a son. There is a sort of uprightness in this too.

The Upright Gūng motif often recurs in later writings. Filial piety was unopposable; it is the one conventional cultural value that is never satirized, even in the irreverent Jwāngdž. But in its own way, law too was unopposable.

**Collective Responsibility**, which is implicit in the Upright Gūng dilemma, was an important concept in Legalist thinking. It first appears in the Gwāndž:

**3:47** (GZ 4:5, excerpt, c0315). Collective guilt: If [an infraction] is by family members, it extends to the head of the family; if by the head of a family, it extends to the head of the group of ten or five; if by the head of a group or ten or five, it extends to the clan head . . .

The presumption is that (1) everyone is responsible for what occurs at the next lower level, and (2) to conceal a crime is itself a crime. Yet filial piety in this system was a virtue recognized by the state, one to be reported and rewarded:

**3:48** (GZ 4:5, excerpt, c0315). Filiality and respect for elders, loyalty and fidelity, ability and goodness, refinement and talent: if displayed by a family head’s senior and junior family members, male and female slaves, servants and menials, or visitors and guests, [the family head reports it to the group of ten or five], the group of ten or five reports it to the clan head, the clan head reports it to the district marshal . . .

These are virtues of subordination; the basic virtue *is precisely* subordination.

There is further evidence for collective responsibility in the Kāng Gàu. Two Dzwō Jwān quotations from it are not found in either the A or the B segment; they are *not in our text of the Kāng Gàu*. They were probably replaced when the more severe Kāng Gàu B material was added. They read, in full:

**3:49** (Shū 37, lost passage, quoted at DJ 5/33:6, c0322). In the Kāng Gàu it says, If the father is unkind, or the son disrespectful, if the elder brother is unfriendly or the younger brother unsubmitive, [guilt] does not extend from one to the other (不相及也).

**3:50** (Shū 37, lost passage, quoted at DJ 10/20:4, c0322). In the Kāng Gàu it says, With father and son, elder and younger brother, guilt does not extend from one to the other (罪不相及).

**Methodological Moment.** These arguments for an *exception* to the rule *imply* a rule, and are thus evidence for a co-responsibility rule in the late 04c.

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<sup>18</sup>For Greek echoes in Chinese texts after 0327, see Brooks **Alexandrian**.

**The Lǚ Syíng** 呂刑 (Shū 55) is supposed to be a speech by the 010c Jōu King Mù-wáng. Like the Kāng Gàu, it is one of the most quoted Shū texts. It represents a humanizing trend in legal theory, though it does so by the ungallant device of blaming the cruelty of the law on somebody else. The text has two parts, of which the second or B (Legge §14-22) is defined by promising, at its beginning and its end, to “make punishments a blessing” (祥刑). Part A (§1-13) attributes cruel punishments not to Sinitic tradition, but to the Myáu 苗:

**3:51** (Shū 55:3, excerpt, c0330). The Myáu people did not use persuasion, but kept order by punishments; they made a penal code of Five Cruelties and called it Law . . .

The Myáu are “destroyed” to protect the culture. Somehow the same cruel five punishments are still used, but at least there shall be no undue influence . . .

**3:52** (Shū 55:11, excerpt, c0330) . . . In adjudicating cases, they shall not be influenced by intimidation, nor by wealth . . .

. . . and intentionality (終) shall be considered in deciding guilt:

**3:53** (Shū 55:13, excerpt, c0330) . . . Heaven, in keeping order among the people, allows us one day [for judgement]. Whether [a crime] is unintentional 無終 or intentional 惟終 depends upon the person . . .<sup>19</sup>

The later B section extends the A rule against improper influence. It also proposes dismissing doubtful cases which would involve punishments . . .

**3:54** (Shū 55:17, excerpt, c0288). If there is doubt about the five punishments, the punishment should be forborne; if there is doubt about the five penalties, the penalty should be forborne . . .

. . . and has an elaborate system for the commutation of punishments into fines:

**3:55** (Shū 55:18, excerpt, c0288). When the punishment of branding is doubtful, and forborne, the penalty is a hundred rings,<sup>20</sup> but first make sure that the offense was committed. When the punishment of cutting off the nose is doubtful, and is forborne, the penalty is twice as much . . .

The penalty in lieu of death is a thousand rings. The text gives the number of ancient crimes as 3,000. This is pure fantasy: no *later* law code was that large.<sup>21</sup> But commutation was real; we will encounter it in 03c Chí and Chín.<sup>22</sup>

The 04c Micians, householders rather than farmers, found law protective. These Lǚ Syíng B statements are meant to further civilianize law; to make it a blessing and not a curse for those who live under it.

<sup>19</sup>The phrase here is cryptic; the principle is more fully spelled out in Kāng Gàu A, where even a severe crime, if unintentional (有大罪非終), is to be forgiven.

<sup>20</sup>A ring of metal (in the majority opinion, copper) contained six ounces.

<sup>21</sup>Nor was any ancient code. For the Hittite laws (200 clauses), see Roth **Law** 213f.

<sup>22</sup>Commutation was commonplace in the Ancient Near East; see Roth **Law** passim.



The Gwǎndž Legalists had tended to exclude the human dimension . . .

**3:56** (GZ 3:18, c0332). Maintaining territory depends on fortifications; maintaining fortifications depends on armies; maintaining armies depends on men; maintaining men depends on grain.

. . . and to rely only on things they could be sure of controlling. The Analects group had insisted on the importance of people's *feelings* toward the state:

**3:57** (LY 12:7, c0326). Dž-gùng asked about government. The Master said, Enough food, enough weapons, the people having trust 信 in him. Dž-gùng said, If he had to let something go, of the three, which would be first? He said, Let weapons go. Dž-gùng said, If he had to let something else go, of the two, which would be first? He said, Let food go. Since ancient times there has always been death, but if the people lack trust, he cannot stand.

They also found inadequate the whole idea of government by compulsion:

**3:58** (LY 2:3, c0317). The Master said, Lead them by government and regulate them by punishments, and the people will evade them with no sense of shame. Lead them with virtue and regulate them by ritual, and they will acquire a sense of shame – and moreover, they will be orderly.

Lǐ will achieve *as a byproduct* what law struggles, and fails, to achieve directly.

**Custom.** The Analects Confucians, who were now shifting their position (see #3:2), did not want a system of laws; they wanted a social order achieved by more spontaneous means. Justice before the law no longer attracted them; they wanted, not justice, but prevention:

**3:59** (LY 12:13, c0326). The Master said, in hearing lawsuits, I am no better than anybody else. What is required is to bring about a situation where there *are* no lawsuits.

And they sought social transformation through moral influence from above:

**3:60** (LY 12:19, c0326). Jì Kāngdž asked Confucius about government, saying, If I kill those who have not the Way to support those who do have the Way, how would that be? Confucius replied, You are there to govern, what use have you for killing? If you desire the good, the people will be good. The virtue of the gentleman is the wind, the virtue of the little people is the grass. The wind blowing on the grass will surely bend it.

Bending the grass means changing the people. But how long would it take to change them to create a civic order, so that law itself would be superfluous?

**3:61** (LY 13:11, c0322). The Master said, If good men ran the state for a hundred years, one could finally rise above cruelty and abolish killing – true indeed is this saying!

Four human generations. At least this does not underestimate the difficulty.<sup>23</sup>

<sup>23</sup>For the process of changing customs in modern France, see Weber **Peasants**.

Needless to say, no 04c state could afford to wait that long to get its civilian house in order before going to war. The social insight of the Confucians is sound, and their candor about the requisites for a spontaneously law-abiding state is admirable, but the timetable did not recommend the method. The mass army drillmaster stood ready to produce a docile populace in just a few weeks.

**Legal Practice** is first directly known, from the inside, in late 04c Chǔ:

**The Bāushān 包山 Texts** (0322-0316) are from the tomb of the highest Chǔ law official, the Intendant Shàu Twō 邵佗. They include a large set of legal documents. See Weld **Chu**.

The Bāushān legal documents tell us a good deal about law and legal practice in a Sinicized state at the end of the 04c.<sup>24</sup> They reveal social and political conservatism in Chǔ, along with advanced legal procedures. The Chǔ King had his “traveling palaces” (syíng-gūng 行宮) at which he held court in various parts of his domain, as he doubtless imagined the Jōu Kings had done, though litigants are often ordered to appear in Yíng, the Chǔ capital. Next below the King was Intendant Shàu Twō, himself the descendant of a Chǔ ruling family. He too traveled, to investigate things or render decisions on the spot.

Dated documents name years by the major event of the year preceding. The roster of recognized “major events” is suggestive:

- 0322. Chǔ general defeats the army of “Jìn” (Ngwèi)
- 0321. Embassy from Chí
- 0320. The Chǔ Prince of Lǚ-yáng repairs the wall of Jvng.
- 0319. Embassy from a state whose name is now lost to history
- 0318. Embassy from Sùng
- 0317. Embassy from “Eastern Jōu,” presenting sacrificial meat
- 0316. Chǔ general rescues a threatened city.

These are all events which increase, or recognize, the power of Chǔ.

Individuals might complain of wrongs both personal and administrative:

**3:62** (Bāushān #97, excerpt, 0317) . . . has taken his wife. . .

**3:63** (Bāushān #102, excerpt, 0317) . . . have judged illegally.

Petitioners who did not appear for their hearing prompted an investigation, and a finding of probable fact might lead to the case being taken up by the state:

**3:64** (Bāushān #29, c0317). 8th month, day #11. Jōu Rv̄n, a man of the Magistrate of Lyáu, was assigned a date. On day #20, he did not appear at court. Investigation determined that there had been injury . . .

There is no clear separation between what we call civil and criminal law.

<sup>24</sup>For a full account of the more personal documents, see Cook **Death**.

**Absorbed Territories.** At least some Chǔ districts (syèn 縣) were headed by a Prince (gūng 公), not a civil appointee. These previously independent districts had their own law officials and police. Interaction between them and the state could be cumbersome: one case in the district of Tāng, whose police are called the police of Yīn, and involving counter-accusations of the murder of a brother, was several times referred back and forth between the state and the district; at one stage, no less than 211 witness gave their testimony under oath. The impatience of the higher authorities led to this official note:

**3:65** (Bāushān #135, excerpt, 0317) . . . This case has long gone without final judgement. The King orders that all be brought to judgement.

Accused persons who flee were a problem in this case. Another deals with the omission of a few “gentlemen” (jywndž 君子) from the tax roll, presumably as a personal favor. In another, officials conspire to falsify a population register; all of them flee before they can be arrested.

The legal system was also in charge of agricultural loans in gold:

**3:66** (Bāushān #108, excerpt, c0317) . . . granted them seven yì of gold for the planting . . . The deadline passed without the gold being repaid.

In fairness be it added that according to the records, some of these loans *were* repaid, in full or in part, by the due date.

On the whole, the Chǔ system is functioning well, if not always promptly, in its tasks of controlling the population and supporting the infrastructure. The law is publicly known, and it is generally effective.

**Science.** The cogency of nature as a model for the state was increased at this time by concepts which seemed to give a deeper understanding of nature, amounting, in the opinion of the time, to a *science* of nature. It suggested the possibility of resonant interaction between the human and the natural realms. The key concepts included Yīn/Yáng dualism, the Five Element theory, the implications of the new Yì divination system, the model of the seasonal cycle, and several ideas usually associated with the Chí philosopher Dzōu Yěn.

**Yīn/Yáng 陰陽** is probably a version of early Persian dualism;<sup>25</sup> it first appears in Chinese texts in the 04c. The words themselves are old: Yīn 陰 was the dark side of a mountain; Yáng 陽 the sunlit side. As cosmic forces they were complementary. Their first theoretical application may have been medical: a way of rationalizing the effects of heat and cold. The association with the light and dark parts of the year was also early. Yīn/Yáng dualism had all the suggestive power of any binary opposition, and it quickly became influential.

<sup>25</sup>Bactria, where eastern and western trade routes met, had been part of the Persian Empire until its conquest by Alexander. Persian dualism was widely diffused: the Jews encountered it during their Babylonian exile (06c), and one Greek theory regarded the world as formed from the interaction of two opposing forms, Light and Darkness.

**Concepts of Change** proliferated in the highly analytical late 04c.

**The Five Elements** were a late idea.<sup>26</sup> They were early associated with the older five directions (the cardinal four plus the center), five colors, five notes of the scale, and five planets. From the five planets they probably took their name Wǔ Syíng 五行, “the Five Walkers.” Besides simply defining a five-part group, they were also thought of as an endlessly recurring cycle,<sup>27</sup> in which each stage “destroyed” the preceding one:

water > fire > metal > wood > earth<sup>28</sup>

**The Yì** with its system of 64 hexagrams envisioned a wilder kind of change. If emphasized lines in a hexagram are changed to their opposite, the resulting hexagram gives the outcome. Any one hexagram might therefore conceivably become *any of the others*. This was attractive to small states, which could never catch up with their rivals except by some sudden and discontinuous leap.

Here is how the DJ writers applied changing-hexagram analysis to the question of whether Jìn should have supported Jǐng against Sùng in 0486:

**3:67** (DJ 12/9:6, c0318). Jàu Yāng of Jìn divined [by the bone method] about going to the aid of Jǐng . . . [three interpreters commented on the result; all advised against doing so]. Yáng Hǔ divined by the stalk method with the Jōu Yì. He obtained hexagram Tàì 泰 going to Syw̄ 需. He said, Sùng just now is in a fortunate position; it may not be engaged . . .

Tài “The Great” is auspicious, but here it gets bogged down in Syw̄ “Delay.”

**The Seasonal Cycle** was another paradigm of change for the ruler:

**3:68** (GZ 7:14-15, c0323). He should model himself on Heaven by extending benevolence to all, and imitate Earth by being impartial. He should make a third with the sun and moon; a fifth with the four seasons.

One way for a ruler to imitate Heaven was to take charge of the traditional seasonal activities of planting and harvesting:

**3:69** (DJ 10/25:3b, excerpt, c0320). There are duties of government and the administrative services . . . in accordance with the four seasons.

Later, detailed work schedules appeared. Seasonality was essential:

**3:70** (GZ 8, excerpt, c0310). In spring, if the winter schedule is followed, there will be chill; if the autumn schedule is followed, there will be thunder; if the summer schedule is followed, there will be stunting.

<sup>26</sup>The original number, probably of Indian origin, seems to have been six; they appear in DJ 6/7:8 (c0358) as water, fire, metal, wood, earth, and grain. Similarly, the four elements of Empedocles (05c) are identical with a related Indian set of four.

<sup>27</sup>Also translated as “Five Phases,” to emphasize their cyclical-succession aspect.

<sup>28</sup>This is the “destructive” sequence as given in DJ 6/7:8; other authorities differ. The “generative” sequence is usually given as wood > fire > earth > metal > water.

In the twelve days when the aura (chì 氣) of earth is emerging, give warning about spring tasks. In [the next twelve days], begin ploughing. In [the next], make distributions. In [the next], repair gates and doorways. In [the next], bring males and females together. In the twelve days including the Chīng-míng festival, issue prohibitions . . .

The number eight is honored in this season. The ruler wears green<sup>29</sup> clothing, tastes sour flavors, listens to music in the jywé 角 mode . . .

All this met with healthy disbelief on the part of some practical men:

**Sūndž Bīngfǎ** 孫子兵法 “The Art of War of Master Sūn” or Sūn Bìn, the victor of Mǎ-líng (0343). Compiled c0360-c0305, with an addendum (Sūndž 13) in c0262; later attributed to a mythical 06c general. The first of the early Chinese military texts. Translations by Giles and Sawyer.

**3:71** (Sūndž 6, excerpt, c0320). So the Five Elements have no constant conquest order, the Four Seasons have no constant duration, Night and Day may be short or long, and the Moon waxes and wanes.

That is, the Five Elements have *no* constant order, and thus no predictive value.

**Dzōu Yěn** 騶衍 of Chí (c0347-c0276) was the leading figure of the Jì-syà theoreticians. His career, which shifted from Chí to Ngwèi to Jàu to Yěn,<sup>30</sup> suggests knowledge of a secret, albeit fallible, method. It may have been a theory of astral/terrestrial correspondences, which maps the constellations onto the states, so that an event in a constellation portends an event in that state.<sup>31</sup>

The possessor of such a system might be invited by any ambitious state, but then dismissed if a major event turned out badly. Dzōu Yěn’s career moves can be mapped onto events in just that way. In 0295, Ngwèi was attacked by Chí, in 0294 it fought a drawn battle, in 0293 it suffered a great defeat. This might have led to an invitation to Dzōu Yěn in 0293. He may have lost prestige in Ngwèi after another defeat, with loss of territory, in 0290. A move to Jàu (which had lost a battle to Chí in 0289) may have occurred in that year. Jàu then enjoyed several years of calm; a joint action with Yěn against Chí in 0284 was successful. The King of Yěn came to Jàu in 0283, and may have hired Dzōu Yěn away in that year. That King died in 0279, and Dzōu Yěn ended his days in Yěn, in the house the King had built for him. One book he wrote in Yěn was *The Master of the Cycles*; it may have dealt with the Five Phases theory. It is with that theory that he has chiefly been associated in later times.

<sup>29</sup>Chīng 青 covers colors from light green to dark blue; we translate by context.

<sup>30</sup>For these details we follow SJ 47, which seems to derive from a genuine tradition.

<sup>31</sup>The system includes Wú (conquered in 0468), but not Jvng (conquered in 0376). The roster is: Hán, Sùng, Yěn, Wú, Ywè, Chí, Wèi, Lǚ, Jàu, Ngwèi, Chí, Jōu, Chǔ.

### The 03rd Century

This is the century of the military showdown. In the east, Chí Mǐn-wáng, who ruled from 0300, was eager for conquest. After long delay for preparation, a delay which the Gwǎndǔ theorists urgently advised, he attacked Sùng in 0285. And conquered it, but allied states drove him from Sùng and from Chí itself. He died far from his capital in 0284, and Chí never again ranked as a major power. Its eclipse favored its western rival: Chín.

**Lord Shāng** or Wèi Yāng, a general of Chín, had defeated Ngwèi in 0342; he was given the fief of Shāng and a ministership in 0341. His reputation in other states was military, but Chín tradition (found in the Shāng-jyǔwǎn Shū) claimed him as a statesman, and it is possible that he applied military discipline (harsh punishments, no exemptions for nobles) to the civilian population also. As in Chí, reward and punishment are the root axioms of 03c Chín legal theory:

**3:72** (SJS 9:2a, excerpt, c0295). Now, the nature of men is to like titles and salaries and to hate punishments and penalties. A ruler institutes these two things to control men's wills . . .

But in contrast to eastern thought, the SJS firmly rejects antiquity arguments:

**3:73** (SJS 7:2c, excerpt, c0288). The Sage neither imitates the ancient nor cultivates the modern . . . the Three Dynasties had different situations, but they all managed to rule. Thus, to *rise* to the Kingship, there is one way, but to *hold* it, there are different principles.

Governing conquered territory requires attention to the specific situation.

Chín conquered the Chǔ capital Yǐng in 0278, but presently Chǔ made a counterattack. The tone of the SJS becomes more absolutist from this point on. It is clear that all power in the state *belongs* to the state, and none to the people:

**3:74** (SJS 20:1, excerpt, c0276). If the people are weak, the state will be strong; if the state is strong, the people will be weak. Therefore, the state which possesses the Way will be concerned to weaken the people.

**Mician Theory** favored law. The Micians were the ideal citizens of the new state, who accepted law as protecting them from criminal behavior. They expected law to protect the good and punish the bad, and in government, they expected meritocracy: the employment of the virtuous. These expectations were so blatantly violated by 03c governments as to provoke this angry denunciation:

**3:75** (MZ 10:5, excerpt, c0275) . . . But when the art of judging is not understood, though virtuous men may compare with Yǔ and Tāng, with Wǎn and Wǔ, there will be no commendation. And though some relative of the ruler may be lame and dumb, deaf and blind, as evil as Jyé or Jòu, there will be no condemnation. Thus does reward not come to the virtuous, nor punishment to the evil . . .

From the Mician viewpoint, the evil are favored and the virtuous are neglected. The new system has failed to produce a moral government.

The Mician answer to these ills was still the reward and punishment system, but now reorganized as a meritocratic reporting system at each social level:

**3:76** (MZ 13:7, excerpt, c0273) . . . Let the Son of Heaven announce and proclaim to the masses of the world: “If you see someone who loves and benefits the world, you must report it; if you see someone who hates and harms the world, you must report it.” Whoever, on seeing someone who loves and benefits the world, reports it, is like one who himself loves and benefits the world. If his superior can get him, he will reward him; if the masses hear of him, they will praise him. But whoever, on seeing someone who hates and harms the world, fails to report it, is himself one who hates and harms the world. If his superior can get him, he will punish him; if the masses hear of him, they will oppose him . . .

Not to put too fine a point on it, the people have here become the police force, or if one prefers, the merit recruitment and reproof agency, of the state.

In some parts of the world, law limits the ruler. Chinese law did not arise in that way. It functioned to *empower* the ruler. Law made the state easier for the ruler to control, whoever the ruler might be. This merely set things up for a usurper, like the Tyén usurpers in Chí. As the Jwāngdž people pointed out:

**3:77** (JZ 10:1a, excerpt, c0257) . . . Of old, the neighboring towns of Chí could be seen from each other; the cries of dogs and chickens could be heard from each other; where its nets and seines were spread, what its ploughs and spades turned, was an area of more than two thousand leagues. It filled all the space within its four borders. In its establishing of temples and shrines or altars of soil or grain, in its governing of its cities and towns, its districts and regions, its counties and hamlets, what was there that did not model itself on the Sages?

But Tyén Chýngdž in a single morning killed the ruler of Chí and stole his state. And was it only the state he stole? With it he stole the laws which Sagely wisdom had devised. And so Tyén Chýngdž gained the name of a thief and a bandit, but he himself rested as easy as Yáu or Shùn. Small states dared not denounce him, large states dared not attack him, and for twelve generations his family has held the state of Chí . . .

That twelfth Tyén ruler, King Jyèn (r 0264-0221), favored Confucianism. He responded to the Chǔ threat by reactivating, and attempting to Confucianize, the Jì-syà theory group. Chí thought was still cosmological in character . . .

**3:78** (GZ 40, excerpt, c0250). Yīn and Yáng are the grand rationale of Heaven and Earth; the Four Seasons are the great cycle of Yīn and Yáng. If punishment and amnesty correspond to the seasons, they will beget good fortune; if they are adverse, they will beget disaster . . . In summer, if one carries out the spring schedule, there will be windstorms; if one carries out the autumn schedule, there will be floods; if one carries out the winter schedule, there will be shedding [of leaves]. . .

. . . but that routine had not protected the state against recent disasters such as the near-destruction of Chí following its 0285 conquest of Sùng.

So to the new Jì-syà, King Jyèn in 0258 invited the Confucian Sywǎndž.

**Sywǎndž** 荀子 (SZ). The preserved writings of the 03c Confucian Sywǎn Kwàng (c0310-c0235) of Jàu. Of its 32 chapters, most are authentic; some additions are as late as early Hàn. Translated by Knoblock.

Sywǎndž had begun as a student of ritual and music at the court of Lǔ. At first he followed traditional Confucian philosophy, but later diverged from it. He was the most abrasive controversialist of his day, though this did not prevent him from appropriating what he thought was good in others' ideas. As of 0258, Sywǎndž was a well-known figure, but had not yet gained a court position.

Sywǎndž considered his 0258 appointment in Chí as a mandate to bring Confucian light to the erring Chí philosophers. To counter the Chí theory of a determining Heaven, he wrote what he surely intended as a thoughtful and considerate account of the subject. It is still considered to be his masterpiece:

**3:79** (SZ 17:1, beginning, c0257). The course of Heaven is constant. It does not survive because of Yáu, nor perish because of Jyé. If you respond to it with order, there will be good fortune; if you respond to it with disorder, there will be misfortune. If you strengthen basics and keep expenses low, Heaven cannot afflict you. If you follow the Way faithfully, Heaven cannot bring disaster on you. So flood and drought cannot cause famine, cold and heat cannot cause sickness, strange and weird events cannot cause misfortune. If basics are neglected and expenses wasteful, Heaven cannot make you rich; if food is scarce and initiative lacking, Heaven cannot make you whole; if you forsake the Way and act irrationally, Heaven cannot make you fortunate . . .

**3:80** (SZ 17:4, excerpt, c0257). Are order and chaos due to Heaven? I say, Sun and moon, stars and constellations, the calendrical markers, were the same for Yǔ and Jyé. With Yǔ they led to order; with Jyé they led to disorder: Order and chaos are then not due to Heaven. Are they due to the seasons? I say, crops sprout and grow in spring and summer; they are gathered and stored in autumn and winter. These too were the same for Yǔ and Jyé. With Yǔ they led to order; with Jyé they led to disorder. Order and chaos are then not due to the seasons . . .

**3:81** (SZ 17:7, excerpt, c0257). When stars fall or trees creak, the country is terrified. They ask, Why is this? I reply, No reason; these are things that happen when Heaven and Earth change, or Yīn and Yáng mutate. We may marvel at them, but it is wrong to fear them. As for eclipses of sun and moon, unseasonableness of wind and rain, or the uncanny appearance of a strange star, there is no age but has had them . . .

All this tact and eloquence did not convert the cosmologically committed philosophers of Chí to a more human-centered view. Relations at Jì-syà became so uncomfortable that in 0254, Sywǎndž departed for a less philosophical post, as the Chǔ governor of newly conquered Lǔ.



**Seasonal Theories** continued to flourish in Chí. From there they spread to Chín, where they were used as the framework of Lǚ Bù-wéi's Chín statecraft compendium, completed in 0241. We have previously (#2:59-61) seen its rules for mid-autumn. Here is how LSCC begins the year:

**3:82** (LSCC 1/1:1, excerpt, c0241). The correlates of this month are the cyclical days jyǎ 甲 (#1) and yī 乙 (#2), the Sovereign Tàì-hàu, his assisting spirit Gōu-máng, creatures with scales, the note jywé, the pitch Tàì-tsòu, the number eight, sour tastes, rank smells, and the offering at the door. At sacrifices, the spleen is given the prominent position.

The east wind melts the ice, dormant creatures begin to stir, fish push up against the ice, otters sacrifice fish, and migrating geese head north.

**3:83** (LSCC 1/1:4, excerpt, c0241). In this month . . . the King distributes the tasks of agriculture and orders that field inspectors lodge at the eastern suburban altar. They must see that people keep boundaries and borders in good repair, and that care is taken as to the straightness of the pathways between fields. They are to carefully survey the mounds, slopes, ravines, plains, and marshes to see which have soils and landforms suitable to the growth of the five grains. In all this they must personally instruct the people, and personally take part in the work . . .

Another LSCC chapter deals with the concept of impartiality (gūng 公): fairness, evenhandedness, not favoring one thing over others:

**3:84** (LSCC 1/4:1-2, excerpts, 0241). In the past, when the Sage Kings governed the world, they always put first impartiality: if they acted impartially, the world would be at peace. This peace was obtained by impartiality. When we examine the records of antiquity, there are many examples of the world being won and lost. Those who gained it, did so by impartiality; those who lost it, did so through partiality. Whenever sovereignty is established, it is from impartiality . . .

The world is not one man's world; it is the world's world. The harmony of the Yīn and Yáng does not favor one species; the sweet dews and seasonable rains are not confined to one creature. The ruler of the myriad people does not attend to only one person . . .

A man of Chǔ lost his bow, but declined to look for it. He said, A man of Chǔ lost it, a man of Chǔ will find it; why should I look for it? . . .

Heaven and Earth are so great that they give birth to things but do not regard them as their children; they bring to completion but do not regard them as their own. The myriad creatures all are nourished by them, and receive benefits from them, but no one knows where they come from. Such was the virtue of the Three August Ones and the Five Sovereigns.

The King of Chǔ sees no difference between himself and any other man of Chǔ. The state, similarly, must be as capacious as Heaven, inclusive as Earth, indifferent as sun, impartial as rain. Only in this way can the state be over all. Thus ran one conception of how Chín should prepare itself to rule the world: with no sense of locality or special privilege, like nature itself.

**Science?** In the end, the Two Forces, the Four Seasons, and the Five Planets did not develop into the concept of a law of nature; a world order independent of the political order, and superior to it: something that could be appealed to against the ruler. The new cosmic symbolism instead strengthened the old association of the ruler with Heaven. Interest in the planets led to more accurate calculation of eclipses, but not to a countervailing system of political thought.<sup>32</sup>

**Theory.** At first, Chǐ had been the source of statecraft theory for the west. In the mid 03c, we see a movement back in the other direction. Here is a late Gwǎndǒ view of how the state works. It is contemporary with the core LSCC, but it shows more influence from Chín harshness than the LSCC itself:

**3:85** (GZ 45, excerpt, c0240). Subordinate serving superior should be like echo answering sound; minister serving ruler should be like shadow following shape . . . If the people respect the orders of the ruler and carry them out, should there be injury or loss and they are penalized, they would hesitate, would begin to consider outcomes, and so depart from the law. Once ministers and commoners begin considering outcomes, they will bring forward their own judgement, the law will be in ruins, and orders will not be carried out.

Judgement is forbidden: obedience is more important than results..

By contrast, the LSCC, however ostensibly Legalist, preserves a certain place for Confucian values. Here, it returns to the Upright Gūng theme (#3:46). In Chín, this reaffirmation of the old Analects position was rather daring:

**3:86** (LSCC 11/4:3, c0241). In Chǔ there was one Upright Gūng. When his father stole a sheep, he reported him to the authorities. The authorities arrested the thief and were about to execute him, when his honest son requested that he be allowed to take his place and be executed. He said to the officer, When my father stole a sheep I reported him – is this not the very meaning of honesty 信? Now that my father is about to be executed, I take his place – is this not the very meaning of filiality 孝? If you execute one who is both honest and filial, who will the state pardon? When the King of Chǔ heard of this, he did not execute the man.

When Confucius heard of it, he said, Different indeed is Upright Gūng's kind of honesty. It was merely at the expense of his father that he was able to get his reputation. It would be better to be dishonest than to practice the "honesty" of Upright Gūng.

This writer<sup>33</sup> contemptuously rejects the idea that there can be a compromise between the paramount duty to one's father and the requirements of the state.

<sup>32</sup>Compare the momentous implications of Kepler's astronomical discoveries for European political theory, and indeed for the future of European states.

<sup>33</sup>Whoever he was. In all, probably about eight contributors, of somewhat different philosophical background and policy proclivities, took part in writing the LSCC.

**Hán Fēi** 韓非 came from Hán to Chín, and was there executed, probably (as the earliest tradition says) for a failed intrigue against a court rival. Under his name there now circulate a large body of statecraft writings which are widely regarded as typical of Warring States Legalism . . .

Hán Fēidz 韓非子 (HFZ). Statecraft writings, attributed to Hán Fēi (executed in Chín in 0233) but actually written during the 02c by a succession of Hàn statecraft theorists. Translated by Liao.

. . . but that attribution can be refuted in a **Methodological Parenthesis** (they ignore the core Warring States problem of conquest, and focus on court intrigue and other concerns of a unified empire; successive chapters are inconsistent in doctrine, but mirror the changing fads of the 02c Hàn court). Hán Fēi himself was real enough, but the theories later associated with his name belong to the intellectual history of the Hàn Dynasty, and will not concern us here.

**Chín Laws.** The requirements of the Chín state are known in some detail, thanks to the Shwèihǔdì documents,<sup>34</sup> which contain the case files of the Chín law official Syǐ. These files give us a look at the actual administration of law under Chín, and of the logic of the Chín judges. Here are some samples.<sup>35</sup>

Chín offered promotion to those who had cut off heads or otherwise distinguished themselves in battle. But there were refinements:

**3:87** (Hulsewé A91, c0220). If any wish to surrender two degrees of rank to liberate one person – their own father or mother – who is a slave, or if bond-servants who have been [given the lowest rank] for having cut off a head ask to surrender that rank to liberate a wife who is of servile status, this is to be permitted. They are to be liberated and made commoners.

Rank amounts to a kind of currency with the state, and as such, it can be exchanged with the state for other social goods.

**3:88** (Hulsewé C13, c0220). When the produce of the lacquer plantations is inferior, the Overseer is fined one suit of armor; the Director, Assistant Director, and Assistants are fined one shield each; the men are fined twenty sets of armor lacings each. When the produce of the lacquer plantations is inferior for three years, the Overseer is fined two suits of armor and is dismissed; the Director and Assistant Director are each fined one suit of armor.

This develops the idea of commutation of mutilating punishments (**#3:55**), but with a new twist: the penalties benefit the state by contributing to its armory. Even justice serves the ends of conquest.

<sup>34</sup>See p60.

<sup>35</sup>For a complete translation of the Shwèihǔdì laws, see Hulsewé **Ch'in**.

There is considerable precision in the defining of legal offenses:

**3:89** (Hulsewé D14, c0220). A husband steals 300 cash. He informs his wife, and he and his wife consume it in eating and drinking. How is the wife to be sentenced? If there had been no previous plotting, this is to be considered a case of “receiving” 收. If they had previously plotted, [she gets] the same punishment. A husband steals 200 cash and hides 110 in his wife’s apartment. How is the wife to be sentenced? If she knew that her husband had stolen them, it is to be considered a case of theft. If she did not know, it is a case of “keeping” 守 ill-gotten gains.

Chín, like Chí before it, grouped households into fives 伍. Movements of individuals were restricted. This emerges in several rules on false accusation:

**3:90** (Hulsewé D80, excerpt, c0220). When one of a group of five denounces another, hoping to escape punishment, and it is inaccurate, he is to be punished with the punishment he had hoped to escape.

**3:91** (Hulsewé D93b, excerpt, c0220) . . . To denounce someone, saying he has left the state, when he did not cross the border or did not leave without permission, is carelessness in denouncing. How should he be sentenced? This is a case of carelessness in denouncing. It is punishable by tattooing and being made a forced laborer.

Sometimes further information was requested about a still incomplete case:

**3:92** (Hulsewé E16, c0220). Tattooing a Female Slave. A public officer 公士<sup>36</sup> of such-and-such village brought in adult woman B, and deposed: I am a household official of Grandee 大夫 A of such-and-such village. B is A’s slave. A has asked me to say, “B is insubordinate. I ask that B be tattooed and have her nose cut off.” On being interrogated, B said, “I am A’s slave woman.” She has not been accused of any other crime.

The Assistant herewith informs the Head of the District of [the above information]. Inquire whether things are as he says. Determine her name, status, village, crimes of which she has been accused or sentenced, and whether she has been again interrogated. Report in writing.

Let it be noted that this is not a particularly cruel system. It is a *severe* system, but not an exercise in terror: it aims at a recognizable kind of justice. Enough pressure will be applied to get the system to work as intended

The intent of the system is manifest. Some mutilating punishments are kept from earlier times. But the fines it sets are weapons, and go to the armory, and the penal servitude it mandates is so much hard labor, and is sent to the walls.

Here then is the Spring and Autumn state, re-equipped with laws and land, stripped down again to its ancient essentials, and fine-tuned for war.

<sup>36</sup>The lowest Chín rank; here, a private and not a government official.