vols.) (reprint), Hong Kong: Hong Kong University Press, 1960, Vol. 5, p. 726. For a detailed discussion of this issue, see Chapter 4 of this book.

The quotations of the *Zuo Zhuan* throughout this study will be simplified as shown in this note, i.e. the *Zuo Zhuan*, followed by the reigning year of the princes of Lu (in this note Zhao 28), and then by the page number of Legge's translation in volume 5 of *The Chinese Classics*.

# 1 Society and the Development of Law in Shang–Zhou China

The difficulties in studying the origin, nature, and development of Chinese law have attracted the attention of numerous scholars worldwide, and various theories have been advanced to explain the early foundations. However, Chinese scholars have only known and studied Western theories of law since early this century. Before that time, the study of the origins of Chinese law took a completely independent path from the study of the origins of Western law. I will examine the most influential Chinese theories of the origins of law later in this book.

Since the 1920s, many Western jurists' works have been translated into Chinese. Among them, Sir Henry Maine's works exerted significant influence upon many Chinese students of law. Although written more than 130 years ago, many of Maine's ideas still provide a sound foundation from which to explore the origins of law in early society. As an introduction to this chapter, for comparative purposes, Maine's works will be referred to and some of his terms used to explain the origins and early development of law in China.

As early as 1861, Maine pointed out that most theories explaining the origin, nature, and development of law were based only on hypothesis, because their originators did not conduct detailed investigations into the archaic states of society.[1] Maine attempted to trace the origin and development of law in the context of ancient society. While he is often regarded as a pioneer of method rather than the exponent of a system,[2] Sir Frederick Pollock has remarked that Maine did nothing less than create the natural history of law.[3]

Maine distinguished three stages in the development of law. The earliest notions connected with the conception of a law are contained in the Homeric words 'themis' and 'themistes'. At this

stage, law is conceived not as a principle enunciated for general application or observance, but as a judgement announced to determine a particular issue by a king acting under divine inspiration. Next, the epoch of customary law: the divinely inspired king is superseded by aristocracies or small privileged groups who became the depositaries and administrators of the law without claiming heavenly inspiration for each determination. These oligarchies monopolize all knowledge of the law. Customary law is true unwritten law; it existed before the invention of writing, at a time when the best, if not the only, way of preserving the customs in a traditional form was to confide them to the care of a privileged order or caste. Finally, from the period of customary law we come to the era of codes, those ancient codes of which the Twelve Tables of Rome were the most famous specimen. This stage marks the end of the spontaneous development of law. Thereafter, modification can arise only from a conscious desire to improve. Maine considered that the development from customary law to codes was doubtless originally suggested by the discovery and diffusion of the art of writing. Although admitting that democratic sentiment may have added to their popularity, he emphasized that the codes were mostly a direct result of the invention of writing.[4]

In Maine's day, because information was limited, such a conclusion seemed the most plausible. Since then, archaeologists and anthropologists have made many important discoveries, greatly enriching our knowledge of primitive man and society. One cannot now refrain from questioning Maine's proposition that written codes were mainly the result of the invention of writing. Certainly, there is no denying that without the invention and diffusion of writing, men cannot preserve their customary law anywhere outside of their mind. However, writings on ceramics in China can be traced back to Neolithic times, and a quite mature writing system is known to have been used by the royal house of the Shang dynasty from at least the early fourteenth century BC.[5] A similar writing system was used by another state contemporary with the Shang.[6] These facts suggest the diffusion of writing during the fourteenth to twelfth centuries BC. Yet the widely acknowledged earliest Chinese code, the *Fa Jing* (the Canon of Laws)—which has long been lost—was not drawn up and enacted until 400 BC.[7] Even the *Zuo Zhuan* records, which narrate the casting of bronze tripods in 536 BC with descriptions of crimes and their punishments on them by the people of Zheng (*Zheng ren zhu xing shu*)[8] are regarded by



many to be the earliest written codes of China. These date back 900 years later than the first examples of writing in the court of Shang. The earliest Chinese written code so far discovered is the Qin code, excavated in 1975 from Qin tombs in Yunmeng county, Hubei province. Scholars believe that the owner of the bamboo slips upon which the Qin code was written—a person by the name of Xi, who was subsequently buried in the tomb—copied the code during the period *c.* 240 to 217 BC.[9]

All these indications suggest that in China known written codes appeared long after the invention and diffusion of writing. Thus one cannot but doubt Maine's proposition, and conjecture that at least in China the invention of writing was not the main cause of written codes. It is quite possible that the invention of writing was at most a 'technical' prerequisite—a necessary but by no means sufficient cause—and that the appearance of written codes was due to other, more important factors.

In *Ancient Law* and his later works, Maine also studied primitive society, which he suggested was an aggregation of families. Consanguinity was not merely the guiding principle. It was the only basis on which any sort of community could take place. No brotherhood was recognized, save that of blood relationship. Later, it was only by means of the legal fiction of adoption that social relations were transferred from a familial to a territorial foundation. The family ceased to be the unit of society and the individual emerged. Maine also showed that along with changes in social relationships, there was the evolution of both legal principles and provisions of law. However, he gave separate treatment to the two key issues, that is, the development of law from unwritten usages to written codes and the changes of social relationship from kinship group to territorial community; he failed to appreciate that there might be some connection between them.

Having questioned Maine, I conduct my study of the development of Chinese law from unwritten usages to codes within the context of the radical changes in social relationships, from the Shang dynasty to the Spring and Autumn period, and try to formulate a new proposition. In the following pages, I venture to suggest that in China the appearance of written codes was mainly due to fundamental changes in social structure. In Shang times, the basic unit of society was the *zu*, or lineage, which we may define to be a consanguineous group of people descended from a common ancestor. Each *zu* consisted of many families and had its own *yi*

(town), but different *zu* did not live in the same town. Some large *zu* were, in fact, independent polities.

Contrary to accepted scholarship, I shall argue that there was no unified customary law in Shang times, but that there were many sets of customary laws practised by the different *zu*.[10] After the Zhou Zu (Zhou Fang, the state of Zhou) had subdued the Shang, the Zhou House pursued the political strategy of *fengjian* (feudalism). A direct consequence of this policy was that different *zu* were forced to live together. This resulted in conflicts between different customary laws. To cope with this problem, the Zhou House, on the one hand, allowed the people of other *zu* to use their own customary laws; on the other hand, a series of *yi* (rites) were designed to maintain the unity of the members of the Zhou Zu, to adjust the relationships between the nobles and to strengthen the feudal system.

Afterwards, because of the deterioration of the *fengjian* system and the subsequent social mobility from the end of Western Zhou to the Spring and Autumn period, the *yi* were frequently violated, and the theory of 'natural *li*', which generalized a series of common moral principles of different *zu*, was gradually developed. In addition, the *meng*, or covenant, was an institution widely used during the Spring and Autumn period as the transitional mechanism to mitigate the conflicts between different states, as well as to ease frictions between different *zu* within a state. This supplied, to some extent, the technical forms for written codes. After all these changes had taken place, the codes were finally made and enacted, incorporating common points from the usages of different *zu*, and thus applied to a population organized according to geographically divided administrative units.

## Social Structure and Interstate Relationships during the Shang

From ancient oracle bone inscriptions, it is known that during the Shang dynasty, especially in early Shang times, there were numerous states, known as the *duo fang*. Following Professor Dong Zuobin's periodization of the oracle records of the early Shang, we can see that the *duo fang* existed during the five periods. The largest number was registered in Period 1: Shima Kunio counted thirty-three *fang* names for that period, but went on to identify two in



Period 2, thirteen in Period 3, twenty-three in Period 4, and eight in Period 5.[11] K. C. Chang, in his study *Shang Civilization*, quoted the Western Zhou poem *Bei Shan*, which proclaimed:

> Everywhere under Heaven
> Is no land that is not the king's
> To the borders of all those lands
> None but is the king's slave.[12]

He held that what was true for the Zhou was also true for the Shang. But it appears that this was not the case. At that time, the Shang was doubtless the strongest state among the *duo fang*, but whether judged by the territory it actually controlled, or its governmental organizations, or its relationship with other states, it cannot be compared with that of the Zhou.

How large were the territories of the Shang and other states? Some scholars, on the basis of studies of oracle records and the sites of archaeological finds, have outlined the approximate territorial expanse of the Shang state as follows: the northern half of Henan, the southern half of Hebei, western Shandong, northern-most Anhui, and north-western Jiangsu.[13] Because of the frequent wars between the Shang and other states, the extent of the Shang domain fluctuated from time to time.[14] One can see that the territory of the Shang was confined to the lower Yellow River Valley and was much smaller than that controlled by the Zhou after the latter had replaced the Shang, and had accomplished its eastern, northern, and southern campaigns.[15] The territories of the Shang's neighbouring states were certainly much smaller than that of the Shang. For example, the territory of the Zhou Fang, the same Zhou that became the Shang's nemesis and conqueror, was very small. Although its earliest homeland is still a matter for speculation and debate, the centre of activity for the predynastic Zhou has generally been placed in the Weishui Valley of Shaanxi.[16] Late in 1977, a palace structure and a batch of more than 200 pieces of inscribed oracle records were discovered in Qishan county, Shaanxi. These records are reported to date from Wen Wang's reign (*c.* 1077–28 BC).[17]

This important discovery confirmed that the political centre of the Zhou before conquering the Shang was in Qishan. The Zhouyuan area, or 'the plain of Zhou', in which the palace of the Zhou in Qishan was located was merely a few tens of square *li* (one *li* is equivalent to about 0.5 kilometres).[18] This coincides with some

records in the Confucian scriptures. In the *Shu Jing*, the Duke of Zhou (Zhou Gong) often referred to Zhou as 'our small state',[19] while Mencius claimed that the domain of King Wen was just 100 square *li*.[20] Scholars think that some of the *duo fang* probably moved regularly, even that their territories were not fixed. A plausible explanation is that the people of these *fang* were herders. For instance, the name Qiang Fang appears in oracle records of Periods 1, 3, 4, and 5. *Shuo Wen* explains the character *qiang* as sheep herder; the oracle bone character bears this out with its sheep-shaped upper element (  ). The location of the Qiang Fang has been variously placed in Western Henan,[21] southern-most Shanxi, and adjacent areas in Shaanxi and Henan,[22] or northern Shaanxi to the south of Gong Fang.[23] This may simply reflect the regular movement of the Qiang people. According to Dong Zuobin, the Gong Fang people were also herders.[24]

Within the territory of Shang there were numerous *zu*. The oracle bone character for *zu* (  ) has two elements, a flag above and an arrow below. Ding Shan's interpretation, that it originally signified a military unit,[25] is generally accepted.[26] Scholars have found that there are a great number of 'emblems' in bronze and oracle bone inscriptions, many of which are pictograms derived from animal symbols. These emblems were apparently symbols of different *zu*.[27] Li Zongtong indicated that people of primitive society had worshipped various totems and used them as the symbols of their groups. He suggested that the organization of *zu* originally evolved from totemic clans of primitive society.[28] Ding Shan, by carefully identifying the symbols inscribed on oracle bones, believed that he was able to distinguish more than 200 *zu*. In his opinion, Shang Zu and Shang *shi* were two sides of the same coin: *zu* referred to the group's military-like organization, and *shi* was its symbol, while the group in question was 'totemic' in nature.[29] Most Chinese scholars consider the *zu* to be based on kinship and to be the elementary unit of society in Shang times.[30] The view that Shang society was based on discrete and separate totemic clans called *zu* is also shared by Japanese oracle bone scholars. One such scholar is Shirakawa Shizuka, who has undertaken substantial studies of a number of important *zu* during the dynastic period of the Shang.[31]

The ruins of the Shang capital in Anyang and of Shang towns in other locations demonstrate that people in Shang times had built walled towns and lived in them. In oracle bone inscriptions there



are also many divinations about *zuo yi* (building of towns).[32] The character for *yi* () consists of two elements: a square enclosure above and a kneeling person below. These elements signify the two essentials of a Shang town, a walled enclosure to mark its boundaries, and its resident people.[33] Chen Mengjia considers that *yi* recorded in oracle bone inscriptions of the Shang can be divided into two categories: one is the capital of the king, and the other is the *yi* of *zu* living in the Shang territory.[34]

Among the scholars of oracle bones, Zhang Bingquan was the first to discover in the 1960s a very interesting phenomenon which he later named the *ren di tong ming xianxiang* (a name referring both to a person and to a place). His studies supported the view that in Shang times, each *zu* had its own *yi* (town) and different *zu* lived in sepanate towns. He found that in oracle bone inscriptions which belonged to the same period, some characters, such as *gao*, *jiao*, *che*, *yue*, and so on, were used both as the names of people and of places. For example, the character *gao* in some inscriptions was apparently the name of a person who was alive at the time of divination, while in others the character seemed to refer to the ancestors of *gao*, but in some cases the same character was obviously used as the name of a place. Furthermore, Zhang discovered that some of the characters—which were used as the names of the persons alive then, such as *mou* and *cha*—appeared in Period 1 inscriptions as well as in Period 5 inscriptions. Because the span from Period 1 to Period 5 was relatively long, it is impossible to maintain that they were the same persons. He believed that it is highly probable that there is a very close relationship between the persons who appeared in oracle inscriptions of different periods and used the same names. Zhang emphasized that a possible explanation of this phenomenon is that these persons may have obtained their names from the places in which they lived, or that those places were named after these persons.[35] Zhang Zhenglang, in a special study of *poutian* (reclaiming farmland) recorded in oracle inscriptions, also noticed that some persons who shared the same names appeared in oracle records of different periods. He suggested that such names should be regarded as the name of a *zu*, but not just the name of a particular person.[36] Zhang Zhenglang's study provided further evidence indicating that the *zu* was the basic unit of Shang society.

One of the more profound and enduring concepts taught by Maine was that the basic unit of early times was the family; the

aggregation of families constituted the gens or house; a collection of houses formed the tribe; a multitude of tribes produced the commonwealth.[37] However, from the above discussion we can see that most scholars agree that the basic unit of Shang society was the *zu* and the numerous *zu* constituted the state of Shang.

The social structure of the Shang was thus simpler than that described by Maine. But a *zu* was certainly larger than a family, which in Maine's terms usually included the eldest male parent, his wife or wives, his children, and slaves.[38] Moreover, most agree that the *zu* kinship units were organized hierarchically.[39] Professor Hsu Cho-yun further suggested that such a hierarchy was probably the consequence of segmentation of a kinship lineage into branches that formed the subordinated units of the main stem, and resulted in a hierarchical network of several levels of branches within a *zu*.[40] Although the exact structure of Shang *zu* is still a matter of debate,[41] one thing is certain: that it consisted of a number of families. Furthermore, it is the segmentation of a *zu* that produced these families, not the aggregation of families that constituted the *zu*. In other words, the *zu* defined the families, the families did not define the *zu*—a process which is just the opposite of Maine's order.

Zhang Zhenglang claimed that the Shang *zu* as a military unit comprised 100 adult men coming from 100 households, so the size of a *zu* was 100 families.[42] However, this proposition was merely derived from a few oracle inscriptions bearing characters such as 300 on the left, middle, and right, or 303 *zu* on a single piece of oracle bone. These records can hardly be reckoned as direct indications of a *zu* being a unit of 100 men. Furthermore, Zhang's conjecture that the size of *zu* in Shang times was 100 families was based on the records of the *Zhou Li*. We know that many parts of the *Zhou Li* in fact reflected an idealized picture of Confucian society and were probably written by Confucian scholars of a much later time. Those Confucian scholars held that even before the Shang dynasty, China was a unified empire with a social structure similar to that existing after the Han dynasty. Although a very doubtful proposition, many modern scholars still follow it when explaining newly discovered materials. Thus, Zhang Zhenglang's conclusion may be considered not very reliable. The *zu*, during Shang times, must have varied in size. Among the *zu* names found in oracle records and in bronze inscriptions, some are particularly prominent; one may assume that these *zu* had bigger



land, bigger towns, and consisted of more families.[43] One prominent example of such *zu* is the Que (the sparrow lineage), studied by many scholars.[44] The stronger *zu* lasted for many years and some Shang *zu* still existed after the fall of the Shang dynasty—their names appeared on bronze inscriptions of the early Zhou.[45]

In spite of their varying size and status, all the *zu* existed as independent entities. The members of the same *zu* lived together in their own walled town. If the *zu* was large, it might divide into several branches and its members might live in an area comprising several towns. Whatever the size of the *zu*, the principle seems to be that different *zu* did not live mixed together in a single place, but either in a town or in a larger area. Therefore, the name of a particular *zu*, to the Shang people, would also refer to the place in which the people of that *zu* lived. Conversely, the name of a particular place would pertain to the *zu* living there as well. This phenomenon, reflected in oracle bone inscriptions, puzzled Zhang Bingquan for many years. Although he singled out 173 cases where personal names were found to be identical with place names, he admitted that in many cases it is virtually impossible to differentiate a personal name from a place name.[46] This may reflect that at that time the numerous *yi* (towns) were the centres of social activities for the various *zu* which organized their own members.

Oracle records frequently tell of a king ordering a *zu yin*, a *yin*, a *zu*, or *duo zu* (the several lineages), *duo yin* (the several *yin*) to take some action. It will be argued later that when organizing and leading their *zu* members to take those actions, the *zu yin* might rely on certain usages or customary laws of their own *zu*. Zhang Zhenglang considered that the *zu yin* or *yin* designated the *zu* leader, and in some cases the character *zu* may also refer to the leader of that *zu*.[47] Whatever the exact designation is, one thing is clear, that every *zu* had its own leader who represented his *zu*. *Zu* members not only lived together, they also collectively took many actions under the leadership of the *zu yin*. In oracle inscriptions *zu* are recorded as action units in military campaigns.[48] Apart from military functions, *zu* also constituted action units which reclaimed farmland.[49] (This will be discussed in detail later in this chapter.)

I have mentioned the theory that the people of some *fang* were herders and moved regularly. I also noted that some *zu* might occasionally move from one place to another. On occasions of migration the *zu* also moved together. The song *Gong Liu* in the

*Shu Jing* narrates the story of the Zhou Zu migrating to a new land. They carried dried food and weapons. Gong Liu led them out of the land of 'hundreds of springs' to ascend to the highlands. They stopped at Xu and Bin, where they offered sacrifices and established Gong Liu as their ruler and patriarch.[50] Eight generations later, Tan Fu led the people of Zhou in migration to the Wei Valley, and they finally settled there.[51]

It appears that the *zu yin* was the most important figure in a *zu*. He represented his *zu* in the broad community. He received orders from the king and led the members of his *zu* in military campaigns and land reclamation. He led his *zu* when migrating from one place to another. One can assume that he exercised considerable authority over the members of his *zu*. To a great extent, the role and power of a *zu yin* was similar to that of the eldest male parent depicted by Maine. The latter reigned absolutely supreme in his household. His dominion extended to life and death, and he exercised unlimited power over his children and slaves. The flocks and herds of the children belonged to the father, and their wives and offspring were obliged obey him.[52] However, there seems to be a significant difference between the order of the *zu yin* and the despotic command of an eldest male parent as described by Maine.

The *zu*, especially the large and enduring *zu*, must have developed their own customs, which, it may be assumed, would have contained certain embryonic elements of customary law. The *zu yin* would have had to exercise their power in accordance with these customs. Maine, however, did not think that the family as the unit of society had developed its own customary law, nor did he believe that the eldest male parent exercised his power in line with any such customary law. Since the *zu* lived in the same place and the members knew each other, the customs of a *zu* were very probably known to all its members, especially to the parents of the families. Furthermore, the customs of a particular *zu* might apply only to its own members, and thus there were probably few, if any, conflicts between the customs of different *zu*.

Therefore, we may draw the following conclusions: the *zu* was the basic unit of Shang society; each *zu* had its own leader who assumed apparent leadership of the *zu*; and the *zu yin* exercised considerable power over the members of the *zu* according to the customs of that *zu*. But we have little knowledge of some important features of Shang society, such as the exact internal structure of the *zu*, the general Shang social structure, the Shang value



system, and so on. We have to wait for fresh evidence before we will be in a position to address these matters.

## State Apparatus and Customary Law of the Shang

The structure of the state organization of the Shang requires some discussion because we will see that in the Shang period, there existed neither a centralized state organization nor a unified law which could be applied to all the *zu*. Hu Houxuan, who based his study on oracle bone inscriptions, considers that certain Shang kings made a practice of conferring territories upon their wives, sons, and prominent ministers, as well as unnamed individuals who are simply referred to in the inscriptions as *hou*, or (less frequently) as *bo* or *nan*, terms that were later to become well-known titles of nobility in the Zhou feudal hierarchy. He concluded that the feudal system had been established in the Shang dynasty.[53] H. G. Creel, working from virtually the same material used by Hu, conducted a study in 1936—eight years earlier than Hu—in which he concluded that feudalism could not be traced back to the Shang. He pointed out that the mere occurrence in Shang texts of titles which later appear in the Zhou feudal hierarchy does not prove that these titles had the same connotation in Shang times as they did during the Zhou.[54] D. Bodde for his part has indicated that the inscription material subsequently analysed by Hu is too fragmentary and ambiguous to be conclusive. In its totality, it may show that during Shang times dependency relations existed, but these had not developed into a feudal structure like that of the Zhou.[55]

Later scholars' studies showed that the Shang governmental organizations were loose and informal. Diviners, as we see from oracle bone inscriptions, were very important officials of the Shang kings. But some scholars have noticed that the diviners tended to flourish for a reign or two, and then vanish.[56] This suggests that the kings changed their diviners and that relations between the kings and diviners were based on personal ties. Oracle records clearly indicate that some *zi* (princes) and *fu* (royal consorts) had their own walled towns outside the capital area. They were active and of high status. 'They were ordered to perform sacrifices or to lead military campaigns. They came and went to perform chores for the king, being no different from the king's close officials.'[57] Kaizuka believed that they formed a politically and militarily powerful group with its

own divining agents.[58] One may presume that these princes and royal consorts were probably quite independent of the king.

In order to gain some idea of the king's degree of control over the various towns, D. Keightley has designed a formula to obtain the 'state score' of any place name and then locate these place names on a map. By charting the king's itineraries recorded in the oracle bone inscriptions, such as hunting expeditions, military campaigns, and so on, he obtained some interesting and illuminating results:

> One has the sense of the state as a thin network of pathways and encampments; the king and information and resources traveled along the pathways, but the network was laid over a hinterland that rarely saw or felt the king's presence and authority. State power would have been generally intermittent and, in areas like Shaanxi and Shanxi, rather transitory.[59]

He argued further that it is unlikely that the state itself was immutable and stable in its location and functions. It seems most appropriate to conceive of the Shang state as a political–religious force-field, stronger in some areas and weaker in others, whose power to influence events advanced and receded in accordance with a variety of factors, such as the personality and energy of the reigning Shang king, his marriage alliances, the successes of his crops and his armies, the strength of the surrounding groups, and so on.

However, some writers consider that by the end of the Shang dynasty, the stature of the king had changed: all state affairs were managed under his name, and deceased kings were thought to be associated with various deities. In addition, the mechanics of governmental organization had changed. The *xiao chen* (minor attendants) who were originally household servants, had become very powerful courtiers by the late Shang.[60] But even by the end of the Shang dynasty, a bureaucratic government mechanism had not been established. The Shang state remained in Weberian terms 'patrimonial'.[61] From the above discussion, we may conclude that the Shang state was in origin an alliance of independent groups, that is, the numerous *zu*. The king was mainly a religious and military leader. He relied primarily upon his own armies and the help of a few close supporters. The king's power over the independent groups was, to a large extent, symbolic, in that the heads of independent groups—the *zu yin*, the *zi*, and *fu*—were discrete in disposing of the internal affairs of their groups. In the inscriptions there were many records in which the king ordered the heads of these groups to participate in military campaigns, to reclaim new land, or to support the king's affairs (*gu wang shi*), but we find no evidence that the king interfered in the internal affairs of these groups.



The inscriptions indicate that the relationship of the Shang king with the numerous *fang*, Shang's neighbouring states, was very different from those between the groups within the Shang territory. These *fang* were independent states. Zhang Zhenglang found that in Period 1 inscriptions when the king ordered *zhong ren* (the multitude of people) to reclaim farmland in the Yang state, such phrases as *ru* Yang Fang, or 'entering (the territory) of the Yang state', were used. In Period 4 inscriptions, *duo yin* (the several heads of *zu*) were again ordered to go to Yang for opening up new land, but this time Yang was not described as a *fang*. Zhang believes that in Period 4 Yang Fang may have been exterminated by the Shang, or parts of Yang's land were seized by the Shang and became Shang territory, so the king simply ordered *duo yin* to go there and reclaim Shang's land.[62] Thus, as independent states, the *fang* would have their own territories, which were recognized by other states. The relationships of these states with the Shang were varied and very unstable. Some were probably friendly or even subordinated to the Shang from time to time. For example, scholars found that when Shang and Gong Fang were on good terms, Shang enquired about Gong Fang carrying out errands for the king.[63]

But after examining the oracle bone inscriptions which recorded the relationships between Shang and these *fang*, one is more likely to get a strong impression that the Shang was hostile to many of the *fang*. The Shang kings launched numerous military campaigns against the *fang*. Sometimes wars against some *fang* involved vast numbers of Shang troops—in one instance 13,000 were employed against Qiang Fang.[64] Such wars continued from the very early times of Shang till the concluding days of the dynasty. Two major campaigns were undertaken against Ren Fang under the personal command of Di Xin, the last Shang king. It is generally agreed that these campaigns weakened the Shang's political strength and helped the Zhou in their conquest.[65] If the *fang bo* (the chiefs of *fang*) were captured in these wars, they were often killed by the people of Shang as sacrifices for their former kings, and the skulls of *fang bo* thus executed were used as inscription materials.[66] Other

captives were also recorded as having been sacrificed in rituals, especially the Qiang captives. From the oracle bone records of Zhou found in Qishan county, we learn that there were also wars between these *fang*.[67]

Maine provided a suitable expanation as to why there were so many wars between Shang and other *fang* and captives of war treated like animals. He believed that in ancient times there was an implacable hostility between all who were not kinsmen. He wrote:

> If a man was not of kin to another, there was nothing between them. He was an enemy to be slain, or spoiled, or hated, as much as the wild beasts upon which the tribe made war. . . . It would scarcely to be too strong an assertion that the dogs which followed the camp had more in common with it than the tribesmen of an unrelated tribe.[68]

These *fang*, in the final analysis, were different consanguineous groups from that of the Shang. Many *fang* were in essence large *zu*. They had their own ancestors, culture, and customs. It is hardly necessary to emphasize that the most important difference between a *fang* and a *zu* within the domain of the Shang was that the former had no blood relationship, either real or fictive, with the Shang. In this respect, the oracle records of the Zhou give us much new and precious information. They prove that before subduing the Shang, Zhou was truly an independent state. The chief of Zhou, King Wu's father, Wen, was recorded as being a king during his own lifetime, and acknowledged to be king by his own people. The Zhou had its own divining agency.

Li Xueqin held that there were many fundamental differences between the oracle bones of the Shang and the Zhou. He suggested that the divination methods of Shang and Zhou evolved from two different traditions and the oracle bones of Zhou were not a direct continuation of the Shang.[69] Also, the terminology of phases of the moon used by the Zhou people was not to be found in the oracle bones of Anyang, and this reflected a certain cultural difference between the Shang and the Zhou people.[70] Zhou possessed considerable military power and undertook military campaigns against other states.[71] These new findings are contrary to the pictures painted by the Confucian scholars who said that Shang was a unified empire and there did not exist an independent state called Zhou.

To sum up, the numerous *fang* during Shang times were independent states made up of different consanguineous groups that had their own territories, chiefs, and armies. The chiefs of the *fang*, therefore, could handle the affairs of their states independently. One may conjecture that these *fang* all had their own customary laws, and there was not a unified customary law universally applied to the Shang and these *fang*.



## Zhou Feudalism and Its Significance

An ode in the *Shi Jing* reveals that the chief of Zhou Fang had long been obsessed with the ambition of conquering the Shang:

> A descendant of Hou Ji was King Tai
> Who lived on the southern slopes of Mount Qi;
> He began the clipping of Shang.
> When it came to (Kings) Wen and Wu
> They continued the work of King Tai;
> The end decreed by Heaven was effected
> On the battlefield of Mu.[72]

Here we are told that the great-grandfather of King Wu began the process of incursion against the great Shang state, and that four generations later King Wu achieved the final victory. Both the *Shu Jing* and the *Shi Ji* record the decisive battle of Muye waged by King Wu.[73] It is said that in this battle the Zhou king, leading his own small army plus troops and war chariots sent by other allied states, defeated the Shang king's army of 700,000 men.

The battle of Muye is also confirmed by the inscription on a bronze Ligui vessel discovered in 1975 at Lintong. The text shows us that before the battle in which King Wu vanquished the Shang on the day of *jiazi*, in the morning, a ceremony of *sui* was held and a divination was made. At dusk on the same day the Zhou triumphantly occupied Shang.[74] According to the ancient text *Yi zhou shu*, a series of consolidation operations were made by the Zhou forces almost immediately after the victory at Muye. The results of these campaigns were the 'destruction' of ninety-nine 'states', and the subjugation of 652 other 'states'. The date of this account in the *Yi Zhou Shu* has been a matter of some dispute, but most agree that the account dates back to Zhou times and is perhaps even contemporaneous with the event.[75]

Professor Hsu Cho-yun, in his recent book *Western Chou Civilization*, suggested that each of the so-called states overcome

by King Wu was probably no larger than a cluster of villages or settlements,[76] but it is more likely to have been the *zu-yi* entity described in the first part of this chapter.

The studies of the Western Zhou bronze inscriptions indicate that the people of Zhou continued to launch a series of military campaigns in the eastern, northern, and southern directions during the reigns of several early Zhou kings.[77] After these campaigns, the territory of Zhou must have expanded tens and even hundreds of times. The new Zhou territory consisted of the old Shang territory and large areas either formerly independent or only loosely dependent on Shang. Through their conquest, the Zhou also accumulated a heterogeneous population. The conquerors achieved unprecedented success and, at the same time, faced an unprecedented challenge—they had to find the appropriate political, philosophical, and social apparatus to bring the newly acquired territories under control and to manage this disparate population.

The problem of territorial control had not only military, but also geographical aspects. Whether forests and marshes constituted a problem is still a question to be debated,[78] but at least the mountains and rivers and the distances involved must have made it difficult to move armies rapidly and to maintain the communications necessary for administrative control. In regard to the population problem, there were difficulties both social and conceptual. The rulers of Zhou had to create a certain social-political system by dissolving the old *zuyi* entities and gradually assimilating the heterogeneous population. Feudalism (*fengjian*) was their solution.

Although there is no unanimously accepted definition for feudalism,[79] all writers on early China agree that Zhou society was based on feudalism. In his study *Feudalism in China*, D. Bodde presented a general picture of the Zhou system. The investment of fiefs and the contractual relationship between the lord and vassals were underlined as distinctively feudal characteristics.[80] However, Bodde's analysis ignored an important and unique feature of the Zhou feudal system, that is, that Zhou feudalism was inseparably integrated with the *zongfa* system which may be defined as an organization consisting of the agnatic (paternal) units of stratified kinship groups. The *zongfa*-feudal system of Zhou is very like a dual pyramid. The king was at the top, both as the paramount ruler of the country and as the supreme leader of the Ji clan, namely, the Zhou Zu. After he died, his eldest son would not only succeed him as the new king, but also as the new leader of the royal *zu*. He was called



the *dazong*, or major descendant. The other sons of the king would be invested with land and people, and made princes of the states (the *zhuhou*). They were known as the *xiaozong*, or minor descendants. Similarly, when the princes died, their eldest sons would become both the new princes and *zu* heads in their own states—the *dazong* in the states. The other sons of the princes would be by investiture made ministers or great officers, and be referred to as the *xiaozong*. The same principle of succession applied to the ministers and great officers, but their minor descendants would merely be given the title of *shi* or great officers and the *xiaozong* of *shi* would become commoners. Figure 1.1 is designed to show the broad outline of the *zongfa*-feudal system of the Zhou.

Feudalism was probably used by the early Zhou rulers as a pragmatic device in order to control newly acquired territories and population. But this practice caused the members of different *zu* to live together and the mixed residence of people coming from various *zu* led to significant changes in social structure and law. Under the *zongfa*-feudal system, hierarchical political power was reflected in ranks, and organically interweaved with stratified lineage organization. The lineages were segmented into branches, each of which was regarded as subordinate to the line from which it divided. Thus, apart from the lord–vassal relationship, there was also a superior-inferior consanguineous relationship between nobles in differing branches. This gave the political system of Zhou a dual stability. Although it is impossible to say exactly how many new states were established by the Zhou, it is known that according to some historical texts King Wu and the Duke of Zhou invested at least fifty sons and brothers, as well as other relatives of the king, as the princes of states.[81] Many were dispersed to strategically important states and border cities, so that they might act as defensive barriers for Zhou power. Some leaders of the allies who had helped the Zhou in its conquest were also made princes of states. But the Zhou's new territory was so large that many areas were apparently simply left in the continued possession of those indigenous *zu* leaders who had submitted to the new Zhou rulers.

After their brilliant military victory, the new rulers began to realize that to rule a larger heterogeneous population would be an even more difficult task. It is estimated that at the time of their conquest, the total population of Zhou was only 60,000–70,000.[82] The population living in the newly acquired territories must have been hundreds of times more than that of the Zhou. Furthermore, as

noted earlier, the elementary unit of Shang society was the *zu*, and the population was therefore far from being unified. The Zhou rulers had to pursue clever policies in order to gain, and to maintain, control over this population. The first strategy which the conqueror used was to move some prominent Shang *zu* to Shaanxi—the homeland of the Zhou. This action has been verified by evidence gained from excavations.

In 1976, 103 bronze vessels were discovered in a storage pit in Fufeng county, Shaanxi, seventy-four of them bearing inscriptions. The vessels were all cast during the Western Zhou period and belonged to a *zu* named Wei.[83] The most important inscription for us records a short history of the Wei Zu. Scholars generally agree on the main content of the inscription, but not on its details.[84] One part of the inscription reads as follows:

> 'Our ancestor resided in Wei, at the time when King Wu conquered the Shang. Our great-grandfather was the historian of the Wei state and came to the court of King Wu. King Wu ordered the Duke of Zhou to assign him a residence at Qizhou. Our great-grandfather served the king and enjoyed his confidence.[85]'

Here we are clearly told that the ancestors of the Wei Zu surrendered to King Wu at the time of the Zhou conquest and that one was the court historian in the Shang state of Wei. The *zu* was then moved to the west and assigned a piece of land at the old capital near Qishan. The storage pit where the bronzes were found was in that precise area.

Another significant example was the Zheng Zu of Shang. These were powerful groups in the Shang, and the name Zizheng often appeared in Shang oracle bone inscriptions. Ding Shan has identified Zizheng as a Shang crown prince.[86] After the conquest of Zhou, the Zheng were also moved to Shaanxi, where their name was often recorded and some bronze vessels of the Zheng Zu were found.[87] Over the years, archaeologists have discovered many Shang-style bronzes in Baoji, Fengxiang, and Meixian in Shaanxi. Some scholars have suggested that these bronze vessels were probably the belongings of Shang descendants who were forced by the conqueror to move to the region of the Zhou capital.[88] Thus, one may assume that the relocation of the Shang populations to Shaanxi was a large-scale movement and that the Wei and Zheng Zu were merely two of the more obvious examples among the many Shang




**Figure 1.1** An Outline of the *Zongfa*-Feudal System of the Zhou

*zu* who were moved to the west. By pursuing such a strategy, the Zhou placed some leaders of the Shang and their *zu* under immediate surveillance, but this only partially solved the problem of controlling the population.

The vast eastern areas were still a great potential danger for the Zhou. Although the Shang king was dead, the Shang people had not been crushed. At the beginning of the dynasty, a son of the Shang king named Lu Fu was enfiefed by the Zhou with a state which was located in the old Shang capital region so that he might continue to make the necessary sacrifices to the Shang ancestors. King Wu sent three of his brothers to oversee the Shang scion, and they were garrisoned in or near the newly established Shang state.[89] However, King Wu died not long after the conquest. His son succeeded as King Cheng, but real power was in the hands of the young king's regent, the Duke of Zhou. Two brothers, the Zhou garrison commanders, joined with the Shang scion and several groups of the Dongyi peoples or 'the eastern barbarians' in revolt against the new royal authority. The Duke of Zhou marched east with an army and fought for two years before successfully putting down the rebellion.[90] The Zhou leaders were now aware that they must find other ways to maintain firm control of the eastern areas and to accelerate the assimilation of the population.

One of the significant actions they took was to build a new capital at the centre of the eastern plain. Chengzhou, the new capital, was located at the junction of the Luo and Huang rivers, slightly west of the old Shang capital. This site could be used to control the strategically important east–west route along the Huang River and gave the Zhou a vantage point for supervision of the whole empire. When the construction of the city was completed, many members of the Shang élite were removed from their home territory and forced to live in the new capital. They were told that if they reverently obeyed the Zhou, they would still be allowed to own land and dwellings. However, if they did not obey, they would not only lose their land, but would also be further punished.[91] In addition to the Shang élite, people of other regions were settled in the new capital. The Duke of Zhou and his family, as well as many Zhou officials, remained in Chengzhou. The Duke was asked by King Cheng to encourage harmonious relations between the peoples living in the new capital.[92] In bronze inscriptions Chengzhou is frequently mentioned because the king visited Chengzhou quite often to conduct political and religious activities, which included investiture, royal audience with important persons, and various ceremonies.[93] The new capital indubitably became a pivot of the eastern areas.



Another important strategy which the Zhou conqueror adopted was to establish in the eastern areas a number of new states which were entrusted to brothers, sons, and other relatives of the royal house. Among these states, the most important were Wei, Lu, Jin, and Qi. After the great rebellion was suppressed, the new state of Wei was founded in the former Shang royal domain. This state was given to Kangshu, a younger brother of King Wu and the Duke of Zhou. To the east of Wei, in the region previously occupied by the Yan people, one of Zhou Gong's sons established the state of Lu. On the north bank of the Huang River, the state of Jin was set up in the southern part of what is now the province of Shanxi. Tangshu, another younger brother of King Wu, was enfiefed as the lord there. In the 'Great East' area, Duke Tai, the chief of the Jiang Zu and the closest ally of Zhou, founded the state of Qi. These states all occupied positions of strategic importance and served to surround and protect the new capital and the east–west route to Qishan. In the *Zuo Zhuan*, a historian narrated the enfeoffment of the states of Lu, Wei and Jin in the following terms:

> When King Wu had subdued Shang, King Cheng completed the establishment of the new dynasty, and chose and appointed (the princes of) intelligent virtue, to act as bulwarks and screens for the Zhou. . . . To the Duke of Lu there was given a grand chariot, a grand flag with dragon on it, the *huang*-stone of the sovereigns of Xia, and the [great bow], Fanruo of Fengfu. [The Heads of] Six clans of the people of Yin—the Tiao, the Xu, the Xiao, the Suo, the Changshao, and the Weishao—were ordered to lead the chiefs of their kindred, to collect their branches, the remoter as well as the near, to conduct the multitude of their connections, and to repair with them to Zhou, to receive the instructions and laws of the Duke of Zhou. They were then charged to perform duty in Lu, that the brilliant virtue of the Duke of Zhou might thus be made illustrious. Lands [also] were apportioned [to the Duke of Lu] on an enlarged scale, with priests, superintendents of the ancestral temple, diviners, historiographers, all the appendages of State, the tablets of historical records, the various great officers and the ordinary instruments of their offices. The people of Shang-yen were also attached; and a charge was given to Boqin [the Duke of Lu], and the old capital of Shaohao was assigned as the centre of his state.[94]

Following these comments we are told that Kangshu and Tangshu were also bestowed with land and precious items. In addition, Kangshu was given seven clans of the people of Yin, while Tangshu had nine clans of people with the surname Huai. The fact that the vassals were by investiture given land, people, and precious gifts is also confirmed by bronze inscriptions.[95] Thus, we may safely assume that the pattern of enfeoffment recorded in the *Zuo Zhuan* must have been applied to all the newly established states entrusted to relatives of the Zhou Zu. Of course, the smaller the state was, the smaller amount of land, precious items, and *zu* of Yin or other peoples, could be given to the vassal. So one can see that besides occupying strategically important points, the core of Zhou policy for consolidating its rule was to force the people of different *zu* to live together. In Zhouyuan, the Zhou homeland, and the state of Wei, the Zhou people lived with the people of various Shang *zu*; in Chengzhou, the new capital, the mixed residents consisted of the Shang élite, peoples removed from other regions, and Zhou officials and their families; while in the cases of Lu and Jin, the Zhou lords and their families, together with the Yin or Huai peoples, settled in their new states where they were surrounded by the native people.

The Zhou conqueror might originally have just adopted this policy as an expediency, as the best means at hand for dividing and gaining control over the heterogeneous population. However, as a result of the Zhou strategy, the people of different *zu* came to live together on a significant scale and the old social structure in which the *zu-yi* entity was an organic whole was dissolved. This brought about unforeseen consequences.

## Mixture of Various *Zu* and Conflict between Customary Laws

Before examining these consequences, we should first briefly discuss the manner in which the conquered were treated by the conqueror. Some Chinese Marxist historians either maintain that after the conquest of Zhou, all the people of Yin were reduced to slaves of the Zhou Zu,[96] or hold that the Shang nobles all became captives, and adherents of the former dynasty were severely oppressed by the conqueror.[97] This approach may well have been adopted in order to fit the case of early China to Marxist theory,



according to which the evolution of all human societies should, without exception, go through the successively historical stages of primitiveness, slavery, feudalism, capitalism, and communism. As a result, such writers have felt it necessary to label pre-Qin (or pre-Spring and Autumn period, as Guo Moruo suggested) history as a period of slavery, followed by a long period of feudalism. However, Fu Sinian, on the basis of his study on historical texts of pre-Han times and bronze inscriptions, has suggested that the new rulers were in fact rather tolerant toward the Yin people and pursued a policy of mollification.[98] Many scholars agree with Fu.[99]

New findings of bronze inscriptions are also strongly in favour of the latter version. Generally speaking, the conciliatory policies of Zhou are reflected in the following facts. First, if heads of Shang *zu* surrendered to the Zhou and obeyed the new rulers, they would be allowed to possess their own land and dwellings, though some might be forced to move to other areas.[100]

Second, the Shang officials were still able to occupy high-ranking and important positions in the Zhou government. The above-mentioned Wei Zu constitutes a good example. The inscriptions on bronze vessels which belonged to the Wei Zu indicate that the heads of this *zu* were appointed as high-ranking officials and were very active in the royal court of Zhou. For six to seven generations, the prominent position and power of this *zu* did not decline.[101] Another example was the Lutong Zu of Shang. After they made their submission to the Zhou, the heads of this *zu* were also given land and offices. The Lutong Zu flourished for nearly 100 years.[102] Moreover, bronze inscriptions show that certain troops stationed in Chengzhou were called the Yin Ba Shi or 'the eight divisions of Yin'.[103] Shiqi, the name of a high commanding great officers of these divisions, appears several times on bronze inscriptions. The associated emblem and the posthumous name of his father both indicate that he was a Shang descendant.[104] This proves that the Zhou House still used some troops which must have consisted of Shang soldiers led by great officers of the Shang scion.

Third, the people of Shang and the peoples of other *zu* were allowed to practise their own customs. In Song, the state enfiefed to a Shang prince, the people of Shang were allowed to continue to offer sacrifices to their ancestors according to their own customs. A certain Boshe (or Shrine of Bo) was allowed to remain in the state of Lu until the Spring and Autumn period, and the Shang people were permitted to practise their own religious activities

there.[105] According to the records of *Shi Ji*, the first Duke of Qi allowed the local people to preserve their own customs. He even simplified the Zhou rites in order to accommodate the local population.[106]

Archaeological evidence also supports this theory. In 1952, some twenty Shang burials were discovered at the Zhou sites at Luoyang, the latter-day name for Chengzhou. The style of tomb construction, the accompanying objects, and types of sacrifices all indicate that the nobles still practised their own distinctively Shang burial customs.[107]

One of the immediate results of the *fengjian* strategy was the conflicts which could arise between different customary laws. In Shang times, the various *zu* lived in their own walled towns. Many *zu* developed their own customary laws, such laws applying only to their own members. Now that different *zu* lived together in a single place, the members of these *zu* must have perceived the existence of different customs and customary laws between them. If the conquered peoples of Shang and other *fang* had all been reduced to slaves, as some scholars have suggested, the conflict between different customary laws would be totally out of the question. But, as noted above, the reverse seems to be true. Those peoples of Shang and other *fang* who had surrendered themselves to the Zhou were not only allowed to retain high status in the Zhou government and armies, but also to follow their own customs in various activities. In contrast, slaves could only dream of being treated like this.

Of course, it might be argued that if the conquered had not been reduced to slaves, and the ruler of Zhou had simply forced all the conquered people to abandon their own customary laws and to employ the customary law of Zhou, then there would not have been the question of conflict between different customary laws. However, as noted earlier, before conquering the Shang, Zhou was a small *fang* and had only a small population. The rulers of Zhou were clearly aware that only by means of clever strategy could they rule the heterogeneous population living in a vast area which was hundreds of times larger than their old homeland. Whether or not to allow the conquered to use their own customs and customary law was undoubtedly one of the most sensitive issues they faced. But customs and customary laws were the concentrated expression and accretion of the social, political, and cultural system of a particular people. It would not have been possible for them to have



been changed within a short time, nor can one imagine that the conquered would abandon their own customs and customary laws and adopt those of the conqueror immediately after the subjugation.

The Zhou conquerors knew that if they simply ruled by force and compelled the Shang and other peoples to accept the customs and customary law of Zhou, this might give rise to large-scale resistance, thus endangering their rule. Therefore, when the states of Lu and Wei were established, the princes of these two states were instructed 'to commence governance according to the principles of Shang, but (to remember) that their boundaries were defined according to the rules of Zhou (*jie qi yi Shang zheng, jiang yi Zhou suo*).' The prince of the vassal state of Jin was instructed to commence his governance according to the principles of Xia, but his boundaries were defined by the rules of Rong.[108] Scholars generally accept that the meaning of *qi yi Shang zheng* and *Xia zheng* (to commence governance according to the principles of Shang and Xia) was that the princes should allow the non-Zhou peoples to use their own customs and customary laws continuously so far as such a continuation did not pose a threat to the rule of the Zhou House.[109]

In the chapters 'Kang Gao' and 'Jiu Gao' of the *Shu Jing*—which many scholars believe to be true records of the early Zhou[110]—we find clear evidence which indicates that the ruler of Zhou allowed the Shang people to use their own customary laws and that there were conflicts between Shang and Zhou customary laws. These two *gao* or 'announcements' were royal instructions given to Kangshu, whose newly established state was seated in the old capital of Shang, where the majority of the population must have been Shang people. In 'Kang Gao' ('the Announcement to Kang'), Kangshu was urged by the Duke of Zhou to investigate diligently the traces of the former wise kings of Yin (Shang) and learn from them what he might use in protecting and regulating their people. In regard to hearing the cases of Shang people, he was instructed to adopt the laws of Yin. The punishments, as well as the death penalty which he used, should also be determined by the regular laws of Yin and correctly implemented.[111]

The conflict between Shang and Zhou customary laws is reflected in the records of Jin Gao' ('The Announcement Concerning Liquor'). According to the customary law of Zhou, the Zhou people were not allowed to become intoxicated; Shang customary law, however, did not prohibit the Shang people from

drinking. Kangshu was instructed that if he was informed that there were Zhou people drinking together, he (Kangshu) should not fail to apprehend them all and send them to the capital of Zhou where they would be punished. However, if the Shang people were found even to have become addicted to drink, they would be reeducated for a time—but they would not be punished.[112] Because many customary laws were unwritten and could not be preserved, there were very few records in ancient texts. We shall have to wait for archaeological discoveries to learn the details of the customary laws of these *zu*, and to what extent they were different, as well as the scale of conflict between different customary laws.

Living among the Shang and other non-Zhou peoples, the rulers of Zhou must have been strongly conscious of the danger of losing their identity if there were not certain institutions to distinguish them from other peoples. Therefore, a series of *yi* (rites) was designed and gradually developed in order to maintain the unity of the members of the Zhou Zu, to differentiate them from other peoples. These *yi* also served to regulate relationships between the nobles and to strengthen the feudal system. The origin and evolution of *yi* will be examined in some detail in the next chapter.

In contrast to the territorial expansion of the early days of the dynasty, the last kings of the Western Zhou experienced frequent invasions by the Rong nomads from the north and north-west. In the end, according to the traditional account, King Ping had to abandon the capital in the west and re-establish his court at Chengzhou, the eastern capital, in 770 BC, following the death of his father King You at the hands of the Rong. This action was an open acknowledgment of the weakness of the sovereign power. The Spring and Autumn period which followed was a history of disorder during which the vassal states fought each other frequently. The feudal lords of some of the stronger states endeavoured to arrogate to themselves various royal functions and assume the leadership of all the others. The new title of these lords was Ba or 'Lord Protector'. However, the disorder continued and the consequence of the prolonged disorder was the disintegration of the whole feudal system from the middle of the Spring and Autumn period onward. A new phenomenon seen in this period was that assemblies of the leading nobles of the states were convoked from time to time by the Ba. *Meng* or covenants were often made by the nobles at these meetings, pledging themselves to maintain the



peace, to do good for other states, and to assist the royal house (of Zhou). The covenant served as a transitional mechanism for mitigating the conflicts between different states. It was also widely used within the states to ease the frictions between members of different *zu*. It will be referred to again in Chapter 5.

The dissolution of the feudal order was hastened by widespread changes which occurred in the latter centuries of the Zhou. Significant technological, social, institutional, and ideological changes gave rise to far-reaching consequences. A detailed discussion is provided in the next section.

The chronic disorder and struggles for power between the vassal states ended in 221 BC, when the lord of the state of Qin eliminated his last rival state and established a unified empire in China. The empire was divided into about forty *jun* or commanderies.[113] Each commandery was subdivided into an indeterminate number of *xian* or counties. All such *jun* and *xian* were governed by officials appointed by the central government. But the Qin empire lasted for only twelve years. It was replaced by the Han dynasty and the first emperor of the Han dynasty revived a certain type of *fengjian* system in 202 BC. He divided almost two-thirds of his new empire into 'kingdoms' and 'marquisates' and bestowed these on his brothers, sons, and meritorious assistants. This 'revived' feudal system was, in turn, shortlived, for the Han regime also continued with and gradually extended the *jun-xian* system. By the end of the first century BC, there were eighty-three *jun* and 1,314 *xian*, with administrative power located in the hands of the centrally controlled bureaucracy. According to historical records, there were 130,285 officials under Emperor Ai (6–1 BC).[114] This official-gentry formed a new ruling class which replaced the old nobles. The emergence of this group marked a new era in Chinese history.

## The Dynamics of Early Chinese Society

Since the evolution of customary law into written codes in China occurred over the course of the historical development we have described, we should explore the forces that shaped early Chinese society and explore the possibility of certain factors exerting a decisive influence on the evolution of society and law. Certainly, given the present state of our knowledge, no answers can be really conclusive. But the exercise is still worth attempting. Among

the various explanations which have been made, the theories of Owen Lattimore and Wolfram Eberhard deserve serious consideration because of the care and detail with which they have been worked out.

In *Inner Asian Frontiers of China*,[115] Lattimore advanced his theory by combining K. A. Wittfogel's concept of 'oriental society' with his own concept of the nature of nomadic society. He suggested that the major theme of Chinese society was the interplay of forces between the agrarian society of China proper and the nomadic society of the steppes, mountains, and deserts fronting China's northern periphery. According to this thesis, Chinese civilization evolved in North China out of a neolithic culture, based on a mixed economy of hunting, fishing, and food-gathering, to which were later added the domestication of the dog and pig, and primitive agriculture. Gradually, agriculture developed first in certain valleys in the loess highlands and then spread to the lower reaches of the Huang River, and finally moved down to the Yangtze valley. Because agriculture could not progress further under the conditions of comparative sparseness and seasonal irregularity of rainfall in North China, irrigation became a crucial factor. When irrigation developed to a certain scale and informal organization was insufficient for maintaining order, a government emerged and took over the duty of regulating and initiating irrigation works. Under conditions of irrigated agriculture some nuclear areas formed. The Shang and Zhou states were two of these nuclei. There were also many small principalities centred on walled cities (where precious grain could be stored). In these areas, population inevitably increased and wealth accumulated. The denser population and greater concentration of wealth together brought about social changes which eventually established a differentiation between 'Chinese' and 'barbarians'.[116] Lattimore proposed that the valleys of loess highlands were areas admirably suited to a feudal society. When irrigation projects developed to such a large scale in the plain of the lower Huang River that no one feudal lord could manage it alone, the feudal nobles acted together, politically forming new and larger combinations which took the form of united states.

Finally, the amalgamation of these states formed a new kind of bureaucratic empire. Because of irrigation agriculture, in China, there were clerical functionaries even under feudal conditions. Clerical workers were employed to organize the labour of the whole community in order to maintain the public waterworks, to allocate water rights, and to store and issue grain for the labour gangs. These 'clerks' and the ruling feudal nobles later successfully transformed themselves into the ruling scholar-gentry.



The other side of Lattimore's theory concerned the nomadic steppe peoples of China's northern frontiers. In his view, these people initially belonged to the same general neolithic North China culture, but they lived in less favourable intervening terrain and retained their earlier mixed economy, thus becoming the 'barbarians'. When the tide of Chinese agricultural economy spread northward and northwestward, there were conflicts between the 'Chinese' and the 'barbarians'. Some 'barbarians' accepted the agrarian way of life and thereby themselves became 'Chinese'. Others resisted, however, and were driven progressively farther into the mountains and eventually even out into the inhospitable steppe where the environment was neither favourable for the old mixed economy nor for agriculture, and they were forced to develop a nomadic way of life.

Between the full steppe, in which Chinese agriculture could not prevail, and the well-watered landscape of China, in which pastoral nomadism was obviously inferior to agriculture, there lay a belt of marginal lands on which a mixed agricultural–pastoral society developed. Politically, its members enjoyed a peculiarly strategic position, because they could influence the trend of history by joining either side in its struggles against the other.

From the Han dynasty onwards, this intermediate area has often been the focus of struggles between the Chinese and nomads. Both sides have wanted to control this zone and then go on to establish domination over the homeland of the other. But whenever either side succeeded temporarily in these struggles, it painfully found that in order to rule the other, it had to accept the other's psychology and way of life, thereby losing its own cultural and political identity. Thus, permanent success has always remained elusive.

Eberhard profoundly disagreed with the theory of irrigation-determinism. In *Conquerors and Rulers: Social Forces in Medieval China*,[117] he adduced historical evidence for the following case. First, irrigation was not vital to the wheat and millet culture of North China—where Chinese civilization began—and assumed real importance only in connection with the later-developing rice culture of the south. Second, there is no sure evidence that the construction of large-scale waterworks can be traced far back into the

feudal period. Only in the imperial epoch was the central government interested in such works, and the water projects were ordinarily canals designed to secure transportation routes. Irrigation of fields adjoining the canals was only a valuable by-product. Thirdly, the impulse towards building real irrigation works usually came from the local populace and not the central government. Irrigation as a large-scale project, therefore, did not produce a special type of social order.

Eberhard attempted to explain the evolution of Zhou feudalism into what he calls Chinese 'gentry' society by applying A. Rustow's theory of 'superstratification',[118] that is, the theory advocating that feudalism results from the stratification produced when there is the conquest of one group by another that is ethnically and culturally different. Having severely attacked Wittfogel's and Lattimore's approach with regard to feudalism as mainly the product of economic conditions, he emphasized that feudal conditions were the consequence of superstratification of a basically agrarian group by an essentially—or at least originally—pastoral group. In other words, feudalism was the result of certain social changes, and power played a far greater role in shaping society than did the economy. In the Chinese case, Eberhard wrote,

> Zhou society is the result of an ethnic superstratification. The Zhou rulers came from Western China accompanied by a group of militarily organized tribes of non-Chinese affiliation, at least partly of Tibetan stock. They conquered and occupied East China and started an expansionist, colonial activity.[119]

An inevitable result of the conquest was, in Eberhard's opinion, a deep dualism between the rulers and the subject population. This dualism can be seen in the spheres of religion, literature, and law. The most important in this connection was the dualism in property relations, which should be regarded as a decisive point in the question of the origin of gentry society. When the western conquerors were enfiefed with land in central and eastern China, they arrived there with their families, servants, and bondsmen. Since they were foreigners in the new territory, they built city fortresses which stood like islands in the sea of natives. Being unable to rely wholly on the natives for their food supply, the new rulers had to develop alternative sources of food of their own. Thus, the Zhou tribesmen were organized in semi-military cadres of eight families each. 'These groups left the fortress in early spring, cleared a piece of land and



cultivated it for one or more seasons until the soil was exhausted, after which a new clearing was made.'[120] Such clearings were described by Mencius and other later Zhou writers as the *jingtian* or 'well-field' system. These eight-family groups probably worked together collectively and paid a certain 'tithe' to the feudal lords.

By contrast, the natives did not have such rigid organizations. They lived in their own villages more or less independently from the conquest group, to which they had only to pay a small amount of 'tribute'. Soon the cities of the lords became industrial and commercial centres and were attractive to the natives who came into the centres in order to acquire the goods produced by the city artisans. This led to the formation of a group of merchants and the rise of a money economy. By means of purchases and other methods, the city-dwelling nobles and their bondsmen probably gained much of the land originally possessed by the natives, and in this way a new landlord–tenant relationship was created. After these developments, the difference between the 'tithe' of the bondsmen working on the *jingtian* and the tribute of the natives was obliterated, and they gradually merged to become a fixed tax. Commissioners were sent by the lords to travel through the countryside and collect the new taxes. The merchants proved to be ideal tax collectors and were employed by the nobles as their 'officials'. In the course of time, a new class of 'gentry' was created and feudalism evolved into a new 'gentry' society.

The approach of Wittfogel and Lattimore is predominantly geographic–economic, whereas Eberhard's is primarily socio-political. The former emphasizes the influence of environmental, natural–geographical, and economic factors upon social development, whereas the latter stresses the importance of human relations, including the power structure. However, neither the economic nor the socio-political approach provides a fully satisfactory explanation for the evolution of Chinese society from the feudal and pre-feudal stages to its later form. Eberhard's general arguments indicate that Wittfogel and Lattimore have probably significantly overestimated the all-embracing role of irrigation in China, at least as far as the north is concerned. But Eberhard's own theory of 'ethnic superstratification' is also too one-sided. Archaeological evidence and historical texts are strongly opposed to Eberhard's supposition that the Zhou were 'originally of Turkish stock',[121] and hence ethnically distinct from the peoples they conquered. On the contrary, they indicate that both the Zhou and the

Shang originated from an essentially uniform stock common to North China in neolithic times, and that the cultures of the two groups were in good part derived from common antecedents. More importantly, a common defect of both theories is that they fail to recognize that it was the change of the basic unit of society that exerted the most significant influence on the evolution of Chinese society and consequently upon the development of law in China.

## Disintegration of the *Zu* and the Evolution of Law

It has been noted that in Shang times the basic unit of society was the *zu*. After the Zhou had subdued Shang, the conqueror pursued the political strategy of *fengjian*. As a result, different *zu* were forced to live together in particular places. From the late Western Zhou onwards, there had been a crucial change of social structure, namely, individual families began to emerge as the basic unit of society. Such families were much smaller in size than the *zu*, consisting normally of the parents and their children, but sometimes also with grandparents and grandchildren. In the Spring and Autumn period, the old *zu* and individual families were both basic units of society. As the bronze inscriptions and ancient texts show, large and strong *zu* still existed in almost all the feudal states. They had their own walled towns, armed forces, and large amounts of grain. Relying on their strength, they even dared to challenge their lords. For example, in the state of Lu, each of the three Huan Zu had a principal city as the main fief. Each of the cities was fortified in the strongest manner, and could defy any attempts against it. In the eleventh year of the reign of Duke Xiang (561 BC), Lu formed three armies, with each of the heads of the three Huan Zu claiming one of the armies as his own. Afterwards, Duke Zhao tried to seize back his power and attacked the Ji Zu, but was defeated and fled abroad.[122] In Qi, the strong Chen Zu stored a great quantity of grain. The *zu* heads lent grain to the people on generous terms in order to buy popular support. In the end, the Chen Zu became so powerful that its head, Chen Chengzi, controlled the government of Qi.[123]

However, the general trend was towards the disintegration of the *zu*. This was probably due to the following factors. First, in many areas, especially the river valleys and plains, the land had been well cultivated. Equipped with metallic tools (such as bronze tips and iron ploughs) and benefitting from improved agricultural techniques (draught animals, better ploughs and fertilizers), an individual family could act as an independently productive unit and carry out the whole process of agricultural production. The family was also able to reclaim new farmland. The ancient text, the *Zuo Zhuan*, narrates the story of a farmer named Ji Que whose wife brought his food to him as he worked alone in his field. Ji Que accorded her full respect, and behaved to her as he would have done to a guest. Although this was recorded to praise Ji Que's virtue—for which he was recommended to Duke Wen of Jin, who appointed him as a great officer—the text also indicates that at that time agricultural production had already become the work of individual families.[124] In 594 BC, according to historical records, the state of Lu began to levy a kind of land tax (*chu shui mu*).[125] Scholars generally agree that this was because the improvement of farm tools enabled individual families to open up new farmland. As a result, there was an increasing number of *sitian* or 'private fields' as opposed to the *jingtian* or 'well-field'. Eventually, the nobles had to accept these *sitian* as a *fait accompli* and to levy taxes upon families according to the amount of land they held.[126]



Second, in Shang times, different *zu* did not live together. Each *zu* lived in its own walled town. The members of different *zu* were strangers, even enemies. There were frequent conflicts and wars between the *zu*. In those days, only if a *zu* lived together in its own walled town could the families of the *zu* protect themselves. From the early Western Zhou period onwards, different *zu* began to live together in single locations and the towns became the assemblage of families that were originally of different *zu*. The frequent contact between their members promoted mutual understanding among different *zu*, and the sense that the *zu* was a self-defence unit was gradually blunted.

Third, having lived together for several centuries, the peoples who inhabited towns located in river valleys and plains, and specialized in agriculture and handicrafts came to acknowledge each other. They realized that although there were certain differences between them, they also had many things in common: they all lived an agrarian way of life; they practised similar religious activities, of which many were marked with the characteristics of agrarian society; they had similar psychologies; and they possessed similar systems of values. Thus in the course of time, the concept of *huaxia* or the 'Chinese' emerged, denoting all the peoples of agrarian

communities. This category stood in contrast to that of the *rongdi* or 'barbarian', a concept referring to those people who still practised a mixed economy or who lived a pastoral way of life in the mountains, steppes, and deserts. It seems that the *huaxia* peoples now recognized each other mainly according to the criterion of whether or not they lived the agrarian way of life, not from what *zu* they had originated. This change in perception helped pave the way for the establishment of a centralized state structure and for the development of laws that could be applied universally.

As the basic unit of society began to transform from *zu* into individual families, the forms of power structure and law changed. In Shang times, state organization was loosely knit, as the heads of the *zu* enjoyed absolute authority to handle the internal affairs of their *zu* according to their own customary norms. In the Western Zhou period, however, with its rigidly stratified feudal structure, the nobles at different levels were at the same time the heads of their *zu*. The lord of the state had dealings only with these noble *zu* heads. He maintained a small government since he only needed a few liaison great officers to maintain or make contact with these nobles. Most of his court officials were historiographers, diviners, and priests. In Zhou times, a series of rites were formulated to regulate the behaviour of the nobles, but these rites did not apply to commoners. In addition, the heads of *zu* could still dispose the affairs of their *zu* according to their own customary laws. During the Spring and Autumn period, both the *zu* and individual families existed as important social units. When the lords of states wanted to build large-scale waterworks, to construct new walled cities, to raise armies by conscription, and to levy taxes, they needed a new administrative system to organize these individual families. A bureaucratic system filled with officials was certainly the ideal. It was necessary to create an institution of law codes corresponding to such an administrative system—codes which were written, publicly enacted, and equally applicable to all men, in place of the personalized noble rites and various customary laws of the *zu*. But the *Zuo Zhuan* shows that the innovative attempts of the lords in some states to establish a quasi-bureaucratic system encountered severe resistance from the heads of a number of strong *zu*.[127] When the first two written law codes were enacted in the states of Zheng (536 BC) and Jin (511 BC), some conservative-minded scholar-officials sternly denounced such innovations.[128]



Nevertheless, the changes continued in the Warring States period (475–221 BC), typically manifested in the state of Qin. When Duke Xiao of Qin ascended to the dukeship, he gave orders seeking able and virtuous men to serve as his assistants, so Shang Yang went to Qin. Having enjoyed the confidence of Duke Xiao, Shang Yang was entrusted to take charge of reforms in Qin. Because traditionally there were only a few large and strong *zu* in Qin, Shang Yang's reforms met with less resistance than in other states. First, he promulgated the *Qin Lü* or the *Code of Qin*, which was publicly enacted and applicable to all people. The second important reform was to abolish the old system of land tenure, encourage individual families to reclaim new farmland, and give to the peasants the right to sell and buy land. Families working on such land would pay taxes directly to the state and not—as they formerly did—to their immediate overlords. Shang Yang issued a decree in which a provision explicitly stipulated that if there were more than two adult men in a household and they did not live separately, such a household would be liable to payment of double taxes.[129] A common view is that such a policy was pursued to encourage the peasants to produce more grain. One should add that it also played an important role in checking the development of large *zu*.

Third, the various small towns and villages were organized under the *xian* system. The *xiangling*, or county magistrates and their deputies, were appointed by the lord of the state. The towns and villages all had their heads who were accountable to the county magistrates. The *shiwu* system was created to organize families at the grass-roots level. Under this system, each *wu* was made up of five families, and each *shi* of ten families. Every family was equally responsible for the wrongdoing of every other family, and equally subject to punishment if one failed to inform the authorities of such wrongdoing.[130] After these reforms, the lord of Qin could control the basic units of society, the individual families, through his officials (who were organized under a bureaucratic system), and could rule the people according to the written codes. He could also easily recruit an army on the *shiwu* system and support this army in constant wars because he could directly levy taxes upon individual families through his administrative system. Therefore, after a few generations, Qin became richer and its armies stronger so that Ying Zheng, the Lord of Qin, and later the First Emperor of Qin, defeated all his rival states and finally established a unified empire in 221 BC.

One may conclude that Chinese law originated from the usages and customary laws practised by different *zu*. The early development of law in China was closely related to the changes in the social structure, most importantly, the change in the basic unit of society, that is, from the *zu* to the individual family. We will see in the next chapter that it was these social changes which resulted in the transformation of *li*.



## Notes

1. Henry Maine, *Ancient Law*, London: Oxford University Press, 1930 edn., p. 136.
2. W. Robson, 'Sir Henry Maine Today', in W. I. Jennings (ed.), *Modern Theories of Law*, London: Oxford University Press, 1933, p. 178.
3. Frederick Pollock, 'Introduction' to *Ancient Law*, op. cit., p. xvi.
4. Maine, *Ancient Law*, p. 13.
5. Joseph Needham, *Science and Civilization in China*, Vol. 5, *Chemistry and Chemical Technology, Part I: Paper and Printing*, written by T. H. Tsien, Cambridge: Cambridge University Press, 1985, pp. 24–5.
6. Zhouyuan Kaogudui, '*Shaanxi Qishan Fengchucun faxian Zhouchu jiaguwen*' (Oracle Inscriptions of Early Zhou Discovered at Fengchu Village of Qishan County, Shaanxi Province), W. W., 10 (1979), pp. 38–43 (hereinafter cited as '*Zhouchu jiaguwen*').
7. '*Xingfa zhi*' in *Jin Shu* (Treatise of Criminal Law in the History of Jin) (reprint), Bejing: Zhonghua shuju, 1974, p. 922; Zhang Jinfan, Zhang Xipo, and Zeng Xianyi, *Zhongguo fazhi shi* (A History of Chinese Legal System), Beijing: People's University Press, 1981, p. 96. However, a few scholars have thrown doubt upon the authenticity of the *Fajing*. For a detailed discussion, see Timoteus Pokora, 'The Canon of Laws by Li K'uei—a Double Falsification?' *Archive Oriental* 27 (1959), pp. 96–121.
8. *Zuo Zhuan*, Zhao 6; James Legge (trans.), *The Chinese Classics*, (5 vols.) (reprint), Hong Kong: Hong Kong University Press, 1960, Vol. 5, p. 609.
9. Shuihudi Qimu zhujian zhengli xiaozu, *Shuihudi Qimu zhujian* (The Bamboo Strips from the Qin Tomb of Shuihudi), Beijing: Wenwu Press, 1978.
10. There is some evidence indicating that the *zu* did have their own customary laws. cf. Chapters 4 and 7 of this book. However, we may regard the idea of 'customary laws' in the Shang and Zhou times in this chapter as an assumption.
11. Shima Kunio, *Inkyo bokuji kenkyū* (Research on Oracle Inscriptions from the Yin Ruins), Tokyo: Kyuko shoin, 1958, pp. 384–5; Chen Mengjia, *Yinxu buci zongshu* (A Comprehensive Exposition of Oracle Inscriptions from the Yin Ruins), Beijing: Science Press, 1956, pp. 267–312. Because most of the oracle bone inscriptions cannot be placed with exactitude on a calendar of years, scholars have proposed broader schemes of periodization which attempt to date the inscriptions by the reigns of individual kings or groups of kings. Dong Zuobin has divided the inscriptions from King Pan Geng to King Di Xin into five periods, that is, Period I, c. 1240–1181; II, 1180–51; III, 1150–21; IV, 112–1101; and V, 1100–1041. Dong's theory of five periods has been followed by most scholars. For a detailed discussion of this theory, see David N. Keightley, *Sources of Shang History: The Oracle-bone Inscriptions of Bronze Age China*, Berkeley: University of California Press, 1978, pp. 92–3 and Table 14 at p. 203.
12. '*Beishan*' in *Shi Jing*; see Kwang-chih Chang, *Shang Civilization*, New Haven: Yale University Press, 1980, p. 158.
13. Li Xueqin, *Yindai dili jianlun* (A Brief Exposition of the Geography during the Yin Dynasty), Beijing: Science Press, 1959, pp. 37–60; Chang, *Shang Civilization*, p. 252.
14. Li Xueqin, *Yindai dili*, pp. 95–8.

15. Cho-yun Hsu, *Western Chou Civilization*, New Haven: Yale University Press, 1988, pp. 123–7.
16. Qian Mu, '*Zhouchu dili kao*' (On the Geography of the Early Zhou), YJXB, 10 (1931), pp. 1955–2008; Ding Shan, '*You Sandai duyi lun qi minzu wenhua*' (From the Capital Cities of the Three Dynasties On their National Culture), ZYLYSJK, 5 (1935), pp. 89–129; Qi Sihe, 'Xi Zhou dili kao' (On the Geography of Western Zhou), YJXB, 30 (1946), pp. 63–106.
17. Zhouyuan kaogudui, '*Shaanxi Qishan Fengchucun Xi Zhou jianzhu fajue jianbao*' (A Brief Report on the Excavation of Western Zhou Structures at Fengchu Village of Qishan County, Shaanxi Province), W. W., 10 (1979): 27–34. See Chen Mengjia, *Xi Zhou niandai kao* (On the Chronology of Western zhou) (reprint), Shanghai: Shangwu yinshuguan, 1955, esp. Table 4 at p. 50.
18. Xu Xitai, '*Zhouyuan chutu de jiaguwen suojian renming, guanming, fangguo, diming qianshi*' (A Preliminary Interpretation of the Personal Names, Official Titles, States and Place Names Found in the Oracle Inscriptions Excavated from the Zhou Plain), *Guwenzi yanjiu*, 1 (1979), pp. 185–6.
19. '*Duoshi*' in *Shu Jing*, James Legge (trans.), *The Chinese Classics*, Vol. 3, p. 454.
20. '*Gongsunchou*' in *Mencius*.
21. Shirakawa Shizuka, '*Kyōzoku kō*' (A Study of the Qiang Nationality), Kyoto: *Kōkotsu kinbungaku Ronsō*, 9 (1958), p. 61.
22. Chen Mengjia, *Yinxu buci*, p. 282.
23. Shima Kunio, *Inkyo bokuji*, pp. 404–05.
24. Dong Zuobin, '*Wuding ripu*', in *Yin lipu* ('A Calendar Chronicle of Wuding' in the Yin Chronology), Lizhuang: Institute of History and Philology, Academia Sinica, 1945, p. 38.
25. Ding Shan, *Jiaguwen suo jian shizu jiqi zhidu* (The Clans and Their Institutions Found in Oracle Inscriptions), Beijing: Science Press, 1956, p. 33.
26. Li Xiaoding, *Jiagu wenzi jishi* (A Variorum of the Pictographs Inscribed on Oracle Bones), Taipei: Academia Sinica, 1965, pp. 2231–3.
27. Hayashi Minao, '*In Shū jidai no zushō kigō*' (The Emblems and Signs of the Yin and Zhou Times), Kyoto: *Tōhōgakuhō*, 39 (1968), pp. 1–117; Kwang-chih Chang, '*Shang–Zhou qingtongqi qixing zhuangshi huawen yu mingwen zonghe yanjiu chubu baogao*' (A Preliminary Report of a Comprehensive Study on the Shapes, Ornamental Figures and Inscriptions of Shang–Zhou Bronzes), *Zhongyang yanjiuyuan minzuxue yanjiusuo jikan*, 30 (1970), pp. 239–315.
28. Li Zongtong, *Zhongguo gudai shehuishi* (A History of Ancient Chinese Society), Taipei: Publishing Committee of Chinese Culture, 1954, pp. 5–8.
29. Ding Shan, *Jiaguwen suojian*, pp. 3 and 35. The word 'totem' used in this study refers to peoples or tribes which were divided into groups or *zu* named after animals, plants, and so on, and such animals were spoken of or inscribed as their totems.
30. Chen Mengjia, *Yinxu buci*, p. 496; Chang, *Shang Civilization*, pp. 161–3.
31. Shirakawa Shizuka, '*In no kiso shakai*' (The Foundational Society of the Yin), In *Ritsumeikan sōritsu gojyū shūnen kinen ronbun shū bunggaku hen* (The Literature Volume of Collected Essays in Commemoration of the Establishment of Ritsumeikan for 50 Years), Kyoto: Ritsumeikan, 1951, pp. 260–96; Shirakawa, '*In no ōzuku to seiji no keitai*' (The Pattern of the Royal Lineage and Politics of the Yin), *Kodaigaku*, 3 (1954), pp. 19–44; and Shirakawa, '*Indai yūzoku kō, sono ni, Jaku*' (On the Powerful Clans during the Yin: Part 2, The Sparrow), *Kōkotsu Kinbungaku Ronsō*, 6 (1957), pp. 1–62.



32. Shima Kunio, in *Inkyo bokuji sōrui* (A Comprehensive Classification of Oracle Inscriptions from the Yin Ruins), 2nd edn., Tokyo: Kyuko shoin, 1971, p. 43, lists forty-four recorded items on town buildings.
33. Li Xiaoding, *Jiagu wenzi*, p. 2165.
34. Chen Mengjia, *Yinxu buci*, p. 321.
35. Zhang Bingquan, '*Jiaguwen zhong suojian ren di tongming kao*' (On the Names Referred both to Persons and Places Found in Oracle Inscriptions), in *Qingzhu Li Ji xiansheng qishisui lun wen ji* (Collected Essays in Commemoration of the 70th Birthday of Li Ji), Taipei: Qinghua Xuebaoshe, 1967, pp. 687–776 (hereafter cited as '*rendi tongming kao*').
36. Zhang Zhenglang, 'Buci potian jiqi xiangguan zhu wenti' (Reclamation of Farmland and the Relevant Issues in Oracle Inscriptions), KGXB, 1 (1973), pp. 109.
37. Maine, *Ancient Law*, pp. 142–5.
38. Maine, *Dissertations on Early Law and Customs*, Oxford: Oxford University Press, 1883, p. 198; and Maine, *Ancient Law*, p. 140.
39. Chang, *Shang Civilization*, pp. 158–65.
40. Hsu, *Western Chou Civilization*, p. 148.
41. Chen Mengjia, *Yinxu buci*, p. 497.
42. Zhang Zhenglang, '*Buci potian*', p. 110.
43. Chang, *Shang Civilization*, pp. 193 and 210–20.
44. Hu Houxuan, '*Yindai fengjian zhidu kao*' (A Study of the Fedual Institutions in the Yin Dynasty), in *Jiaguxue Shangshi luncong chuji* (Collected Essays on the History of Shang Based on Oracle Studies), Chengdu: Qilu University, 1944, pp. 13–17; Ding Shan, *Jiaguwen suojian*, pp. 123–5; Shirakawa Shizuka, 'Indai yūzoku kō'.
45. Guo Moruo, *Liang Zhou jinwenci daxi* (An Outline of Bronze Inscriptions of the Two Zhou), Tokyo: Bunkyudo shoten, 1931; Hsu, *Western Chou Civilization*, p. 114.
46. Zhang Bingquan, '*Rendi tongming kao*', pp. 689 and 703–04.
47. Zhang Zhenglang, '*Buci potian*', p. 110.
48. Chen Mengjia, *Yinxu buci*, p. 497.
49. Zhang Zhenglang, '*Buci potian*', p. 110.
50. 'Gong Liu' in *Shi Jing*.
51. 'Mian' in *Shi Jing*.
52. Maine, *Ancient Law*, p. 140.
53. Hu, '*Yindai fengjian*', pp. 13–17.
54. Herrlee G. Creel, *Birth of China: A Study of the Formative Period of Chinese Civilization*, New York: Reynal and Hitchcock, 1937, pp. 135–6.
55. Derk Bodde, 'Feudalism in China', in Rushton Coulborn (ed.), *Feudalism in History*, Princeton: Princeton University Press, 1956, p. 51.
56. Zhang Bingquan, '*Rendi tongming kao*', pp. 689–90; David Keightley, 'The Late Shang State: When, Where, and What?', in D. Keightley (ed.), *The Origins of Chinese Civilization*, Berkeley: University of California Press, 1983, p. 549.
57. Hu, '*Yindai fengjian*', p. 4.
58. Kaizuka Shigeki, *Chūgoku kodai shigaku no hakken* (The Development of Historiography in Ancient China), Tokyo: Kobundo, 1946, pp. 291–2.
59. Keightley, '*The Late Shang State*', pp. 528–39 and 548.
60. Chen Mengjia, *Yinxu buci*, pp. 202, 365, and 580–1; Hsu, *Western Chou Civilization*, pp. 26–7.
61. Paul Wheatley, *The Pivot of the Four Quarters: A Preliminary Enquiry into the Origins and Characters of the Ancient Chinese City*, Chicago: Aldine Publishing Company, 1971, p. 52.

62. Zhang Zhenglang, '*Buci potian*', p. 107.
63. Zhang Bingquan, *Yinxu wenzi bing bian, xia'er* (Fascicle Three of Inscriptions from the Yin Ruins), Taipei: Academia Sinica, 1972, pp. 67–8.
64. Chen Mengjia, *Yinxu buci*, p. 312.
65. Shima Kunio, *Inkyo bokuji*, p. 391; Chen, *Yinxu buci*, p. 304.
66. Chen, *Yinxu buci*, p. 327.
67. Zhouyuan kaogudui, '*Zhouchu jiaguwen*', p. 42.
68. Maine, *Lectures on the Early History of Institutions*, London: Murray, 1875, p. 65.
69. Li Xueqin, '*Xi Zhou jiagu de jidian yanjiu*' (A Few Observations on the Oracle Bones of Western Zhou), W. W., 9 (1981), p. 10.
70. Zhouyuan kaogudui, '*Zhouchu jiaguwen*', p. 43.
71. Ibid., p. 42.
72. 'Bi gong' in *Shi Jing*; Bernhard Karlgren (trans.), *The Book of Odes*, Stockholm: Museum of Far Eastern Antiquities, 1974, p. 259.
73. 'Mushi' in *Shu Jing*; 'Zhoubenji' in *Shi ji*.
74. Lintong xian wenhuaguan, '*Shaanxi Lintong faxian Wuwang zheng Shang gui*' (A Bronze Gui of King Wu's Expedition on the Shang Being Discovered in Lintong County, Shaanxi Province), W. W., 8 (1977), pp. 1–7; Yu Xingwu, '*Ligui mingwen kaoshi*' (A Study and Interpretation of the Inscriptions on the Bronze Gui of Li), W. W., 8 (1977), pp. 10–12.
75. Gu Jiegang, '*Yi Zhou Shu "Shifu pian" jiaozhu xieding yu pinglun*' (The Finalized Annotation and Commentary on the 'Shifu' Chapter in the Lost Book of Zhou), *Wen shi*, 2 (1963): 1–42; E. L. Shaughnessy, 'New Evidence on the Zhou Conquest', *Early China*, 6 (1981), pp. 57–79.
76. Hsu, *Western Chou Civilization*, p. 113.
77. Guo Moruo, *Liang Zhou jinwenci daxi*; Guo, *Liang Zhou jinwenci daxi kaoshi* (Textual Research and Annotations on the Outline of Bronze Inscriptions of the Two Zhou), Beijing: Science Press, 1957. Shirakawa Shizuka, *Kinbun hoshaku* (Supplementary Annotations on Bronze Inscriptions), Tokyo: *Hakutsuru Bijitsu kanshi*, 48–50 (1978–9).
78. Marcel Granet considers that these areas formerly contained immense marshes and important forests (*Chinese Civilization*, originally published in French in 1930, (trans.) Kathleen E. Innes and Mabel R. Brailsford, New York: Gordon Press, 1960, p. 72. In his review of this book, V. K. Ding disagreed with Granet. He pointed out that all geologists agreed that in the loess there had never been any afforestation (*Chinese Social and Political Science Review*, 15 (1931), pp. 265–90).
79. See, for example, Wolfram Eberhard discusses the definition of feudalism in *Conquerors and Rulers: Social Forces in Medieval China*, Leiden: E. J. Brill, 1952, pp. 1–5, and points out that none of the definitions given were satisfactory. R. Coulborn believes that feudalism is primarily a method of government, not an economic or a social system (*Feudalism in History*, p. 4). *Oxford English Dictionary*, (2nd edn.), prepared by J. A. Simpson and E. S. C. Weiner, Oxford: Clarendon Press, 1989; defines 'feudal system' as: 'the system of polity which prevailed in Europe during the Middle Ages, and which was based on the relation of superior and vassal arising out of the holding of lands in feud'.
80. Bodde, 'Feudalism in China', pp. 49–92.
81. Xunzi in '*Ruxiao*' stated that Zhou established seventy-one new states, of which the Ji Zu occupied fifty-three. In the *Zuo Zhuan*, a great officer of Jin also claimed that when King Wu subdued Shang, fifteen of his brothers received states, and forty other princes of the surname Ji did the same (Zhao 28; Legge, Vol. 5, p. 727).



82. Li Yanong, '*Yindai shehui shenghuo*' (Social Life during the Yin), in *Li Yanong lunji* (Collected Essays of Li Yanong), Shanghai: People's Press, 1962, p. 581.
83. Zhouyuan kaogudui, '*Shaanxi Fufeng Zhuangbai yihao Xi Zhou qingtongqi jiaocang fajue jianbao*' (A Brief Report on Western Zhou Bronzes Excavated from Pit One at Zhuangbai of Fufeng County, Shaanxi Province), W. W., 3 (1978), pp. 1–18.
84. Tang Lan, '*Luelun Xi Zhou Weishi jiazu jiaocang tongqi qun de zhongyao yiyi*' (A Brief Comment on the Momentous Significance of the Bronzes Pitted by the Wei Zu of Western Zhou), W. W., 3 (1978), pp. 19–24; Li Zhongcao, '*Shiqiangpan mingwen shiyi*' (Tentative Interpretation of the Inscriptions on the Bronze Plate of Shiqiang). W. W., 3 (1978), pp. 33–4; Chen Shihui, '*Qiangpan mingwen jieshuo*' (Explanation of the Inscriptions on the Bronze Plate of Qiang), K. G., 5 (1980), pp. 433–5.
85. Shirakawa, *Kinbun hoshaku*, Vol. 50, pp. 340–97.
86. Ding, *Jiaguwen suojian*, pp. 87–9.
87. Hsu, *Western Chou Civilization*, p. 118.
88. Shirakawa Shizuka, *Kinbun tsūshaku* (A General Annotation on Bronze Inscriptions), *Hakutsuru Bijutsu kanshi*, 46 (1977), pp. 18–19.
89. 'Zuolo' in *Yi Zhou Shu*, 5/7; 'Xiaoming' in *Shi Jing*, Legge (trans.), *The Chinese Classics*, Vol. 4, p. 365; *Shi Ji*, 4/39.
90. There are abundant records of these events in the Classics. For a detailed discussion, see Chen Mengjia, '*Xi Zhou tongqi duandai*' (Western Zhou Bronzes Dated), KGXB, 9 (1955), pp. 137–75.
91. '*Duoshi*' in *Shu Jing*; Legge (trans.), *The Chinese Classics*, Vol. 3, pp. 453–63.
92. Ibid., '*Luogao*'; Legge, Vol. 3, pp. 434–52. Legge translates *duozi* as 'numerous great officers' (p. 448), but Qu Wanli considers that *duozi* should refer to the sons of the Duke of Zhou. See Qu's *Shang Shu jinzhu jinyi* (Modern Annotation and Interpretation of the Book of History), Taipei: Shangwu yinshuguan, 1969, p. 129.
93. Guo Moruo, *Liang Zhou jinwenci daxi*; Shirakawa, *Kinbun tsūshaku*, Vol. 2.
94. *Zuo Zhuan*, Ding 4, (Legge, Vol. 5, p. 754).
95. Qi Sihe, '*Zhoudai cimingli kao*' (On Enfeoffment Rites of the Zhou), YJXB 32 (1947), pp. 197–226.
96. Li Yanong, *Zhongguo de nulizhi yu fengjianzhi* (The Slave System and Feudal System of China), Shanghai: People's Press of East China, 1953.
97. Fan Wenlan, *Zhongguo tongshi jianbian* (A Concise General History of China), Beijing: People's Press, 1953, pp. 57–9; Guo Moruo, *Zhongguoshi gao* (A Draft History of China), Beijing: People's Press, 1976, p. 237.
98. Fu Sinian, '*Zhou dongfeng yu Yin yimin*' (The Enfeoffment of Zhou in the East and the Remaining Yin People), ZYLYSJK, 4/3 (1934), pp. 285–92.
99. Shirakawa, *Kinbun tsūshaku*, Vol. 2; Du Zhengsheng, 'Lüe lun Yin yimin de zaoyu yu diwei' (A Brief Discussion of the Experiences and Status of the Remaining Yin People in the Zhou), ZYLYSJK, 53 (1982), pp. 662–94; Hsu, *Western Chou Civilization*, Chapters 3, 5, and 6.
100. '*Duoshi*' and '*Duofang*' in *Shu Jing*, (Legge, Vol. 3, pp. 502–03).
101. Zhouyuan kaogudui, '*Shaanxi Fufeng Xi Zhou qingtongqi*'.
102. Luo Xizhang, '*Shaanxi Fufeng chutu Xi Zhou Tongbo zhuqi*' (Western Zhou Bronze-Vessels of Tongbo Excavated in Fufeng County, Shaanxi Province), W. W., 6 (1976), pp. 51–65.
103. Shirakawa, *Kinbun tsūshaku*, Vol. 13, pp. 721–2.

104. Ibid., p. 765.
105. *Zuo Zhuan*, Ai 4, Ai 7, and Ding 6. For a detailed discussion, see Fu Sinian, '*Zhou dongfeng*', pp. 286–91.
106. 'Yinbenji', *Shi Ji*, 3/19.
107. Guo Baojun and Lin Shoujin, '1952 nian qiuji Luoyang dongjiao fajue baogao' (The Excavation Report of the Eastern Suburb of Luoyang in Autumn 1952), KGXB, 9 (1955), pp. 91–116.
108. *Zuo Zhuan*, Ding 4, Legge, Vol. 5, p. 754.
109. Fu, '*Zhou dongfeng*' p. 286; Li Zongtong, *Chunqiu Zuo Zhuan jinzhu jinyi* (Modern Annotations and Interpretation of the Chunqiu and Zuo Zhuan), Taipei: Shangwu yinshuguan, 1970, pp. 1333–4; Hsu, *Western Chou Civilization*, p. 188.
110. Qu, *Shang Shu jinzhu*, pp. 96–112; Legge (trans.) *The Chinese Classics*, 'The Prolegomena' to *The Shoo King*, Vol. 3, p. 48 and notes to 'Kang Gao', pp. 382–3.
111. 'Kang Gao' in *Shu Jing*, (Legge, Vol. 3, pp. 386–91).
112. Ibid., 'Jiu Gao', Legge, Vol. 3, pp. 403–12.
113. '*Qinshihuang benji*' in *Shi Ji*, 6/19.
114. *Han Shu*, 28/15–16 and 19/14.
115. Owen Lattimore, *Inner Asian Frontiers of China*, New York: Capital, 1951.
116. Ibid., p. 350.
117. Eberhard, *Conquerors and Rulers*, p. 3ff.
118. Alexander Rustow, *Ortbestimmung der gegenwart*, Salvator Attanasio (trans.) *Freedom and Domination: a Historical Critique of Civilization*, Princeton: Princeton University Press, 1980.
119. Eberhard, *Conquerors and Rulers*, p. 4.
120. Ibid., p. 7.
121. Wolfram Eberhard, *History of China*, (trans.) E. W. Dicks, Berkeley: University of California Press, 1950, p. 25.
122. *Zuo Zhuan*, (Legge, Vol. 5, p. 710).
123. Ibid., Zhao 3 and Ai 4, (Legge, Vol. 5, pp. 589 and 839).
124. Ibid., Xi 33, (Legge, Vol. 5, p. 226).
125. Ibid., Xuan 15, (Legge, Vol. 5, p. 327).
126. Guo Moruo, *Shi pipan shu* (The Book of Ten Critiques), (reprint), Shanghai: People's Press, 1954, pp. 46–53, and *Zhongguoshi gao* p. 326; Fan Wenlan, *Zhongguo tongshi*, p. 111; Liu Zehua et al., *Zhongguo gudai shi* (Ancient History of China), Beijing: People's Press, 1979 p. 113.
127. See above; the three Huan Zu of Lu was a typical example.
128. *Zuo Zhuan*, Zhao 6 and Zhao 29, Legge, Vol. 5, pp. 609 and 732.
129. '*Shangjun liezhuan*' in *Shi Ji*.
130. However, in the Qin strips discovered in 1975, there are only records of *wu*, but no mention of *shi*. For a detailed discussion, see Chapter 7 of this book.

# 2 *Li* (I): The Development and Evolution of *Li* under the *Zongfa*-Feudal System of the Zhou

No one can study ancient Chinese law without an understanding of *li*, an essential element in the regulation of life in ancient China. But what is *li*? What aspects of life and society did *li* govern and how does it fit in with our conception of law today? To whom did *li* apply? Is *li* interchangeable with the Western term 'law', or is 'rite' more apt? Readers may find some answers to these questions in this and the next chapter. Given the importance of *li*, surprisingly few special studies on this subject have been published, and little effort has been made to trace the origin and evolution of *li* prior to Confucius.[1] A rare exception is Professor N. E. Fehl's book, *Li, Rites and Propriety in Literature and Life*,[2] a valuable cross-cultural study. However, since he conducted his research mainly from the perspective of a cultural history of ancient China, he failed to reveal that socio-political factors were the most important catalysts in the development of *li*. In this respect K. C. Chang's *Art, Myth and Ritual, the Path to Political Authority in Ancient China* provided a much more penetrating analysis of the available data on the period.[3]

It will be demonstrated that it is the *zongfa*-feudal system of the Zhou which played the decisive role in the full-scale development of *li*. With the disintegration of the feudal system and the subsequent increase in social mobility, an evolution in *li* occurred and the theory of 'natural *li*' was gradually developed. Some scholars equate the systematic theory of *li*, here called natural *li*, with the concept of natural law. The theory of natural *li* will be discussed in detail in Chapter 3.