

# SHANG YANG 商鞅 AND LEGALIST 法家 REFORM IN THE ANCIENT CHINESE STATE OF QIN 秦

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## Abstract

*Legalism has played a major role in the history of the Chinese legal and governmental tradition. One of the major exponents and formulators of this school of thought in ancient times was Shang Yang, an official in the state of Qin. Shang Yang oversaw a program of law reform in Qin in such areas as criminal law and the economic life of the country which aimed to strengthen the power of the state. This can be said to have had long term consequences for both Chinese and world history, in that the strengthening and reorganization of Qin along the lines of Legalist principles helped lead to its gaining preeminence amongst the other states vying for influence in the Warring States period, ultimately leading to the unification of China under the rule of the Qin dynasty.*

**Keywords:** *Shang Yang, Legalism, law reform, Qin state, criminal law, economic regulation.*

## 1. Introduction

Throughout much of the history of the Chinese legal and governmental tradition, two different schools of thought have been portrayed as competing and coexisting at the same time; these are the Legalists 法家 and the Confucians 儒家<sup>1</sup>. Both sought to maintain social order, yet differed in the primary methods through which they sought to achieve this end<sup>2</sup>. The Legalists generally believed in increasing the power of the ruler through written laws that would strengthen the power of the state<sup>3</sup>, while the Confucians, whose beliefs are seen as a manifestation of feudal and traditional Chinese values<sup>4</sup>, placed more emphasis upon the idea that the ruler had to support and adhere to a certain moralistic order, which involved following proper rules of propriety and behaviour.<sup>5</sup> An important member of the Legalist school was Shang Yang, an official in the state of Qin during the fourth century B.C.<sup>6</sup> Two areas in which he had a particularly strong influence were criminal law and in regulation of the economic life of the state. These shall be examined in this study, as well the general legal and governmental philosophy which inspired Shang Yang's reform program. As shall be seen, Shang Yang advocated a system of strong centralized rule and the promulgation of written laws

that would be known among the general population, which included a system of strict punishments to be applied equally to all. Additionally, he implemented reforms that favoured agriculture at the expense of commerce.

This study particularly draws on the *Book of Lord Shang* 商君書, the earliest surviving and foundational text of the Legalist school whose authorship is attributed to Shang Yang<sup>7</sup>. It has been noted that very few studies on the *Book of Lord Shang* have been done in European languages, and indeed, the only complete English translation of the book was made by Jan J.L. Duyvendak in 1928<sup>8</sup>. Thus, it is hoped that the present work may contribute to increasing knowledge of this vital part of the Chinese legal and governmental history. Indeed, this is a topic that goes beyond the interest of just antiquarians; the issue of Legalist and Confucian thinking, and their respective places in Chinese society, are still being debated even today in modern China.<sup>9</sup> As a result, an accurate study and assessment of the past may furnish insights and instruction for issues being faced today. Such a study is also of interest more broadly, offering insights into the nature of law generally, its origins, uses, and purpose.

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<sup>1</sup> Xin Ren: *Tradition of the Law and the Law of the Tradition: Law, State, and Social Control in China*, Greenwood Press, Connecticut, 1997, 19.

<sup>2</sup> T'ung-Tsu Chu: *Law and Society in Traditional China*, Mouton, Paris, 1961, 226.

<sup>3</sup> Yongping Liu: *Origins of Chinese Law: Penal and Administrative Law in its Early Development*, Oxford University Press, Oxford, 1998, 173.

<sup>4</sup> Zhengyuan Fu: *Autocratic Tradition and Chinese Politics*, Cambridge, Cambridge University Press, 1993 30.

<sup>5</sup> Ren op. cit. 19.

<sup>6</sup> Herrlee G. Creel: *Chinese Thought from Confucius to Mao Tse-tung*, 1953, 141.

<sup>7</sup> There is scholarly debate about the actual authorship of this book; however, the work is accepted by most scholars as containing the basic ideas of Shang Yang's thinking (see Liu op. cit. 175) and as containing parts composed either by himself or his immediate followers, and thus the work has been described as expressing his "intellectual current" (see Yuri Pines: *Legalism in Chinese Philosophy*. In Edward N. Zalta (ed.): *The Stanford Encyclopedia of Philosophy*, Winter 2014 edition, <https://plato.stanford.edu/archives/win2014/entries/chinese-legalism/>) and so, the work shall be used as if expressing his thoughts and opinions.

<sup>8</sup> Yuri Pines and Carine Defoort: *Chinese Academic Views on Shang Yang Since the Open-Up-and-Reform Era*, *Contemporary Chinese Thought*, Vol. 47, No. 2, 2016, 59.

<sup>9</sup> See, for example, Ren op. cit. 32.

## 2. Shang Yang's Background and Philosophy

Shang Yang, who lived during the fourth century B.C., had originally served as an official in the state of Wei 魏.<sup>10</sup> We are told that "In his youth, he was fond of the study of criminal law."<sup>11</sup> He had heard that Duke Xiao of Qin 秦孝公 was seeking capable men to help him strengthen his state and increase his military power<sup>12</sup>. Shang Yang went to Qin, and soon found favour with the duke<sup>13</sup>, eventually being appointed to the office of Minister in 357 B.C.<sup>14</sup> As a result of the work that he undertook in Qin, Shang Yang has come to be intimately connected with the rise of the Qin state in the Chinese political landscape<sup>15</sup>.

The Zhou dynasty 周朝, which nominally ruled China at the time of Shang Yang, had established itself in 1122 B.C.<sup>16</sup> The nature of Zhou rule in China was essentially feudal, with various vassals and lords being nominally under the jurisdiction of the Zhou king; in time, especially during the Eastern Zhou period (771-249 B.C), these vassals came to gain a great deal of independence in their respective regions, even coming to challenge the authority of the Zhou king, which eventually led to a decline in the strength of the central authority.<sup>17</sup> This led to the Warring States period, which has been described as a 'war against all' amongst the various strong states of China, who sought to spread their influence and territory at the expense of one another.<sup>18</sup> One of these was the state of Qin, located in China's West<sup>19</sup>.

In order to properly comprehend the significance and meaning of Shang Yang's Legalist philosophy and his criminal law reforms, it is important to understand something of the traditional values that underlined the political and social structure of Zhou China. It was during the Zhou period that various important developments in Chinese civilisation took place; this included the development of the feudal system, and the various beliefs and customs that were connected to this system<sup>20</sup>. One of the most important concepts that

developed during this period was that of *li* 禮<sup>21</sup>. *Li*, which was believed to be the most important factor in governing society, was a body of approved behaviour patterns governing the interaction between individuals in society<sup>22</sup>. It can be said to have captured the spirit of the feudal era, containing within it the relational and hierarchic quality that existed within the political and social structure of feudal China under the Zhou dynasty<sup>23</sup>.

Central to the concept of *li* was social interaction and relationships; these rules governing relations between members of society were strongly connected to one's social status, and varied according to the status of the individual and the specific dynamics and nature of the relationship<sup>24</sup>. In addition to this, family relationships were considered to be the foundation of human society<sup>25</sup>; Confucius 孔子 himself had said, 'When a gentleman feels profound affection for his parents, the common people will be stirred to benevolence. When he does not forget friends of long standing, the common people will not shirk their obligations to other people<sup>26</sup>.'

The Zhou king was bound to uphold the traditional *li*, with all its rules of proprietary and right behaviour, having to maintain and honour the immemorial customs that had been handed down from ancient times<sup>27</sup>. The empire was to be ruled by natural law, which was a standard held to be sufficient for all public and private activity; moral virtue, which was considered to be inherent within man, was supposed to be the ultimate basis of conduct in every aspect of society<sup>28</sup>. This social and political system, led by the king, the Son of Heaven, was bound to follow the law of Heaven<sup>29</sup>. Confucian thought always emphasised the importance of *li* and considered it to be the primary regulations or 'rules' in governing a society<sup>30</sup>. Confucius had said, 'For giving security to superiors and good government of the people, there is nothing

<sup>10</sup> Creel op. cit. 141.

<sup>11</sup> The Biography of the Lord of Shang in the Shih-Chi. In: The Book of Lord Shang: A Classic of The Chinese School of Law, Arthur Probsthain, London, 1928 8.

<sup>12</sup> Creel op. cit. 142.

<sup>13</sup> Ibid.

<sup>14</sup> Liu op. cit. 175.

<sup>15</sup> J.J.L. Duyvendak, Introduction. In: The Book of Lord Shang: A Classic of The Chinese School of Law, Arthur Probsthain, London, 1928, 1.

<sup>16</sup> Fu op. cit. 17.

<sup>17</sup> Ibid 17-18.

<sup>18</sup> Ibid 18.

<sup>19</sup> Robin D. S Yates: The Rise of Qin and the Military Conquest of the Warring States. In Jane Portal (ed.), The First Emperor: China's Terracota Army, London, British Museum Press, 2007, 30.

<sup>20</sup> N. & V. Rajendra - C. Lower: A History of Asia, Melbourne, Longman Cheshire, 1992, 121.

<sup>21</sup> Roberto Mangabeira Unger: Law in Modern Society: Toward a Criticism of Social Theory, Free Press, 1976 93.

<sup>22</sup> Chu op. cit. 230-1.

<sup>23</sup> Unger op. cit. 93.

<sup>24</sup> Chu op. cit. 231.

<sup>25</sup> Ibid 244.

<sup>26</sup> Confucius: The Analects, trans. D.C. Lau, Penguin Classics, London, 1979, Book VIII:2 92.

<sup>27</sup> J.J.L. Duyvendak op. cit. 77.

<sup>28</sup> Ibid 78.

<sup>29</sup> Ibid 78.

<sup>30</sup> Chu op. cit. 239-40.

more excellent than the rules of propriety [*li*]<sup>31</sup>.’ Shu-hsiang said ‘[*Li*] are the King’s great canons<sup>32</sup>.’

These abovementioned beliefs differ markedly from Shang Yang’s legal philosophy. In order to properly understand the basic tenets of his beliefs, and the reforms that he subsequently implemented in the Qin state, his concept of the origin and nature of law must be examined. The Legalist school that Shang Yang belonged to can be said to have come into being during the time of the Spring and Autumn period, and coincided with the development of ideas that sought to elevate the position of the ruler<sup>33</sup>. Its central tenets began to develop more fully, however, during the Warring States period, which spanned the fourth and third centuries B.C.<sup>34</sup>. One of these was the idea that the ruler should centralise all state power in his own hands, create written codes of law with which to govern the country *fa* 法, and rule the population through a bureaucratic system of government, making use of various officials in the handling of affairs<sup>35</sup>.

The actual practice and development of Legalism took place mainly in the state of Qin, which was situated on the western frontier of Chinese civilisation<sup>36</sup>. It would appear from a survey of the history of the Qin state that it was an area conducive to the development of Legalist thinking and reform<sup>37</sup>. For example, in 513 B.C. tripods bearing various penal regulations were cast in Qin, which shows that by the Spring and Autumn periods the practice of relying on written laws had already come to exist in Qin<sup>38</sup>. It must also be said that the Qin state, due to its frontier location, had never been as saturated with Chou feudal customs as other parts of Qin<sup>39</sup>. For example the Confucian scholar Hsun Tzu said that Qin ‘were less observant of the proper conduct between father and son and husband and wife than were the people of certain other parts of China, because they failed to follow the traditional rules of etiquette and the proper relationships<sup>40</sup>.’

In order to understand properly the basic tenets of Lord Shang’s philosophy, and as a result, the reforms that were subsequently implemented according to the spirit of his thinking, his concept of the origin of law must be examined, for it could be said to form the root from which all his other concepts grow.

In the *Book of Lord Shang*, Shang Yang states that:

*Of old, in the times of the Great and Illustrious Ruler, people found their livelihood by cutting trees and slaying animals; the population was sparse and trees and animals numerous ... In the times of Shen-nung, men ploughed to obtain food, and men wove to obtain food, and women wove to obtain clothing. Without the application of punishments or governmental measures, order prevailed; ... After Shen-nung had died, the weak were conquered by force and the few oppressed the many. Therefore Huang-ti created the ideas of prince and minister, of superior and inferior, the rites between father and son, ... At home he applied sword and saw, and abroad he used mailed soldiers; this was because the times had changed ... Shen-nung is not higher than Huang-ti, but the reason that his name was honoured was because he suited his time.<sup>41</sup>*

Here we see that Shang Yang held that during an earlier period of time society functioned without the need for any serious administrative measures; it could be said that society functioned almost naturally, without the need for complex laws. Yet in time, as society developed, and oppression increased, the need finally arose for a more interventionist form of government.

In one instance, when Duke Xiao was discussing policy with his three Great Officers, Kan Lung had warned the Duke against changing the law and customs of the Qin state, saying that ‘I am afraid that the empire will criticise Your Highness and I wish that You would reflect maturity<sup>42</sup>.’ In response to this, Shang Yang said ‘a wise man creates laws, but a foolish man is controlled by them; a man of talent reforms rites, but a worthless man is enslaved by them<sup>43</sup>.’ During this same audience, Tu Chih had said ‘I have heard it said, that in taking antiquity as an example, one makes no mistakes, and in following established rites one commits no offence. Let Your Highness aim at that<sup>44</sup>.’ In response, Shang Yang stated that:

*Former generations did not follow the same doctrines, so what antiquity should one imitate ... Wen-wang and Wu-wang both established laws in accordance with what was opportune and regulated laws in accordance with what was opportune and*

<sup>31</sup> Confucius, *The Li Ki*. In James Legge: *The Texts of Confucianism*, V, Clarendon Press, Oxford, 1885, 258, quoted in Ch’u op. cit. 239.

<sup>32</sup> Shu-hsiang: *The Ch’un Ts’ew with the Tso Chuen*. In James Legge (ed.): *The Chinese Classics*, V, Pt. II, Hong Kong, 1872, 660, quoted in Ch’u op. cit. 239.

<sup>33</sup> Kung-chuan Hsiao: *A History of Chinese Political Thought: From the Beginnings to the Sixth Century A.D.*, Vol. I, Princeton University Press, 376.

<sup>34</sup> Liu op. cit. 173.

<sup>35</sup> Ibid.

<sup>36</sup> Creel op. cit. 138.

<sup>37</sup> Hsiao op. cit. 45.

<sup>38</sup> Ibid.

<sup>39</sup> Hucker op. cit. 41.

<sup>40</sup> Quoted in Leonard Cottrell: *The Tiger of Ch’in: The Dramatic Emergence of China as a Nation*, Rinehart and Winston, Holt, 1962, 116.

<sup>41</sup> Shang Yang: *Translation of the Book of Lord Shang*, trans. J.J. L Duyvendak, Arthur Probsthain, London, 1928, 284-5.

<sup>42</sup> Ibid 170.

<sup>43</sup> Ibid 171.

<sup>44</sup> Ibid 172.

*regulated rites according to practical requirements ... There is more than one way to govern the world and there is no necessity to imitate antiquity, in order to take appropriate measures for the state.*<sup>45</sup>

Shang Yang clearly challenges the traditional Zhou notions with regard to custom and historical precedent, expounding a doctrine that would free a ruler from what some might be seen as the ‘shackles of the past’, giving them the ability to respond to the needs of the times.

As to Shang Yang’s attitude with regards to the importance of written law and the administration of a society, he said ‘Law is the authoritative force of the people, and the key to governing ... Rule by law is fundamental to governing’<sup>46</sup>. Elsewhere he said:

*Of old, the one who could regulate the empire was he, who regarded as his first task the regulating of his own people ... For the way, in which the conquering of the people is based upon the regulating of the people, is like the effect of smelting in regard to metal or the work of the potter in regard to clay; if the basis is not solid, then people are like flying birds or like animals. Who can regulate these? The basis of the people is the law. Therefore, a good ruler obstructed the people by the means of the law, and so his reputation and his territory flourished*<sup>47</sup>.

Here, Shang Yang’s attitude differs from more feudal and Confucian notions of the importance of rule by certain moral standards that one exemplifies; instead, the ruler’s authority is based upon the enforcement of regulations within a community. This idea of the ruler’s authority being based on his power to create and enforce law must be borne in mind when looking at the reforms Shang Yang implemented in the Qin state.

### 3. Shang Yang and Criminal Law in Qin

Shang Yang implemented a range of reforms in Qin, which were known as a ‘change of law’ (*bianfa*)<sup>48</sup>. This process essentially aimed at increasing the power of the state, which involved the weakening of the

feudal structure<sup>49</sup>. Shang Yang was aided in this endeavor by the *Fa Jing* (“Canon of Laws”) 法經<sup>50</sup>, which was a legal code put together around 400 B.C by Li Kui, which was made up of six parts<sup>51</sup>.

An area that Shang Yang paid special attention to was criminal law, particularly the system of punishments. Shang Yang said that “nothing is more basic than for putting an end to crimes than the imposition of heavy penalties”. Shang Yang espoused what appears to have been a novel concept at the time, which was that in the course of a criminal procedure, there was to be no distinction on the application of the law based upon social position<sup>52</sup>. He stated that:

*What I mean by the unification of punishments is that punishments should know no degree or grade, but that from ministers of state and generals down to great officers and ordinary folk, whosoever does not obey the king’s commands, violates the interdicts of the state, or rebels against statutes fixed by the ruler, should be guilty and not be pardoned. Merit acquired in the past should not cause a decrease in the punishment for demerit later, ... If loyal ministers and filial sons do wrong, they should be judged according to the full measure of their guilt*<sup>53</sup>.

This is a concept very different from traditional feudal Chinese concepts, which considered such things as family relationship, individual merit, friendship, and social status in relation to the administration of justice and the way in which crimes were dealt with.<sup>54</sup> In fact, there had been a Confucian idea that “rules of ceremony do not go down to the common people. The penal statutes do not go up to great officers.”<sup>55</sup> One of the aims of this equal application of the law to all levels of society was to maintain the general population’s trust in the system of rule<sup>56</sup>.

Shang Yang also believed that the laws should be understood and known by the entire population. One measure that was taken in order to achieve this was the placing of laws in prominent places on pillars in order to make them known amongst the whole population<sup>57</sup>. He is cited in the *Book of Lord Shang* as making the following statement:

<sup>45</sup> Ibid 172-3.

<sup>46</sup> Shang Jun Shu, quoted in Ren op. cit. 20.

<sup>47</sup> Shang Yang op. cit. 285-6.

<sup>48</sup> Fu op. cit., 40. It should be noted that as far as the author is aware, there are no real primary examples of actual, preserved legal statutes implemented by Lord Shang; knowledge of Shang Yang’s legal reforms come from various historical accounts instead, and these shall be relied upon, either directly or indirectly.

<sup>49</sup> Ibid 22.

<sup>50</sup> Attila Kormany: „To Enter a Court is to Enter a Tiger’s Mouth” The Role of Law in China, 50 *Annales U. Sci. Budapestinensis Rolando Eotvos Nominatae*, 349 (2009), 359.

<sup>51</sup> Jinfan Zhang: *The Tradition and Modern Transition of Chinese Law*, Springer, Berlin Heidelberg 2014, 271.

<sup>52</sup> A.F. P Hulsewé: *Remnants of Ch’in Law: An Annotated Translation of the Ch’in Legal and administrative rules of the 3rd century B.C.* discovered in Yün-meng Prefecture, Hu-pei Province, in 1975, E.J. Brill, Leiden, 1985, 7.

<sup>53</sup> Ibid 278-9.

<sup>54</sup> Hsiao op. cit. 402.

<sup>55</sup> *The Book of Rites (Li Ji): English-Chinese Version*, trans. by James Legge, Intercultural Press, Washington, Intercultural Press, 2013, par. 68, quoted in Christine Abigail L. Tan: *The Cultured Man as the Noble Man: Jun zi as a Man of Li in Lun yu*, *Kritike*, 2015/9/2, 186.

<sup>56</sup> Gray L. Dorsey: *Jurisculture: China*, Transaction Publishers, New Brunswick and London, 1993, 129. However, this must be qualified by what appears to have been the fact that hierarchy still played a role in the handing down of punishments, with those of aristocratic rank receiving lighter punishments than commoners. See Hulsewé op. cit. 50.

<sup>57</sup> Dorsey op. cit. 127.

*For, indeed, one should not make laws so that only the intelligent can understand them, for the people are not all intelligent; and one should not make laws so that only the men of talent can understand them, for the people are not all talented. Therefore did the sages, in creating laws, make them clear and easy to understand, and the terminology correct, so that stupid and wise without exception could understand them; and by setting up law officers, and officers presiding over the law, to be authoritative in the empire, prevented the people from falling into dangerous pitfalls<sup>58</sup>.*

Another reform that can be seen as a manifestation of Shang Yang's philosophy is the harshness of punishments that he developed in Qin; in fact, it can be said such strictness was his avowed policy in implementing his legal program<sup>59</sup>. It was believed that by threatening harsh punishment, the state could increase its exercise of power.<sup>60</sup> He is quoted as saying that:

*In applying punishments, light offenses should be punished heavily; if light offenses do not appear, heavy offenses will not come. This is said to be abolishing penalties by means of penalties, and if penalties are abolished, affairs will succeed. If crimes are serious and penalties light, penalties will appear and trouble will arise. This is said to be bring about penalties by means of penalties, and such a state will surely be dismembered<sup>61</sup>.*

One striking example of the operation of the criminal law regime instituted by Shang Yang is the case when the Crown Prince of Qin broke the law, and Shang Yang required that the infringement be punished; as the heir to the Qin throne could not be subject to such action, his tutor was punished and his teacher branded instead.<sup>62</sup> We are told that after the Crown Prince's tutor and teacher were punished harshly on their master's behalf, and that, subsequently, the population of Qin 'hastened into (the path of) the law<sup>63</sup>.'

An area of importance that Shang Yang legislated for was in the area of family relations, which was also

affected by his program of criminal law reform. He implemented a system that involved the organisation of the population into groups of ten and five families<sup>64</sup>. This form of organisation was known as the *shiwu* system; the reason why this form of familial organisation was put into place by Shang Yang in Qin was in order to allow the state to increase its ability to manage what was at the time a relatively mobile population<sup>65</sup>. A particular component of the *shiwu* system was the principle of mutual responsibility<sup>66</sup>, which involved the denunciation of crime and joint responsibility in the case of offences<sup>67</sup>. Those who were members of the group of five or ten families would end up sharing in the responsibility for the crime of another member of the family unit<sup>68</sup>. Part of this involved a system of denunciation;<sup>69</sup> one was subject to punishment if the individual failed to denounce the crimes of a member of a fellow *shiwu*<sup>70</sup>. Shang Yang's purpose in instituting these reforms was in order to prevent the growth of powerful units in society that may have resisted the expansion of state power<sup>71</sup>. As to the success of the *shiwu* system implemented by Shang Yang, Han Fei 韓非 wrote that 'the sovereign thereby became glorious and secure and the state thereby became rich and strong<sup>72</sup>.'

#### 4. Economic Reforms

One important area in which Shang Yang implemented legal reforms was in the economic sphere<sup>73</sup>. The major thrust of these reforms that private industry and commerce should be strictly controlled and regulated by the state, which he saw as being of lesser importance than agriculture, which was understood as being absolutely fundamental and of the highest importance to the state<sup>74</sup>.

One of Shang Yang's most significant reforms was his completely abolishing the *ching* system, which was then replaced by a system of individual property<sup>75</sup>. According to the former system, peasants were bound

<sup>58</sup> Shang Yang op. cit. 334.

<sup>59</sup> Derk Bodde: *China's First Unifier: A Study of the Ch'in Dynasty as seen in the Life of Li Ssu, 280?-208 B.C.*, Hong Kong University Press, Hong Kong, 1967, 167-8.

<sup>60</sup> Creel op. cit. 136.

<sup>61</sup> Shang Yang op. cit. 203.

<sup>62</sup> The Biography of the Lord of Shang in the *Shih-Chi*, op. cit. 16.

<sup>63</sup> *Ibid* 16.

<sup>64</sup> Han Fei Tzu: *Eight Villainies*. In: *The Complete Works of Han Fei Tzu: A Classic of Chinese Political Science*, Vol. I, W.K. Liao, Arthur Probsthain, 1939, 115.

<sup>65</sup> Liu op. cit. 187.

<sup>66</sup> Han Fei Tzu: *On Assumers*. In: *The Complete Works of Han Fei Tzu*, Vol II, trans. W.K. Liao, Arthur Probsthain, London, 1939, 213.

<sup>67</sup> Han Fei Tzu: *Eight Villainies*, op. cit. , 115.

<sup>68</sup> Han Fei Tzu: *On Assumers*, op. cit. 187.

<sup>69</sup> *Ibid*.

<sup>70</sup> Liu op. cit. 188.

<sup>71</sup> Brian E. McKnight: *Law and Order in Sung China*, Cambridge, Cambridge University Press, 1992, 123.

<sup>72</sup> Han Fei Tzu, *Eight Villainies*, op. cit. 115.

<sup>73</sup> Bodde op. cit. 170.

<sup>74</sup> Li Yuyie: *Legalism emphasized role in agriculture, military, Chinese Social Sciences Today*, 2 February 2016, <http://www.csstoday.com/Item/3128.aspx>.

<sup>75</sup> Duyvendak op. cit. 44.

to the land of their overlords as virtual chattels<sup>76</sup>. Lord Shang's likely purpose in implementing this reform was to break up the feudal system that existed in the area of land ownership<sup>77</sup>. He also probably had the desire to attract settlers from neighbouring states with the prospect of becoming free landholders<sup>78</sup>.

Shang Yang also implemented reforms that aimed at repressing commerce in favour of the development of agriculture<sup>79</sup>. Agriculture was seen as something absolutely fundamental and the ultimate source of the state's wealth, while commerce was seen as being somewhat unproductive<sup>80</sup>; he said 'the means, whereby a country is made prosperous, are agriculture and war<sup>81</sup>', and 'Insignificant individuals will occupy themselves with trade and will practise arts and crafts, all in order to avoid agriculture and war, thus preparing a dangerous condition for the state ...such a country will be dismembered<sup>82</sup>.'

Shang Yang said in regard to the focus on agriculture that by limiting the people's skills and opportunities by prohibiting certain kinds of activity, the population's capacity would be limited; in addition to this, he believed that by focusing on farming, the people would remain 'simple', being content with where they are, and would not have a desire to leave the territory<sup>83</sup>. During Shang Yang's time, the Qin state had a vast territory, but a sparse population<sup>84</sup>. As the human resource was the main factor in agriculture, it was necessary for the aims Shang Yang and the power of the Qin state that the population be kept within the territory of the state<sup>85</sup>.

Another area in which Shang Yang ventured into with regards to family organisation was taxation; a family that had two or more males had to pay double taxes<sup>86</sup>. The reason for this was once again related to extending state influence; this taxation policy would prevent the creation of strong family units that had caused difficulties for the authorities during the Spring and Autumn period; it also allowed for the development of more independent units of production so that the population would increase at a faster rate, which in turn would lead the cultivation of wasteland into productive farmland<sup>87</sup>.

From the words and actions of Shang Yang in relation to agriculture and trade, several aspects of his philosophy can be seen. First, law is used in order to strengthen the state. Laws implemented in this instance are practical and utilitarian, and he felt free to discard older systems that seem to inhibit the prosperity of the state. His reason for encouraging agriculture and discouraging or controlling trade was because he believed it would strengthen Qin, while commerce was not seen as having the same utility. So, in this instance we see Shang Yang bringing about legal reforms primarily with reference to state power and with a utilitarian eye.

Due to his various reforms, Shang Yang had made many enemies among members of the aristocracy, and after the death of Duke Xiao and his son Huiwen 秦惠文王 ascending to the throne, he was accused of plotting against Qin's new sovereign<sup>88</sup>. So effective had his reforms been that when he fled as a result of the accusations against him, he was unable to find accommodation as no innkeeper dared to receive a traveller not in possession of an internal passport, a law that had been established by Shang Yang himself.<sup>89</sup> Duke Huiwen had his body torn to pieces by chariots,<sup>90</sup> a penalty which Shang Yang had instituted<sup>91</sup>.

## 5. Conclusion

After Shang Yang's death his ideas continued to be influential, with his system of criminal law continuing to form the basis of the Qin penal code<sup>92</sup>. Most importantly, his reform program led to the strengthening of the Qin state, which aided Qin Duke Ying Zhen 嬴政 in defeating the rival states in China, and in 221 B.C proclaiming himself as the 'First Emperor' or *Qin Shi Huang* 秦始皇, thus establishing a unified Chinese empire for the first time in history<sup>93</sup>. Later, the Han dynasty 漢朝, upon its ascension to China's imperial throne, continued to take Shang Yang's code as the basis of its own system of criminal

<sup>76</sup> Bodde op. cit. 170.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid 52.

<sup>79</sup> Bodde, op. cit. 171.

<sup>80</sup> Ibid.

<sup>81</sup> Shang Yang op. cit. 185.

<sup>82</sup> Ibid 186.

<sup>83</sup> Ibid 222.

<sup>84</sup> Liu op. cit. 186.

<sup>85</sup> Ibid.

<sup>86</sup> 'The Biography of the Lord of Shang in the *Shih-chi*' in Duyvendak op. cit. 15.

<sup>87</sup> Liu op. cit. 187.

<sup>88</sup> Zhengyuan Fu: China's Legalists: The Earliest Totalitarians and Their Art of Ruling, M.E Sharpe, London and New York, 1996, 18.

<sup>89</sup> Ibid.

<sup>90</sup> 'The Record of Shang Yang in the *Ch'in-t's'e*'. In Duyvendak op. cit. 32.

<sup>91</sup> Fu op. cit. 18.

<sup>92</sup> Yates op. cit. 30.

<sup>93</sup> Christian D. Von Dehsen, Shang Yang, In: Christian D. Von Dehsen: Lives and Legacies: An Encyclopedia of of People Who Changed the World, Philosophers and Religious Leaders, Oryx Press, 1999, Phoenix, Yates, 30.

law<sup>94</sup>, and which retained the Qin's central administration apparatus in order to aid it in consolidating its rule over the territory that it came to possess<sup>95</sup>. Thus, Shang Yang's worldview and legal and governmental reforms which strengthened the Qin state may be said to have contributed to the ultimate unification of China and the formation of its imperial state tradition. China's ability to assert itself in the international arena as an independent international actor is ultimately rooted in the country's unification in ancient times, which saw disparate and warring kingdoms come together to form a unified state. This event has determined the ultimate destiny of China and to an extent the wider world, and has allowed that country to project itself further afield, from ancient times up until the present day.

The chaotic Warring States period of ancient Chinese history in which Shang Yang lived caused him to seek to bring about a higher degree of order to the political and social life of those times<sup>96</sup>. As has been seen, Shang Yang implemented a program of reforms in such areas as criminal law and economic relations in Qin which utilized written law as a primary tool in strengthening the state, with his measures focusing

upon the maintenance and strengthening of the ruler's authority. Despite what has been written about the differences in the Legalist and Confucian schools of thought, it can be argued that they ultimately had the same ends in mind, while essentially differing as to the way in which this was to be achieved. As the Chinese scholar Zeng Zhenyu put it, "There are certain commonalities between Confucius and Shang Yang. They differ just in the means they advocate for the advancement of an ideal society based on morality. For Confucius, the means are ethical education and consequent transformation of the populace. Shang Yang, in distinction, believes that only after reliance on heavy punishments will humans be able to advance on to the new stage of a society ruled by morality<sup>97</sup>." Indeed, there are examples from Chinese history where an actual synthesis between the two took place, a development particularly noteworthy during the Han dynasty period<sup>98</sup>. This is a subject worthy of further research, which reflects the diversity of the intellectual tradition of Chinese civilization, and its ability to utilize and synthesize a myriad of differing currents of thought.

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<sup>95</sup> Wei Wu: *Cultural Relativism and Universal Fair Interrogation Standards in Europe and China*. In Marc Cools, et. al (eds.): *European Criminal Justice and Policy*, Maklu, Antwerpen, Apeldoorn, Portland, 2012, 155

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<sup>97</sup> Quoted in Yuri Pines and Carine Defoort: *Chinese Academic Views on Shang Yang Since the Open-Up-and-Reform Era*, Contemporary Chinese Thought, 2016/47/2, <https://www.tandfonline.com/doi/full/10.1080/10971467.2016.1227112>.

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