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THE STATE—ORGANIZED PROGRESS OR DECAY PRODUCT?

JOHN K. HORD

A Commonweale is a lawfull gouernment of many families, and of that which unto them in common belongeth, with a puissant soueraigntie. . . . For so it here behoueth first to define what maiestie or Soueraigntie is, which neither lawyer nor politcall philosopher hath yet defined: although it be the principall and most necessarie point for the understanding of the nature of a Commonweale. . . . Wherefore let this be the first and chiefe marke of a soueraigne prince, to bee of power to give lawes to all his subjects in generaH, and to euerie one of them in particular, without consent of any other greater, equall, or lesser than himself. [Bodin 1962:1, 84, 159]

So said Jean Bodin in 1576. The statement was seminal, the first "unmistakably modern" definition of the state, that it must have "supreme political authority; otherwise it is not a state" [McRae 1962:A14]. His concept "sovereignty," power centralized into a single absolute rulership and so defining the state, became and has remained dogma. Much more recently (e.g. Service 1975), anthropology has tended to raise "the state" to be the defining characteristic of civilization itself. This has had the effect of creating a double definition: "The state" becomes, first, an effectively centralized1 rulership, second, found in and defining all civilization(s). There is nothing obviously contradictory in such a pairing, but there seems to have been nothing but argument ever since. This study proposes that the two qualities are in fact mutually contradictory, and that if the anthropological equation of the state with civilization is to stand, then Bodin must fall.

Since any proposal to overturn a dogmatic assumption of some 400 years' standing will be rather controversial, in pursuit of this objective one practice will be followed which has been anathema in traditional Western scholarship: In most cases, evidence will be not just cited but quoted in the words of the cited sources. This is principally because history and anthropology have not mixed all that commonly. Quotation will save the interested anthropologist, and others, the trouble of digging out and verifying all the proposed evidence; it will also provide some of that
elusive flavor of implications and assumed background that comes with habituation to a field. This may be considered heteropraxy: In fact it is one of the oldest orthopraxies. 2500 years of Chinese historiography have been characterized outright as "the handing down of documents by continuous grinding out of quoted passages" [Balazs 1964:131]. This kind of quotation is not the fashion in the West, but one can hardly enter the comparative study of civilizations and then declare that only one civilization's approach to the matter is legitimate.

The stated proposition was that if civilization and the state are to be considered coterminous, then centralization cannot be a defining characteristic of the state. This is not to say that there is no such thing as a centralized state, but only that obviously civilized milieus have existed which can by no stretch of the imagination be called centralized. This may be noted by testing some of the proposed anthropological definitions which include centralization.

It has been suggested that states, and civilization, differ from the next lower level of political organization, called a chiefdom, in that chiefdoms inherently break apart while states do not. This is debatable in general principle; secession is found on a definitely constitutional basis in civilized polities at least since ancient Greece, and the events of 1861 in the United States suggest it compatible with very modern states. On an even grander scale, "empires wax and wane, states cleave asunder and coalesce," a saying that both begins and ends one of the most famous Chinese novels, San kuo chih yen-i (translated into English as The Romance of the Three Kingdoms). The Chinese dynastic cycle, the existence of seeds of destruction in the heart of every new incarnation of the state, has been the staple of Chinese historiography for over 2000 years, and the validity of the idea is widely recognized in Chinese studies. It would seem somewhat extravagant to say that this tendency of Chinese empires to break apart means that China, of all places, is not a state and therefore not civilized. Likewise, if one excludes the European crop of the last few centuries, almost every state which has ever existed is now gone. Many perished through coalescence (i.e. absorption into others). But of these others, almost all eventually cleft asunder, collapsed because of internal disintegration, including those such as the Roman Empire which had previously made brilliant careers of absorption. One may
argue that the mere fact of a virtually 100% occurrence rate should not be held to constitute a pattern, but it seems at least a reasonable first approximation of one.

Or the state, and civilization, has been held to exist only when the ruling center has at least two levels of hierarchically subordinate polities under its rule. This runs hard against the ancient Greek polis, city-state, which was essentially a single level of political hierarchy directly in touch with the whole people.

The special culture of a Polis ... was essentially marked by its unity. The reason for this is that all expressions and forms of spiritual as well as artistic life were closely bound up with the political and religious existence of the Polis. ... It is remarkable how very strong the participation of all citizens was in the culture of the Polis, and that is not true of Athens alone. ... [In dealings outside the individual polis, this] will to autonomy probably remained the strongest force in Greek politics ... the expression of 'particularism' in the world of Greek states, of the will of each Polis to shut itself off and isolate itself—the cause of the endless internal wars of Greece. [Ehrenberg 1969:94-95]

The poleis had remnants of lower levels of hierarchy, but by historic times these were almost invisible and so transmuted as to have no more intrinsic reality that, say, electoral districts for seats in Parliament or the U.S. House of Representatives. There were attempts at federations of poleis, some (e.g. the Boiotian and Khalkidian leagues of the later fifth century B.C.) even reasonably successful, but most such efforts devolved into empires that were considered monstrous in their own times and were prime causes of warfare. In their political writings neither Plato nor Aristotle even bothered to mention the federation. [Westermann 1930:31] Most of Hellas was for most of its golden age organized in, emphatically, only one level of hierarchy. If single-tier government can maintain so presumably shining a civilization as Periclean Greece, then one should not automatically dismiss it from consideration for more primitive developments.

Or the state, and civilization, has been argued different from chiefdoms in that states, but not chiefdoms, have a monopoly of official force. Medieval Europe is the best known outright contradiction of this proposal.

The history of mediaeval rebellions ... cannot be properly understood unless we recognize that, behind the chaos of selfish antagonism and anarchy, there was a confused and obscure legal belief that anyone who felt himself prejudiced in his rights by the king, was authorized to take
the law into his own hands, and win back the rights which had been
denied him. . . . The right of resistance was deemed by mediaeval opin-
ion a true and necessary 'right'. . . . A hybrid of right and force, self-help
had its own rules of procedure . . . but it did not recognize the authority
of any supreme judge [other than God, of course]. . . . Not until the
arrival of the centralized, bureaucratic State was the lawful, avenging
feud uprooted. [Kern 1956:90]

Indeed the offended subject was not only allowed but required to
use force against a "tyrannical" ruler, else he would become
accomplice to that ruler's tyrannies. Nor was this idea confined to
the chaos of the early Middle Ages. The right of "resistance" or
"rebellion" began only ca. 1075 during the princely revolts of the
Investiture Conflict. [Carlyle and Carlyle 1903-36:III, 129-130]

Official certification by the recognized leading jurists of the times
(comparable to Supreme Court certification nowadays) came la-

it was recognized formally as law by John of Salisbury (ca.
1115-1180) [Carlyle and Carlyle 1903-36:III, 143-144; McIlwain
1932:285-286] and was put in its definitive form only some two
centuries later, by Bartolus of Sassoferrato (1313-1357) [Figgis
1922:363-366]. And this continued. With "insignificant" excep-
tions, the first writer known to have declared that "the temporal
ruler was in such a sense representative of God that under no
circumstances could he be resisted" was none other than Martin
Luther. [Carlyle and Carlyle 1903-36:VI, 272] Thereafter, be-
cause of the dislocations caused by the Protestant Revolution, it
became increasingly established. But it had no accepted place in
Western political theory before Luther, and 1520 would seem a
rather late date for the arrival of the state (much less civilization)
in Europe.

Or, if not of official force, the state, and civilization, may be
characterized by a monopoly of official authority. Here again
medieval Europe is a problem. The right of resistance would
prejudice any claims to total authority that the kings might make,
but in practice, they never seem to have made any.

To the early mediaeval mind, king and people together, welded into a
unity which theoretical analysis can scarcely divide, formed the State.
Neither the rule of a monarch whose powers were limited by law, nor the
active legislative co-operation of the community expressed in the consen-
sus fidelium, was regarded as 'sovereign' in the modern sense.
Sovereignty, if it existed at all, resided in the law which ruled over both
king and community. . . . The blunt 'either-or' of later times—*either* the
king is unlimited or the people is sovereign—is an impossible dilemma from the standpoint of the early Middle Ages.

Not the State, but 'God is the source of all law'. Law is part of the world-order; it is unchangeable. It can be twisted or falsified, but then it restores itself, and at last confounds the evil-doer who meddled with it.

Germanic and ecclesiastical opinion were firmly agreed on the principle, which met no opposition until the age of Machiavelli, that the state exists for the realization of the Law; the power of the State is the means, the Law is the end-in-itself; the monarch is dependent on the Law, which is superior to him, and on which his own existence is based. [Kern 1956:70-71, 141, 150-151]

Even beyond this, authority was actively constrained within law, and such constraints were recognized as the principal defining elements of a person's status. In many ways the medieval definition of personal liberty was precisely opposite to that held in the modern national states, being not freedom of decision (one's own) but freedom from decision (one's own as well as someone else's). As status increased, constraints increased with it, and this was considered the true and proper ordering of society.

What men feared and resented in serfdom was not its subordination, but its arbitrariness. The hatred of that which was governed, not by rule, but by will, went very deep in the Middle Ages. The supremacy of Will was itself an evil, whether the will was one's own or another's; the latter was more uncomfortable, the former more deadly.

The higher one rose towards liberty, the more the area of action was covered by law, the less it was subject to will. The knight did not obey fewer laws than the ordinary freeman, but very many more; the freeman was not less restricted than the serf, but he was restricted in a different, more rational way. Law was not the enemy of freedom; on the contrary, the outline of liberty was traced by the bewildering variety of law. High and low alike sought liberty by insisting on enlarging the number of rules under which they lived. The most highly privileged communities were those with most laws. The man who lives outside the law, whether under the rule of his own will or that of another, is bound by the iron chains of servitude.

It was a characteristic of the higher forms of law, that those who submitted to them must do so of their own choice. There must be a personal act . . . a contract embodied in a public ceremony, renewed by each person in each generation. The highest law of all was that in obedience to which a man stripped himself of this world's goods and subjected himself to religious poverty and obedience.

Medieval society was prolific in creating forms of association to which entry was obtained by some form of oath. This connexion between
freedom and individual acts of acceptance emphasizes the rational character of freedom. . . . The nobleman was bound by several codes of law—as a Christian, a baron, a knight, a subject of the king, and he could suffer all manner of penalties for a breach of any of these codes of law. Into all these obligations he had entered by an individual contract in the ceremonies of baptism, homage, knighthood and fealty. If he was punished, even by being burnt as a heretic, he could reflect that he was being punished for breach of contract. [Southern 1953:107-110]

Thus however much the instruments of government might be concentrated in a king, any assertion that the king had a monopoly of authority would in medieval terms be an utter confusion of reality, in direct opposition to centuries of emphasis on the growth of binding law. Authority was specifically and increasingly subtracted from the Crown, and the increasingly complex instruments which the several Crowns developed during this period served (legitimately, at any rate) only to steer the royal business through an increasingly complex maze of authoritative law.

It might of course be possible for a king to ignore this authoritative law, to depend on the physical military support of interested vassals in order to exert his own will. But the medieval opinion of rule by will should be clear from the above, and the medieval jurists were quite aware of the potentials for abuse along that line. It is therefore finally important that this opportunity for concentration of authority was circumscribed just as strongly as the others.

The subject, according to the theories of the early Middle Ages, owed his ruler not so much obedience as fealty. But fealty, as distinct from obedience, is reciprocal in character, and contains the implicit condition that the one party owes it to the other only so long as the other keeps faith. This relationship . . . must not be designated simply as a contract. The fundamental idea is rather that ruler and ruled alike are bound to the law; the fealty of both parties is in reality [obedience] to the law; the law is the point where the duties of both of them intersect. If, therefore, the king breaks the law, he automatically forfeits any claim to the obedience of his subjects. Manegold of Lautenbach remarks . . . that no oath of fealty was of any account unless sworn on such conditions as these. Only the ‘loyal’ king has loyal subjects. . . . The difference between freemen and slaves according to secular law was precisely that the latter had to obey unconditionally the will of their master, whilst freemen tested the actions of their lord according to the standards of the law, and shaped their course accordingly. [Kern 1956:87-89]
Thus the governments of the European Middle Ages cannot possibly be held to have had a monopoly of formal authority, and the age of Machiavelli would seem, again, a rather late date for the arrival of the state, and civilization, in Europe.

These examples by no means exhaust the lot, and some of the others are even more alien to the viewpoints of the modern Western jurist. One further example, relatively closely related to the West, and one general comment will suffice for further background of the moment.

Islam is a near neighbor of the West, partly drawn from the same sources, and Muslim civilization is traditionally assessed to have been a shining light to western Eurasia during the early Middle Ages. But Muslim government is strangely absent from political and anthropological analyses of the nature of the state. One may suggest that this is because, if the constitutional organization of the medieval West seems odd to the modern mind, that of this next near neighbor would be far more alien. It would be very difficult indeed to show in siyasa madaniya, (Muslim) government, anything like the traditional "state".4

It must first be understood that the Muslim attitude toward "law" was precisely the same as medieval Europe's. "Law" was the command of God: end of definition. Where clear statements by God were not available, the Muslim jurist would consult the records of actions of presumably error-free men, especially Muhammad, and a whole legal science was built on this basis.

Next, Muslim constitutional theory shows very little use for the dictum that political thought is essentially a justification for the powers of the rulers.

The religious Muslim did not oppose the state, but tried to have as little to do with it as possible. The Muslim middle class did not conquer the state, because it did not [try]... In Islam, still more than in Judaism, authority—in spite of its divine origin—is regarded as the very root and seat of evil, the contact with which should be avoided at all cost. 'Omar II, who was a caliph himself [AD 717-720], is reputed to have said 'Do not spend your time in the company of a prince, even if you are guiding him in the right way, for the sin of spending time with him is greater than any good you could effect.'... [Other sayings go that] 'a religious man who goes to see a ruler loses his religion. For the things by which he pleases the ruler anger God.'... 'One should never desire authority at all. Only if authority is thrust upon a person should he accept it, and then only in order to fulfill the law and make it possible to guide men aright.'... The profession of the honest merchant, or indeed any trade, pleases God.
more than government service. . . . Practice conformed to this view. The
greatest Muslim scholars . . . preferred exile, prison and public whipping
to Government service. And that was in the golden age of the Abbasids

Third, Muslim social theory specifically disallowed the class structure so beloved of anthropological analyses; all Muslims
were equal before God. [Hodgson 1974:1, 320; Watt 1968:79] A
"notability" of sorts, the ashraf, existed on a somewhat hereditary
basis in the individual cities [Ashtor 1976:24], but is not reported
to have had any wider influence on any permanent basis.

Fourth, there was one, and only one, legitimate political institution
in the entire Muslim realm: the caliphate itself. "If the [local]
rulers wanted to stay in power unchallenged and unhindered
they dared not ignore the fundamental principle that the authority
conferred . . . upon the lawful caliph was the only authority in
law to which a Muslim would and could submit." [Rosenthal
1958:28] There were no other legitimate juridical entities of any
kind whatever—no regions, no cities, no nations, nothing with
any institutionalized legitimacy, nor for that matter any legitimate
form of corporate organization across or within regions or cities.
[Stern 1970: 48-49, 57] There were only the umma, the commu-
nity of all believers represented by the caliph or his designated
representative (usually self-promoted and very anxious for official
recognition), and the individual, and no official organization
could be created on any but an ad hoc basis that would stand
between the two. People could and did create such organizations
for local purposes, but these held no place in the formal system.
Political expression was instead channeled into the only accepted
source of legitimacy in Islam: the religion itself. The command of
God ordered society; therefore political pressure groups, political
parties if one will, could be expressed only as conflicting interpre-
tations of that divine command, that is as religious sects.
[Duchesne-Guillemin 1955:9; Cahen 1955:147-148] Thus one vis-
itor to eleventh-century Nishapur noted a particular Sunni-Shi'i
conflict as the principal running dispute in the city, but that this
dispute "was not basically a religious one": In fact the Karramis
(Sunnis) "were the spearhead of lower class, economic discontent,
and the [Isma'ili Shi'is] a frightened, defensive group of wealthy
merchants with perhaps a sprinkling of genuine Shi'ites among
them." [Bulliet 1973:74]
Finally, the caliph himself had strictly limited powers, which were in turn the only ones he could delegate to his agents of the moment. His operative title was *amir al-mu'minin*, usually translated as commander of the faithful, and the position retained a strong flavor of its military origins. Very like the medieval European king, the caliph was chief of public security in a legal system largely outside his personal control. During AD 833-848 the caliphs tried to assume rights of religious and social interpretation as well, but the attempt failed.

The struggle ended with the victory of the orthodox, and proved once and for all that the religious institution of Islam was independent of the Caliphate or any other political institution, that its sources of authority could not be controlled by political governors but were possessed by the Community in its own right, and that the Caliphate itself was only an emanation of that authority and its political symbol. [Gibb 1966:14-15]

Thus “the essential points of that in the Muslim Law which concerns daily life were independent of the state” [Cahen 1955:144], and arrangements were made accordingly.

Muslim urban society was divided [within each city] into numerous small [special interest] communities, and what held them together were the ulama [religious-legal scholars] and their ties across divisive family and community lines. . . . No central agency for coordination or administration of the whole existed. There were no municipalities, nor communes, nor state bureaucracies for urban affairs. Rather the cohesion of the city depended not on any particular institutions but on patterns of social activity and organization which served to create a more broadly based community, and this community was built around the religious elites. . . . Their competencies, their judicial, managerial, legal, educational, secretarial, financial, commercial, and familial authority grounded in the multiple dimensions of Muslim law brought them into contact with every concern of the city. . . . As an undifferentiated elite their roles, their ramified ties, and the pattern of their social interaction held Muslim cities together without recourse to more formal institutions of representation or control. [Lapidus 1967:107, 113-114]

As Periclean Greece was a one-tier organization, so the realm of Islam might almost be called no-tier. In practice, of course, there were tiers and other divisions aplenty, but none had any but prescriptive legitimacy and all could be changed or abolished at the whim of each new caliph or his designated agent. The brilliant civilization of the first five Muslim centuries was built on arrangements that were permanently temporary and definitively undefined. Yet I would suggest it difficult to pass fiat judgment
on the world of Harun ar-Rashid and ‘Umar Khayyam as “not civilized” for all that.

One more observation, on a much larger scale, will suffice to show the dimensions of the problem, since it covers most of the ancient world and almost all of modern eastern Asia.

If we refer to kingship as a political institution, we assume a point of view which would have been incomprehensible to the ancients. We imply that the human polity can be considered by itself. The ancients, however, experienced human life as part of a widely spreading network of connections which reached beyond the local and national communities into the hidden depths of nature and the powers that rule nature. The purely secular—insofar as it could be granted to exist at all—was the purely trivial. Whatever was significant was imbedded in the life of the cosmos, and it was precisely the king’s function to maintain the harmony of that integration. This doctrine is valid for the whole of the ancient Near East and for many other regions. [Frankfort 1948:3]

Thus, for example, any attempt to emphasize the ruler's personal authority as harmonizer of all nature would also emphasize his personal responsibility for every storm, famine and earthquake that happened along, with drastic consequences for the individual incumbent, whatever it might have done for the office. One may wonder how much of the differentiation among ancient monarchies was caused by different local attempts to work around that problem.

Are these situations normal? Certainly they are out of keeping with the modern image of the monolithic state, concentrating all authority and power around a tightly built central sovereignty. And such monolithic states are also commonplace in history. Moreover, they seem to develop very rapidly from polities that had previously enjoyed a stable diffusion of power for a long time. In Europe, only 130 years elapsed between the denunciation of the right of rebellion ca. 1520 and the leviathan state of Thomas Hobbes in 1651. The motor behind this development seems to be that old anthropological chestnut, war: In China of the chan kuo (leading to the Ch’in and Han unification), in Japan of the sengoku jidai (leading to the Tokugawa unification), in India of the matsuanyakya$^5$ (leading to the Nanda and Maurya unification), in Peru of the auca pacha (leading to the Inca unification), this change from a diffuse to a monolithic political system is visible within the limits of available evidence. All four italicized expressions translate effectively as “the war time,” and the label could be
applied to several other similar periods elsewhere. But warfare is hardly a monopoly of these peculiarly ferocious war times. Those lawful European Middle Ages were specifically noted above to have institutionalized warfare at all levels of life. Some deeper cause seems to drive these war times to their excessive ferocity. This, too, can be traced. For present purposes one particularly well chronicled example will suffice: that transition from a diffuse to a monolithic political system which produced early modern Europe.

The destruction of medieval Europe was directly connected to the very center of its constitutional system. In a religious polity final sovereignty rests with God: this cannot be too often emphasized. “God is the source of all law,” etc.; this formulation went quite far indeed.

[The Church] was not a State, it was the State; the State or rather the civil authority (for a separate authority was not recognized) was merely the police department of the Church. [Figgis 1923:4; my emphases]

That concept of the modern age was not there—the concept of the State as a self-sufficient, autonomous juristic body of citizens. ... What there was, was a kingdom (reignum) and a priesthood (sacerdotium), but both were parts of one and the same body, the Church. The concept of the State was as far removed from the mind of the high Middle Ages as the steam engine and electricity. [Ullman 1965:137]

This should not be considered some characteristic limited to the earliest Middle Ages and irrelevant to the developed civilization. The concept endured even into the early modern period.

You do not even begin to understand typical sixteenth-century thought till you have grasped the fact that to a vast majority of the thinkers of that period, all right was divine. Right cannot exist on one side without obligation on the other; and all in the sixteenth century who believed at all in obligation, believed that all obligation was to God. ... It was inconceivable that there could be any obligation merely to man. [Allen 1928:122]

But in the later Middle Ages disputes racked this juristic Church, and the one formula which appeared capable of solving them, called the conciliar doctrine (that the Church should be ruled by bodies of prelates and others in council assembled) failed utterly in the course of the fifteenth century.

Of decisive significance was its failure: the failure of the medieval Church of the West to reform itself as a united body. Reform was left to
come in the shape of, and as a consequence of, revolution. [Previté-Orton 1962:974]

The final result was the Protestant Revolution... In so far as the church had been the dominant institution of the earlier period, its decline was the crucial event during the years that ensued. Indeed, no phase of European civilization in the fourteenth and fifteenth centuries remained unaffected by the fading of the old ecclesiastical ideals. [Stephenson and Lyon 1962:588-589]

There followed the previously mentioned revolutionary doctrinal innovations of Machiavelli and Luther. The Protestant Revolution forced the reformation of all the various churches which emerged, but the surgery was fatal to the patient. Various churches did emerge, and this new existence of competing churches forced on Europe a choice that, in a theocratic polity, is absolutely vital: the choice of the true and proper agents of God. The extent of this disaster can probably best be appreciated by comparison to the present national system. In the United States the day-to-day standing authority is the Constitution, acting as a collective voice of the American people. What would be the result if the United States suddenly acquired two competing and irreconcilable Constitutions (or interpretations of the one), each declared legitimate and operative by its own supporting faction, with neither faction willing to recognize any act or decision of the other as legitimate? The result of course was the American Civil War of 1861-1865. But this ended one of the interpretations and so solved the problem. Europe was not so lucky.

So the civil war in Christendom provoked widespread and passionate discussion of the basis of religious and political authority; the attempt at a total integration of Christian society was gradually abandoned. That experiment had failed... Men were left groping for a new sanction for religious and political authority among the relics of medieval thought. [Bowie 1947:287]

It was this problem of authority which made a religious question the ruin of the whole European system. In a theocracy the Law stands at the summit of political organization, the single unified and absolute will of God, unchallengeable by king and people alike. Islam had disputed interpretation of this law from the beginning and so could face such a problem, but Europe had developed a strict religious hierarchy under which unity of interpretation was itself a basic point of law. With the division of the Church this unity collapsed. Human agencies now had to pass

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judgment on the will of God, and the only provision made by the
old system for such a literally cosmic decision was the defunct
conciliar system. The last opportunity for a solution seems to have
ended in 1555, in what one source calls “the greatest rent that had
ever been made in the ‘seamless garment of Christ’.” [Merriman
1962:III, 404] This final blow was not a war but a peace.

The Religious Peace of Augsburg . . . was of the greatest significance.
The medieval unity of Christendom was broken, and for the first time
heretics received a civil and political status equal to that of members of
the old Church. . . . At the same time the Peace of Augsburg culminated
the transformation of the religious into a largely political struggle. . . .
Sweeping spiritual powers were given to secular rulers, who, irrespective
of their moral character and the strength of their religious convictions,
were tempted and compelled to judge religious issues within the
framework of their general political interests. . . . It was inevitable that in
the period that followed politics claiming to be motivated by religion
would exploit the power of religion in human hearts even more reck-
lessly. [Holborn 1959:1, 245-256]

About 1560 Michel de L'Hôpital, chancellor of France, became
the first political leader to realize what this meant, and what the
necessary consequences must be. Insofar as the old system could
determine, God was now speaking in conflicting voices, each of
which claimed full and final authority. The result was no author-
ity at all, and since “God is the source of all law,” the Law itself had
come to an end. L'Hôpital's insight was precisely of the need for a
new law, and thus of a new sovereignty, a power that could exact
recognition of rulership in spite of the ongoing internecine dis-
putes over religion.

[In his writings, L'Hôpital] has introduced the concept of a sovereign
law-making power. . . . Evidently he was a little afraid of this law-making
power that he recognized. But of the practical necessity of such a recogni-
tion he was convinced. He asserted that the King held his authority from
God: but it was not upon this that he laid stress. He saw in recognition of
the king as a real sovereign, with power to make law and to determine all
questions without appeal, the only hope of peace and order in France. In
this he anticipates Bodin. Of all evils, he declared, civil war is the worst.
Better that a man should suffer every kind of injury than be a cause of
civil war. . . . Internal peace, order, and unity is the grand object to be
achieved, and recognition of full sovereignty in the King is the only
means of its achievement. [Allen 1928:293]

So sovereignty came to the European states. Previously even
the most practically absolute kings—Louis XI of France (1461-
1483) is an obvious example—had recognized the validity of the old laws and group rights even while bypassing them in every way available. Henceforth, with the law itself demoted below a secular sovereign, centralization could proceed under the banner of the law itself. This should not, however, be considered any kind of precursor to modern nationalism. L'Hôpital's horizons remained firmly bounded by religion, as witness his statements that the presence in France of two competing religions was "an evil and a dangerous thing," that it was "almost impossible that men of different religions should live together in peace," that (after the Hundred Years' War) "a Frenchman and an Englishman of the same religion are nearer together than two men of the same city whose religions differ." [Allen 1928:295] Dictatorship and religious toleration were not desirable; they were merely necessary. With the beginning of the Religious Wars there came an end of any primacy of law and liberty; it became "a question for France between royal absolutism and no government at all." [Allen 1928:376] And this same question spread across most of Europe.

The political character of Europe was profoundly, and permanently, changed.... This bitter confessional conflict came in time to overshadow every aspect of European life.... [On the inter-realm stage, it meant] the breakdown of international life itself.... The diplomatic institutions and procedures of European states, painfully evolved over the course of centuries, were also subjected to almost intolerable strains. As the continent divided into two warring camps, it became increasingly difficult to maintain the traditional international courtesies, or to continue the dialogue between sovereign States.... The traditional links between States were snapped one by one.... It was natural [in this situation] that nostalgia for the old, united Christendom should grow.... It was left to later generations to perceive that the men [of the middle sixteenth century] had themselves already passed the point of no return; that Christendom as a unity was lost beyond recall, and that the Europe which replaced it would be sharply and permanently divided. [Elliott 1968:30, 39-42]

Thus both within and among the polities that survived the religious wars, the body of law that had been built up over centuries was gradually destroyed in favor of authoritarian central rule. This new authority was fixed on the local kings and princes, who accordingly replaced the many medieval corporations as the centers of politics. These thrones were in theory stabilized by dynastic succession, but in practice dynasticism proved only the slightest limitation on royal policy. The "reunion" courts of Louis
XIV, the partitions of Poland, the ever-recurring "war(s) of the . . . succession" showed well enough where real power lay. By the middle seventeenth century and Thomas Hobbes' analysis of the nature of society, Europe was already in a war time, with no constitutional limitations on the exercise of power, and showed it.

The absolutism [within] the states was a denial of the integrity and common law of Europe. The Thirty Years' War and the treaties of Westphalia had buried all ideas of general sanctions, authoritative or moral. Even before the [war], Bodin, Grotius and their congeners had sought new sanctions in the misty regions of the natural law and of history interpreted ad hoc. The sum total of their efforts corresponded to the actuality: a recognition of the essentially anarchic character of the society of European states. . . . [Indeed], the states of Europe lived in a perpetual battle royal, an anarchy untempered by rational arrangement, in which the part of each state was dictated by an unreflecting greed and limited only by the most obvious barriers. . . . The heads of ambitious states presumed that they could fall upon and destroy their neighbors . . . [and] lesser powers collaborated with even less compunction and restraint as opportunity offered to fall upon a neighbor attacked by a stronger power. . . . Wars [were] undertaken for dimly conceived purposes, waged with the utmost brutality, and concluded by reckless betrayals of allies. [Nussbaum 1953:147-148]

One can understand how in such an arena, with the central part of the belief system already destroyed, the niceties of power-sharing would be shown the gate. The results as of the eighteenth century are considered classical, and to no small degree produced the modern Western concept of the state. I shall suggest, however, that as of the eighteenth century this prospective European war time was becoming a highly aberrant specimen of the type. Although these polities are predictably characterized as "great military states" [Wolf 1951:1] in which "the standing army became an organic feature" dominating the whole government [Dorn 1940:12], by no means all the countries of Europe matched this description. The Netherlands and Switzerland had managed the religious transition without resorting to the decisive absolutism that characterized most of Europe; Scandinavia had tempered royal absolutism with an aristocratic service bureaucracy that in practice kept government open to its public. And most important, the description "great military state" does not fit the one country which came to dominate eighteenth- and nineteenth-century European development. Britain managed to convert its failed divine-law constitutional system into a very
successful parliamentary model with an abhorrence of standing armies, and so avoided the running civil war and consequent running absolutism of the Continent. Moreover, the mass armies forming on the Continent were futile against Britain’s unbreakable wooden walls; even more, starting from a base economy and population far less than that of France, the British system produced a civilian great power able to upset any continental militarism with almost no danger of being hit back. As the eighteenth and nineteenth centuries proceeded the enormous success of parliamentary democracy more and more influenced developments first on the Continent itself, then around the world. One of the developing diffuse states even enshrined diffuseness as a basic principle of its Constitution: It might be difficult to find much difference between the American “separation of powers” and “diffusion of power.” In Australia and Canada the distribution of power remains so uncertain that outright secession of member units (Western Australia and Québec) has been a noisy possibility within the last decade. The conflict between the diffuse and the monolithic forms of state organization is by no means settled, but at least the European experience would seem to suggest that the monolithic state by no means has a preordained victory.6

Thus the basic situation suggested by historical analysis. I propose six conclusions for further testing.

A. In standard theory the term “diffuse state” would be an oxymoron of Orwellian proportions, and many scholars may prefer somesuch name as “diffuse complex political entity” as an analgesic. I submit that the label makes no difference. These entities, however called, do seem to exist, and to be the preferred method of organization for development levels as different as post-invasion Europe and post-industrial America. If they be not states then “the state” is not a prerequisite for civilization, and becomes instead only a specialized case within a much larger field of study as yet unnamed. For present purposes the term “diffuse state” will be maintained, if only to provoke controversy.

B. If constitutional collapse is considered an aberrant condition, then the normal state is diffuse. The monolithic state, so far as can be observed, is a technically degenerate7 type caused by a war situation in which normal codes of behavior have already been destroyed. The diffuse state, from the examples discussed
above, is essentially a political expression of the basic principles of
the formal knowledge system of the civilization; it is destruction
of these basic principles which in turn destroys the articulations
and limitations that had previously managed disputes within the
diffuse state.

C. From this discussion one may infer the defining characteristic
of a state level of organization to be a body of sovereign law. To
this one must by physical necessity add instrumentalties for ap-
planation of said law and a populace over whom the law is
sovereign. Thus the traditional despotic state, in which *quod
principi placuit legis habet vigorem*, reduces neatly to autocrat plus
bureaucracy (and, probably, a court) plus subjects— *unless* this
despotism has become no more than hallowed tradition, masking
a complex participatory structure behind the throne which is
recognized to have, and does have, the right to formulate the
despot's words.

This creates some difficulties for the practicing anthropologist.
To what extent may a pre-urban, pre-literate society be said to
have "law," much less a body of sovereign law? This breaks down
into (at least) the two subordinate questions of content and stabil-
ity.

No necessary content is visible. Even such presumably basic
constraints as a requirement that the state or government have a
right to enforce the law must for the moment be held in abeyance;
for example, in the developed Brehon code of medieval Ireland,
the plaintiff had first to secure the defendant's agreement to be
sued (by embarassing him into it) and then had to execute the
verdict himself if the defendant did not agree with it (with several
constraints on proper methods of execution). [Joyce 1968:1,
200-207]

Regarding the stability of law in pre-literate cultures, Africa is
an obvious mine of information. One recent study including eight
sub-Saharan presumed "early states" found "law as a system" in
only two of them, with some doubt expressed on one of the two.
[Claessen 1978:561] Evidently any legal stability was at a
minimum level.

When first contacted by Europeans, sub-Saharan Africa of-
ered all levels of development from hunter-gatherer bands to
the traditional early state. One of these extremes, the hunter-
gatherers, was a diminishing frontier, with some of its members
already being amalgamated into the African "tribal" units. [Schapera 1956:17-20] The other extreme, the presumed early states, may have been only slightly more stable than the presumed chiefdoms. "Over the centuries . . . the southern rim of the Sahara [has] witnessed an almost continuous rise and fall of centralized states" [Cohen 1978b:142]. But there does seem to have been some formula present behind this instability. There are occasional undefined references to "law," e.g. Lucy Mair [1974:137-148] on the law (in this usage, constitution and dispute-settlement mechanisms) of a group, the Arusha, lacking even agglomeration into villages and any kind of institutionalized personal office; Isaac Schapera [1956:150] that "in theory, at least, [the ruler] was not above the law."

More suggestively, from all Bantu and some of Nilotic Africa, from Senegal to Zimbabwe, one finds "the incorporation of the various African peoples concerned into states whose institutions were so similar that they must have been derived from a common source." [Oliver and Fage 1962:44] Note also that authority, while strongly centralized in each ruler, was matched by a right of secession and transfer of allegiance for both individuals and groups, to the point that this was "an outstanding feature of their social system." [Schapera 1956:25-29, 155-156, 175-176, 199-201] Secession is known in historic times (again, as recently as 1861) as a corrective for irreconcilable disagreement, and it would seem an obvious adaptation to the constraints of preliteracy. Since no legal corpus could be accumulated beyond the individual memory, most questions were left to decision as local circumstances dictated, with the sanction that dissidents could simply secede from (or change by revolt or assassination) any body of decisions that was sufficiently disliked. These individual units would be layered into larger units, the presumed early states, as occasion provided; hierarchy and complexity were in effect an off-the-rack suit of political clothes, to be acquired when convenient and shucked off when even with repairs it no longer fit. The Arab writer al-Mas'udi noted a right of deposition already in place in Africa a thousand years ago [Davidson 1969:28-29], so this sanction system would appear to be at least that old. Thus in sub-Saharan Africa law would appear to reduce to a constitutional template, with very limited permanent content but nonetheless able to maintain the stability of the system for a very long time.10
D. If the state is accepted as essentially a body of sovereign law, and the monolithic state as a variety collapsed toward a military command center, then one very old question may be much nearer an answer. Does the state originate in conflict or in integration? From this analysis, the monolithic state comes very essentially of conflict. Likewise in the forming diffuse state a developing body of law is an obvious instrument of integration; it includes laws governing conflict (which can be quite heavy in such periods), but it also includes other laws governing much else besides, as noted in the discussions of medieval Europe and Islam.

E. The modern idea of the centralized state involves both a ruling center and a locus of rule, usually defined as a territory. One may note that the proposed definition “body of sovereign law” involves neither of these concepts.

Necessarily a state, like everything else that is presumed to exist, must be located somewhere. And in pre-industrial societies, when very much of wealth is drawn one way or another from land, necessarily the place of said land in society will be a matter of careful address. But note that the requirement for a location is not a requirement for any particular location; both wealth and people are mobile objects—as witness a strong tendency in so-called feudal systems to grant not ownership but usufruct of land as payment—so actual territoriality, while the simplest way, is not a necessary way of handling the land problem. Thus, current Western concepts notwithstanding, it is not necessary for a state to be fixed to, or even to be involved with, any particular territory. So for example in ancient Greece there were poleis whose territories belonged to another polis, and—not the only example—Themistokles could, at a particularly exasperating point in the Persian War, threaten that the polis Athens would up anchor and move bag and baggage to Italy. [Ehrenberg 1969:26] On a larger scale presumably a whole civilization/state/body of sovereign law could exist physically contained by some other civilization/etc.: The Jewish experience in medieval Europe and Islam is an obvious example, and the Gypsies have been even less bound to particular territory.

A territorially specific, or in any other physical way specific, ruling center is likewise not necessary. The monolithic state is monocentric, since the core of the state involves a very clear seat of sovereignty. But the diffuse state is also monocentric, the
center being God and the Law, “welded into a unity which theoretical analysis can scarcely divide”—or in the modern national state, literally *vox populi, vox dei*. This, however, is a different kind of center. It is incorporeal, so the effect is of a system of institutions interacting on multiple vectors with at best a very delayed and disputed central control, possibly no tangible central control at all. To a very large extent the diffuse state is all by itself what among monolithic states would be called a “states system.” In a monolithic state the military front line, the territorial frontier, is the single most important line of division existing, and so creates the level of hierarchy between the state and the state system. But the diffuse state can exist quite happily either more or less with internal geopolitical boundaries, as in medieval Europe, or more or less without them, as in the *mamlakat al-Islam*. The “political” boundary in a diffuse state may be no more clearcut than any other of its institutional edges, and one may draw as many different maps in a diffuse state as there are fields of variation among its instrumentalities. The apparent total confusion of feudal Europe is a classic example, and by no means the only such.

F. So, is the state to be considered organized progress or decay product? Evidently it can be either. The diffuse state is an indicator of expanding civilization, in that government is only one relationship among individuals and many different ideas and relationships can develop without necessary reference to their usefulness to the political order. The monolithic state is an indicator of a milieu that has so far lost control of its dispute-settlement mechanisms that individual governments must mobilize all available resources behind the single imperative of survival. Even the monolithic state does see progress of a sort, but it is a very Darwinian sort. The natural product of a war time is a Prussia, not a Britain. In respect of the ability to develop indefinitely along many different lines of technology and culture, the very diffuseness of the diffuse state seems to offer much greater flexibility and opportunity than does the regimentation of the monolithic state. Thus the monolithic state is in the exact technical sense a decay product, the result of a continuing and metastasizing breakdown of a system, in this case of a society's constitutional structures. The diffuse state just as certainly represents progress, though one may argue “organized.” In such a case as the European Middle Ages, one may wonder whether society has
organized itself into chaos. It remains an open question just how far these definitions may be stretched, but it does seem that a requirement for centralization as a basic qualifying characteristic of the civilized polity cannot stand, while the quality “body of sovereign law” can accommodate the historical centralized and decentralized polity alike. Whether it will in fact prove to accommodate all civilized polities, and what the boundaries of civilization then become, must await further investigation. \(^{11}\)

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NOTES

1. One may argue whether Bodinian “sovereignty” in this exact term constitutes a necessary part of current anthropological definitions of the state; for example Claessen and Skalnik [1978:4] specifically exclude from this “an entity over and above the human individuals who make up a society, having as one of its attributes something called ‘sovereignty’.” But since it was Bodin who successfully rationalized the concentration of power into a single center, I shall suggest that this disowns the word while keeping the thought. Thus they also comment that “the government is centralized;” “[when] there is no longer any real central government [there is] no longer a real state” [1978:19, 21; their emphases]. One may also note the crucial need for centralization in such other recent analyses as Carneiro 1970:733, Service 1975:8, Cohen 1978a:32, Jones and Kautz 1981:14 and Haas 1982:3. Whether or not one ascribes it ultimately to Bodin, it is this requirement for centralization that is under question here.

2. Be it duly noted that some definitions are based on stratification rather than centralization and so are not affected by the central thesis of this essay. Due note should also be taken, however, of the lack of stratification in Muslim society as noted herein.

3. Remnants of this definition of freedom do persist, if not exactly in “law.” An obvious one, directly inherited from medieval attitudes, is the idea of a personal contract with the devil at the price of one’s soul. A more directly appreciable one is the situation of the college professor. If John Doe, a professional street person, writes and publishes something that is a deliberate falsification of fact, the amount of interest in and retribution for that action is likely to be rather small, both by the general public and by his own community. If James Roe, professor, does the same, the situation is entirely different, and the more status Professor Roe has, the greater the likely reaction. Likewise on the side of liberty, Professor Roe’s
community is likely to have much more, and much stronger, a community reaction to any attempt to silence a member than Mr. Doe's community would ever think of having.

4. This discussion is based on the tenets of Sunni Islam; the Shi'a has somewhat different attitudes. However, for the period at issue (through ca. 1500 AD) this is a difference that made no difference. For example in 945 Baghdad, seat of the Sunni caliphate, was seized by the Buyid or Buwayhid dynasty, which professed and thereafter continued to profess Shi'ism. They installed a new caliph in the usual manner, but otherwise left the Sunni caliphate strictly in place, i.e. did not depose the ruling Abbasid dynasty in favor of an Alid line or a Shi'i imamate; even beyond this, they prepared to defend the Sunni caliphate against an attack by their own co-religionists the Shi-i Fatimid dynasty of Egypt. [Saunders 1965:135] One may suspect a rather large dose of realpolitik in this, but the fact of some considerable degree of peaceful co-existence and mutual non-intervention remains.

5. The word matsyanyaya properly refers to a theoretical state of polity, "where the big fish swallowed the little fish in a condition of anarchy," rather than to a specific chronological period, but Thapar notes this theory to have been produced by the very violent period preceding the imperial unification [1966:46].

6. The idea of the diffuse political system or diffuse state may also cast some light on the anthropological problem of the origins of the state and civilization. The European war time had Britain to re-establish the diffuse civil state, but few war times have enjoyed the presence of an implacable and impregnable anti-conquerer. The only obvious analogue to Britain is the Roman Republic, before it too turned to a career of national imperialism. Four "war times" so-called by their own historians were cited earlier, and all four were fought to the finish, with the winner and sole survivor establishing a universal conquest empire. In the better chronicled periods of history one may even note the diffuse political arrangements preceding these bloodthirsty militarisms: in Russia the Grand Principality of Kiev, before the wars of the Russian princes, before the Muscovite Empire; in Islam as already noted, before the wars of the Mamluks, Turks, and Persian and Indian Muslim princes, before the Osmanli, Safavid, and Mughal empires; among the Greek poleis as already noted, before the wars of the Hellenistic princes, before the Roman Empire. Any attempt at a complete catalogue of such developments would necessarily be rather subjective; the war time will be dealt with as a general phenomenon in the next essay in this series. Suffice it for present purposes that, first, the transition to "statehood" in terms of centralization and sovereignty can be shown in the particularly well-documented case of Europe to have been caused by the sixteenth-century collapse of an earlier, much more diffuse system, leading to unbridled military competition and political organizations to match; second, such "war times," sometimes with the preceding diffuse system historically visible, commonly produce anarchic warfare for a period of centuries leading to universal conquest empire for a further period of
centuries. This second finding occurs on large enough a time scale to be visible from very limited, even exclusively archaeological evidence. It may therefore be possible to apply it usefully to the question of the first beginnings of the state and civilization.

Elman Service [1975] nominated six cases of primary or pristine formation of the state and civilization, which have become more or less canonical. Two, by the Harappans and the Shang, occurred in circumstances too little known for anything beyond speculation. A third, Egypt, arose in circumstances so ill known that one recent authority assesses even the evidence of internal warfare to be very uncertain. [Janssen 1978:215-216] Elsewhere the age of conflict preceding unification is suggested to have lasted for at least the preceding 200 years. [Hoffman 1979:332] But with reasonable certainty the other three all involved more or less prolonged warfare within a single culture area leading to empire. In Mesoamerica Service nominated Teotihuacán both as “the first true urban civilization in America” and (more debatably) “an empire,” with specific note of a “highly competitive situation” preceding [1975:169, 173, 184]. In Peru he specifically notes a period of “militarism” ending ca. 400-500 AD with the arrival of civilization in the form of “the wide-ranging militaristic empires of Huari and Tiahuanaco” [1975:193, 200]. In Mesopotamia the advent of civilization is nominated to the Early Dynastic period (ca. 2900-2500 BC), in which the individual unit was “an established hereditary military kingdom” and the “political trend was accompanied by increased militarism and force” and terminated in empire [1975:209-211]. Thus the circumstances surrounding all three of the moderately well known proposed advents of civilization, and possibly also a fourth lesser known one, would seem equally compatible with collapse of a preceding, still largely unknown, diffuse political system, which presumably had developed at some still earlier time.

7. In the technical biological sense: a simplified form caused by a simplified regime. The blind, unpigmented animals of the total darkness of the deep caves are the most famous example. In a phraseology directly relevant to the proposed situation, nothing else so concentrates one’s attention as having a gun pointed at one’s head.

8. In my analysis it is the “formal knowledge system” which actually lies at the heart of and defines each separate civilization; likewise the onset of the primary or pristine civilizations was marked by the first formulations of such formal knowledge systems—in Catal Hüyük ca. 6000 bc, in Mesoamerica in Olmec San Lorenzo ca. 1200-900 bc, in Chavin Peru possibly ca. 1000 bc, and in Mississippian North America ca. 1100-1400 AD. See Hord 1981, 1987.

9. One may conceive of the “body of sovereign law” as the political actualization of the formal knowledge system. This would imply that sovereign law is a necessary concomitant of a formal knowledge system, but for at least one such system this is demonstrably false: modern Science, a very established formal knowledge system, which (at least in non-Marxist countries) remains self-admittedly unable to explain social relations in any successfully prescriptive manner. One may assume that
the disciplines of modern science were not available in, for example, the Early Neolithic, but our own example does suggest the need for some caution.

10. This suggests literacy (or somesuch workable equivalent as the *quipu*) to be a defining boundary between chiefdom and state levels of organization as now labelled. But this would be a very thick boundary zone, since literacy was at least centuries in development in each area. Likewise if such a “chiefdom” comes to be supplied with a script, this does not create instant long-term stability, since the Sahel states continued to rise, fall, and regroup for a thousand years after Islam introduced written Arabic. At least one long-distance preliterate suzerainty is known, the Yapese “empire,” a redistribution network with very firmly established command relationships and no mention of warfare off Yap itself, stretching some 1100 kilometers east from Yap into Micronesia and attested as early as 1731. [Lessa 1950; Bellwood 1970:105-106] One might then argue that oceanic communication between small islands of settlement creates a very special situation, but this only requires a close technical analysis of the presumed uniqueness of the situation.

11. Before closing I should relieve Jean Bodin of what amounts to a bum rap. In his analysis of sovereignty Bodin personally preferred decisive monarchic absolutism, and by reason of the persuasiveness of his arguments and the irreconcilable differences abroad in Europe at the time, this became the classical image attached to his thoughts. But he did admit the technically equal validity of aristocratic and democratic sovereignty, which made the *Republic* a prime source of ideas for republican theorists in the next century. Bodinian sovereignty remains absolute wherever vested, including the people, and if a “diffuse absolutism” sounds even more an oxymoron than a diffuse state, it remains both a logical consequence of his analysis and a technically accurate description of the authority vested in, say, the totality of the people of the United States (or any other nationalism) acting according to law.

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