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1 Before the state: prehistory to AD 1300

Definitions of the state have varied widely. The one adopted here makes no claim to being exclusive; it is merely the most convenient for our purpose. The state, then, is an *abstract* entity which can be neither seen, nor heard, nor touched. This entity is not identical with either the rulers or the ruled; neither President Clinton, nor citizen Smith, nor even an assembly of all the citizens acting in common can claim that they *are* the state. On the other hand, it includes them both and claims to stand over them both.

This is as much to say that the state, being separate from both its members and its rulers, is a corporation, just as universities, trade unions, and churches *inter alia* are. Much like any corporation, it too has directors, employees, and shareholders. Above all, it is a corporation in the sense that it possesses a legal *persona* of its own, which means that it has rights and duties and may engage in various activities *as if* it were a real, flesh-and-blood, living individual. The points where the state differs from other corporations are, first, the fact that it authorizes them all but is itself authorized (recognized) solely by others of its kind; secondly, that certain functions (known collectively as the attributes of sovereignty) are reserved for it alone; and, thirdly, that it exercises those functions over a certain territory inside which its jurisdiction is both exclusive and all-embracing.

Understood in this way, the state – like the corporation of which it is a subspecies – is a comparatively recent invention. During most of history, and especially prehistory, there existed government but not states; indeed the idea of the state as a corporation (as opposed to a mere group, assembly, or community of people coming together and living under a set of common laws) was itself unknown. Arising in different civilizations as far apart as Europe and the Middle East, Meso- and South America, Africa, and East Asia, these pre-state political communities were immensely varied – all the more so since they often developed out of each other, interacted with each other, conquered each other, and merged with each other to produce an endless variety of forms, most of them hybrid.

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More information

Nevertheless, speaking very roughly and skipping over many intermediate types, they may be classified into: (1) tribes without rulers; (2) tribes with rulers (chiefdoms);[1] (3) city-states; and (4) empires, strong and weak.

Tribes without rulers

Tribes without rulers, also called segmentary or acephalous societies, are represented by some of the simplest communities known to us. Before the colonization of their lands by the white man led to their destruction, they included so-called band societies in many parts of the world: such as the Australian aborigines, the Eskimo of Alaska, Canada, and Greenland, and the Kalahari Bushmen. Other communities discussed here were somewhat larger and their political organizations slightly more sophisticated. Among them are some East African Nilotic tribes such as the Anuak, Dinka, Masai, and Nuer made famous by the anthropological researches of Evans-Pritchard;[2] the inhabitants of the New Guinea highlands and Micronesia; and most – though not all – pre-Columbian Amerindian tribes in both North and South America.

What all these had in common was the fact that, among them, "government" both began and ended within the extended family, lineage, or clan. Thus there were no superiors except for men, elders, and parents, and no inferiors except for women, youngsters, and offspring including in-laws (who, depending on whether the bride went to live with the groom's family or the other way around, could be either male or female). In this way all authority, all rights, and all obligations – in short all social relations that were institutionalized and went beyond simple friendship – were defined exclusively in terms of kin. So important were kin in providing the structure of the community that, in cases where no real ties existed, fictive ones were often invented and pressed into service instead. Either people adopted each other as sons, or else they created the sort of quasi-blood tie known as guest-friendship in which people treated each other as if they were brothers. Among the Nuer, this system was taken to the point that women could, for some purposes, "count" as men.[3]

[1] In distinguishing between tribes without rulers and chiefdoms, I follow M. Fortes and E. E. Evans-Pritchard, eds., *African Political Systems* (Oxford: Oxford University Press, 1940). For some other classifications of tribal societies, see E. R. Service, *Origins of the State and Civilization* (New York: Norton, 1975), and T. C. Llewellen, *Political Anthropology: An Introduction* (South Hadley, MA: Bergin and Garvey, 1983).

[2] E. E. Evans-Pritchard, *The Nuer* (Oxford: Oxford University Press, 1940). This is probably the most complete and sympathetic description of a tribe without rulers ever produced.

[3] Evans-Pritchard, *Kinship and Marriage Among the Nuer* (Oxford: Clarendon Press, 1951), pp. 180–9.

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More information

Within the limits of the kin group the individual's position relative to everybody else was determined very precisely by his or her sex, age, and marital status. Conversely, those who for one reason or another were not surrounded by a network of kinspeople – such as foreigners originating in other tribes and, in many places, unwed mothers – tended to find themselves in a marginal position or with no position at all. An excellent case in point is provided by the biblical story of Ruth. Ruth, originally a Moabite, married an Israelite man who had settled in her native country. Left a widow by his death, she, together with her mother-in-law Naomi, moved from Moab to Israel. However, so long as she was not recognized and reintegrated into her late husband's family by marrying one of his relatives her situation in life remained extremely precarious. Not only was she reduced to beggary, but as a woman on her own she was exposed to any kind of abuse that people chose to inflict on her.

In the absence of any institutionalized authority except that which operated within the extended family, the societies in question were egalitarian and democratic. Every adult male was considered, and considered himself, the equal of all others; nobody had the *right* to issue orders to, exercise justice over, or demand payment from anybody else. "Public" tasks – that is, those tasks that were beyond the capacity of single family groups, such as worship, big-game hunting, high-seas fishing, clearing forest land, and, as we shall soon see, waging war – were carried out not by rulers and ruled but by leaders and their followers.[4] The operating units were so-called sodalities, or associations of men. In many societies, though not all, each sodality had its own totemic animal, emblem, and sacred paraphernalia, such as musical instruments, masks, festive clothes, and so on. The items in question, or at any rate the instructions for manufacturing them, were believed to have been handed down by the gods. They were kept under guard in specially designated places and were often considered dangerous for outsiders, particularly women and children, to touch or even look at.[5]

Membership in a sodality did not depend on a person's free choice but was passed along by heredity. Every few years a ceremony would be held; old men would be passed out, and their places taken by a group of youths, mostly related to one another through the network of kin, who joined the ranks of the sodality after passing through the appropriate rituals.[6] Within

[4] The early Germanic tribes expressed this relationship rather exactly by calling those who obeyed the leader his *Gefolgschaft* (literally "follow-ship"). See H. Mitteis, *The State in the Middle Ages* (Amsterdam: Elsevier, 1974), p. 11.

[5] See Y. Murphy and R. P. Murphy, *Women of the Forest* (New York: Columbia University Press, 1974), pp. 92–5, for an example of such arrangements.

[6] For the working of age-group systems, see B. Bernhardi, *Age–Class Systems: Social Institutions and Politics Based on Age* (London: Cambridge University Press, 1985).

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each sodality leadership tended to pass from father to son. However, being well sired was of little use if the person in question did not also possess the necessary combination of personal qualities. Among them were a certain minimum age, eloquence, courage, experience, and, perhaps most important of all, proven skill in performing the various activities that made up the sodality's *raison d'être*. In many societies they also included a reputation for being able to command magic powers such as the ability, for example, to cause the game to appear at the appointed time and thus lead to a good hunting season.

Returning to the community as a whole, law, in the sense of a man-made, formally enacted (and therefore alterable), and binding set of regulations that prescribe the behavior of people and of groups, did not exist. In its place we find custom; in other words, an indeterminate number of unwritten rules which were partly religious and partly magic by origin. The rules covered every aspect of life from sexual mores to the division of an inheritance; thus our present-day distinction between the public sphere (which is covered by law) and the private one (where, as in ordering one's household or making one's will, for example, people are supposedly free to do as they please) did not apply. For example, custom dictated that a youngster *had* to pass through the appropriate initiation rites – and suffer the appropriate agonies – in order to be admitted to adult status, join the sodality to which the remaining members of his family belonged, and be allowed to marry. A newly married couple *had* to take up residence with the groom's family or with that of the bride. And brideswealth *had* to be shared with various male members of one's family, all of whom had a claim on it.

In the absence of the state as an entity against which offenses could be directed, another distinction which did not apply was the one between criminal and civil law; and indeed it has been said that the societies in question recognized tort but not crime.[7] Tort could, however, be directed not only against other people but – in cases such as incest or sacrilege – against the group's ancestral spirits and the deities in general. These were invisible, by and large malignant beings that dwelt in the air and took the form of wind, lightning, and cloud; alternatively they were represented by certain stones, trees, brooks, and other objects. Whatever their shape or chosen place of residence, they were intent on having their rights respected. If given offense, they might avenge themselves by inflicting drought,

[7] For an excellent discussion of these problems, see H. I. Hogbin, *Law and Order in Polynesia: A Study of Primitive Legal Institutions* (London: Christopher's, 1934), particularly ch. 4; and L. K. Popisil, *Kapauku Papuans and Their Law* (New Haven, CT: Yale University Press, 1958).

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illness, or infertility not just on the perpetrator but on his relatives or, indeed, anybody else.

Once again a good illustration of the way things worked is provided by the Bible, this time in the book of Leviticus, which should be regarded as the codification of previous tribal usage. Much of the book is concerned with uncleanliness, especially but not exclusively of a sexual kind – menstruation, unintended ejaculation, and the like. Each rule is followed by the ways in which, if broken, it is to be atoned for, the understanding being that the Lord was particularly concerned with such problems and would not tolerate impurity in His people. Minor transgressions carried no particular penalty and could be obviated by the individual resorting to temporary seclusion, purification, prayer, and sacrifice. However, major ones such as incest were known as *tevel* (abomination). They carried the death sentence, usually by fire, or else the text simply says that the culprit should be "cut off" from the people (in other words, destroyed). Thus, and although there was no separate category of criminal law, there did exist certain kinds of behavior which were recognized as injurious not just to individuals but to God and, through His wrath, the community as a whole, and which, unless properly dealt with, would be followed by the gravest consequences.

As this example shows, tribal custom, far from being regarded as part of the nature of things and automatically obeyed, was occasionally violated.[8] In the simpler "band" societies it was the head of the household who arbitrated and decided in such cases, whereas among the more sophisticated East African pastoralists and North American Indians this was the role of the village council. The council consisted of elders, meaning not just old people but those who had undergone the appropriate rituals marking their status and, as a result, were considered close to the spirits and custodians of the group's collective wisdom. Even so, membership of the appropriate age group did not in itself qualify a person to speak in council; while every councilman had to be an elder, not every elder was a councilman or, if he was, could command attention. To become a "talking chief" one had to possess a reputation for piety and wisdom as well as a demonstrated record in maintaining the peace among the members of one's own family group. As the Berti of Sudan put it, he who is unable to strengthen his own cattle-pen should not seek to strengthen that of his neighbor.[9]

The initiative for summoning the council was taken by the parties

[8] See B. Malinovsky, *Crime and Punishment in Primitive Society* (London: Kegan Paul, 1926).

[9] L. Holy, *Neighbors and Kinsmen: A Study of the Berti People of Darfur* (London: Hurst, 1974), p. 121.

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Martin van Creveld
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involved in a dispute or, more likely, by one of their relatives who had taken alarm and gone to summon help. Assembling at a designated place – often under the shade of a sacred tree – the council would hear out those directly involved as well as other witnesses drawn from among their kinspeople. In case of an invisible offense – i.e., where a misfortune was suspected to have its origin in witchcraft – a diviner would be called to discover the perpetrator; next, the accused or suspected would be made to undergo an ordeal, such as drinking poison or dipping an arm in boiling water, as a way to determine his or her guilt.[10] The way to settle interpersonal disputes up to and including murder was generally by means of retaliation – an eye for an eye, a tooth for a tooth – restitution, or compensation. The latter was itself based on the customary scale: so much for the death or injury of a man, so much for a woman, or for a youngster. All these, however, were due only in case the person offended against belonged to a different family or lineage; one did not pay for injuring one's own.

As they lacked anything like a centralized executive or police force, the sole sanction at the elders' disposal consisted of their ability to persuade the members of the group to follow their wishes and carry out the council's decision. What really mattered was one's personal standing and the number of relatives whom one might call to one's assistance; as in all other societies, the strong and influential could get away from situations in which the weak and the unconnected became entangled. A small, intimate, and tightly knit community might not find it too difficult to discipline, and if necessary punish, isolated individuals. However, taking similar measures against persons whose relatives were numerous and prepared to stand with them was not so easy, since it might readily result in the group dividing into hostile camps and even to feuding followed by disintegration. Once again there are examples of this in the Bible: for example, the book of Judges where an attempt to punish members of the tribe of Benjamin for an outrage committed on a woman led to full-scale civil war.

The absence of a centralized authority also determined the form and nature of another function normally associated with the state, namely warfare.[11] In some of the more isolated and less sophisticated societies it scarcely existed; instead there were ritualized clashes between individuals using blunt weapons or none at all. Such was the case among the Australian aborigines, where the rivals confronted each other staff in hand. It

[10] The classic treatment of divination and ritual is E. E. Evans-Pritchard, *Witchcraft, Oracles and Magic Among the Azande* (Oxford: Clarendon Press, 1976).
[11] The best work about the subject remains H. Turney-High, *Primitive War: Its Theory and Concepts* (Columbia: University of South Carolina Press, 1937).

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Excerpt
More information

also applied to the Eskimo, where the two parties would exchange derisive songs in front of the assembled community until one or the other gave way, at which point his rival was declared the victor. But most societies, notably those of East and Central Africa as well as New Guinea, Micronesia, and the Americas, did not content themselves with such friendly encounters among their own people. Using sodalities as their organizational base, they mounted raids – which were themselves scarcely distinguishable from feuds – against the members of other lineages, clans, or tribes.

The most important objectives of warfare were to exact vengeance for physical injury, damage to property (e.g., livestock or gardens), offenses to honor, and theft (including the abduction or seduction of women). Another was to obtain booty, and again this included not merely goods but marriageable women and young children who could be incorporated into one's own lineage and thus add to its strength. From Papua through Africa to North and South America, very great importance was attached to the symbolic trophies that war was capable of providing. These took the form of enemy ears, scalps, heads, and the like; having been dried, smoked, pickled, or shrunk, they could either be carried about on one's person or else used to decorate one's dwelling. As in more developed societies, a person who possessed such symbols could readily translate them into social status, sexual favors, family alliances, and goods. Hence the role that war played in men's lives was often very large: both the Latin *populus* and the Germanic folk could originally stand for either "people" or "army." Among the North American Plains Indians, men were known as "braves," while in the book of Exodus the term "members of the host" is synonymous with "adult men." In the absence of a centralized decision-making body, war itself might be defined less as a deliberate political act than as the characteristic activity of adult males, undertaken in the appropriate season unless they were otherwise engaged.[12]

On the other hand, it was precisely because every adult male was at the same time a warrior that military organization was limited to raiding parties. By no means should sodalities be understood as permanent, specialized, war-making armed forces or even popular militias. Instead they were merely associations of men which, lying dormant for much of the time, sprang into life when the occasion demanded and the leader succeeded in convincing his followers that a cause worth fighting for existed. Often raiding parties could maintain themselves for weeks on end and cover astonishing distances in order to make pursuit more difficult;

[12] For the way these things worked in one extremely warlike society, and the implications for humanity as a whole, see N. Chagnon, *Yanomano: The Fierce People* (New York: Holt, Rinehart and Winston, 1983 edn.).

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Excerpt
More information

they were also capable of disciplining their members, breaking their weapons (a grave insult), inflicting corporal punishment, and even putting them to death if necessary. However, once hostilities were over, sodalities invariably dissolved, leaving the leaders stripped of their authority. This was the case, for example, among the Cherokee with their so-called red chiefs; so also among the Pueblo, Jivaro, Dinka, and Masai.[13] None of these societies had a system of rent, tribute, or taxation that would have redistributed wealth and thus given rise to a class of individuals with the leisure needed in order to train for, and wage, war as their principal occupation.

In some of these societies, such as the Bushmen, institutionalized religion played hardly any role and every household chief was at the same time his own priest. However, the majority did recognize a religious head in the person of the shaman, prophet, or priest whose authority went beyond that of the individual lineage. Karl Marx to the contrary, the most fundamental difference separating humans from animals is not that the former engage in production for a living.[14] Rather, it is that they recognize the idea of incest, even if the rule against it is occasionally broken. In no known case anywhere around the world did the family-based, face-to-face groups in which people spent most of their lives habitually marry among themselves. Instead they sought their partners among the members of similar groups, normally those which were related to them, but not too closely.

In addition, and on pain of inflicting misfortune, the deities demanded to be worshipped. From Australia to Africa to the Americas, these twin social factors made it necessary to hold periodical gatherings, or festivals. Depending on its religious importance and the number of people whom it brought together, a festival could last for anything between three days and a fortnight. A truce was declared and peace, i.e., the absence of mutual raiding, prevailed; this enabled the members of the various clans to assemble in order to pray, sacrifice, eat their fill, socialize, and exchange women (either permanently, by arranging marriages, or else temporarily by relaxing social mores) and other gifts. Coming on top of its practical and religious functions, the festival also provided the people with an opportunity to reaffirm their own collective identity as a community; such is the case in other societies to the present day.

[13] For this kind of military organization, see P. Clastres, *Society Against the State* (Oxford: Blackwell, 1977), pp. 177–80; P. Brown, *Highland People of New Guinea* (London: Cambridge University Press, 1978); and J. G. Jorgensen, *Western Indians: Comparative Environments, Languages, and Culture of 172 Western American Indian Tribes* (San Francisco: Freeman, 1980).

[14] K. Marx and F. Engels, *The German Ideology* (New York: International Publishers, 1939 [1843]), p. 7.

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More information

The person who led the celebrations, though he might make use of female assistants to carry out his duty, was invariably male. His position is best described as a combination of sage, prophet, and high priest; by origin he had to belong to the lineage which, according to tradition, was considered closest to the tribe's principal divinity. Holding the position presupposed extensive knowledge of tribal lore, astronomy, magic rites, medicine, and so on, all of which could be acquired only by means of a prolonged apprenticeship. Priests were expected to train their own successors from among members of their family, either sons or nephews. Even so the succession was not automatic; instead it had to be confirmed by the elders of the priestly lineage who selected the candidate deemed most suitable by them. Among the East African Shilluk and Meru, for example, he carried the title of *reth* or *mugwe*, respectively.[15]

Once he had taken up his position, the priest was distinguished by certain symbolic tokens of office: such as body paint, headgear, dress, the staff that he carried, and the shape of his residence. He might also be subject to taboos such as being forbidden to have his hair cut, touch certain objects considered unclean, eat certain kinds of food, or marry certain categories of women. His influence rested on the idea that the fertility of land, cattle, and people depended on the accomplishment of rituals that he alone, owing to his descent and the learning that had been passed on to him by his predecessor, could perform; as a Bakwain (modern Mali) shaman once allegedly put it to the explorer David Livingstone, "through my wisdom the women become fat and shining."[16] In this way a close connection existed between the tribe's welfare and his own. Priests were responsible for the timely occurrence of climatic phenomena, such as rain, without which "cattle would have no pasture, the cows give no milk, our children become lean and die, our wives run away to other tribes who do make rain and have corn, and the whole tribe become dispersed and lost."[17] If they failed in their duty, they might be deposed and a substitute appointed in their stead.

Cases are known when capable priests manipulated their presumed magic powers to develop their influence into authority and make themselves into *de facto* tribal leaders. They acted as mediators, settled disputes, represented their people in front of foreigners, and instigated action in respect to other groups, including, in colonial times, the organization of rebellions against the imperial power. Although, by virtue of their sacred

[15] See L. Mair, *Primitive Government* (Harmondsworth, UK: Penguin Books, 1962), pp. 63ff.; and E. E. Evans-Pritchard, *The Divine Kingdom of the Shilluk of the Nilotic Sudan* (Cambridge: Cambridge University Press, 1948), pp. 13ff.

[16] Quoted in M. Gluckman, *The Allocation of Responsibility* (Manchester: Manchester University Press, 1972), p. xviiii.

[17] *Ibid.*

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position, priests could not function as military commanders or participate in the fighting, they often conducted the opening and closing ceremonies that were considered necessary first in order to authorize bloodshed and then as a means of atoning for it. In return for their ministrations they could obtain presents in the form of food, since parts of the offerings made to the deities were set apart for them. Their reward might also include clothing, services such as help in erecting their dwellings, and, in some societies, women.

Still, priests, however important their position, did not make custom, but merely explained what it was and interpreted it to suit the case at hand. No more than anybody else did they possess the right to command obedience. They did not levy taxes, did not have an organized following that might enforce their wishes, and did not exercise command in war. Their weapons were persuasion and mediation, not coercion; insofar as the sole sanctions at their disposal were of a kind that we should call supernatural, their power fell far short of that of a chief or, indeed, any kind of ruler in the ordinary sense of that term. It is from Samuel's description of the arrangements which a king would institute once he had been duly anointed and installed that one can learn of the things that he himself, as a mere prophet, could not do:

> This will be the manner of the king that shall reign over you. He will take your sons, and appoint them for himself, for his chariots, and to be his horsemen; and some shall run before his chariots.
>
> And he will appoint him captains over thousands and captains over fifties; and will set them to clear his ground, and to reap his harvest, and to make his instruments of war, and instruments of his chariots.
>
> And he will take your daughters to be confectionars, and to be cooks and to be bakers.
>
> And he will take your fields, and your vineyards, and your oliveyards, even the best of them, and give them to his servants.
>
> And he will take the tenth of your seed, and of your vineyards, and give them to his servants.
>
> And he will take your menservants, and your maidservants, and your goodliest young men, and your asses, and put them to his work.
>
> He will take the tenth of your sheep, and ye shall be his servants.
>
> And ye shall cry out on that day because of your king which ye shall have chosen you; and the Lord will not hear you on that day.[18]

Tribes with rulers (chiefdoms)

Given that their social structure was almost identical with the extended family, lineage or clan, tribes without rulers were necessarily small and

[18] 1 Samuel, 8, 11–19.

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