

SELECTED GIVINGS AND TAKINGS BY A KING IN PRE-MODERN INDIA

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Abstract

The paper has two main parts. The first part presents five Old Indian theories of a monarchic state: the idealistic theory of state, the Arthaśāstra's seven-member theory, the protection-through-punishment theory, the contract theory, and the loyalty theory.

The second part discusses two selected aspects of the king's givings and takings related to these theories of state: (i) According to Kauṭilya, the king or his officers should compensate the victim for items stolen by a thief if the latter cannot be apprehended. In contrast, compensation for stolen items is not widespread in modern legal systems. (ii) One of the king's duties is just punishment and one may worry about the king's incentives to administer justice properly. One answer given by Manu points to Varuṇa as chastiser of kings. In the same context, Manu demands that a king must keep a property fine for himself, but "he should offer that fine to Varuṇa by casting it into water".

Keywords: Theories of State, *Arthaśāstra*, Kauṭilya, Manu, justice.

Introduction

I would like to begin by presenting five major Indian concepts of monarchical states in the next chapter. In chapters III and IV, these theories of state are linked to incentives provided to civil servants

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and to the king himself. In particular, the pre-modern Indian king is obliged to catch the thief and return the stolen property according to some *dharmasāstras* and according to Kauṭilya's *Arthasāstra*. If that should prove impossible, the victim is to be compensated by the king or his officials. We then turn to the Varuṇa rule. It stipulates that the king is not to keep for himself any monetary punishment he might administer.

It should be admitted at the outset that one should be careful not to draw far-reaching conclusions from the *artha* and *dharma* texts used in this paper. While it is a matter of debate whether Kauṭilya meant to describe how royal rule was effected in his time or whether he intended to prescribe an ideal (if ruthless) government, *dharma* texts seem to be even less suitable for historical research. The usefulness of the *dharma* literature for historical purposes has been wisely discussed by Davis, Jr. : "Because we are talking about ideas and not practices, we have to be content with a little distance from the hard ground that historians prefer, a second-order kind of understanding that might be thought of as intellectual history. Still, ideas have practical consequences [...]" (2017: 4). And, so I like to add, ideas may reflect historical realities even if we cannot take them at face value.

Indian Concepts of Monarchical States

In this chapter, five major old Indian ideas of monarchical states are briefly covered by the idealistic theory of state, the *Arthasāstra*'s seven-member theory, the protection-through-punishment theory, the contract theory, and the loyalty theory.¹ I do not make any claim to the effect that they have arisen in that very order.

The *dharma* literature usually projects a rather idealistic picture of the king and his characteristics. For example, GDh 11.2–6 demands: "[The king] should be correct in his actions and speech and trained in the triple Veda and logic. Let him be upright, keep his senses under control, surround himself with men of quality, and adopt sound policies. He should be impartial towards his subjects and work for their welfare" (Olivelle 2000). This idealistic approach can be found in many other places.² Thus, some sort of benevolent dictator³ is supposed to reign the old Indian state. Of course, the idealistic viewpoint is not well suited to address incentive problems. After all, "bad" kings are ruled out, in a purely normative manner.

For a discussion of the seven-member theory, it is best to turn to the *Arthasāstra*. Kauṭilya (KĀŚ 6.1.1) enumerates:

Lord, minister, countryside, fort, treasury, army, and ally are the constituent elements (Olivelle 2013).

R.S. Sharma calls this list a “complete definition of the state” (Sharma 2005: 31) and suggests that this definition surpasses the Greek endeavours in this field: “Although Plato and Aristotle speculate on the origin of state, they never define it as sharply and clearly as is the case with early Indian thinkers.” (Sharma 2005: 38)

The third theory of state might be addressed as protection-through-punishment theory, with a central quote being due to Manu (MDh 7.20-21):

If the king fails to administer Punishment tirelessly on those who ought to be punished, the stronger will grill the weak like fish on a spit; [...] no one would have any right of ownership; and everything would be topsyturvy.^{4, 5}

According to Manu, the necessity to punish the subjects arises from their dishonesty or, more generally, their behaviour against *dharmic* values. Indeed, legal procedures and punishment arise from this lamentable state as Nārada (NSmM 1.1-2) explains:

When men had dharma as their sole purpose and were speakers of the truth, then there was no legal procedure, no enmity, and no selfishness. Legal procedure came into being at the time when dharma was lost among men. The overseer of legal procedures is the king; he has been made the rod-bearer.^{6, 7}

The fourth theory of state is the contract theory that imagines a contract between a king and his subjects.⁸ Consider KĀŚ 1.13.5-7:

Oppressed by the law of the fish, people made Manu⁹, the son of Vivasvat, king. They allocated to him as his share one-sixth of the grain and one-tenth of the merchandise, as also money. Subsisting on that, kings provide security to the subjects (Olivelle 2013).

Thus, the contract theory seems to flow from the protection-through-punishment theory. There is not much evidence that Kauṭilya himself supported the contract theory of state. The above passage is ideological. Its purpose is to propitiate the people with their tax-collecting ruler who may sometimes seem oppressive (*see* KĀŚ 1.13.1-13).

It was clear to Old Indian theoreticians of the monarchical state that the king should strive to be reckoned a just king and enjoy the loyalty of his ministers and subjects. Indeed, the importance of loyalty is clearly spelled out in KĀŚ 7.5.26–27:

[T]hrough the negligence and lazyness of the king or the destruction of enterprise and security,
 there arise the impoverishment, greed, and disloyalty of subjects.
 When impoverished, subjects become greedy; when they are greedy, they become disloyal;
 and when they are disloyal, they either go over to the enemy or kill their lord themselves (Olivelle 2013).

Compensation for Theft

Kauṭilya (KAŚ 3.16.25-26) stipulates that the king (or, indeed, his officials) should compensate the victim for items stolen by a thief if the latter cannot be apprehended:

Things robbed by an enemy king or a tribal chief [...] the king should recover and restore to their respective owners. Anything stolen by thieves that cannot be found - or that he is powerless to recover - the king should restore from his own property. What has been seized as a result of individual plunder, he should recover and restore or pay compensation. (Olivelle 2013).

Rules like these help the king (the first member in the seven-member kingdom) to organize his relationships with the *amātyas* (the second member), the functionaries, whose diligence he has to rely upon.

It is striking that compensation for stolen items is not current in modern legal systems.¹⁰ The Indian rules remind us of the central obligations of governments, in particular ensuring inner and outer security. This is surely in line with the contract theory of state. From an efficiency perspective, it is unclear whether such compensation rules should be in effect. On the one hand, potential victims may take insufficient precautions if they know that the cost of theft is borne by the government (or a king). Indeed, the compensation acts as an insurance against theft. In economic theory, these reductions in precautionary measures come under the heading of moral hazard.¹¹ On the other hand, (modern) governments may also need (monetary and political) incentives to prevent theft (by stricter laws against theft, by increasing the police force, by controlling borders, etc.).

How Varuṇa Helps the King to be Just¹²

It is clear from both the protection-through-punishment theory and from the contract theory that the king bears the responsibility for

just punishments. From the idealistic viewpoint, this does not pose any problems. The just king will administer justice in the correct manner. This does not stop Indian texts from worrying about the king's incentives.

In particular, some Indian *dharma* texts mention that the punisher king confiscates property as a fine. Then, the subjects may fear that the king uses these fines to overcome financial bottlenecks. Consider KAŚ 4.13.42–43:

For a king fining someone who does not deserve to be fined, the fine is 30 times that amount. He should place it in water for Varuṇa, and then give it to Brāhmaṇas. By that, the king's sin caused by wrongful infliction of fines is cleansed, for Varuṇa is the one who disciplines kings when they act wrongly with respect to men. (Olivelle (2013))¹³

Thus ensues a two-level structure where Varuṇa can punish the king who in turn can punish his subjects.¹⁴ The king is enticed to punish in a just manner if he believes that Varuṇa will otherwise punish him. Take, however, the subjects' point of view. They will trust the king to punish them in a just manner if they believe that the king is a believer (in Varuṇa). In this way, one encounters second-order beliefs¹⁵ which are more difficult to uphold than first-order ones.

If the belief argument is too facile, I need to supply additional arguments of how Varuṇa's punishment might work. Does it imply that the king, the most powerful agent himself, would somehow need to punish himself? Against this idea, Kane has already opined that "these prescriptions [...] were counsels of perfection and must have been futile. No king would ordinarily fine himself" (1973: 176–177). He then refers to medieval texts where the king is understood as a "subordinate chief". Then, it is not Varuṇa himself who punishes, but the overlord, instead. This is a good explanation, as far as it goes. However, it just pushes up the problem one level. After all, how would, then, an unjust overlord be brought to justice?

In the context of property fines, the king is to cast property or fines into water or to give them to Brahmins according to MDh 9.243–247:

²⁴³ A good king must never take the property of someone guilty of a grievous sin causing loss of caste; if he takes it out of greed, he becomes tainted with the same sin.

²⁴⁴ He should offer that fine to Varuṇa by casting it into water, or present it to a Brahmin endowed with learning and virtue.

²⁴⁵ Varuṇa is the lord of punishment, for he holds the rod of punishment over kings; and a Brahmin who has mastered the Veda is the lord of the entire world.

²⁴⁶ When a king refrains from taking the fines of evildoers, in that land are born in due course men with long lives;

²⁴⁷ the farmers' crops ripen, each as it was sown; children do not die; and no deformed child is born.

In this *Manu* passage, the king is strongly advised not to keep any confiscated property for himself or his treasury. Instead, he should throw it into the water or give it to the Brahmins. The prescription to give the fine “to Varuṇa by casting it into water” might be called the “Varuṇa clause”.¹⁶ The *Arthaśāstra* also mentions water, but here, Kautilya does not seriously entertain the possibility of casting the fines (this time to be paid by the king himself) into the water. Instead, “place it in water for Varuṇa, and then give it to Brāhmaṇas” seems to be a short description of a ceremony by which the king is cleansed of his judicial mistake.

Why should *Manu* demand that the king does not keep the confiscated property taken from the offenders? Is it not pure waste to throw the property into the water? Of course, one might point to the alternative of giving the property to Brahmins. After all, Brahmins do often benefit from unclaimed property (see ViDh 3.56–61). Perhaps, the Varuṇa clause is just another clever device by Brahmins to gain influence and wealth? To our mind, there is more behind the Varuṇa clause. Remember the discussion above that the king who does not have an overlord is in a difficult position. He certainly likes to be reckoned a just king and enjoy the loyalty of his ministers and subjects.

Now, in his position relative to his subjects, the king knows best whether he acts justly. But how can he, even if well-intended, convince the subjects? Just saying: “I am a just king” will generally not suffice. Here, the Varuṇa clause may help the king to “prove” that he is a good king, a king who would not take property as a fine in order to enrich himself or in order to fill his depleted treasury. The best way to do this would then be a ritual, with Brahmins performing the rites and many onlookers. Indeed, Chwe (2001) advances the interesting idea that rituals serve the purpose of producing “common knowledge”, here, the common knowledge of a just king.¹⁷

Finally, let us return to Kane’s assertion that “[n]o king would ordinarily fine himself”. One might reply: Maybe, he would not, but he would like to be able to. And he may have to incur some cost to achieve that aim, for example by offering the confiscated property “to Varuṇa by casting it into water”.

Conclusion

One may, of course, discuss other incentives problems. In particular, I did not talk about incentives for a king's subjects. In the context of law proceedings, ordeals are particularly intriguing institutions. See the papers by Leeson (2012) and Wiese (2016c) who argue that ordeals might have been quite sensible institutions.

Remember the Nobel Prize winner F. A. von Hayek who has stressed that institutions (such as markets or specific judicial rules) are often not invented or not even fully understood by us humans. Instead, they spontaneously develop and are kept if they prove useful. (Hayek 1973: 8–34) In this sense, institutions may embody “intelligent” solutions. I submit that ordeals or the Varuṇa rule are suitable illustrations of such implicit understanding.

Abbreviations

GDh	Gautama Dharmasūtra (Olivelle 2000)
KAS̄	Kauṭilya's Arthaśāstra (Kangle 1969)
MDh	Mānava Dharmasāstra (Olivelle 2005)
NSmM	Nārada Smṛti (Mātrkā section) (Lariviere 2003)
NSmV	Nārada Smṛti (Vyavahārapadāni section) (Lariviere 2003)
VaDh	Vasiṣṭha Dharmasūtra (Olivelle 2000)
ViDh	Vaiṣṇava Dharmasāstra (Olivelle 2009)

Notes

1. See also Drekmeier (1962: 245–281) and Sharma (2005: 31–76). One may alternatively stress other theories of state, such as those that focus on the regulation by state officials or on the imperialist endeavours of a king. Kauṭilya can easily provide suitable illustration. With the help of game theory, Wiese (2016a) argues for a close relationship between Kauṭilya's *maṇḍala* model on the one hand and Indian four-king chess on the other hand.
2. For example VaDh 19.1
3. For this fictitious character from economic theory, see Buchanan (1975, 1987).
4. According to old Indian commentators of Manu, “the lower castes would usurp the roles and privileges of upper castes” (Olivelle 2005: 294).
5. Olivelle 2005.
6. Lariviere 2003.
7. Both “Punishment” in the above Manu quote and “rod” here are translations of *daṇḍa*. The same word is employed in the seven-member theory where *daṇḍa* is translated as “army”.
8. Sharma (2005: 63–76) summarizes old Indian ideas and sources (that comprise the *Aitareya Āraṇyaka* and Buddhist texts) of the contract theory of state.
9. As Olivelle (2005: 481) explains, “[i]n several accounts of the origin of the human race, Manu is presented both as the first man and as the first king.”

10. In modern times, damage to health is (partly!) compensated for according to legislation found in several countries. See, for example, the German “Gesetz über die Entschädigung für Opfer von Gewalttaten (Opferentschädigungsgesetz – OEG)”.
11. See, for example, Salanié (2005).
12. This section borrows freely from Wiese (2016b).
13. MDh 9.245 resembles KĀŚ 4.13.43.
14. At this juncture, one might worry about Varuṇa’s incentives to chastise the king appropriately. Might one run into a regressus ad infinitum? Presumably not, because the god Varuṇa himself does not encounter any incentive problems.
15. See Geanakoplos (1994).
16. Strictly speaking, “casting into water” and confiscation are contradictory terms. Lat. *fiscus* means treasury and confiscation hence “adjoining the treasury”. From this perspective, one might say that Manu 9.242–247 forbids confiscation. However, I will understand confiscation as asset forfeiture or asset seizure, irrespective of how the property taken is used afterwards.
17. Common knowledge is said to be present between actors A and B if A knows something, B knows that A knows it, A knows that B knows that A knows it, etc. ad infinitum. See also Geanakoplos (1994).

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