

इन्द्रवज्रा VERSE ON THE TERROR OF CORONA VIRUS

चिन्ताकुलो भाति समस्तलोकः
कोरोनकीटाणुरयं हि यातः ।

The whole world manifests many worries,
for the Corona virus
(the little Corona worm) has come.

नित्यं हि नित्यं परिवर्धमानः
सर्वत्र लोकः खलु पीडितो ऽसौ ॥

It is continually spreading
and everywhere indeed this world is
tormented.

by Sadananda Das

PRE-MODERN INDIAN PERSPECTIVES ON GIVING, GIFTING, AND SACRIFICES: THE KING

Harald Wiese, University of Leipzig

- Various givings
- Various takings
- Indian concepts of monarchical state and
 - Compensation for theft (giving)
 - Giving to Varuṇa (not taking)
 - Judicial wagers (taking from guilty party to a law suit)

GIVING FOR PERSONAL TEACHING

Brhadāraṇyaka Upaniṣad:

Yājñavalkya amazes the king of Videha with his wisdom.

King: I'll give you a thousand cows together with the bulls and elephants!

Yājñavalkya: My father believed that one should never accept a gift before giving instruction.
Let's hear what else they have told you.

Yājñavalkya disproves assertions such as “*Brahman* is breath”.

King: Homage to you!
These people of Videha and I myself—here we are at your service.

GIVING IN PHILOSOPHICAL COMPETITION

Brhadāraṇyaka Upaniṣad:

Janaka, the king of Videha, once set out to perform a sacrifice at which he intended to give lavish gifts to the officiating priests. ... So he corralled a thousand cows; to the horn of each cow were tied ten pieces of gold. He then addressed those Brahmins:

“Distinguished Brahmins! Let the most learned man among you drive away those cows.”

Yājñavalkya is challenged by eight Brahmins and manages to silence each of them.

TAKING THE MARKET TAX

Kauṭilya Arthaśāstra:

The Superintendent of Customs should set up the customs house along with the flag facing the east or the north near the main gate ...

The traders should announce the quantity and the price of a commodity that has reached the foot of the flag: “Who will buy this commodity at this price for this quantity?” After it has been proclaimed aloud three times, he should give it to the bidders.

If there is competition among buyers, the increase in price along with the customs duty goes to the treasury.

Kauṭilya's market tax might be realized by electronic trading platforms like ebay.

TAKING AS “IMPORT” AND “EXPORT” DUTIES

Kauṭilya Arthaśāstra:

the superintendent of commodities should facilitate the “import” of commodities from other lands by granting favors

Vaiṣṇava Dharmaśāstra:

The duty on incoming goods is half the duty on locally produced ones.

(Italian town) Ravenna:

in 1234 “imports” into Ravenna were free of duty, while tolls were imposed on “exports”

TAKING AS “IMPORT” AND “EXPORT” DUTIES

- Border-crossing transport of goods in pre-modern India economically different from modern-day imports or exports.
- An exporter (in the modern sense)
 - is institutionally located in a home country and obtains gold, foreign currency, or claims (receivables) in exchange for the goods he exports.
 - A country may benefit from exports if it values gold, foreign currency and/or claims higher than the exported goods.
- In Old and Medieval India,
 - the trading goods brought out of the country by merchants were lost until (and if) the merchants returned.
 - It is therefore understandable that kings were concerned about goods flowing out of the country.

INDIAN CONCEPTS OF STATE: INCENTIVES MATTER

Fable collection Pañcatantra:

‘He is my friend!’—is that any reason to trust a scoundrel?
‘I have done him a great many favors!’—that counts for nothing!
‘This man is my very own relative!’—that’s an old folk tale!
People are driven by money alone, no matter how small.

Fable collection Hitopadeśa:

If you have to cross an impassable ocean, you have a boat;
when darkness comes, you have a lamp;

[...]

Thus there is no problem in the world for which
the Creator has not carefully invented some solution.

**But when it comes to countering a wicked person’s way of thinking,
it seems to me that even the Creator has failed in his efforts.**

INDIAN MONARCHICAL CONCEPTS OF STATE: IDEALISTIC APPROACH

Gautama Dharmasūtra:

[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.

Kauṭilya Arthaśāstra:

[The king] should gain mastery over the senses [...], gain a keen intellect by association with elders, gain a keen eye through information provided by spies, gain enterprise and security by energetic activity, enforce the Law specific to each by providing guidance on duty [...]. He should pursue Pleasure without transgressing Law or Success; he should not deprive himself of enjoyments. [...] “Success alone is paramount,” says Kauṭilya, “for Success is the foundation of Law and Pleasure.”

INDIAN MONARCHICAL CONCEPTS OF STATE: SEVEN-MEMBER THEORY

Kauṭilya Arthaśāstra:

Lord, minister, countryside, fort, treasury, army, and ally are the constituent elements.

... a calamity affecting each previous one is more serious ...

Sharma: “complete definition of the state” that 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.”

INDIAN MONARCHICAL CONCEPTS OF STATE: PROTECTION THROUGH PUNISHMENT

Mānava Dharmaśāstra:

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 topsy-turvy.

Kauṭilya Arthaśāstra:

[...] one who punishes severely terrifies the people, and one who punishes lightly is treated with contempt

INDIAN MONARCHICAL CONCEPTS OF STATE: CONTRACT THEORY

Kauṭilya Arthaśāstra:

Oppressed by the law of the fish, people made Manu, 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.

- The contract theory seems to flow from the protection-through-punishment theory.
- No 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.

INDIAN MONARCHICAL CONCEPTS OF STATE: LOYALTY THEORY

Kauṭilya's Arthaśāstra:

[...] by casting away good people and embracing evil people,
by initiating unprecedented and unrighteous acts of violence;
by discontinuing customary and righteous practices,
by addiction to what is unrighteous,
and by severing himself from what is righteous;

[...]

through 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.**

GIVING COMPENSATION FOR THEFT

Kauṭilya's Arthaśāstra:

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.

Traders in a caravan may lodge within village perimeters after declaring the value of their goods. From among these, anything stolen or killed—unless it has gone out at night—should be compensated by the **village headman**. What is stolen or killed between villages, on the other hand, should be compensated by the **Superintendent of Pasture Lands**; in areas beyond the pasture lands, by the **officer in charge of catching thieves**.

GIVING COMPENSATION FOR THEFT

Efficiency perspective

- potential victims may take insufficient precautions if they know that the cost of theft are borne by the government (or a king)
compensation acts as an insurance against theft
- (modern) governments may also need (monetary and political) incentives to prevent theft
 - stricter laws against theft
 - increasing the police force
 - controlling borders

Reminder: central obligations of governments with respect to inner and outer security

Theories: seven members, protection through punishment, contract, loyalty

VARUṆA AS LORD OF PUNISHMENT, VARUṆA RULE

Mānava Dharmaśāstra:

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.

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

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.

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

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

VARUṆA AS LORD OF PUNISHMENT

A two-level structure

- Varuṇa can punish the king
- who in turn can punish his subjects

But take 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).

Second-order beliefs

VARUṆA AS LORD OF PUNISHMENT

- Kane: “these prescriptions [...] were counsels of perfection and must have been futile. No king would ordinarily fine himself”.
- Kane 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.
- Good explanation, as far as it goes.
 - It pushes up the problem one level.
 - How would an unjust overlord be brought to justice?

VARUṆA RULE: DISALLOWING THE KING TO TAKE

- Pure waste to throw the property into the water?
- But perhaps, the purpose is to benefit Brahmins (compare treasure-trove)

- There is more behind the Varuṇa clause. Loyalty theory.
- Just saying: “I am a just king” will generally not suffice.
- The Varuṇa clause may help the king to “prove” that
 - he is a good king
 - would not take property as a fine in order to enrich himself or in order to fill his depleted treasury.

VARUNA RULE: DISALLOWING THE KING TO TAKE

- A king can prove his justmindedness by way of a ritual
 - with Brahmins performing the rites and
 - many onlookers.
- Remember Kane's assertion that "no king would ordinarily fine himself".
- My 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".

JUDICIAL WAGERS

- Ordeals are a manner of saying:
“I am speaking the truth; this will be revealed by God/fate.”
- A judicial wager amounts to proclaiming:
“I am speaking the truth;
if found otherwise by the king,
I will pay the appropriate fine, and, on top, make a wager payment.”

JUDICIAL WAGERS

Yājñavalkya Smṛti:

If the dispute should be with a wager, then he should make the defeated party pay the fine and his own wager as well, but only the contested amount to its owner.

Inconclusive findings by Lariviere. But

- The wager may have been placed by one or by both parties.
- The recipient might have been the king (the court), the opponent, or even both.
- The size of the wager seems not to have been fixed and was probably up to each party.

JUDICIAL WAGERS: THE INCENTIVE PUZZLE

Lariviere: “The *pana* seems ... not to be a factor at all in deciding the case”

A Lariviere king would simply ignore the wagers placed by the parties and decide on the evidence available to him. In that case, the parties do not have any incentive to offer a non-zero wager.

- If the ruling goes in their favor, they do not have to pay the wager.
- If the ruling goes against them, they lose the case and have to pay the wager on top of the fine.

But, matters are even worse: The king is tempted to rule against a party that has placed a wager. Hence, the wager-placing party doubly loses.

- First, it increases the likelihood of an adverse ruling.
- Second, it may lose the wager.

JUDICIAL WAGERS: THE SCARCE-EVIDENCE PUZZLE

Lariviere:

- the texts point out what should be an important point in the general description of legal procedure
- two categories
- just the sort of thing which one would expect to find often repeated (or at least alluded to) in other basic *smṛtis*
- but these three verses are the only ones that we find in the whole corpus of *dharmasāstra*
- This is unusual.
- It might not be so unusual if the verses gave a thorough and complete description of the *paṇa*, but that is hardly the case.
- In both texts, ... the verses ... are found with a hodge-podge of more or less unconnected and general statements about legal procedure.

A MODEL OF JUDICIAL WAGERS: PAYMENTS

Parties quarrel about some “stake” x .

Parties may lose wager, but wager may signal truth-telling.

King may obtain **wager payment**.

King wants to be reckoned a just king. He obtains the **justice payment** if his judgement is correct.

- evidence of certain quality
- wagers as signals

A MODEL OF JUDICIAL WAGERS: TWO STAGES

For a given wager amount w ,

1. Parties choose wagers 0 or w .
2. King chooses verdict.

Solution concept: **backward induction**

JUDICIAL WAGERS WITHOUT SIGNALLING

Assume that the king does not entertain the belief that the wagers convey any signal about the parties' truthfulness.

Then, positive wagers are a bad idea because they incite the king to rule against that party.

Foreseeing this, each of the two parties has the dominant action 0.

USING WAGERS FOR SIGNALING PURPOSES

The king's belief:

If one party places a positive wager, while the other opts for a zero wager, the former is the honest party with probability 1.

If both wagers are zero or both equal to w , the king cannot learn anything from the wagers. He then uses the evidence available to him.

JUDICIAL WAGERS: SOLUTION TO THE INCENTIVE PUZZLE I

- The honest party to a conflict is more willing to risk a wager than the dishonest party. Indeed, if both parties have placed a positive wager, the innocent can be more confident to win his case than the guilty one if the quality of evidence is not useless.
- For the “unjust” king the wager payment is larger than the justice payment. He rules against the only party that has placed a positive wager. Consequently, the parties choose the zero wagers.

JUDICIAL WAGERS: SOLUTION TO THE INCENTIVE PUZZLE II

- For the “just” king the justice payment exceeds the wager payment. He rules for the only party that has placed a positive wager.
- Two possible outcomes:
 - The innocent party places a positive wager, the guilty party does not (separating outcome). The wagers successfully signal the parties’s truthfulness. The Creator has not failed after all.
 - Both place a positive wager (pooling outcome). The wagers fail to signal honesty.

JUDICIAL WAGERS: SOLUTION TO THE SCARCE-EVIDENCE PUZZLE

- Judicial wagers have serious drawbacks. A cash-stripped party may just not be able to place the wager amount required by the king. Then, separation is not driven by
 - the honesty or truthfulness of the parties, but by
 - their more or less deep pockets.

The king's subjects are suspicious of that institution.

- The subjects will sometimes observe that the king obtains the wager amount. Bad for the king's reputation.
- Of course, *dharmasāstra* authors may not find good reason to write extensively about an institution long gone extinct. This is probably the solution to the scarce-evidence puzzle.

CONCLUSION

The Austrian Nobel prize winner (in economics) F. A. v. Hayek has stressed that useful 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. In this sense, institutions may embody “intelligent” solutions. I submit that

- compensation for theft,
- the Varuṇa rule, or
- ordeals

are suitable illustrations of such implicit understanding.

Might they be re-employed in modern times?

RESTERAMPE

A MODEL OF JUDICIAL WAGERS: THREE STAGES

1. King chooses wager amount.
2. Parties choose wagers.
3. King chooses verdict.

Solution concept: **backward induction**

ORDEALS: DERRETT AND LARIVIERE

- To us “modern” people, ordeals seem to be strange legal institutions.
- For people in early and medieval India, they did not.
- Derrett tried to vindicate this “Ancient Indian ‘Nonsense’” (quoting from the title of his short article) and suggested that the ordeals might have worked for some physiological reason.
 - fire ordeal: “A person of quiet conscience who knows no reason why he should not survive an ordeal is likely to have his pores closed, and will escape blisters more easily than one who sweats with fear of detection.”
 - water ordeal: “A man who is quiet in mind can hold his breath under water for far longer than a man who is frightened or has his pulse-rate increased for whatever other reason.”
- Lariviere :

“The question of how ordeals ‘work’ is no more likely than is the question of how sacrifices ‘work’: they ‘work’ because of the nature of the universe as these men of faith understood it. An ordeal was a religious act in the sense that one prayed to a deity for assistance –the ‘workings’ of ordeals were a matter of faith.”

ORDEALS: LEESON I

Very strong belief on the defendant's part that ordeal can find out whether he is innocent or not. ·

- If innocent,
 - he will choose to undergo the ordeal and
 - expect to receive zero punishment rather than suffering the no-ordeal punishment. ·
- If guilty,
 - he declines the ordeal
 - because the no-ordeal punishment is smaller than the ordeal punishment which he expects for sure.

ORDEALS: LEESON II

Weak belief on the defendant's part ·

An ordeal taker is cleared for one out of two reasons:

1. God/fate will possibly reveal his innocence.
2. The ordeal's outcome is managed (manipulated) by the ordeal officer.

From the defendant's point of view, his success depends on a mixture of 1. and 2.

The ordeal will clear the guilty defendant with a lower probability than the innocent defendant, from defendant's point of view.

ORDEALS: LEESON III

Depending on

- the punishments
- the strength of belief in the ordeal

it may well happen that

- the innocent defendant voluntarily submits to the ordeal
- while the guilty one does not.

The stronger the belief in the ordeal, the more likely such a "separating" outcome.

ORDEALS: FROM DECISION THEORY TO GAME THEORY

Nārada Smṛti

with the consent of the plaintiff, not otherwise

Four cases:

1. Both agree to the ordeal.
Ordeal is undertaken.
The accusant will be punished if the defendant is cleared.
2. Only the defendant agrees.
Complaint inconsequential.
3. Only accusant agrees.
Defendant is punished.
4. Neither defendant nor accusant agrees.
Defendant is punished.

ORDEALS: FROM DECISION THEORY TO GAME THEORY

The best outcome for each agent is his agreeing to the ordeal while the other rejects the ordeal.

Typical outcome:

- one agent agrees to the ordeal
- while the other does not.

Then, the ordeal does not take place, contributing to ordeals being applied in rare cases, only. B

Both agents agree to the ordeal (which is then carried out) if

- the ordeal punishments for the agents are relatively small
- the innocent party believes strongly in the ordeal
- the guilty party does not believe strongly.