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## C.H. Alexandrowicz’s India and the Kautilyan Moment

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### Abstract

This article addresses the international legal historian C.H. Alexandrowicz’s engagement with Kautilya’s *Arthashastra* as part of his revision of the place of India and Southeast Asia in the development of international law. The article locates Alexandrowicz’s writing on the *Arthashastra* against the backdrop of the debates about the *Arthashastra* that ensued upon its discovery in 1905, including controversies about its date, authorship, and place in the tradition of Indian political thought. The article reviews the Indian nationalist reading of Kautilya, the various attempts to compare Kautilya to Hobbes and Machiavelli, and the values that were particularly important for Alexandrowicz in telling the narrative of the place of Kautilya’s *Arthashastra*, its rationalism, secularism, and the divisibility of sovereignty.

**Keywords:** C.H. Alexandrowicz; Kautilya’s *Arthashastra*; Indian international legal theory

The 1980 issue of the *Indian Year Book of International Affairs* – a periodical that the eminent historian of international law C.H. Alexandrowicz initiated in 1952 with the approval of Jawaharlal Nehru – published papers presented at the Grotian Society. Alexandrowicz had been the moving force of the society, with the society’s three chapters in his three successive homes after his native Poland, the UK, India, and Australia. The articles in the 1980 volume included one by Alexandrowicz, five years after his death in 1975, on the role of German treaty-making in the partition of Africa.<sup>1</sup> T.S. Rama Rao, who had taken over the yearbook’s editorship when Alexandrowicz relocated from Madras (now Chennai) to Sydney in 1961, opened the 1980 volume with a tribute to the former editor.<sup>2</sup> After talking about Alexandrowicz’s institutional and teaching roles, Rao turned to his research, telling us that:

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<sup>1</sup> David ARMITAGE and Jennifer PITTS, “‘This Modern Grotius’: An Introduction to the Life and Thought of C.H. Alexandrowicz”, in C.H. ALEXANDROWICZ, *The Law of Nations in Global History* (David ARMITAGE and Jennifer PITTS, eds., Oxford: Oxford University Press, 2017) [*Law of Nations*], 1 at 10; C.H. ALEXANDROWICZ, “The Role of German Treaty Making in the Partition of Africa”, (1980) 18 *Indian Year Book of International Affairs* 161, *Law of Nations*, at 303. For a broad intellectual analysis of Alexandrowicz’s international legal history, see Armitage and Pitts, “This Modern Grotius”; Carl LANDAUER, “The Polish Rider: CH Alexandrowicz and the Reorientation of International Law, Part 1: Madras Studies”, (2019) 7 *London Review of International Law* 321; and Carl LANDAUER, “The Polish Rider: CH Alexandrowicz and the Reorientation of International Law, Part II: Declension and the Promise of Renewal”, (2021) 9 *London Review of International Law* 3.

<sup>2</sup> T.S. Rama RAO, “Professor C.H. Alexandrowicz: A Tribute”, (1980) 18 *Indian Year Book of International Affairs* viii.

[T]hough he came with a background of studies in Western Universities, the inadequacy of library resources in Madras especially in the area of modern International Law, did not deter him. With uncanny skill, he spotted out and concentrated attention on the areas in which research material was plentiful here, two of which were the debates of the Indian Constituent Assembly in the areas of Constitutional Law and the unpublished archives in the Record Offices of Madras, Cochin and other places, which revealed to him a fund of material on the practice of International Law from the 16<sup>th</sup> Century onwards by the Indian rulers.<sup>3</sup>

In that sentence, sounding like an instance of serendipity, we find two of Alexandrowicz's primary areas of publication: the history of the law of nations and Indian Constitutional development. It also framed the Indian context of a period when Alexandrowicz would confront the most famous ancient Indian political tract, Kautilya's *Arthashastra*.<sup>4</sup>

In recent years, Alexandrowicz has been gaining in recognition, in part as a predecessor to the international legal history adopted by writing in the Third World Approaches to International Law (TWAIL) mode. Arnulf Becker Lorca in *Mestizo International Law* identifies Alexandrowicz as one of his "semi-peripheral" lawyers and who had discovered that "South Asian powers governed their interactions based on a tradition that compared to the European—Alexandrowicz argued—was more ancient 'and in no way inferior to notions of European civilization'".<sup>5</sup> Upendra Baxi highlights Alexandrowicz in a review essay of Anthony Anghie's groundbreaking *Imperialism, Sovereignty and the Making of International Law* and Gerry Simpson's *Great Powers and Outlaw States*: "Anghie and Simpson stunningly carry forward, and indeed go much beyond, the genre pioneered by Charles Alexandrowicz at three 'peripheral' world order locations—Krakow, Chennai, and Sydney."<sup>6</sup> In identifying Alexandrowicz as a predecessor to TWAIL historiography, Jennifer Pitts recently wrote: "In international law, the first generation of lawyers representing the so-called New States beginning in the 1950s, the progenitors of the more recent Third World Approaches to International Law or TWAIL, undertook historical studies alongside their anti-colonial legal work: figures such as R.P. Anand, Mohammed Bedjaoui, T.O. Elias and C.H. Alexandrowicz."<sup>7</sup> Natasha Wheatley, in her *Life and Death of States*, identifies Alexandrowicz as a "bridge figure" whose "attempt to reverse the perspectival orientation of international legal thought made him one of the forerunners of the [TWAIL] movement".<sup>8</sup> More broadly, specialists on Indian international legal history and the nineteenth-century European confrontation with Africa view Alexandrowicz's work as an important point of reference.

It is enlightening to place Alexandrowicz's contribution, including his writing relating to Kautilya, in the context of Alexandrowicz's biographical trajectory. Alexandrowicz was born in Lviv, now in Ukraine but at the time of his birth in Galicia – the Austro-Hungarian

<sup>3</sup> *Ibid.*, at ix.

<sup>4</sup> For a modern translation of the *Arthashastra*, see Patrick OLIVELLE, ed. and transl., *King, Governance, and Law in Ancient India: Kautilya's Arthaśāstra* (Oxford: Oxford University Press, 2013).

<sup>5</sup> Arnulf BECKER LORCA, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge: Cambridge University Press, 2014) at 33, citing C.H. ALEXANDROWICZ, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)* (London: Oxford University Press, 1967) at 224.

<sup>6</sup> Upendra BAXI, "New Approaches to the History of International Law", (2008) 19 *Leiden Journal of International Law* 555.

<sup>7</sup> Jennifer PITTS, "The Uses of History in the Study of International Politics", in Richard BOURKE and Quentin SKINNER, eds., *History in the Humanities and Social Sciences* (Cambridge: Cambridge University Press, 2023), 69 at 74.

<sup>8</sup> Natasha WHEATLEY, *The Life and Death of States: Central Europe and the Transformation of Modern Sovereignty* (Princeton: Princeton University Press, 2023) at 259, 262.

province of partitioned Poland.<sup>9</sup> After studying at a prominent gymnasium in Vienna and law in Krakow, he spent the interwar period as a legal practitioner, a scholar writing on canon law and Polish marital law, and as an officer for the Bank of Poland. During the Second World War, Alexandrowicz joined the Polish army in its defence of Lviv. He stayed temporarily in Bucharest, where he was arrested by the fascist Iron Guard before escaping through Istanbul, eventually landing in London. In London, he was involved with the Polish government in exile. In addition to training in law and teaching in London, Alexandrowicz worked for a Polish development bank and was appointed head of an international organization designed as part of the recovery effort for the European economy after the war. In 1951, upon the recommendation of David Hughes Parry, the director of the University of London's Institute of Advanced Legal Studies, Alexandrowicz became the first scholar to take up an Indian chair of Constitutional and International Law, which he held at the University of Madras. It was there that he engaged in his research into the past law-of-nations or inter-polity law of India and established a study group that launched the *Indian Year Book of International Affairs*. Each issue of the yearbook included at least one article on the history of India's law of nations; both the study group and the yearbook would be recognized in India for their early contribution to the history of Indian international law.<sup>10</sup>

Alexandrowicz's involvement with India, including its constitutional and domestic law, was more broad-ranging than generally appreciated. Missing, for example, from accounts of his work, is his *Bibliography of Indian Law*, published by Oxford University Press.<sup>11</sup> It may be a slim volume of only seventy-seven pages but it included topical bibliographical essays and publication lists for subjects like "Personal Law", "Civil Law", "Criminal Law", "Taxation", and "Industrial and Labour Law", in addition to more anticipated sections for Alexandrowicz on "International Law" and "Comparative Law". Notably, he divided his section on "Personal Law" into subsections on "Hindu Law" and "Mohammedan Law". This slim volume stands as testimony to Alexandrowicz's broad and intense focus on Indian law and the wide range of his engagement with India. In addition to his well-known focus on Indian international legal traditions, he also wrote on Indian constitutional issues, including his 1957 book, *Constitutional Developments in India*.<sup>12</sup> There are important values that inhabited both his international and domestic law writing about India, including a valorization of secularization, rationalism, tolerance, commerce, and expertise. Here, it is worth noting that his constitutional writings were produced in the atmosphere of values articulated by Nehru and the leading Dalit leader of the twentieth century and key drafter in India's Constituent Assembly, B.R. Ambedkar. Alexandrowicz knew them both. In addition, he acted as a legal advisor to the Government of India. In the background of his writing, one can discern his personal involvement in organizations of the interwar and wartime Polish government<sup>13</sup> as well as his experience with, and

<sup>9</sup> For biographical information, see Armitage and Pitts, *supra* note 1 at 3–12; RAO, *supra* note 2; Clive PARRY, "Professor Charles Alexandrowicz", (1975) 49 *Australian Law Journal* 644; and W.A. STEINER, "Charles Henry Alexandrowicz 1902–1975", (1975) 47 *British Yearbook of International Law* 269.

<sup>10</sup> J.S. BAINS, "Teaching of International Law in India", (1961) 1 *Indian Journal of International Law* 498, at 500.

<sup>11</sup> Charles Henry ALEXANDROWICZ, ed., *A Bibliography of Indian Law* (London: Oxford University Press, 1958).

<sup>12</sup> Charles Henry ALEXANDROWICZ, *Constitutional Developments in India* (London: Oxford University Press, 1957).

<sup>13</sup> During the interwar period, Alexandrowicz worked in the Bank of Poland. During the Bucharest exile of a faction of the Polish government, he worked on the Commission for the Protection of State Property and chaired the Legal Affairs Committee, and he was acting governor of the Bank Gospodarstwa Krajowego. In 1943, when he wrote a short *curriculum vitae* for the Polish Government in exile, he was a member of the Legislative Works Committee and the committee to draft Poland's economic plan as well as being a member of the Polish-Yugoslav Committee of Economic Experts. Following the war, Alexandrowicz was the chairman of the European Central Inland Transport Organization, which was an early development organization for postwar

extensive writing on, international organizations.<sup>14</sup> Ultimately, his personal experience and his writings outside international legal history tie into the values that he would find in the Kautilyan tradition.

Before delving more deeply into Alexandrowicz's approach to Kautilya, it is worth broadly placing Alexandrowicz's Kautilya in the context of his historical view of Asia in the history of international law and provide some preliminary background to the readings of Kautilya into which Alexandrowicz was making his intervention. Alexandrowicz's depiction of the European confrontation with the East involved his focus on the early modern European companies becoming enmeshed in an existing Asian network of commercial interaction, treaty relations established on an equal basis, divisible sovereignty, and progressive secularization. For those principles, he looked largely to Asia's "Kautilyan Principles", which he specifically called out in the title of a mid-1960s article for the *British Yearbook of International Law*.<sup>15</sup> His identification of the environment and values of the East Indies – by which he meant India and the "Further India" of India-influenced Southeast Asia – was central to the Hague Academy lectures he gave in 1960.<sup>16</sup> The Hague lectures pointed to a "Kautilyan tradition" – but, in them, he primarily and briefly focused on the exposition of the *mandala*, the historical constellation of states in relation to each other which, for Alexandrowicz and others, was typically translated into Western parlance as "balance of power".<sup>17</sup> Still, he packed a good deal into his short discussion of the Kautilyan tradition in the Hague lectures, including a notion of "unity in diversity" and admonitions against *debellatio* in war, that is, a prohibition against completely eradicating one's defeated enemy. For Alexandrowicz, "[a]s underlined in the 'Cambridge History of India', this Kautilyan tradition survived to the end of the XVIII century and was a code of conduct in the Maratha Empire".<sup>18</sup> His more fulsome Kautilya appraisal, however, would have to wait for his *British Yearbook* article in 1965–66 and the expansion of the Hague lectures in his *East Indies* book in 1967, where Kautilya would take centre stage in his rendition of the Indian law of nations.

As central as Kautilya was to that depiction, it is striking to remember that Kautilya's *Arthashastra* was only recovered as a full text when it was delivered to the Mysore Government Oriental Library, whereupon the library's curator, R. Shamasastri, published translated excerpts starting in 1905, the full Sanskrit text in 1909, and an English translation of the full text in 1915.<sup>19</sup> The early twentieth-century publication of Kautilya's *Arthashastra* was momentous for Indians, allowing them, at last, to recognize their own place in the history of state development. The *Arthashastra* of Kautilya was quickly adapted

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Europe that focused on the logistics of the train systems. See Armitage and Pitts, *supra* note 1 at 4–6; and C.H. ALEXANDROWICZ, "Curriculum Vitae" (23 May 1943), Polish Institute and Sikorski Museum, London, A.48.2.IX/12. [I am grateful to Jennifer Pitts for providing me a copy of the *curriculum vitae*.]

<sup>14</sup> This includes two books, Charles Henry ALEXANDROWICZ, *International Economic Organisations* (London: Stevens & Sons Limited, 1952); Charles Henry ALEXANDROWICZ, *World Economic Agencies: Law and Practice* (London: Stevens & Sons Limited, 1962).

<sup>15</sup> C.H. ALEXANDROWICZ, "Kautilyan Principles and the Law of Nations", (1965–66) 41 *British Yearbook of International Law* 301, reprinted in Alexandrowicz, *supra* note 1 at 35.

<sup>16</sup> Charles H. ALEXANDROWICZ, "Treaty and Diplomatic Relations between European and South Asian Powers in the Seventeenth and Eighteenth Centuries", *Académie de Droit International*, (1960) 100 *Recueil des Cours* 203. On the use of "East Indies", Alexandrowicz wrote in his *East Indies* book that it "is intended to cover the subcontinent of India as well as 'Further India' including Ceylon, Burma, Siam and the Indonesian Islands. It also extends in a wider sense to Persia, particularly in connexion with her commercial and strategic position in the Persian Gulf." See Alexandrowicz, *supra* note 5 at 1.

<sup>17</sup> Alexandrowicz, *supra* note 16 at 215.

<sup>18</sup> *Ibid.*

<sup>19</sup> J.F. FLEET, "Introductory Note", in R. SHAMASASTRI, ed. and trans., *Kautilya's Arthasāstra* (Mysore: Mysore Printing & Publishing House, 1915), vi.

for nationalist purposes as a retort to long-held commonplaces about the Indian political tradition, such as the Western trope of Indian politics as being entirely religious in nature – a line that one finds from Hegel and passing through Max Weber. Indians could not only use the *Arthashastra* to refute the general tropes and use it for nationalist assessments of Indian political sophistication, as we are told by Johannes H. Voight and Maria Misra,<sup>20</sup> but they could also use it to identify an Indian place in the formation of international law. As prime examples, Pramathanath Bandyopadhyay's *International Law and Custom in Ancient India* of 1920<sup>21</sup> and S.V. Viswanatha's *International Law in Ancient India* of 1925<sup>22</sup> participated in that growing Kautilya surge.<sup>23</sup>

It is important to work through various twentieth-century constructions of Kautilya to help place Alexandrowicz's particular vision. A standard reading of Kautilya was to see him as an intense pessimist about human nature. Numerous writers viewed the *Arthashastra* as conceiving of government as the answer to an innate tendency towards anarchy, described in the Indian political tradition as an all-against-all "law of the fish", which we find in Alexandrowicz's account. In this context, as will be discussed in detail, the Kautilya literature available to Alexandrowicz made comparisons between Kautilya and Hobbes – indeed, even the Indian authors never seemed to lose sight of Western constructs. There were some who even referenced a Lockian state of nature. But by far the most common comparative figure in the Kautilya literature was Machiavelli due to the ruthlessness and ends-oriented character of much of the *Arthashastra*'s guidance. Scholar after scholar hastened to compare Kautilya to Machiavelli, weighing in on whether the *Arthashastra* represented a harsher or softer version of the common understanding of the depraved immorality of *The Prince*. It may be easy to forget that Weber in his famous "Politics as a Vocation" lecture wrote that "[g]enuine, radical 'Machiavellianism' in the popular sense of the word is to be found in Indian literature centuries before the Christian era, in Kautilya's *Arthashastra* (purportedly from the time of Chandragupta)—Machiavelli's own *The Prince* is harmless by comparison".<sup>24</sup> Yet, in addition to varying views of the morality of both Machiavelli and Kautilya, many scholars identified Machiavelli with his scientism as the creator of modern political science. Similarly, many scholars of Kautilya would identify the scientism of the *Arthashastra*, which was important to Alexandrowicz's reading.

Indeed, scientism and, in a very Weberian way, secularization, were extremely important to Alexandrowicz's reading of Kautilya and the Kautilyan tradition. Alexandrowicz and others were working, as mentioned above, against the stereotype of India's culture and politics as fundamentally religious and irrational. The rationality of the Kautilyan tradition – linked in Alexandrowicz's mind to commercialism – was central to Alexandrowicz's broad portrait of the law of nations in the Indian tradition, the very framework that the Europeans confronted in the East. From there, it is useful to reference

<sup>20</sup> Johannes H. VOIGT, "Nationalist Interpretations of *Arthasāstra* in Indian Historical Writing", in S.N. MUKHERJEE, ed., *South Asian Affairs, Number Two: The Movement for National Freedom in India* (London, Oxford University Press, 1966) at 46; Maria MISRA, "The Indian Machiavelli: Pragmatism Versus Morality, and the Reception of the *Arthashastra* in India, 1905–2014" (2016) 50 *Modern Asian Studies* 310.

<sup>21</sup> Pramathanath BANDYOPADHYAY, *International Law and Custom in Ancient India* (Calcutta: Calcutta University Press, 1920).

<sup>22</sup> S.V. VISWANATHA, *International Law in Ancient India* (Bombay: Longmans, Green & Co., 1925).

<sup>23</sup> For a broad analysis of twentieth-century Indian readings of India's ancient inter-polity law, including the *Mahabharata*, the *Code of Manu*, and Kautilya, see Carl LANDAUER, "Twentieth-Century Indian Historiography of Ancient Interpolity Law", in Maria Adele CARRAI and Surabhi RANGANATHAN, eds., *The Cambridge History of International Law: International Law in the Asian Region* (Cambridge: Cambridge University Press, forthcoming).

<sup>24</sup> Max WEBER, "The Politician's Work", in Max WEBER, *Charisma and Disenchantment: The Vocation Lectures* (Paul REITTER and Chad WELLMON, eds., Damion SEARLS, trans., New York: New York Review Books, 2020), 43 at 108.

the divisibility of sovereignty in the *mandala* theory of Alexandrowicz's Kautilya. This Kautilya merged with Alexandrowicz's most prized of the "classical" writers of the law of nations, Hugo Grotius. But it also fed into the traits he most valorized not only in interstate relations but also for the newly constitutional, independent India of the 1950s – the importance of state action he identified in Nehruvian developmentalism, secularization in his siding with Ambedkar in Ambedkar's religious attack on caste, the divisibility of sovereignty that he saw in the federalism of the new Indian state, and, of course, rationality.

The pages ahead will turn to a more detailed analysis by placing Kautilya in Alexandrowicz's overall picture of inter-polity traditions in Asia at the time of the early modern engagement of the European companies with the East. In the context of the significant Kautilya literature that grew from the time of the *Arthashastra's* recovery in 1905, this article will characterize the identity of Kautilya in Alexandrowicz's writing and what it meant. It will then step back to discuss three main themes of Kautilyan literature, including Indian nationalism, an image of the anarchical society against which Kautilya's writing presented itself, and the standard comparison of Kautilya and Machiavelli. Although Machiavelli did not have much of a role in Alexandrowicz's depiction, it is important to see that depiction against the common comparisons with Niccolò Machiavelli and Thomas Hobbes, not just for their pessimistic anthropology but also for their roles in the development of modern political science. Finally, the article will turn to the significance of the *mandala* for Alexandrowicz and his view of Kautilya's image of the divisibility of sovereignty as opposed to the impermeable, atomistic state entities that were the stuff of positive international law. For Alexandrowicz, this was important and tied to his deep appreciation for Hugo Grotius as his most valued writer on the law of nations.

### The Kautilyan East

Alexandrowicz has been largely known and often pilloried for the so-called "Alexandrowicz Thesis", the argument highlighting the influence of the law of nations of the East on the West.<sup>25</sup> Notable was his broad construction of the law of nations of the East, a framework he perceived to be prevalent in much of Asia, particularly as depicted in his *East Indies* book and previewed in his Hague lectures in 1960 and the *British Yearbook* article on Kautilya. Alexandrowicz is also known for his rise-and-fall narrative of international law in which the "classic" (his preferred term) writers on "the law of nations" (also his preferred term) of the late medieval and early modern period in Europe held to a natural law theory that viewed all polities internationally as subject to the same universal legal norms, in Alexandrowicz's words, "which according to its natural law premises was a universal and non-discriminatory law operating irrespective of civilisation, religion, race or continent".<sup>26</sup> This, too, is tied to his vision of the inter-polity traditions of the East Indies.

Alexandrowicz's Hague lectures, his *East Indies* book, and the French-language article he published, tellingly, in the house journal of the French Annales school edited by Fernand Braudel (in fact, the same issue in which Michel Foucault published his only contribution to the journal), "Le Droit des Nations aux Indes Orientales",<sup>27</sup> each depict the European powers, following Vasco da Gama's landfall, in their confrontation with an East that had a developed inter-statal system well in place. In his Hague lectures, Alexandrowicz

<sup>25</sup> See Eric WILSON, "The 'Alexandrowicz Thesis' Revisited: Hugo Grotius, Divisible Sovereignty, and Private Avengers within the Indian Ocean World System", in Ooi Keat GIN and Hoàng Anh TUÂN, eds., *Early Modern Southeast Asia, 1350-1800* (London and New York: Routledge, 2016), 28.

<sup>26</sup> Alexandrowicz, "German Treaty Making", *supra* note 1 at 334.

<sup>27</sup> C.H. ALEXANDROWICZ, "Le Droit des Nations aux Indes Orientales: Aux XVI<sup>e</sup>, XVII<sup>e</sup>, XVIII<sup>e</sup> siècles", (1964) 19 *Annales. Histoire, Sciences Sociales* 869, 1066, reprinted in *Law of Nations*, *supra* note 1, at 83.

argued that “the European newcomer in Asia in the sixteenth century found himself faced with a precise network of inter-State connections” and was “doomed to be caught up in this network”.<sup>28</sup> Alexandrowicz maintained in his *East Indies* book:

In the process of establishing their first settlements in India, the Portuguese soon discovered their inability to deal with local communities on the basis of inapplicable legal titles such as discovery, occupation or the title of Papal donation of overseas territories. All the major communities in India as well as elsewhere in the East Indies were politically organized; they were governed by their Sovereigns, they had their legal systems and lived according to centuries-old cultural traditions.<sup>29</sup>

Also, in his *East Indies* book, he maintained:

Thus, in the East Indies a confrontation of two worlds took place on a footing of equality and the ensuing commercial and political transactions, far from being in a legal vacuum, were governed by the law of nations as adjusted to local inter-State custom.<sup>30</sup>

Of particular note here is the value Alexandrowicz placed on equality and tolerance. In his “Kautilyan Principles” article, he wrote that “[r]eferences to the position of foreigners in Hindu States indicate the spirit of tolerance and non-discrimination with which they were treated”.<sup>31</sup> He viewed xenophobia as fundamentally “alien” to Indian politics.<sup>32</sup> Indeed, Indian polities showed tolerance of European trading settlements and recognized their right to self-government.<sup>33</sup> That led to Alexandrowicz’s view of the importance of capitulations in the East Asian scheme. He argued that “capitulations in the wider sense of the word existed in Asia long before the arrival of Europeans. It was one of the oldest customs in most Asian countries to grant substantial concessions to settlements of foreign merchants.”<sup>34</sup> This would counter claims by twentieth-century Western lawyers that capitulations granted by the East were a sign of weakness and inferiority. Rather, it was a standard part of the Asian political arsenal.

Core to this portrait of the East Indies was Alexandrowicz’s emphasis on commerce. It was not by chance that he cited J.C. van Leur’s pathbreaking *Indonesian Trade and Society* in the very first sentence of “Le Droit des Nations aux Indes Orientales”, and he did so because of its emphasis on the commercial foundation of the Far East.<sup>35</sup> Alexandrowicz related in his *East Indies* book:

[h]istorical research has thrown some light on the pattern of international trade in the East Indies before the arrival of the Europeans [at] the beginning of the sixteenth century. J.C. van Leur in his *Essays in Asian Social and Economic History* draws our attention to the efforts of European agencies to fit into this pattern, which gradually changed from feudal and patriarchal to modern European trading methods.<sup>36</sup>

<sup>28</sup> Alexandrowicz, *supra* note 16 at 208.

<sup>29</sup> Alexandrowicz, *supra* note 5 at 14.

<sup>30</sup> *Ibid.*, at 224.

<sup>31</sup> Alexandrowicz, *supra* note 15 at 44.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> Alexandrowicz, *supra* note 16 at 251.

<sup>35</sup> See Alexandrowicz, *supra* note 27, at 83; J.C. VAN LEUR, *Indonesian Trade and Society: Essays in Asian Social and Economic History* (Dordrecht: Foris Publications, 1983; originally 1955).

<sup>36</sup> Alexandrowicz, *supra* note 5 at 61.

Broadening his focus, Alexandrowicz observed that the “Asian maritime powers observed a customary regime of free navigation aiming inter alia at the suppression of anarchy and piracy on the oceanic routes”.<sup>37</sup>

Commercialism in Alexandrowicz’s mind was closely aligned with secularism. There was a caste backstory to Alexandrowicz’s story of secularism. Ironically, Alexandrowicz, who was quite sympathetic to Ambedkar’s caste concerns in post-Independence India as driven by religious blindness – one of the threads of Alexandrowicz’s Indian Constitution book – found in India’s early division of labour with governance being taken out of the hands of the Brahmins as planting the seed of the secularization in politics. He discerned the “separation of the religious function from political power” and maintained that “[a] logical consequence of this separation of power was the secularization of the royal function in the hands of the *ksatryas*”.<sup>38</sup> If that was part of the history of secularization in Indian politics, the key point was the relative secular character of the Indian historical state that fostered tolerance in its inter-polity traditions. Indeed, he maintained that East Indian inter-polity practice, which, “based on the Kautilyan and post-Kautilyan tradition, was in principle secular and allowed sovereigns in India and Further India to maintain regular relations *inter se* and later with Islamic rulers, as well as with the European agencies which first appeared in the East [at] the beginning of the sixteenth century”.<sup>39</sup> Overall, it was this political culture, the broad “influence of Hindu civilization”, that played such a “prominent role in the development of East Indian trade”.<sup>40</sup> That image would bring Alexandrowicz to contrast the secular ethos to cultures driven by religious-based wars, specifically the crusades and *jihad*. It became an integral part of Indian civilization so that even “[t]he reign of Moghul Emperors Akbar, Jehangir and Shajahan witnessed the victory of a secular policy of inter-group relations in India, no doubt under Hindu influence and in conditions of the decline of *jihad* ideology”.<sup>41</sup>

Central to Alexandrowicz’s analysis of the Indian interstate network encountered by Europeans was its characteristic modality, the *mandala*. In his description,

The classic model of this network is based on the concept of the circle of States (*mandala*), that is to say, a group of States linked together by their common affairs of peace and war which found expression in bonds of alliance and neutrality, or in hostility.<sup>42</sup>

Using the standard balance-of-power analogy, Alexandrowicz described the *mandala* as a “policy of balance of power within the complicated network of alliances and conflicts conceived in circles of interests”.<sup>43</sup> But pivotal to the *mandala* system was its restriction against the complete destruction of one’s enemies in war. Instead, there were not only shifting alliances but also shifting suzerain-vassal relationships. Indeed, those shifting relationships were crucial to the maintenance of the system. As Alexandrowicz argued, “[w]hat is characteristic in this suzerain-vassal concept is that it was not conceived as aiming at the absorption of vassals by suzerains which would not have served the idea of unity in diversity”.<sup>44</sup> It was critical, then, that “[t]he vassal ruler was not to be subject to suppression or *debellatio*”.<sup>45</sup>

<sup>37</sup> Alexandrowicz, *supra* note 16 at 241.

<sup>38</sup> Alexandrowicz, *supra* note 15 at 39.

<sup>39</sup> *Ibid.*, at 45–46.

<sup>40</sup> *Ibid.*, at 45.

<sup>41</sup> *Ibid.*, at 46.

<sup>42</sup> *Ibid.*, at 39.

<sup>43</sup> Alexandrowicz, *supra* note 16 at 215.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*



The “Alexandrowicz thesis” – a name mostly used by his detractors – identified the influence of the values of the East on the West. Thus, for example, Alexandrowicz contended on a broad point that “[t]he European agencies in the East learned the lesson of coexistence of Hinduism, Islam and Christianity in India (particularly on the west coast) and transplanted their experience to the West, which had been so long incapable of extricating itself from the obsession of religious wars”.<sup>46</sup> The related form of Alexandrowicz’s argument was to depict the influence of the East as an influence on Western legal theorists. Thus, for example, he might suggest that the principles at the centre of the East Indian system “had an indirect impact on a number of European writers in the eighteenth century”.<sup>47</sup> In his *East Indies* book, he offered “it may be recalled that Grotius and Freitas appeared as the classic witnesses of legal issues relating to the East Indies in the early seventeenth century”.<sup>48</sup> The Grotius-Freitas debate was born of experience in the East. Specifically, “[t]he Grotius-Freitas controversy ... revealed the impact of the maritime regime of the Indian Ocean on the development of our international maritime law”.<sup>49</sup> Indeed, “[i]t may be assumed that Grotius either conceived or perfected the doctrine of the freedom of the sea under the influence of maritime traditions prevailing in the East”.<sup>50</sup> Vital here was the scheme created by Asian states. Alexandrowicz ventured that it would be “possible to assume that Grotius in formulating his doctrine of the freedom of the sea found himself encouraged by what he learned from the study of Asian maritime custom”.<sup>51</sup> Aside from the exact exercise of influence, Grotius was decidedly the most significant writer on the law of nations for Alexandrowicz, and core to his engagement with Grotius was the value placed by Grotius on equality between states, commercialism, and secularization, as well as the divisibility of sovereignty that Alexandrowicz saw represented by the *mandala*, values to be discussed in more detail.

### The Author of Kautilya’s Arthashastra

Alexandrowicz focused attention on the “Kautilyan principles” and the “Kautilyan tradition” as critical to his larger effort to reintroduce the Indian East as a vital partner in the creation of international law, and he began his “Kautilyan Principles” with the contention that “[t]he historian of the law of nations who intends to ascertain the totality of factors which contributed to the development of our system of international law cannot confine his inquiry to pre-nineteenth-century Europe only”.<sup>52</sup> In discussing what he described as the “Kautilyan tradition”, he focused on Kautilya as an historical figure within the development of Indian political thought. Thus, for example, he wrote in the Kautilya Principles article: “Until Kautilya, Chandragupta Maurya’s Chancellor, completed his treatise in the fourth century B.C., politics had not been an independent science in India but remained largely a branch of social ethics.”<sup>53</sup> Alexandrowicz fully understood that Kautilya stood within a progression of Indian thought. In addition, the elements of the framework Kautilya set out “were the outcome of a more ancient tradition and constituted at the same time a code of provisions from which usages and customary rules were derived during later periods”.<sup>54</sup> Nevertheless, Alexandrowicz still tied the author

<sup>46</sup> Alexandrowicz, *supra* note 15 at 45.

<sup>47</sup> *Ibid.*, at 51.

<sup>48</sup> Alexandrowicz, *supra* note 5 at 229.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*, at 65.

<sup>52</sup> Alexandrowicz, *supra* note 15 at 35.

<sup>53</sup> *Ibid.*, at 38.

<sup>54</sup> Alexandrowicz, *supra* note 5 at 28.

of Kautilya's *Arthashastra* to the key historical figure of a minister in the Mauryan empire in the fourth century BCE.

At the start of this Kautilya identification, Shamasastri began the "Preface" to the first full translation of Kautilya's *Arthashastra* by observing that "[l]ittle that is reliable is known of the author of the Arthasāstra".<sup>55</sup> Nevertheless, citing an additional early source, Shamasastri felt sufficiently confident to assert that "Kautilya overthrew the Nandas and placed Chandragupta on their throne".<sup>56</sup> In the decades following Shamasastri's publication, there has been a continuous debate about the author of the *Arthashastra*. Some of the debate was over dating the *Arthashastra* as well as the identity of its author. As to authorship, there has been controversy over whether one could ascribe the work to a single author; that is, between those whom Mark McClish identifies as champions of "unitary authorship"<sup>57</sup> and those who viewed the text as created by multiple authors or having evolved out of a process of accretion. Many scholars felt compelled to enter the dating and attribution debates, and those debates started very early. For example, when Kālidās Nāg published *Les théories diplomatiques de l'Inde ancienne et l'Arthaçāstra* in 1923, he wrote about the attribution of the text to the prime minister of the Chandragupta by Shamasastri and others but concluded that "a careful examination of the different parts of the text obliges us to conclude that the hypothesis was not justifiable".<sup>58</sup> Nāg also referenced the work of the German Sanskrit scholar Alfred Hillebrandt to the effect that the *Arthashastra* was the work of a school rather than a single individual.<sup>59</sup>

By the time Indian Sanskrit scholar R.P. Kangle produced his three volumes in the 1960s – his edited Sanskrit text, his translation, and his study of the *Arthashastra*<sup>60</sup> – he felt compelled to devote a fifty-nine-page chapter to "Author and Date." There, he came to a basic agreement with Shamasastri's original assessment by refuting attempts to move the date of authorship or dispute the identity of the author. For example, he rebutted Hillebrandt's argument that Kautilya's practice of referencing himself in the third person was not present in earlier literature by suggesting that this practice of self-citation could be traced to "peculiarities of temperament making themselves felt in an author's work, particularly if the author is known otherwise to have been a masterful personality".<sup>61</sup> Kangle spent a number of pages refuting arguments by Otto Stein, Julius Jolly, and others regarding discrepancies between the Greek diplomat Megasthenes's contemporaneous observations about Mauryan India and the text of the *Arthashastra*. In response, he reminded his readers that "the *Indika* of Megasthenes is preserved only in fragments found in the writings of later historians like Strabo, Arrian, Diodorus and others so that a full picture of Megasthenes's description is not available to us".<sup>62</sup> With that reminder in place, he could protest: "It is, therefore, surprising, to say the least, to find it confidently asserted that the evidence of Megasthenes is against the authenticity of the *Arthasāstra*."<sup>63</sup>

<sup>55</sup> R. SHAMASASTRI, "Preface", in Shamasastri, *supra* note 19 at vii.

<sup>56</sup> *Ibid.*

<sup>57</sup> Mark MCCLISH, *The History of the Arthasāstra: Sovereignty and Sacred Law in Ancient India* (Cambridge: Cambridge University Press, 2019) at 39.

<sup>58</sup> Kālidās NĀG, *Les théories diplomatiques de l'Inde ancienne et l'Arthaçāstra* (Paris: Maisonneuve Frères, 1923) at 115 ("un examen soigneux des différentes parties du texte nous oblige à déclarer leur hypothèse insoutenable").

<sup>59</sup> *Ibid.*, at 116.

<sup>60</sup> R.P. KANGLE, *The Kautilya Arthasāstra, Part I, Sanskrit Text with a Glossary* (New Delhi: Motilal Banarsidass Publishing House, 1960); *The Kautilya Arthasāstra, Part II, Translation with Critical and Explanatory Notes* (New Delhi: Motilal Banarsidass Publishing House, 1963); *The Kautilya Arthasāstra, Part III, A Study* (New Delhi: Motilal Banarsidass Publishing House, 1965).

<sup>61</sup> Kangle, *Part III, A Study, ibid.*, at 107–8.

<sup>62</sup> *Ibid.*, at 69.

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

If the major French Sanskrit scholar, Robert Lingat, simply threw up his hands in an aside about the dating of Kautilya's *Arthashastra* – “the date (or dates) of which are in debate”<sup>64</sup> – Mark McClish provides what I find the most compelling analysis of the authorship and dating of Kautilya's *Arthashastra*. He engages in a thorough structural, stylistic, and syntactical, subject matter, and doctrinal analysis, and introduces additional elements such as numismatic and other historical evidence to arrive at his verdict. He points, for example, to the alternating formal elements of prose and verse, the uneven division of the *Arthashastra*'s books suggesting later imposed divisions, and the competing viewpoints of different parts of the text. Of course, a number of McClish's observations build on the observations of earlier scholars so that, for example, on the verse sloka elements of Kautilya's *Arthashastra*, he can draw on the analysis from 1916 of the slokas by A.B. Keith, which, in Keith's words, were “far more classical in type than the Rāmāyana itself [while containing] correct Trishtubh stanzas in regular metre, which is a clear proof of a comparatively recent date”.<sup>65</sup> McClish can then identify these as archaisms rather than truly archaic language. For him, the slokas were later emendations to a pre-existing text, an observation that falls within his overall exercise in a “redaction history” of the *Arthashastra*.<sup>66</sup> As he argues, “the verses and colophons that conclude each chapter were added during a major redaction of the text, probably sometime in the third century CE”.<sup>67</sup>

McClish concludes that the older source text of the *Arthashastra* consisted of an earlier, purely rational manual of sovereign politics to which religio-moral elements were subsequently added in a later revision. In McClish's words, his study “undertakes a text-critical study of the *Arthasāstra* in order to demonstrate that an earlier text, which I will call the *Dandaniti*, underwent extensive redaction and was recast as the *Arthasāstra of Kautilya*”.<sup>68</sup> Indeed, McClish aimed to:

demonstrate that the *Dandaniti* operated from a political philosophy in which the king's sovereign power was unconstrained by any prior legal or moral constraints. During the redaction, the political theology of “the Sacred Laws of the Social Classes” (*varnadharma*), which understood sovereign power to be governed by dharma as moral law, was brought into the text.<sup>69</sup>

This may be counter to the typical tale of increasing, progressive secularization but the main point is that the source document, which McClish calls the *Dandaniti*, came from a separate and parallel secular political tradition; in McClish's words, an “earlier statecraft tradition, which must be considered as having existed and developed mostly independently of the dharmaśāstra tradition”.<sup>70</sup>

McClish's recent conclusions about Kautilya's *Arthashastra* stand in sharp relief against the major tradition on the *Arthashastra*'s dating and authorship. I have introduced it not to impeach Alexandrowicz's scholarship. Indeed, Alexandrowicz was just adopting the prevalent view. It was, as mentioned, the view of R.P. Kangle – and Alexandrowicz refers to both Shamasastri and Kangle's translations in his “Kautilyan

<sup>64</sup> Robert LINGAT, *The Classical Law of India* (J. Duncan M. DERRETT, ed. and trans., New Delhi: Oxford University Press 1998; originally 1973) at 146.

<sup>65</sup> A.B. KEITH, “The Authenticity of the Kautilya”, (1916) *Journal of the Royal Asiatic Society*, 136–37, quoted in McClish, *supra* note 57 at 38.

<sup>66</sup> McClish, *supra* note 57 at 24.

<sup>67</sup> *Ibid.*, at 45.

<sup>68</sup> *Ibid.*, at 25–26.

<sup>69</sup> *Ibid.*, at 26.

<sup>70</sup> *Ibid.*, at 27.

Principles” article.<sup>71</sup> Alexandrowicz may have cited Nâg, one of the early critics of the unitary author position but he did so in a footnote on an unrelated point.<sup>72</sup> U.N. Ghoshal, a towering figure in the history of Indian political thought and a source for Alexandrowicz, adopted the traditional view. That was the case for his *History of Hindu Political Theories* of 1923, where he wrote in agreement that “Kautilya’s treatise is generally assigned to the period of Chandragupta Maurya’s reign (c. 322–298 B.C.).”<sup>73</sup> He would tell us that there was an ancient Arthashastra tradition from which Kautilya was drawing. “Already in the time of Kautilya”, he wrote, “the literature of the Arthasāstra must have reached a considerable size since he quotes no less than four specific schools and thirteen individual authors.”<sup>74</sup> When Ghoshal expanded his 1923 study as *A History of Indian Political Ideas* in 1959 he did not necessarily agree with the identification of Kautilya as the chief minister of Chandragupta, referring neutrally to the “orthodox tradition which attributes the authorship of the work to the well-known chief minister of Chandragupta”.<sup>75</sup> Yet, there he made a point similar to that of his 1923 text: “In Kautilya’s time the literature of the Arthasāstra had grown into a tangled maze of divergent ideas.”<sup>76</sup> Despite the maze, the main point was that Ghoshal identified a historical, Maurya-era Kautilya.

The historian A.S. Altekar in his *State and Government in Ancient India*, also an important source for Alexandrowicz, came to the conclusion that “we could well place him in the Mauryan period”.<sup>77</sup> Altekar further contended that “[t]he above facts as well as the colophon of the work would suggest that its kernel, at any rate, belongs to the Mauryan age and embodies the views of Kautilya”.<sup>78</sup> Similarly, K.A. Nilakanta Sastri – who contributed to the *Indian Year Book of International Affairs*<sup>79</sup> – wrote in the introduction to his *Age of the Nandas and Mauryas*, “The Arthasāstra of Kautilya (Chānakya) holds a place in the literature of Indian polity corresponding to that of the Mauryan empire in Indian history.”<sup>80</sup> It was fully understandable that Alexandrowicz would adopt the unitary authorship position. Yet, it is also the case that the position served him well, allowing the Kautilyan tradition to be personified and have a champion taking a role not unlike Alexandrowicz’s Grotius.

### Kautilya and Indian Nationalism

As mentioned above, the discovery and publication of Kautilya’s *Arthashastra* represented a paradigm shift in Indians’ views of their political heritage. McClish quotes Johannes Voigt that the discovery and publication created a “sensation of the greatest magnitude” and triggered new views by Indians of the history of their own politics.<sup>81</sup> Indeed, McClish

<sup>71</sup> Alexandrowicz, *supra* note 15 at 36, nn 5.

<sup>72</sup> *Ibid.* at 39, nn 18.

<sup>73</sup> U. GHOSHAL, *A History of Hindu Political Theories. From the Earliest Times to the End of the First Quarter of the Seventeenth Century A.D.* (London: Oxford University Press, 1923) at 70.

<sup>74</sup> *Ibid.*, at 71.

<sup>75</sup> U.N. GHOSHAL, *A History of Indian Political Ideas: The Ancient Period and the Period of Transition to the Middle Ages* (London: Oxford University Press, 1959) at 111.

<sup>76</sup> *Ibid.*

<sup>77</sup> A.S. ALTEKAR, *State and Government in Ancient India*, 3rd ed. (Delhi: Motilal Banarsidass Publishers, 1958; originally 1949) at 14.

<sup>78</sup> *Ibid.*

<sup>79</sup> See, e.g., K.A. Nilakanta SASTRI, “International Law and Relations in Ancient India” (1952) 1 *Indian Year Book of International Affairs* 97; and K.A. Nilakanta SASTRI, “Inter-State Relations in Asia” (1953) 2 *Indian Year Book of International Affairs* 133.

<sup>80</sup> K.A. Nilakanta SASTRI, ed., *Age of the Nandas and Mauryas*, 2nd ed. (Delhi: Motilal Banarsidass, 1967; originally 1951) at 3.

<sup>81</sup> See McClish, *supra* note 57 at 19; Voigt, *supra* note 20 at 48.

observes that “[t]he authoritative disquisitions of the *Arthasāstra* were decisive proof of the kind of native political capacity that India was accused of lacking and proved to be of great value for a people consciously developing a self-assertive national identity”.<sup>82</sup> Voigt’s chapter on “Nationalist Interpretations of *Arthasāstra* in Indian Historical Writing” provides us with an important discussion of the uses to which the sudden appearance of Kautilya’s *Arthashastra* were made, including the importance of state organization in India with, for example, B.K. Sarkar’s “coin[ing] for it the term *dharmastaaten*, a combination of the Sanskrit term *dharma* and the German word for state, meaning by it what is called in German *Rechtsstaat*”.<sup>83</sup> Voigt focused a good deal of his chapter on the bureaucratic and economic role of the government in the eyes of Indian historians. Similarly, Maria Misra recently provided an overview of the Indian Kautilya reception, focusing on the nationalist and materialist strains of that reception, especially in the 1920s and again starting in the 1980s.<sup>84</sup> I will be focusing on a different reception history, on the writing of scholars like Ghoshal, Altekar, and others who were in the frame of Alexandrowicz’s reading of Kautilya.

When Ghoshal first wrote his *History of Hindu Political Theories*, published in 1923 from his 1922 University of Calcutta dissertation,<sup>85</sup> he was quite clear that he was struggling against enormous headwinds. He quoted the nineteenth-century French professor of moral science, Paul Janet, to the effect that “[t]he Orient in general, India in particular, did not conceive the idea of the State . . . To employ a Christian expression, the sole city for the Indian sages is the city divine.”<sup>86</sup> He had to struggle against the heritage of Max Müller with his overly religious image of Indian politics. Ghoshal cited Westel Woodbury Willoughby’s *Political Theories of the Ancient World* to the effect that the civilization of Eastern cultures had an “appeal to dogma rather than to reason, to faith rather than to logically founded belief”,<sup>87</sup> and William Archibald Dunning’s *History of Political Theories Ancient and Mediaeval* to the effect that “[t]he Oriental Aryans never freed their politics from the theological and metaphysical environment in which it is embedded to-day”.<sup>88</sup>

Over against those stereotypes, Ghoshal was able to argue, without entirely dispatching the importance of religion, that “[t]he peculiar genius of the Indo-Aryans left its impress upon another aspect of Hindu political thought, namely its intensely realistic character”.<sup>89</sup>

<sup>82</sup> McClish, *supra* note 57 at 19.

<sup>83</sup> Voigt, *supra* note 20 at 57, citing B.K. SARKAR, *The Political Institutions and Theories of the Hindus: A Study in Comparative Politics* (Leipzig: Verlag Von Markert & Petters, 1922) at 173. Voigt discusses Narendra Nath Law’s *Studies in Ancient Hindu Polity*, which was published on the propitious year of 1914. Interestingly, if you read Radhakumud Mookerji’s introductory essay to Law’s book, he expressed his nationalist pride by asserting that “[t]he system of polity as revealed in the *Arthasāstra* is complete in all aspects and details, and exhibits those features which are characteristic of India”. And he could make the claim that “when we find that all these familiar problems have been treated in the *Arthasāstra*—problems which are still exercising the British Government of India at the present day—we cannot but discover the operation of an evolutionary process which is ultimately governing the development of Indian administration through Hindu, Mahomedan and modern times”. See Radhakumud MOOKERJI, “An Introductory Essay on the Age and Authenticity of the *Arthasāstra* of Kautilya”, in Narendra Nath LAW, *Studies in Ancient Hindu Polity (Based on the Arthasāstra of Kautilya)* (New York: Longmans, Green and Co., 1914) at xlv.

<sup>84</sup> Misra, *supra* note 20.

<sup>85</sup> Ghoshal, *supra* note 73 at vii.

<sup>86</sup> *Ibid.*, at 4, quoting and translating Paul JANET, *Histoire de la science politique dans ses rapports avec la morale*, Vol. I (Paris: Hachette Livre BnF, 1887) at 26.

<sup>87</sup> Ghoshal, *supra* note 73 at 8, quoting Westel Woodbury WILLOUGHBY, *The Political Theories of the Ancient World* (London & Bombay: Longmans, Green, and Co., 1903) at 14.

<sup>88</sup> Ghoshal, *supra* note 73 at 9, quoting William Archibald DUNNING, *History of Political Theories Ancient and Mediaeval* (London: Macmillan Company, 1902) at xix.

<sup>89</sup> Ghoshal, *supra* note 73 at 12.

He was then able to maintain that “[a] new departure moreover, is signaled by the schools and authors of the Arthaśāstra who bring into being an independent branch of knowledge avowedly concerned with the acquisition and preservation of States”.<sup>90</sup> Thus, when Ghoshal came to publish his much thicker study in 1959, over a decade into Indian Independence, he could write with satisfaction that “[i]t is a welcome sign of the times that, not to speak of the keen interest of the Indian as of other Eastern peoples in the ancient history of their lands after their liberation from colonial rule, there has been a growing appreciation of the abiding value of the secular aspects of non-European civilizations in Western lands”.<sup>91</sup> He also sharpened his statement about the Arthashastra writers: “The greatest single contribution made by our ancient authors to the reasoned treatment of political ideas lies to the credit of the schools and teachers of the *Arthaśāstra*.”<sup>92</sup> Of course, Kautilya had pride of place in both versions of Ghoshal’s book. Kautilya was the towering figure of the narrative and Ghoshal could refer to “one striking characteristic of his genius, namely, his sense of balance and harmony”.<sup>93</sup>

If Indian writers on Indian political thought had to refute the charge of over-religiosity, Indian writers on international law had the additional burden of addressing the core conclusions of early twentieth-century international law as to which governmental polities could be regarded as the “subjects” of international law, with the easy understanding that only Christian, European states were subjects and had rights. In 1920, Bandyopadhyay used W.E. Hall as an example and portrayed him as a man “[i]mbued with imperialistic ideas [who] considers International Law as a ‘favoured monopoly’ of the European family of nations”.<sup>94</sup> Countering this set-piece framing by Western writers, Bandyopadhyay exclaimed, and the italics were his: “It is, however, the object of this thesis to establish the apparently incredible fact that *the ancient Indians had a definite knowledge of the rules of International Law according to which they regulated their international conduct*.”<sup>95</sup> Here, Bandyopadhyay rushed to underscore the failure of international law in the West, that Westerners had:

in their cynical disregard of the rights of others as has been evidenced during the last great world war, in violation of Luxemburg, and Belgium, in the compulsory enlistment of Greece, after the violation of her neutrality, in the utter disregard for all rules of civilised warfare and in the curtailment of the rights of the non-combatants to the lowest limits.<sup>96</sup>

By comparison, “[t]he ancient Indians had two thousand years before a Grotius, a Rachel or an Ayala recalled Europe to humanity, propounded a body of rules governing the relations between different states into which the continent of India was generally divided”.<sup>97</sup>

Similar to Bandyopadhyay, Viswanatha opened the preface to his 1925 study by explaining that “[t]he subject of the following book was suggested to me by the Great War of 1914 which witnessed rather sweeping changes in the European Law of Nations”.<sup>98</sup> He suggested that Indian states may have been working with an Austinian

<sup>90</sup> *Ibid.*, at 58.

<sup>91</sup> Ghoshal, *supra* note 75 at vii.

<sup>92</sup> *Ibid.*, at 5.

<sup>93</sup> *Ibid.*, at 112.

<sup>94</sup> Bandyopadhyay, *supra* note 21 at 2.

<sup>95</sup> *Ibid.*, at 3.

<sup>96</sup> *Ibid.*, at 3–4.

<sup>97</sup> *Ibid.*, at 4.

<sup>98</sup> Viswanatha, *supra* note 22 at v.

deficit but they did not lose out as a result: “One point of difference which becomes clear to us between ancient Indian International Law and the modern European Law of Nations is that whereas the rules of the latter are based on the ‘common consent’ of the states which came within the bounds of the law, in the case of the former the rules of conduct embodied in *Dharma* had to be implicitly obeyed by all nations in India, for they were based on a superior ethical sense.”<sup>99</sup> Rebutting the “stale criticism” that Manu, Kautilya, and other Indian writers restricted themselves to an idealized vision rather than describing reality, he responded that Indian political writings “formulated a code of laws which approached the actual to no less an extent than the Code of Grotius, or even the Code formulated at The Hague”.<sup>100</sup>

Alexandrowicz, in “Kautilyan Principles”, reported that “[i]n 1960 an All-India Seminar was held at the University of Delhi which concerned itself with the possible contribution of Indian traditions to the development of international law”.<sup>101</sup> He provided a short description of the Seminar’s coverage:

[t]he Seminar concentrated on a number of problems such as the significance of *pacta sunt servanda* in *dharmasastra* and *arthashastra*; the importance of *mandala* (circle of States) as the expression of balance of power; the role of the principle of nonviolence (*ahimsa*); the settlement of conflict by third-party judgment; and the record of diplomacy and negotiation ‘to the limit’.<sup>102</sup>

In a footnote, he pointed to an argument regarding “what the world could learn from India’s cultural heritage”, to which the British expert on Indian law, J.D.M. Derrett, in agreement with V.K.R.V. Rao, referred, in a post-seminar report to “the Gandhian theory of life and its dharmic aspects”.<sup>103</sup> Alexandrowicz did not directly criticize the expansion beyond Kautilyan principles to incorporate Gandhian gestures and even referred in the same note to Derrett’s piece published in his own *Indian Year Book of International Affairs*.<sup>104</sup> However, Alexandrowicz’s act of deflation came when he concluded, “[w]hat the participants of the Seminar failed to consider is the point in time at which Indian traditions of inter-State conduct were still capable of exercising a direct influence on our system of the law of nations”.<sup>105</sup> Indeed, for Alexandrowicz, “[i]t must be recalled that these traditions came to an end with the collapse of the independent State system in India and Further India at the end of the eighteenth century and the beginning of the nineteenth century”.<sup>106</sup> His intervention was a historical one, arguing that “[t]he only point in time at which a direct influence of such traditions on our law of nations was possible was the period of the sixteenth, seventeenth and eighteenth centuries”, which was a core argument of his writing.<sup>107</sup>

<sup>99</sup> *Ibid.*, at 10–11.

<sup>100</sup> *Ibid.*, at 11.

<sup>101</sup> Alexandrowicz, *supra* note 15 at 36.

<sup>102</sup> *Ibid.*, at 36–37. Note that these were discussion points rather than conclusions. However, Alexandrowicz wrote in a footnote that the Seminar concluded that third-party judgment did not exist in ancient India. *Ibid.*, at 37, nn 9. In addition, non-violence was “quite alien to Indian tradition and practice” although it “tended to be respected in Jainist and Buddhist practice”. *Ibid.*, at 37, nn 10.

<sup>103</sup> *Ibid.*, at 36, nn 8, citing J.D.M. DERRETT, “Report of the Seminar”, (1962) 11 *International and Comparative Law Quarterly* 266.

<sup>104</sup> *Ibid.*, citing J.D.M. DERRETT, “Maintenance of Peace in the Hindu World: Practice and Theory”, (1958) 7 *Indian Year Book of International Affairs* 361.

<sup>105</sup> Alexandrowicz, *supra* note 15 at 37.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*

Here, Alexandrowicz took a tack quite different from that Nagendra Singh would take in his *India and International Law* in 1969.<sup>108</sup> Singh provided a quick march through various principles of international law such as *lex as rex, pacta sunt servanda*, the right of asylum, and the role of missions, tying them to the Indian past with references to the Code of Manu, the *Mahabharata*, and Kautilya's *Arthashastra* as providing precedents for international law writ large. Singh used Kautilya more as an observer than a generative mind. In a later book, he asserted, "Kautilya was a political grammarian and not a legal luminary."<sup>109</sup> In *India and International Law*, Singh sought to steer us away from the "theory of brute force" that, for him, largely characterized Kautilya's *Arthashastra* and look elsewhere to "the subordination of all State policies to *Dharma* or law [which] is of the highest importance for a correct appreciation of the legal position in ancient India".<sup>110</sup> Singh was moving towards a conclusion that the eradication of war and the promotion of peace were core tenets of Indian thought and practice so that he was able to introduce the Indian concept of peaceful coexistence or *Panchsheel* advocated by modern India: "In modern times, after India's Independence in 1947, non-alignment and peaceful co-existence have been the watchwords of this country's foreign policy."<sup>111</sup> Essentially, he transitioned from his Indian heritage to quote at length from a speech by Nehru in 1955.<sup>112</sup> By comparison, Alexandrowicz had what looked like a decidedly historical point to make. But that point was bound up with his views as to his broader fall-and-rise narrative of the law of nations from medieval and early modern naturalism to nineteenth-century European positivism with its xenophobia and colonial abuses, so it was during the period from the sixteenth through to the eighteenth century that the European law of nations was most receptive to the influences of India and Further India, which came from ancient Indian traditions.

### The Anarchical Society

As a touchstone for Indian political thought, many writers pointed to the discussion of the "law of the fish", most notably appearing in the Santiparvan section of the *Mahabharata*. Thus, for example, in 1923 Ghoshal wrote: "If the king, says Bhishma, in concluding this part of his argument, did not exist in this world as a wielder of punishment, the stronger would devour the weaker in the fashion of fishes living in the water."<sup>113</sup> Similarly, Altekar, in his study of the state and government in ancient India, wrote of a falling from grace in the Santiparvan: "The Śāntiparvan goes on to narrate that society flourished without a king or law court for a long time, but later somehow there was a moral degeneration. People fell from rectitude; greed, selfishness and cupidity began to sway their mind[s] and the earthly paradise which they had been enjoying was soon converted into a veritable hell."<sup>114</sup> As a result, "[t]he law of the jungle began to prevail; the strong devoured the

<sup>108</sup> Nagendra SINGH, *India and International Law* (Delhi: S Chand & Co., 1969).

<sup>109</sup> Nagendra SINGH, *Juristic Concepts of Ancient Indian Polity* (New Delhi: Vision Books, 1980) at 98. There were certainly other scholars tying Kautilya to modern international legal principles. See, e.g., T.M.P. MAHADEVAN, "Kautilya on the Sanctity of Pacts", (1956) 5 *Indian Year Book of International Affairs* 342, in which Mahadevan described the principle but, knowing the common views of Kautilya, opened with "[i]t may be least expected of Kautilya that he should lay emphasis on the inviolability of pacts entered into by parties either individuals or states". *Ibid.*, at 342.

<sup>110</sup> Singh, *supra* note 108 at 16.

<sup>111</sup> *Ibid.*, at 72.

<sup>112</sup> For a broad analysis of Singh's *India and International Law*, see Carl LANDAUER, "Passage from India: Nagendra Singh's *India and International Law*", (2016) 56 *Indian Journal of International Law* 265.

<sup>113</sup> Ghoshal, *supra* note 73 at 170–71, citing *Santiparvan*, LXVII. 2, 3, 5, 14–15, 16.

<sup>114</sup> Altekar, *supra* note 77 at 27.



weak, as is the order of the day among the fish (*mātsyanyāya*).<sup>115</sup> Only then did the Gods intervene to bestow kingship. But, having narrated this from the Santiparvan, Altekar offered:

Elsewhere in the Śāntiparvan (Ch. 67) we have a slightly divergent account of the origin of the state, which seems to refer to an unsuccessful contract at one stage. People were tired of the law of the jungle which prevailed for a long time, and entered into a mutual contract that persons guilty of unsocial acts like misappropriation and adultery would be expelled from society.<sup>116</sup>

In both cases, narrated by Altekar, the Santiparvan envisioned human society emerging out of anarchy. US scholar, John Spellman in his *Political Theory of Ancient India* of 1964 wanted to emphasize the anarchy talk of Indian politics: “In ancient India, the fear of anarchy was almost pathological. Underlying every concept of kingship was the doctrine of *mātsyanyāya*—the analogy of the big fish eating up the little fish.”<sup>117</sup> For Spellman, this was crucial to comprehending the Indian institution of kingship. “Without understanding this idea”, he argued, “there can be no understanding of kingship in ancient India.”<sup>118</sup> For him, India was marked by a paranoid style of politics, and he peppered his writing with words like “horror” and “fright”. Referring to several Indian sources, Spellman contended that “[t]he horror with which writers viewed this situation can be traced throughout the period of ancient Indian history”.<sup>119</sup>

Taking quite a different tack from Spellman, Hiralal Chatterjee, in his study of ancient Indian international law in 1958, felt compelled to dismiss any notion that the “logic of the fish” represented an actual historical state or, at any rate, any significant one.<sup>120</sup> After telling us that Benoy Kumar Sarkar, early in the century, compared the European concept of a state of nature to the Hindu concept of *mātsyanyāya* or “logic of the fish”, Chatterjee explained that it was Sarkar’s “view that historical progression from non-statal to statal conditions must have been a slow-going process in between which there existed a state of nature in which *mātsyanyāya* prevailed”.<sup>121</sup> To Chatterjee, the “logic of the fish” was not meant to reflect historical reality. He tells us that it “might have been an occasional phenomenon but could never have possibly governed human relations for any length of time”.<sup>122</sup> Indeed, “[m]ātsya-nyāya was after all a temporary phase, and it occurred at times when government became weak and powerless and failed to enforce its authority effectively in the country, thereby giving rise to a state which might alone was right.”<sup>123</sup> Spellman, the US-based Orientalist, was offering up a pathology, while Chatterjee was defensively assuring his readers that the “law of the fish” was, at most, a fleeting reality.

Interestingly, Alexandrowicz brought Chatterjee and Spellman together to counter any popularly derived social contract theory of kingship. Alexandrowicz did this in a footnote after citing Cambridge historian F.H. Hinsley on the gradual formation of the idea of

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*, at 27–28.

<sup>117</sup> John W. SPELLMAN, *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa A.D. 300* (London: Oxford University Press, 1964) at 4.

<sup>118</sup> *Ibid.*, at 5.

<sup>119</sup> *Ibid.*

<sup>120</sup> Hiralal CHATTERJEE, *International Law and Inter-State Relations in Ancient India* (Calcutta: Firma KL Mukhopadhyay, 1958) at 14

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*, at 14–15.

sovereignty. Alexandrowicz cited Chatterjee and Spellman for the proposition that “[t]he theory that sovereignty in the Hindu State was vested in the people seems doubtful”.<sup>124</sup> Indeed, “[u]nlike the Buddhist doctrine, which tends to see the foundations of the State in [a] quasi[-] contractual relationship between [the] ruler and [the] people, Kautilya—in truly Brahmanist (or Hobbesian) way—is a pessimist and sees government as a remedy to the universal anarchy, or ‘the law of the fish’ according to which the stronger swallows up the weaker (*matsya-nyaya*)”.<sup>125</sup> For Alexandrowicz’s Kautilya, “[t]he answer to anarchy is *danda*, which may *inter alia* mean punishment or sanction”.<sup>126</sup> The sovereign must make use of the rod to thwart an anarchical state.<sup>127</sup> We have here a Hobbesian Kautilya (if Hobbes is set between parentheses) without the social contract overlay and married to Brahmanism. In the *East Indies* book, Alexandrowicz explained that “[a]ccording to Kautilya’s *Arthasāstra* politics were to a great extent divorced from the tenets of Dharma and governed by considerations of expediency”,<sup>128</sup> although he was careful to explain that “in theory, the rules of Dharma prevailed over those of Artha” so that the “*Arthasāstra* appeared as a modifying factor indicating the rules of expediency”.<sup>129</sup> Alexandrowicz turned to a Hobbesian reference point:

As to the nature of inter-Sovereign relations, Kautilya did not conceive it in terms of ideal postulates as it was in the scholastic or Grotian law of nature, but in terms similar to the political doctrine of Hobbes, i.e. as the reality of human conflicts and of self-preservation.<sup>130</sup>

In this context, Alexandrowicz would return to the focus on the anarchical society and explained, “thus Kautilya concerned himself with the formulation of certain rules which could mitigate the catastrophic effects of anarchy”.<sup>131</sup> For Alexandrowicz’s Kautilya, the solution was not just *danda*, the sovereign use of force. It also required the efficient operation of the *mandala*.

US political scientist Roger Boesche, in a book that in its title identifies Kautilya as “the first great political realist”, wrote that in Kautilya’s *Arthashastra*, “[t]he king’s first duty, just as it was for Hobbes’s sovereign, was to ‘destroy the enemies and protect his own people’”.<sup>132</sup> For Boesche’s Kautilya:

[T]he king must protect his people from chaos within, a sort of Hobbesian state of war, or as Kautilya said, a condition when ‘the law of the fishes’ applies, that is, when the big fish eat the little fish and all is violent turmoil.<sup>133</sup>

<sup>124</sup> Alexandrowicz, *supra* note 15 at 39, nn 15. Ironically, Alexandrowicz did not point out here that, despite the long process to sovereignty, Hinsley identified a sharp difference between “segmentary states” and true sovereignty. All the ways in which sovereignty could be divisible for Alexandrowicz were alien to Hinsley’s account. See F.H. HINSLEY, *Sovereignty*, 2nd ed. (Cambridge: Cambridge University Press, 1986; originally 1966) at 17–18.

<sup>125</sup> Alexandrowicz, *supra* note 15 at 38.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

<sup>128</sup> Alexandrowicz, *supra* note 5 at 225. Here he cites Sastri, “International Law and Relations in Ancient India”, *supra* note 79, at 103–4.

<sup>129</sup> Alexandrowicz, *supra* note 5 at 225, nn 4.

<sup>130</sup> *Ibid.*, at 225–26.

<sup>131</sup> *Ibid.*, at 226. David Armitage does a wonderful job of placing Hobbes in the tradition of the idea of civil strife. See David ARMITAGE, *Civil Wars: A History of Ideas* (New York: Alfred A. Knopf, 2017).

<sup>132</sup> Roger BOESCHE, *The First Great Political Realist: Kautilya and His Arthashastra* (Lanham, Maryland: Lexington Books, 2002) at 34.

<sup>133</sup> *Ibid.*, at 34–35.

Here, Boesche quoted Spellman's account of the ancient Indian "fear of anarchy that was almost pathological".<sup>134</sup> That was the background for Boesche, as it was for Spellman. But Boesche aimed to further imprint on us the importance of the Hobbes comparison. He first addresses that comparison by maintaining that "[t]he best European comparison is with Hobbes, who also tried to outline timeless laws by means of a science of politics", and he asserted that both Hobbes and Kautilya "believed the foundation of any science of politics must be clarity of language and crystal clear definitions of words".<sup>135</sup>

Nevertheless, Boesche was more interested in the comparison with Machiavelli, who appeared on the very first page of his introduction. He was interested in the ruthless Machiavelli with Kautilya coming out the worse in the comparison: "In terms of offering frank and often brutal advice to a king, Kautilya makes Machiavelli seem mild."<sup>136</sup> If we think of the two source components of McClish's *Arthashastra*, components that led many commentators to refer to Kautilya's vacillation or ambivalence, Boesche came down firmly on the side of an immoderate Kautilya. Many commentators on Kautilya, even those writing sympathetic portrayals, dwelled on Kautilya's significant number of instructions regarding the use of ruthlessness, deception, and entrapment. Ghoshal explained in 1923 that in a section of the *Arthashastra*

dealing with the suppression of disturbers of the peace, Kautilya states that spies in disguise may mix with thievish foresters, and instigate them to attack companies of merchants and villagers and may contrive the assassination of those people with weapons and with poison.<sup>137</sup>

Indeed, spies have been quite prominent in discussions of Kautilya. No one seems to leave them out, but Boesche sees spying as so important to the *Arthashastra* that he devoted a chapter to "Kautilya's Spy State".<sup>138</sup>

### Kautilya and the Machiavellian Moment

If anything, Alexandrowicz's writing on Kautilya is marked by its lack of attention paid to Machiavelli. His "Kautilyan Principles" engaged with a range of Kautilya's values without reference to Machiavelli, and it is only in the penultimate paragraph that he raised Machiavelli's name, although rather obliquely in his discussion of J.H.G. von Justi: "Justi seems perfectly aware of the concept of *mandala*, whether in its Kautilyan or Machiavellian version."<sup>139</sup> Nevertheless, the Machiavelli comparison remained a critical part of the reception history of Kautilya's *Arthashastra* and set out a range of values and valences that were addressed by Alexandrowicz's portrait of Kautilya. Of course, there were many Machiavellis, just as there were many Kautilyas, so it is worth mapping some of the various comparisons – particularly those made by the authors who appear in Alexandrowicz's notes.

Already in 1923, less than a decade after the publication of Kautilya's *Arthashastra* in English in 1915, Ghoshal addressed "the fashionable comparison between Kautilya and Machiavelli" and offered that "our answer must indicate some remarkable coincidences as well as contrasts".<sup>140</sup> This was five years after Weber identified Kautilya's "[g]enuine,

<sup>134</sup> *Ibid.*, at 35.

<sup>135</sup> *Ibid.*, at 30–31.

<sup>136</sup> *Ibid.*, at 2.

<sup>137</sup> Ghoshal, *supra* note 73 at 148.

<sup>138</sup> Boesche, *supra* note 132 at 45.

<sup>139</sup> Alexandrowicz, *supra* note 15 at 52.

<sup>140</sup> Ghoshal, *supra* note 73 at 155.

radical ‘Machiavellianism’” and held that “Machiavelli’s own *The Prince* is harmless by comparison.”<sup>141</sup> In essence, this Kautilya was placed in the lineage of the devious “Machiavels” of Elizabethan literature, notably Shakespeare’s Richard III. Certain Indian proponents of Kautilya felt the need to rush to his defence. Viswanatha offered that “[i]t is because the *Arthasāstra* subordinates considerations of morality to expediency and practical gain that Kautilya has been styled the Indian Machiavelli”.<sup>142</sup> After quoting directly from Machiavelli about the use of fraud being “admirable and praiseworthy”, Viswanatha intoned that “[t]his is by no means identical with that of Kautilya and other Indian writers”.<sup>143</sup> Nâg in 1923 referred to “this so-called Hindu Machiavel—ce soi-dissant Machiavel hindou”<sup>144</sup> and asserted that Kautilya was not amoral and that war was for him a last resort.

Critiques adopting Kautilya-Machiavellian comparisons would be carried forward, including those by Indian writers. Nagendra Singh, not a great Kautilyan enthusiast, wrote in the late 1960s: “If the theory of brute force based on Machiavellian tactics has been advocated in *Arthashastra* by writers like Kautilya, its position in strict law has to be examined in relation to the principles of *Dharmasastra*.”<sup>145</sup> Here he pushed the role of *dharma*. “In fact”, he assured his readers, “the supremacy of *Dharmasastra* was so well-established that all important literature on *Arthashastra* itself recognised *Dharma* or law as the highest objective.”<sup>146</sup> He then pivoted to addressing Kautilya: “Even Kautilya’s *Arthashastra* categorically states that ‘in any matter where there is a conflict between *Dharmasastra* and practice or between the *Dharmasastra* and any secular transaction, the King should decide the matter by relying on *Dharma* alone.’”<sup>147</sup> Singh’s “even Kautilya’s *Arthashastra*” is a strong formulation and it recurred on the following page. There he provided a scenario regarding the conflict between expediency and *dharma*, offering that righteousness prevails “even” in Kautilya:

This example should establish beyond doubt that where principles of *Arthashastra* or the science of polity prescribed Machiavellian tactics and adoption of acts completely divorced from rules of fair-play and morality, the latter could not prevail over the code of conduct prescribed by *Dharma* or law ... Even Kautilya distinguishes a *dharma-vijaya* which is just conquest from *asurvijaya* or unrighteous conquest or *lobhvijaya* which is conquest undertaken for sheer greed.<sup>148</sup>

Singh’s attitude can be set in relief against that of Ghoshal whose 1959 book served as an important source for Alexandrowicz. Prompted by the constant Kautilya-Machiavelli comparison, Ghoshal, in 1923, after noting the “fashionable” Machiavelli comparison, advised his readers that Kautilya “had evidently a wider scope than the treatises of Machiavelli who confines his attention to the art of government alone”, although Machiavelli was interested in a wider range of government types rather than focusing

<sup>141</sup> Weber, *supra* note 24 at 108. On Machiavelli himself, there have been decades, or rather centuries, of debate on the evilness, immorality, and amorality of Machiavelli. In an evocative recent book, Erica Benner argues, with a close study of language, rhetorical traditions, and other methods, that Machiavelli’s *Prince* has to be interpreted as ironic in frame. See Erica BENNER, *Machiavelli’s Prince: A New Reading* (Oxford: Oxford University Press, 2013).

<sup>142</sup> Viswanatha, *supra* note 22 at 124.

<sup>143</sup> *Ibid.*

<sup>144</sup> Nâg, *supra* note 58 at 114.

<sup>145</sup> Singh, *supra* note 108 at 16.

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*, at 17.

on monarchy.<sup>149</sup> Ghoshal compared their methods, signalling a charge well beyond questions of morality and immorality. He pointed to their shared empiricism and observed that “the empirical method of Machiavelli, supported as it is by frequent references to the history of classical antiquity, has some resemblance to the empiricism of Kautilya which is fortified by occasional references to the Indian traditional history”.<sup>150</sup> Ghoshal was still compelled to address the immorality issue directly. The stakes were high because of the emphasis he placed on Kautilya. In addressing the issue, Ghoshal began by making a concession to critics of Kautilya: “Finally, as regards the attitude of these authors towards religion and morality, it appears at first sight that Kautilya rivals and even surpasses Machiavelli in his sacrifice of these principles to the end of public welfare.”<sup>151</sup> But then he countered: “Nevertheless it has to be remembered that Kautilya reserves his immoral statecraft in general for extreme cases, and he advocates, as in his rules relating to the acquisition of territory, the kind and even benign treatment of the subjects.”<sup>152</sup> And Ghoshal wanted to identify Kautilya as the superior observer of humanity: “Kautilya’s politics, we cannot help thinking, is based upon a deeper knowledge of human nature than that of his European counterpart.”<sup>153</sup>

When Ghoshal produced his massive, revised overview of Indian political thought covering the period from circa 1500 BCE to 1300 CE, thirty-five critical years of the study of Indian thought, including Kautilya, had taken place – and, it is important to remember that Ghoshal’s first study, his University of Calcutta dissertation, was published in a small window after the manuscript of Kautilya’s *Arthashastra* was first published. For Ghoshal, Kautilya was quite clearly the towering figure of Indian political thought. Before his subsection directly addressing “Kautilya and Machiavelli”, in a subsection on “Attitude Towards Religion and Morality”, he framed the long historical trajectory in which he placed Kautilya: “We may sum up this discussion by saying that if Kautilya upholds in some lines of his policy the high authority of the Brahmanical canon, he allows himself in other directions under the dominant influence of the *Arthasāstra* tradition to make religion the instrument of statecraft, or in other words to sacrifice Theology at the altar of Politics.”<sup>154</sup> Essentially, Ghoshal combined McClish’s two poles in the portrait of a unitary author. He did not try to eliminate the immoral in Kautilya, although those elements in Kautilya were again limited and were engaged “specially with the policy towards the highly disaffected and dangerous elements of the kingdom as well as the enemy outside”.<sup>155</sup> Nevertheless, in the last sentence before the Kautilya/Machiavelli comparison, he admitted, “[n]ot without reason did the judgement of posterity fix upon Kautilya the stigma of being the symbol of a thoroughly unscrupulous, if highly successful, statecraft”.<sup>156</sup> Introducing the word “modern” but not exclusively starting with Kautilya, Ghoshal wrote:

[W]hile Machiavelli occupies as the first modern political philosopher a unique position in European history, Kautilya was preceded in Ancient India by a long line of individual authors and schools who may justly claim to have introduced a number of modernist political ideas into the stock of our ancient thought.<sup>157</sup>

<sup>149</sup> Ghoshal, *supra* note 73 at 155.

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*, at 156.

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

<sup>154</sup> Ghoshal, *supra* note 75 at 150.

<sup>155</sup> *Ibid.*, at 153.

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*, at 153–54.

It is worth focusing on a Machiavellian trait in Kautilya's thought for both of Ghoshal's volumes – taking advantage of public emotion and making direct reference to psychology. In 1923, after discussing the role of punishment as a restraining influence in Kautilya, Ghoshal referred comparatively to the *Mahabharata* and the *Manusamhitā*: “The idea first mentioned, namely, that punishment is the great instrument of social order, receives a psychological setting in a third verse which is found alike in the Mahābhārata and the Manusamhitā.”<sup>158</sup> The use of “psychology” as a term expanded in his 1959 study. After describing Kautilya's “exploitation of popular superstitions for political ends”, he wrote of Kautilya's “application of mob-psychology to Politics”.<sup>159</sup> Kautilya was here associated with emblematic twentieth-century notions of mass psychology ushered in by French sociologist Gustave Le Bon's famous 1895 study of the crowd. Ghoshal's Kautilya showed a mastery of psychological workings in politics and also called for the manipulation of religious sentiment, thereby flipping the role of religion in politics. This made Kautilya the secular peer of Machiavelli.

Despite the running Machiavelli-Kautilya comparisons, that comparison did not explicitly enter Alexandrowicz's narrative frame. Nevertheless, important values raised in some of those comparisons – namely, rationalism, modernization, and secularization – were clearly central to Alexandrowicz's Kautilya portrait. On the linking of modernization and secularization, Weberian trends contra Weber, this ties to the importance of modernization and secularization for Alexandrowicz's book on the Indian Constitution, where he endorsed B.R. Ambedkar's struggle for secularization and the disciplining of Hindu law on the subject of caste.<sup>160</sup> Machiavelli may not have been an explicit touchpoint for Alexandrowicz, but the Machiavellian Kautilya of writers like Ghoshal played into Alexandrowicz's Kautilya. One might, in fact, think of Alexandrowicz's Kautilya as involved in an effort not unlike that depicted in J.G.A. Pocock's *Machiavellian Moment* to address, through a refashioning of virtue, the corruption of society that Machiavelli and others confronted.<sup>161</sup>

### The Mandala and Divisible Sovereignty

Alexandrowicz's discussion of the *Arthashastra* in his Hague lectures largely focused on Kautilya's invocation of the *mandala* concept. He began a paragraph on the *mandala* by setting out the stakes for Kautilya: “One of the problems of primary significance before Kautilya was that of *unity in diversity* in the Indian sub-continent—particularly the reconciliation of the dynastic interests of hundreds of Rulers who had their place on the political map of India.”<sup>162</sup> To press the point that this was an issue of contemporary relevance for India, Alexandrowicz advised us in a footnote that “[t]he problem of unity in diversity is solved in present-day India by the adoption of a federal structure in the framework of which various linguistic communities enjoy separate Statehood under the control of the federal Centre”.<sup>163</sup> Alexandrowicz then announced Kautilya's adoption of the *mandala*: “Kautilya's *Arthashastra* advocated the policy of the so-called *Mandala*, i.e. a policy of balance of power within the complicated network of alliances and conflicts conceived in circles of interests.”<sup>164</sup> Intimately linked to this *mandala*

<sup>158</sup> Ghoshal, *supra* note 73 at 107.

<sup>159</sup> Ghoshal, *supra* note 75 at 132–33.

<sup>160</sup> Alexandrowicz, *supra* note 12.

<sup>161</sup> J.G.A. POCOCK, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton & London: Princeton University Press, 1975), see especially viii–ix.

<sup>162</sup> Alexandrowicz, *supra* note 16 at 215.

<sup>163</sup> *Ibid.*, at 215, nn 10.

<sup>164</sup> *Ibid.*, at 215.

idea was an emphasis on suzerain-vassal relations. “What is characteristic in this suzerain-vassal concept”, Alexandrowicz maintained, “is that it was not conceived as aiming at the absorption of vassals by suzerains which would not have served the idea of unity in diversity.”<sup>165</sup> The rule here was that “[t]he vassal ruler was not to be subject to suppression or *debellatio*”.<sup>166</sup> In a short span, we have some of the main strokes of Alexandrowicz’s Kautilya portrait: divisibility of sovereignty, the *mandala* as a sustaining system, the network of suzerain-vassal relationships, and a prohibition on the obliteration of the defeated enemy.

Ghoshal, in 1959, ascribed the *mandala* concept to early *Arthashastra* writers preceding Kautilya, labelling it “an important landmark in the development of our ancient political thought”.<sup>167</sup> Providing a summary of the *mandala* scheme of twelve kings in a chessboard-style layout, he explained:

The standard type (Kautilya, VI 2; XII 16-19) comprises a group of twelve kings consisting firstly, of the Aggressor [Shamasastri translates this as “conqueror” and Kangle as “would-be conqueror”], secondly, of a set of five kings in his front alternatively functioning as his foes and his friends, but with receding degrees of this relationship according to their distance from him, thirdly, of another set of four kings in his rear, alternately functioning as his foes and his friends in the same fashion, and fourthly, of two neutral kings.<sup>168</sup>

For Ghoshal, the *mandala* scheme in place before Kautilya “contemplates a system of States bound by hostile, friendly or neutral relations with an ambitious potentate—an Indian Louis XIV or Napoleon—as its central figure”.<sup>169</sup> This forefronts the analogy to the European state system and the balance of power theory. We can look to Edward Vose Gulick’s classic *Europe’s Classical Balance of Power* of 1955 where he tried to winnow down the various competing theoretical views of the balance of power and identified it in its exclusively European self-image: “[I]n 1800, we may say that a kind of diplomatic fence divided the European state system from the rest of the world.”<sup>170</sup> On the peace-vs-stability scale, Gulick came down on the side of stability, admitting that with “the unavoidable movement of history”, the system “tends to emphasize the preservation of key members of the system at the expense, if necessary, of smaller or weaker powers”.<sup>171</sup> In this context, one is reminded of the two partitions of Alexandrowicz’s Poland.

In the *East Indies* book, Alexandrowicz focused primarily on Kautilya as the foremost exponent of Indian political thought and moved into discussing the *mandala* by stating that “Kautilya concerned himself with the formulation of certain rules which could mitigate the catastrophic effects of anarchy.”<sup>172</sup> This was the Hobbesian anarchical note, played out on an “Indian political map [that] was a highly heterogeneous and decentralised one” – and here is the key *but* – “but there were unifying factors within this diversity, a phenomenon *mutatis mutandis* relevant in present-day Indian federal politics”.<sup>173</sup> It is in

<sup>165</sup> *Ibid.*

<sup>166</sup> *Ibid.*

<sup>167</sup> Ghoshal, *supra* note 75 at 94.

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> Edward Vose GULICK, *Europe’s Classical Balance of Power: A Case History of the Theory and Practice of One of the Great Concepts of European Statecraft* (New York: WW Norton & Company, 1967; originally 1955) at 10.

<sup>171</sup> *Ibid.*, at 40.

<sup>172</sup> Alexandrowicz, *supra* note 5 at 226.

<sup>173</sup> *Ibid.*

this context that he introduced the *mandala*. So too, in the “Kautilyan Principles” article, in his list of Kautilyan principles – a very long list – Alexandrowicz stated regarding the *mandala*:

The principle of individual responsibility of each sovereign within the collectivity or concert of all sovereigns in the circle of States (*mandala*) for the maintenance of a measure of inter-State public order, which is essential to diminish the consequences of anarchy.<sup>174</sup>

The *mandala* was only the starting point. Or rather, essential to its functioning was the prohibition of *debellatio*. Alexandrowicz in his Hague lectures moved from the *mandala* to the rule prohibiting the *debellatio* of the vassal. In the *East Indies* book, he observed, “[i]n the course of this struggle each Ruler tended to get the upper hand in his circle of States (*mandala*), but defeated Rulers were in principle not subject to *debellatio*”.<sup>175</sup> Rather, the Indian system became a complicated network of suzerain-vassal relationships and “[d]efeats meant vassal status”.<sup>176</sup> What the shifting relations of suzerains and vassals meant was that sovereignty was ultimately divisible. And in Alexandrowicz’s focus on divisible sovereignty, his Kautilya became Grotian. As Hedley Bull pointed out in his posthumously published essay on Grotius, “the members of international society in the view of Grotius are not merely states or the rulers of states but include groups other than states and, indeed, individual human beings”.<sup>177</sup> Alexandrowicz separated Kautilya from Grotius when he argued, “[a]s to the nature of inter-Sovereign relations, Kautilya did not conceive it in terms of ideal postulates as it was in the scholastic or Grotian law of nature, but in terms similar to the doctrine of Hobbes, i.e. as the reality of human conflicts and self-preservation”.<sup>178</sup> Significantly, when Alexandrowicz introduced Kautilya’s *Arthashastra* in the “Kautilyan Principles” article, he turned to Grotius with regard to the “divorce of politics (internal and external) from moral philosophy”:

In terms of European philosophy, it might be comparable with the efforts of those theologians and lawyers who tried to extricate the *jus gentium* from the grip of theology. St. Thomas Aquinas was no doubt aware of the need for some separation of the two disciplines, but it was Grotius who made the first decisive effort to conceive the law of nations as a discipline with an existence independent from theology or metaphysics.<sup>179</sup>

This tied to Alexandrowicz’s contention that “[p]erhaps the strongest influence of the Kautilyan tradition revealed itself in the trend towards the secularization of the law of nations in the Hindu sphere of influence in the East Indies”.<sup>180</sup> Secularization was part and parcel of the expansion of trade in the East Indies:

With the rapid development of European-East Indian trade in the seventeenth century doctrinal obstacles to treaty making tended gradually to disappear. The

<sup>174</sup> Alexandrowicz, *supra* note 15 at 50.

<sup>175</sup> Alexandrowicz, *supra* note 5 at 226.

<sup>176</sup> *Ibid.*

<sup>177</sup> Hedley BULL, “The Importance of Grotius in the Study of International Relations”, in Hedley BULL, Benedict KINGSBURY and Adam ROBERTS, eds., *Hugo Grotius and International Relations* (Oxford: Clarendon Press, 2002), 65 at 83.

<sup>178</sup> Alexandrowicz, *supra* note 5 at 225–26.

<sup>179</sup> Alexandrowicz, *supra* note 15 at 38.

<sup>180</sup> *Ibid.*, at 51.



canon law prohibitions of treaty relations between Christian and non-Christian powers became meaningless in the law of nations and treaty making was allowed to gather momentum. There is every reason to believe that the increasing volume of treaties between powers of different religion[s] and cultural background[s] contributed to the *secularization* of treaty law as such.<sup>181</sup>

In addition to underscoring the interdependence of commerce and secularization – and Grotius was, for Alexandrowicz, the signature figure here – it was important to underscore the value placed on divisible sovereignty. Alexandrowicz referenced “present-day Indian federal politics”<sup>182</sup> in the concluding pages of his *East Indies* book, articulating the importance of an independent India providing a structure to address minorities, and he wrote an important article for the *International and Comparative Law Quarterly* criticizing attempts to identify the federalism of the new Indian Constitution as merely “quasi-federal”,<sup>183</sup> which he reprised for a section of his book on the Indian Constitution.<sup>184</sup> It is worth viewing Alexandrowicz’s discussion of federalism in the context of normative debates about sovereignty, such as Harold Laski’s critique of unified sovereignty in *The Foundations of Sovereignty* of 1921.<sup>185</sup> Laski’s sovereignty arguments were certainly in circulation during Alexandrowicz’s London years and, significantly, Laski was an important mentor to Indian political leaders, including Nehru and one of his leading foreign policy practitioners, V.K. Krishna Menon.<sup>186</sup>

It is enlightening to return to Alexandrowicz’s biography here, starting with his birth in Galicia, the Austro-Hungarian administrative region in Poland, as the son of a general in the Austro-Hungarian Polish division.<sup>187</sup> Just there, we see the backdrop of the earlier Polish partitions and the complicated history and identity of Galicia with its competing populations as told in Larry Wolff’s *Idea of Galicia*.<sup>188</sup> Alexandrowicz told us that, as a student in 1918, he participated in the independence movement in Cieszyn Silesia. After both practising law and working as an academic in the interwar period, Alexandrowicz, with the outbreak of the Second World War, engaged in the defence of the city of Lviv, and from Russian-occupied Lviv he moved to Bucharest where he was engaged in the work of the Committee for the Protection of State Property. Expanding on the biographical points in the introduction it is worth noting here that Alexandrowicz, having been arrested in 1940 by the Iron Guard in Bucharest and being held for several weeks by them, was able to make his way through the Middle East before arriving in London. In London, Alexandrowicz worked for the Polish Treasury Ministry, the Bank Gospodarstwa (a development bank), and was chair of the short-lived European Central Inland Organization with its effort to fix the rail system. The India to which Alexandrowicz arrived in 1951 was only a few years removed from the blood-soaked Partition experience.<sup>189</sup> When Alexandrowicz wrote his book on Indian Constitutional

<sup>181</sup> Alexandrowicz, *supra* note 5 at 231.

<sup>182</sup> *Ibid.*, at 226.

<sup>183</sup> C.H. ALEXANDROWICZ, “Is India a Federation?”, (1954) 3 *The International and Comparative Law Quarterly* 393, in Alexandrowicz, *Law of Nations*, *supra* note 1 at 211.

<sup>184</sup> Alexandrowicz, *supra* note 12 at 149 (chapter on “Indian Federalism”).

<sup>185</sup> Harold J. LASKI, *The Foundations of Sovereignty and Other Essays* (New York: Harcourt, Brace and Company, 1921) at vi.

<sup>186</sup> On Laski and Menon, see, for example, Jairam RAMESH, *A Chequered Brilliance: The Many Lives of V.K. Krishna Menon* (Gurgaon, India: Penguin Random House, 2019) at 358.

<sup>187</sup> Alexandrowicz, *supra* note 13.

<sup>188</sup> See Larry WOLFF, *The Idea of Galicia: History and Fantasy in Habsburg Political Culture* (Stanford: Stanford University Press, 2010).

<sup>189</sup> See Yasmin KHAN, *The Great Partition: The Making of India and Pakistan* (New Haven and London: Yale University Press, 2007). Among writings relating to the violence, it is worth noting Khushwant SINGH’s 1956 novel, *Train to Pakistan* (New York: Grove Press, 1981; originally 1956).

developments in 1957, a number of the key court cases were “preventive detention” cases involving Communist insurgents; in his discussion, he observed in understated language that “[p]reventive detention is to a great extent connected with the growth of undisciplined movements and parties which are a disturbing factor in Indian political life”.<sup>190</sup> Alexandrowicz noted that when the subject arose during the constitutional debates:

Dr Ambedkar expressed the general anxiety in this respect when he declared in the Constituent Assembly that it seems uncertain whether people and parties will behave ‘in a constitutional manner in the matter of getting hold of power or whether they would resort to unconstitutional methods for carrying out their purposes’.<sup>191</sup>

Significantly, when Selig Harrison came to choose a title in 1960 for his book on the founding period of independent India, he chose *India: The Most Dangerous Decades*.<sup>192</sup>

Alexandrowicz’s personal experience in Europe and India in the 1950s provides an important backdrop for his reading of Kautilya and inter-state relations in early India. His Polish experience – with an interwar period full of violence, plebiscites (such as that in Upper Silesia in 1921), national minority tensions, and various coups – is full of sources of popular anxiety.<sup>193</sup> Consequently, when Alexandrowicz described Kautilya’s view of the state as an answer to the threat of anarchy, he had seen it. And yet, despite the pessimistic anthropology of Machiavelli and Hobbes – there is a reason why each received a chapter in *The Routledge Handbook of the Philosophy of Evil*<sup>194</sup> – both Machiavelli and Hobbes were more prevalent in the analyses of Kautilya by other scholars. His Kautilya portrait placed emphasis on values that the East brought to the West, values based on rationalism, secularism, commerce, and divisible sovereignty that he would identify with Grotius.

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<sup>190</sup> Alexandrowicz, *supra* note 12 at 33.

<sup>191</sup> *Ibid.*, at 33–34.

<sup>192</sup> Selig S. HARRISON, *India: The Most Dangerous Decades* (Princeton: Princeton University Press, 1960).

<sup>193</sup> See, e.g., Jerzy LUKOWSKI and Hubert ZAWADZKI, *A Concise History of Poland*, 3rd edn. (Cambridge: Cambridge University Press, 2019) at 279 (“Independence Regained and Lost, 1914–1945”).

<sup>194</sup> Thomas NYS and Stephen de WIJZE, eds., *The Routledge Handbook of the Philosophy of Evil* (London and New York: Routledge, 2019) at 55, 70.

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