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# HINDU LAW

*A New History of Dharmaśāstra*

EDITED BY

Patrick Olivelle and Donald R. Davis, Jr.

THE OXFORD HISTORY OF HINDUISM

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*General Editor: GAVIN FLOOD*



# The Oxford History of Hinduism

## Hindu Law

*A New History of Dharmaśāstra*

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PATRICK OLIVELLE  
DONALD R. DAVIS, JR.

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## *Preface*

Given the centrality of Dharmaśāstra in the Hindu tradition for over two millennia, this is a book that had to be written. Left to our own devices, however, this is a book that we would never have undertaken. The daunting task of writing a history of Dharmaśāstra under the shadow of the pioneering and encyclopedic work of P. V. Kane would have made us hesitate. So, thanks are due in the first place to Gavin Flood, who, as the general editor of the new Oxford History of Hinduism, invited us to write this as a volume in the series, and to Tom Perridge, the editor at Oxford who, along with Gavin, launched the series.

It was clear from the start that this was a book the two of us could not write on our own, at least not within stipulated timeframe. Our foremost thanks, therefore, go to the eighteen colleagues from around the world who generously agreed to write chapters of this volume, drawing on their own expertise: Mikael Aktor, Adam Bowles, David Brick, Richard Davis, Ariel Glucklich, Jonardon Ganeri, Andrea Gutierrez, Maria Heim, Knut Jacobsen, Stephanie Jamison, Timothy Lubin, Mark McClish, James McHugh, Axel Michaels, Christian Novetzke, Ludo Rocher, Matthew Sayers, and Gregory Schopen. They were all busy scholars and teachers, and yet they generously accepted our invitation and agreed to devote considerable time and energy to this project. It would not have been possible without their contributions. Our great regret is that our teacher Ludo Rocher passed away before this volume could be completed; his contribution on inheritance, in Chapter 12, will stand as a monument to his vast knowledge of Dharmaśāstra. We thank Rosane Rocher for her assistance with Ludo's chapter.

Patrick Olivelle  
Donald R. Davis, Jr.

*Austin, Texas*  
*March 31, 2017*



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## *List of Abbreviations*

<i>ĀgGr</i>	<i>Āgniveśya Gṛhyasūtra</i>
<i>AitĀ</i>	<i>Aitareya Āraṇyaka</i>
<i>AitB</i>	<i>Aitareya Brāhmaṇa</i>
<i>AitU</i>	<i>Aitareya Upaniṣad</i>
<i>ĀpDh</i>	<i>Āpastamba Dharmasūtra</i>
<i>ĀpDhP</i>	<i>Āpaddharmaparvan of the Mahābhārata</i>
<i>ĀpGr</i>	<i>Āpastamba Gṛhyasūtra</i>
<i>ĀpŚr</i>	<i>Āpastamba Śrautasūtra</i>
<i>AŚ</i>	<i>Kauṭilya's Arthaśāstra</i>
<i>ĀśGṛ</i>	<i>Āśvalāyana Gṛhyasūtra</i>
<i>ĀśŚr</i>	<i>Āśvalāyana Śrautasūtra</i>
<i>AV</i>	<i>Atharvaveda</i>
<i>BDh</i>	<i>Baudhāyana Dharmasūtra</i>
<i>BGr</i>	<i>Baudhāyana Gṛhyasūtra</i>
<i>BGrParīś</i>	<i>Baudhāyana Gṛhyapariśiṣṭa</i>
<i>Bhār</i>	<i>Bhārucci's commentary on MDh</i>
<i>BhG</i>	<i>Bhagavad Gītā</i>
<i>BhGr</i>	<i>Bhāradvāja Gṛhyasūtra</i>
<i>BṛSm</i>	<i>Bṛhaspati Smṛti</i>
<i>BṛU</i>	<i>Bṛhadāraṇyaka Upaniṣad</i>
<i>BŚr</i>	<i>Baudhāyana Śrautasūtra</i>
<i>ChU</i>	<i>Chāndogya Upaniṣad</i>
<i>CII</i>	<i>Corpus Inscriptionum Indicarum, Ed. Fleet 1888</i>
<i>GDh</i>	<i>Gautama Dharmasūtra</i>
<i>GM</i>	<i>Gāyāmāhātmya</i>
<i>GobhGr</i>	<i>Gobhila Gṛhyasūtra</i>
<i>Gov-B</i>	<i>Govindasvāmin's commentary on BDh</i>
<i>GPu</i>	<i>Garuḍa Purāṇa</i>
<i>Har-A</i>	<i>Haradatta, commentary on the ĀpDh</i>
<i>Har-G</i>	<i>Haradatta, commentary on the GDh</i>
<i>HirGr</i>	<i>Hiranyakeśi Gṛhyasūtra</i>

<i>JaiGr</i>	<i>Jaiminiya Gṛhyasūtra</i>
Kane	Kane 1962–75
<i>KātSm</i>	<i>Kātyāyana Smṛti</i>
<i>KātŚr</i>	<i>Kātyāyana Śrautasūtra</i>
<i>KGr</i>	<i>Kāṭhaka Gṛhyasūtra</i>
<i>KhGr</i>	<i>Khadira Gṛhyasūtra</i>
<i>KKT</i>	Lakṣmīdhara, <i>Kṛtyakalpataru</i>
Kul	Kullūka's commentary on <i>MDh</i>
<i>KūrPu</i>	<i>Kūrma Purāṇa</i>
Lakṣ	Lakṣmīdhara, <i>Kṛtyakalpataru</i>
<i>LDhP</i>	<i>Laghudharmaprakāśikā</i> or <i>Śāṅkarasmṛti</i> , Ed. Unni 2003
<i>Mask</i>	Maskarin's commentary on <i>GDh</i> , Ed. in Srinivasacharya 1917
<i>MatsPu</i>	<i>Matsya Purāṇa</i>
<i>MBh</i>	<i>Mahābhārata</i>
<i>MDh</i>	<i>Mānava Dharmasāstra</i>
Medh	Medhātithi's commentary on <i>MDh</i>
<i>MGr</i>	<i>Mānava Gṛhyasūtra</i>
<i>MrĀ</i>	<i>Mṛgendrāgama</i>
<i>MS</i>	<i>Maitrāyaṇīya Saṃhitā</i>
<i>NārP</i>	<i>Nāradiya Purāṇa</i>
<i>NSm</i>	<i>Nārada Smṛti</i>
<i>NSm Mā</i>	<i>Nārada Smṛti Mātṛkā</i>
<i>PāM</i>	Mādhava, <i>Pārāśaramādhaviya</i>
<i>Par</i>	<i>Parāśara Smṛti</i>
<i>PārGr</i>	<i>Pāraskara Gṛhyasūtra</i>
<i>PMS</i>	Jaimini, <i>Pūrva Mīmāṃsā Sūtra</i>
<i>Rām</i>	<i>Rāmāyaṇa</i>
<i>RV</i>	<i>R̥gveda</i>
Śab	Śabara's commentary on <i>PMS</i>
<i>ŚāṅkhGr</i>	<i>Śāṅkhāyana Gṛhyasūtra</i>
ŚB	<i>Śatapatha Brāhmaṇa</i>
ŚBM	<i>Śatapatha Brāhmaṇa Mādhyandina</i>
<i>SmṛC</i>	Devanṇabhaṭṭa, <i>Smṛticandrikā</i>
SS	<i>Samvarta Smṛti</i>
<i>TĀ</i>	<i>Taittirīya Āraṇyaka</i>
<i>TS</i>	<i>Taittirīya Saṃhitā</i>
<i>VaDh</i>	<i>Vasiṣṭha Dharmasūtra</i>

<i>VaikhDh</i>	<i>Vaikhānasa Dharmasūtra</i>
<i>VaikhGr</i>	<i>Vaikhānasa Gṛhyasūtra</i>
<i>VāPu</i>	<i>Vāyu Purāṇa</i>
<i>VārGr</i>	<i>Vārāha Gṛhyasūtra</i>
<i>ViDh</i>	<i>Viṣṇu Dharmasūtra</i>
<i>VidhPu</i>	<i>Viṣṇudharmottara Purāṇa</i>
<i>Vij</i>	<i>Vijñāneśvara, Mitākṣarā</i> commentary on the <i>YDh</i>
<i>VīrMit</i>	Mitra Miśra, <i>Vīramitrodaya</i> subcommentary on <i>Vij</i> and <i>YDh</i>
<i>Viś</i>	Viśvarūpa, <i>Bālakṛīḍā</i> commentary on the <i>YDh</i>
<i>VyPra</i>	<i>Vyavahāraprakāśa</i> of Mitramiśra
<i>YDh</i>	<i>Yājñavalkya Dharmaśāstra</i>



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# *The Oxford History of Hinduism*

## Introduction to the Series

The series offers authoritative, comprehensive coverage of the history of Hinduism. Although the word *Hinduism* is problematic, as the term's origins are only in the nineteenth century and *Hindu* is only attested as a self-description from the sixteenth century, it nevertheless denotes a range of traditions within India that go back at least to the first millennium BCE. The volumes in the series provide a history of the religious traditions encompassed by the term *Hinduism*, from the first millennium BCE to the present day. One of the problems about studying the history of Hinduism, especially in the earlier period, concerns dating. It has been notoriously difficult to establish the dates of early traditions, figures, and texts before the medieval period. We can fairly accurately date Sanskrit texts of Buddhism when translated into Chinese, but "Hindu" texts are more problematic, although there is general agreement about the sequence of major developments in this history. While some scholars have argued against using the category *religion* in the Indian context, on the grounds of its "local" origin in the history of the West, I take it to be a meaningful category that demarcates a set of ideas, practices, and hopes and find that the English word is no more problematic than is *culture* or even *society*. But we do need to acknowledge these difficulties and that our claims as scholars are always provisional and subject to correction, and our categories must often be used without consensual definition.

Each volume considers the relationship between Hinduism and the wider society, for religion is always embedded within culture and sociopolitical structures. Hinduism needs to be understood as dynamically engaging with wider Indian society and with other religions, particularly Buddhism and Jainism, throughout its long history. This dynamism and interactive nature of the religion is reflected in each of the volumes, some of which are more focused on Sanskrit traditions, while other volumes will have more weight on vernacular literatures such as Tamil. After the Vedic age, the volumes are organized thematically and chronologically. Thus, we have volumes devoted to the three major traditions focused on Shiva, the Goddess, and Vishnu, volumes on the themes of philosophy and practice, Hinduism in the modern world, and vernacular traditions. Each volume addresses not only theological concerns but also material culture, such as temples and architecture, along with the history of practices such as making offerings to a deity (*pūjā*), observances or vows (*vrata*), and pilgrimage (*yatra*), which cut across specific traditions.

Professor Gavin Flood, FBA  
General Editor of *The Oxford History of Hinduism* series



# Introduction

*Donald R. Davis, Jr.*

Between 1930 and 1962, the eminent Sanskritist and lawyer Pandurang Vaman Kane (pronounced KAH-nay) produced a five-volume monograph entitled *History of Dharmaśāstra (Ancient and Mediaeval Religious and Civil Law)*, published by the Bhandarkar Oriental Research Institute in Pune, India. This work of over 6,500 pages provides much more than a narrow focus on law or the special genre of Sanskrit literature devoted to religious and legal duties, the Dharmaśāstra. It contains rather something close to an intellectual history of Hinduism, from its origins in the Vedic texts to contemporary debates about the “reform” of Hinduism in nineteenth and twentieth centuries. Kane understood his task as presenting the broadest possible survey of the role legal, religious, and ethical thought in the history of Hinduism, with regular incursions into other religious traditions as well. A modern scholar of Dharmaśāstra, Richard Lariviere, is fond of saying, “We all make our living from Kane’s footnotes.” Indeed, Kane’s work has become a constant source of reference and orientation in South Asian studies of law, religion, ritual, literature, history, and more. It is a work that has perhaps literally launched a thousand dissertations because it is so easy to refer a student or a colleague to the appropriate section of Kane as a way to get their bearings in relation to hundreds of topics in the fields of Hindu studies or Indian social and intellectual history.

So, why do we need a *new* history of Dharmaśāstra? Kane’s work does have shortcomings that have grown more acute over time. First, as one can imagine, it is unwieldy and somewhat chaotic in organization due to the long period of its composition, but also because it sets few limits on what can be topically related. Digressions abound, and the special interests of the author sometimes get long treatment at the expense of other equally significant topics. Second, it is written in “Sanglish,” that glorious creole of English syntax and Sanskrit vocabulary that is well known to students of Sanskrit, but hardly accessible to or liked by others. Long footnotes and parenthetical citations in the

Devanagari script work wonders for specialists, but do nothing but put off other intelligent readers. Finally, and most importantly, several of Kane's arguments are wrong or presented in an outmoded framework that obscures the real significance of certain ideas, texts, and institutions. In particular, Kane too rarely makes clear the historical context of textually expressed ideas. The history of textual development is substituted for a fuller history of institutions, social realities, and ideas that put texts in proper perspective.<sup>1</sup>

We respectfully and affectionately call the volume before you a "new Kane." We have tried to create a streamlined and updated volume that conveys a similar range of topics as Kane does, but with special attention to historical contexts, conflicts, and developments. Kane demonstrated the expansive scope of the Sanskrit concept of *dharma*, perhaps the key religious concept in the history of South Asia, and what it would take to give a comprehensive textual overview of its semantic reach. We want to follow in his footsteps, by providing a comprehensive, but manageable, interpretive study of the history of law and legal texts in Hindu traditions. While there are many words for *law* in Sanskritic and vernacular languages of India, the notion of *dharma* became central early on to the debates and conceptualizations of legal and religious questions such as justice, morality, sin, social obligations, rights, politics, and stratification. To a great extent, therefore, the present volume explores the specific articulation of *dharma* within the normatively focused genre of Dharmaśāstra and closely related textual traditions.<sup>2</sup>

The first claim of this book, therefore, is that the history of Hinduism cannot be written without the history of Hindu law. Each chapter tries to explain why, through a pointed study of an important aspect or topic of *dharma* in Dharmaśāstra. Some religious traditions—Judaism and Islam, for example—are burdened by a stereotype that legalism and law stand as the fixed core of these traditions. Traditional Christian apologists berate Jewish tradition for its legalistic impulse, and the much-misunderstood Shari'a haunts media portrayals of Islam not only in our own time but also in earlier periods.<sup>3</sup> The opposite problem afflicts the study of Hinduism. Stereotypically, India is viewed as a land of spirituality, and Hinduism above all stands in for India's allegedly ubiquitous religiosity. Behind the fog of the "spiritual empire," it is hard to see any longer the deep and powerful role of law, legalism, and legal thought in the history of Hindu traditions and other

<sup>1</sup> Derrett (1968, 1973a, 1973b) and Lingat (1973) wrote still essential studies of the tradition that put more emphasis on historical changes, thus paving the way for recent efforts to put Dharmaśāstra squarely within the history of India and of Hinduism.

<sup>2</sup> In recent years, several new studies of *dharma* within Brahmanical and non-Brahmanical traditions have greatly improved our historical understanding of this key concept. See, for example, Lariviere 1997; Wezler 2004; Olivelle 2004a, 2009b; Hillebeitel 2011.

<sup>3</sup> For modern Christian views of Judaism as "legalistic works-righteousness," see Sanders 1977: 34ff. For Islam, see Bowen 2012.

religious traditions of South Asia. In order to orient readers to this underappreciated aspect of the history of Hinduism, we turn now to some of the major themes that run through the chapters of this book.

## INTELLECTUAL PROJECT AND ELITE IDEOLOGY

As with any normative textual tradition, the first question most people want to ask is how the norms and rules were applied in practice. The question has been answered in many ways by luminaries in the field.<sup>4</sup> The precise relationship of Dharmaśāstra and practice varied, whether in religion, law, commerce, politics, or social interaction. We should not expect that Dharmaśāstra had the same type of influence on society over more than two thousand years of its history. In some periods and places, it seems to have provided basic categories of self-identification and written expression, thereby indicating a strong influence. In other times and places, one must conclude that the Dharmaśāstra had little or no influence because its ethos, assumptions, and details are absent or rejected. Conversely, the impact and imprint of societal changes and innovations on the *dharma* tradition itself must form a fundamental part of any history of Dharmaśāstra. It is part of the ongoing work of scholarship about Dharmaśāstra to ascertain and describe this variable influence through comparative and corroborative research using other historical sources.

Historical variability of the text–practice connection aside, anyone who spends time with the texts of Dharmaśāstra quickly learns that it is a tradition of surprising cohesiveness for its antiquity, of intellectual sophistication of both the genius and pedantry varieties, and of a stable core of hermeneutic methods for preserving and transmitting the tradition. In short, it is what we might call today an intellectual project, or earlier an elite ideology. Squarcini calls this ideology the “the brahmanical regulatory project” (2011: 135). Stein, more provocatively, calls it a “Brahmin conspiracy” (1969). To characterize the nature of Dharmaśāstra as an intellectual project, I want to cite several important summary views of the issue:

The treatises are almost all of them apocryphal. They have a character which is primarily didactic and often purely literary. They never had the force of positive ordinances, and the doctrine itself which they propound, half religious and half juridical, undoubtedly shares the fate of holy and ideal books. They agree only moderately with the way of the world and are more respected than obeyed.

(Barth 1917: 299–300, translated in Lingat 1973: 140)

<sup>4</sup> A complete list is impossible, but interested readers can start with the following: Derrett 1968: 148–70; Lingat 1973: 135–42; Rocher 1993; Lariviere 1997; Wezler 2004; Olivelle 2005a: 62–6.



The fault of a highly intellectual, comprehensive system of thought, especially one devised by generations of pedants inclined to encyclopedism, as the Brahmins were, is that it stultifies growth, defies and discourages new ideas, and provides a powerful systematic hindrance to innovation. (Derrett 1973b: 31)

What I wanted to show in this essay is that it is possible, in a culture in which memorization plays an important role in day-to-day life, to have books, the Dharmaśāstras, that are legal fiction because they were divorced from the practical administration of justice—the role they were given in 1772—but which are not for that reason the product of brahminical fantasy. They are books of law—rather, books of laws. (Rocher 1993: 267)

I believe that the *dharmaśāstra* literature represents a peculiarly Indian record of local social norms and traditional standards of behavior. It represents in very definite terms the law of the land. (Lariviere 1997: 98)

The Dharmaśāstra represents an expert tradition and, therefore, presents not a “record” of custom but a jurisprudential, or in Indian terms, a *śāstric reflection* on custom. Custom is taken here to a second order of discourse.... All *śāstras* represent a meta-discourse; they deal with reality but always once removed.

(Olivelle 2005a: 62, 64)

The issue of practice factors in to these considerations and characterizations, but all students of the huge scholastic corpus of Dharmaśāstra agree that it is an intellectual tradition associated with Brahmin communities and world-views. As in all legalistic genres, the question of practice takes a backseat: “Legalism means the world is addressed through categories and [explicit] rules that stand apart from practice” (Dresch 2012: 15). As this book hopes to demonstrate, *dharma* authors were concerned with practice, with change, and with social realities. However, the form and idiom of their concern was an intellectual tradition that had its own conventions and expectations. Dharmaśāstra, like all *śāstra*, presents itself a “model for” religious law, not a “model of” it. In reality, though, the texts are also “models of” the prevailing views and practices of particular places and times, now transposed into a prescriptive format.

The *dharma* authors took their work seriously and saw in it the apex of human aspiration. Many authors and those who supported their work (kings and upper and rising communities) actively inculcated *dharma* practices and ideals in their time and place. That does not mean, however, that such a tradition could ever speak for the whole of Hinduism. Insofar as “expert traditions” of this sort operate in an isolated, self-referential intellectual world, they must be viewed as one form of elite ideology, the influence of which must be judged from historical case to historical case. It is critical to understand the expert or virtuosic nature of the Dharmaśāstra in order to read the texts generously and appropriately as part of their own tradition.

## HISTORY AND INNOVATION

Having accepted that Dharmaśāstra is an intellectual project guided by scholars from an elite community, the main goal of this volume is to show that, in spite of theological claims to the contrary, Dharmaśāstra has a history. It began in a particular period in response to sociohistorical circumstances. Its transmitters and protectors introduced innovations, though rarely admitted it. It shaped both discourses and practices in Hindu traditions (and influenced other non-Hindu traditions) and responded to pressures from and engagements with them. Many chapters in this volume tackle the historical evolution of both the texts and genres of Dharmaśāstra and the distinct subjects that have fallen within its purview.

Trying to write history on the basis of sources that deny history presents obvious difficulties. First, readers who are new to Dharmaśāstra are likely to be frustrated by the imprecise dates that many contributors mention and the subsequently broad chronological terms they have to use to describe a given topic. Absolute chronology is rarely possible. Even relative chronology is difficult for the earliest texts. Second, until the period of the extant commentators in roughly the eighth century CE, the names of the authors of Dharmaśāstra texts are all eponymous, most being the names of famous sages or divinities of the Vedic tradition now attributed to new texts. Even in later periods, we may know the names, regional origins, and minor biographical details of some authors, but almost no text provides a sufficient basis from which to draw conclusions or make connections to the personal history of the authors. Therefore, except at a general level, the Dharmaśāstra provides little information about time, place, or authorship—three things we would dearly love to know more about.

Nevertheless, a history of Dharmaśāstra is possible because the texts can be chronologically arranged in relative terms such that the internal development of the tradition becomes clear, even if some dates and details would ideally be more fixed in absolute terms. The first kind of history readers will find in this volume, therefore, is the intellectual history of Dharmaśāstra itself. When did certain topics appear in the tradition? How did others change, narrow, or expand over time? What were the disagreements between authors about controversial topics and how did the tradition settle those conflicts? Though more speculative, the second kind of history we pursue here draws on sources beyond the Dharmaśāstra to make arguments about why particular changes occurred in the tradition. In other words, where possible, we try to place innovations and shifts within Dharmaśāstra into a wider sociohistorical context, either to explain why Hindu law changed or how Hindu law altered another social domain. Within the limits of the historical evidence, contributors thus also present an external view of the development of Dharmaśāstra.

On occasion, *dharma* authors self-consciously acknowledged innovations. If the change was seen as good, then a variety of interpretive techniques might be called upon to justify the difference and reconcile the texts. One regularly encountered technique invoked the four ages (*yuga*) of the world to say that the rules change in each age, especially in our degenerate Kali age (e.g., *MDh* 1.85; *PārSm* 1.24). Another technique was more pointed and it inverted the usual rule that customary laws must be consistent with textual laws. When commentators (rarely) invoke the idea of *lokavidviṣṭa*, “despised by the world,” they are placing socially accepted norms above ancient texts (Olivelle 2016b: 34–8). If, by contrast, the change was unacceptable, then an author would dismiss it either as a poor interpretation or as based on a fabricated text. Dharmaśāstra authors did not, however, address or explain larger innovations, especially expansions of the topics of *dharma* itself. In these cases, we have to look beyond these texts for clues about the motivations and processes of change.

## RITUAL AND THE LOVE OF DETAILS

One of most conspicuous aspects of ancient Vedic and Brahmanical religious traditions is an obsession with the details of ritual practice and its efficacy. The poetic beauty and complexity of the *Ṛgveda* quickly gave way in the later Vedas and Brāhmaṇas to a serious and meticulous concern for the correct performance of the rites that also underlay the philosophical and spiritual aspirations of the Upaniṣads. Other Hindu traditions—some Yoga, Vedānta, *Bhagavad-Gītā*, and *bhakti* traditions, for instance—disparaged the ultimate value of ritual. In particular, many criticized the ritual obsession of Pūrva-Mīmāṃsā, the tradition of Vedic ritual hermeneutics focused on the middle Brāhmaṇa layer of the Vedas, and its partner, the Dharmaśāstra, a tradition that extended the paradigm of ritual into the social arena in a deliberate and influential way.

Many of the chapters herein describe specific ritual practices as core elements of the religious life envisioned in Dharmaśāstra. Ancestral rites, daily domestic observances, rites of passage, marriage, adoption, ritual gifts, ascetic regimens and lifestyles, vows, pilgrimages, and temple worship all form major topics of *dharma* at various points in the tradition. Substantively, *dharma* consists precisely of these ritual actions, undertaken in accordance with the rules and procedures specified in the texts. It is no coincidence that the Hinduism depicted in Dharmaśāstra is based on a large body of rituals, many of which center on the household and family as the paradigmatic space of religious life for Dharmaśāstra. The origins of that household focus, solidified by the time (ca. second century CE) of the famous *Laws of Manu*

(*Mānava-Dharmaśāstra*), are reexamined in this volume and are part of an ongoing investigation into the possibly ascetic origins of “householder-ism.” After Manu, however, the rituals of the household and householder remained the stable core of *dharma* until temple rites finally found a prominent place in *Dharmaśāstra* beginning in the twelfth century CE. Thus, religious ritual in an expanding way functioned as a foundation for *Dharmaśāstra*.

This foundation is important not only because actual rituals comprise a large part of *dharma*, but also because other areas of human life were gradually conceived in ritual terms within *Dharmaśāstra*. Everyday social interaction, legal procedure, commerce, punishment, kingship, state administration, and education all take on ritual elements as part of their exposition within the system of *dharma*. The logic of ritual emerges specifically from another Hindu intellectual tradition already mentioned, the *Pūrva-Mīmāṃsā*. *Mīmāṃsā* lent its exegetical principles and hermeneutic techniques to many other traditions including *Dharmaśāstra* (Sarkar 1909; Jha 1964; McCrea 2010). By relying on *Mīmāṃsā* principles and borrowing its exegetical techniques, *Dharmaśāstra* subtly translated non-ritual practices into a ritualistic form. For example, though different orders of life (*āśrama*: student, householder, retiree, and renouncer) were once seen as optional (*vikalpa*) choices for one’s whole life, the superiority of aggregation through sequence (*samuccaya*) according to *Mīmāṃsā* led to the establishment of the well-known Hindu *stages* of life (Olivelle 1993). Ritual logic thus shaped social logic.

In the area of law, too, ritual in its *Mīmāṃsā* sense undergirds both legal interpretation and the overall scheme of law. The same techniques used to harmonize texts, to resolve textual conflicts, and to establish basic readings of legal rules all follow *Mīmāṃsā* hermeneutics. And, just as the Vedas teach us religious ritual through textual rules, so also do the *Dharmaśāstras* teach us social ritual through textual rules (Davis 2010: 62). In this way, law and religion merge within *dharma* in a way that makes it difficult to disaggregate them in many instances.

Finally, the meticulous examination of ritual in *Mīmāṃsā* produced a textual corpus that embraced detail, nuance, and lists as the essential building blocks of *dharma*. In *Dharmaśāstra*, similarly, we find long, detailed discussions of points of scholastic disputation that pore over the minutiae of text criticism, etymology, syntax, semantic range, and interpretive history. Frequent lists punctuate the discussions, sometimes as illustrative examples of a practice and sometimes as a comprehensive enumeration of a topic.<sup>5</sup>

<sup>5</sup> It is worth noting that the scholastic modes of exegesis within *Dharmaśāstra* resemble the hermeneutics found in other traditions of religious law, including Jewish law, Canon law, and Islamic law. For an overview of the shared characteristics of religious laws, see Davis forthcoming.

Each member of a list might be treated in close detail. Following this process, the Dharmaśāstra takes a decidedly premodern form that can be hard to appreciate at first. However, it is exactly in this ritual and legalistic valorization of detail that we find one of most distinctive contributions of Dharmaśāstra to the history of Hinduism. For that reason, it is worth the time and effort to overcome our modern hang-ups and learn to read these texts on their own terms.

## ARBITER OF ORTHODOXY IN A POLYCENTRIC TRADITION

In the context of the history of Hinduism, the most important function of the Dharmaśāstra has been its repeated claims to declare boundaries for a tradition that is famously unbounded. To be clear, no *dharma* text ever uses the words *Hindu* or *Hinduism*. Without revisiting the fraught history of *Hinduism* as a category (Sontheimer and Kulke 1997; Lorenzen 1999; Pennington 2005), what I mean is that Dharmaśāstra regularly drew distinctions between “us” and “them.” The religious and political communities thus imagined came in modern times both to support and to question expressions of what *Hinduism* means and what defines a Hindu.

In religious terms, Dharmaśāstra regularly disparages the doctrines and practices of traditions that deviate from its norms. One will encounter references to *nāstikas* (e.g., *MDh* 2.11) in which good people are encouraged to shun and ostracize those who deny the Vedas and Dharmaśāstras by relying on their own logic. Likewise, “heretics” (*pāṣaṇḍa*) appear in many texts as religious communities living contrary the *dharma* of classes and life-stages. Finally, some medieval texts call the rites and beliefs of some sectarian communities “corrupt, vile” (*dūṣya*). All these terms, in fact, are sometimes used against non-Hindu groups such as Buddhists and Jains and sometimes against other Hindu groups such as the Pāsupatas and Pāñcarātras. In each case, the Dharmaśāstra authors exalt the religious life described in their tradition and denigrate the religion of others.

In the social arena, three well-known classifications are deeply associated with Dharmaśāstra and defended by its authors. In many places, Manu preserves the old division of Āryas (noble/good people) and Mlecchas (foreigners), and this division recurs regularly in later texts. In the ideal portrayal of Dharmaśāstra, society consisted of four social classes (*varṇa*), also called castes: the Brahmins (scholars and priests), Kṣatriyas (kings and nobility), Vaiśyas (farmers and merchants), and Śūdras (servants and laborers). Class division is at the heart of the structure of Manu’s *dharma*. Accordingly, the

*dharma* of classes and life-stages (*varnāśramadharma*) consistently dominates in Dharmaśāstra (Kane I: 11). As Rocher states:

The important but easily overlooked point is that it is normal, that it is a premise, in Hinduism, that what is *dharma* for one is different from what is *dharma* for another. Dharma, basically, is accepted custom (*ācāra*), i.e. custom accepted in a region, in a village, even in a caste or a sub-caste within a village. (2012: 116)

It is fair to say that Dharmaśāstra, more than any other Hindu tradition, vigorously and unashamedly defends class and caste divisions at both the theological and social levels. In fact, the theological defense of class and caste may be one of the defining features of the Hinduism imagined in Dharmaśāstra. In contemporary India, this defense is its most-attacked aspect and what it symbolizes to oppressed groups today. Even within this fourfold scheme, another division is made between the upper three “twice-born” (*dvija*) classes and others. The twice-born classes have a second birth at the childhood rite of investiture with the sacred thread (*upanayana*). In practice, it is mostly Brahmins who regularly wear the thread and who are referred to as *dvija*, but the differentiation of superior and inferior groups within the class structure proved to be remarkably stable as another theoretical social classification. These three classifications were subject to further reworking as the Śūdra class was divided into “good” (*sat*) and “not good” (*asat*) groups, especially in early modern texts. Below this whole scheme were the Caṇḍālas and Untouchables (*asprśya*), whose existence is harshly noted but whose social situation is hardly even inferable from most Dharmaśāstra, in spite of the fact that they make up the largest portion of India’s population. Lastly, those who have fallen from caste (*patita*) and the expiations required to be readmitted to the group are a major topic of Dharmaśāstra.

In the context of family, sons are divided into twelve types according to their level of legitimacy within the family and their ability to inherit from their father. Daughters and wives are similarly classified according to their status within the family. A primary and lawful wife (*dharmapatnī*) has a ritual and legal standing far above any secondary wife, remarried wife, or mistress. Women in general were classed in relation to the primary men in their lives as understood in Dharmaśāstra: daughters, wives, and widows. Respectability within each of these major categories comes with clear expectations spelled out in the *dharma* texts. Legal and social disabilities often followed any failure to maintain respectability.

The point here is that in broad and narrow ways, Dharmaśāstra established norms for social conduct and interaction that drew sharp distinctions between socially and religiously acceptable people and those who were unacceptable. To the extent that it was accepted as authoritative by living communities, Dharmaśāstra served as an arbiter or touchstone of proper conduct for the idealized *vaidika* community, those people who saw their rites and traditions

as based upon the transcendent Vedas. In medieval periods, many of these groups adopted the label *Smārta* as a marker of their professed adherence to the *smṛti*, that is, to the *Dharmaśāstra*. The rhetorical and social power of *Dharmaśāstra* was so great that we can see it function as a persistent point of reference for other Hindu traditions, even when those traditions sought to move past or even reject the ideas and practices of *Dharmaśāstra* (Davis 2007b). In short, *Dharmaśāstra* captured an important core of religious and legal ideas and practices in India that other Hindu groups had to contend with in some way. In a polycentric religion such as Hinduism, *Dharmaśāstra* thus represents something close to an orthodox tradition, a powerful node in the network of Hindu traditions. It is worth noting that modern Hinduism has gradually but consistently moved away from this orthodoxy toward a more universalized self-expression that either incorporates diversity or articulates a higher unity for all Hindu communities. The possibility that some traditional ideas of *Dharmaśāstra* continue to lurk beneath the surface of new expressions of Hindu identity, doctrine, and practice remains probable. At the same time, it seems unlikely that *Dharmaśāstra* as such will make a comeback. If we want to know what lives on and what has passed, however, we have to study the history of *Dharmaśāstra* and its impact on contemporary articulations of Hinduism.

## STRUCTURE OF THE BOOK AND CONTEMPORARY SCHOLARSHIP

In Part 1, we provide a concise overview of the literary genres in which *Dharmaśāstra* was written with attention to chronology and historical developments. The long author-by-author review of *dharma* texts given in Kane is irreplaceable, but it is also overwhelming and unnecessary for an interpretive history of *Dharmaśāstra*. Our approach divides the tradition into its two major historical periods—the origins and formation of the classical texts and the later genres of commentary and digest—in order to provide a thorough but manageable overview of the textual bases of the tradition. In Part 2, we present descriptive and historical studies of all the major substantive topics of *Dharmaśāstra*. Culled from the topics identified as significant by the *Dharmaśāstra* authors themselves, each chapter provides readers with direct knowledge of the debates, transformations, and fluctuating importance of each topic. Indirectly, readers will also gain insight into the ethos or worldview of religious law in Hinduism, enabling them to get a feel for how *dharma* authors thought and why. Part 3 contains brief studies of the impact and reception of *Dharmaśāstra* in other South Asian cultural and textual traditions. Finally,

Part 4 draws inspiration from “critical terms” in contemporary legal and religious studies to analyze Dharmaśāstra texts. The goal here is to provide interpretive views of Dharmaśāstra that start from hermeneutic and social concerns today. By taking this view, we hope to read the texts more transgressively and to seek out histories that were not necessarily intended by the authors. The authors of this part are by and large not experts in Dharmaśāstra, but rather scholars of the chapters’ respective themes who agreed to think through how Dharmaśāstra contributes new perspectives to wider themes in religious studies and beyond. The result is intended to be merely exemplary, a glimpse of what we think could be possible if more people took up a study of Dharmaśāstra. We raise this hopeful note for the future in the context of a real concern in the present, one that faces this book’s contributors and their academic fields.

For some time now, the symbolization of Dharmaśāstra as a source of Hindu tradition has grown in proportion to the ignorance of its contents. It is hard to find any traditional pandit working specifically on Dharmaśāstra, and only a few Sanskrit professors study the topic in India today. Many have heard of it and believe that gurus, temple leaders, and famous swamis know it and communicate it. The truth that we must self-consciously acknowledge, however, is that the most explicit engagement with Dharmaśāstra today is exemplified by this book and by the scholarship produced by its contributors and other academics generally. On the one hand, a small group of contemporary scholars—both within and outside of South Asia—has found in Dharmaśāstra a tradition of rich and diverse resources that are essential to the study of India and South Asia, from religion, law, and history to politics, economics, and kinship. On the other hand, our scholarly efforts also represent what may be the final stage in the disappearance or “sudden death” of interest and expertise in Dharmaśāstra among pandits and academics in India itself (compare Kaviraj 2005). Given the dynamics of colonial power and Orientalist thought, it seems likely that our academic efforts and those of our predecessors to make Dharmaśāstra known did more to hurt the tradition than to help it.

Lip service, prideful praise, caustic critique, and casual interest in this tradition is easy to find in political rhetoric, religious discourse, and even everyday life in India today. Just type *Dharmashastra* into a news site from India or even the news on Google. Finding a scholar anywhere, however, who has read the texts and interpreted them in sophisticated ways that take account of prior scholarship is a challenge. The ironies and sense of loss in how this small academic field has evolved are not lost on the editors of and contributors to this volume. Yet, we remain committed because we are caught intellectually and morally in an ongoing relationship and conversation with the authors of these texts, whose work has grabbed us in some way. Our unwavering sense that this tradition matters in a fundamental way for any responsible history of Hinduism has motivated our efforts in this volume to bring its complexity and significance to a wider audience.





# Part I

## History



# Social and Literary History of Dharmaśāstra

## The Foundational Texts

*Patrick Olivelle*

How and why did the genre of literature called Dharmaśāstra come into being? Who invented it and for what reasons? These are questions hardly ever raised by historians of this literature. Most take its existence for granted as obvious and self-evident, just like other similar genres such as the Śrautasūtras and Gr̥hyasūtras. In a previous study, I raised this issue and attempted to provide a hypothetical answer (Olivelle 2010b). Here I want to emend and expand that answer, taking into account the new discoveries regarding the concept of the *gr̥hastha* (householder) presented in Chapters 5 and 8 of this volume.

Briefly, in the previous study, I concluded that the emerging centrality of the term and concept *dharma* both in Buddhism and in the imperial ethics propagated by Aśoka in the middle of the third century BCE prompted Brahmanical theologians to define their own religious way of life in terms of *dharma*. As I have shown elsewhere (Olivelle 2004a, 2005c), *dharma*, a neologism coined by the poets of the *R̥gveda*,<sup>1</sup> was not a central term in the theological vocabulary of the middle and late Vedic periods when the Brāhmaṇas and the Upaniṣads were composed. It also occupied a marginal position in the ritual sutras, the Śrautasūtras, and the Gr̥hyasūtras. I argued that it is the theological development within Brahmanical thought making *dharma* its central concept that resulted in the creation of texts devoted to the definition and explication of the Brahmanical *dharma* in opposition to the various *dharma*s underlying the doctrines and lifestyles of non-Brahmanical ascetic communities such as Buddhism and Jainism. Although I think this

<sup>1</sup> For detailed studies of the early history of the term, see Brereton 2009 and Horsch 2009.

hypothesis is still valid, it is, however, incomplete. There were other more specific factors influencing the emergence of Dharmaśāstra.

It is obvious that many of the provisions in Dharmaśāstras are addressed to the married householder, especially the Brāhmaṇa householder; he is the lynchpin of the Dharmaśāstric system. This is true also of the ritual sūtras. In much of this literature, however, that householder is what Jamison calls “the unmarked subject” of the provisions; most frequently he is not designated by a specific term but is the implied subject of the verbs in the third person singular. The term most frequently used in Vedic texts, *gr̥hapati*, however, is totally absent in the Dharmaśāstras, including the earliest *sūtra* texts. Its place is silently replaced by *gr̥hastha*, a term that is absent in the literature prior to the Dharmasūtras (see Jamison’s remarks in Chapter 9). I think it is this unremarked and seemingly unremarkable terminological shift that holds the key to the beginning of the Dharmaśāstric genre of literature. As Jamison states, “This terminological demarcation hints at a conceptual discontinuity as well, and the linguistic history of the term *gr̥hastha* illuminates the conceptual renewal.” It also, I argue, underpins the very necessity for the creation of this new genre of literature.

As I note in Chapter 5, the term *gr̥hastha*, although new to the Sanskrit vocabulary, is found in several Prakritic forms such as *gahatta* and is already used by Emperor Aśoka in the middle of the third century BCE. In his usage, *gr̥hastha* is always coupled with and contrasted to *pravrajita*, the ascetic who has gone forth from home into the homeless life. As Jamison points out, *gr̥hastha* should be properly viewed as the “stay-at-home” in contrast to the “gone forth,” rather than simply as any married householder. Both of these kinds of religious people are presented as members of a religious community or organization termed *pāṣaṇḍa* by Aśoka (Rock Edict 12). In Pillar Edict 7, moreover, one of the *pāṣaṇḍas* is identified as Brāhmaṇa. We can conclude, therefore, that in the eyes of Aśoka the Brāhmaṇa community also constituted one among the many *pāṣaṇḍa* groups within his empire, and it, like the others, contained two kinds of members: *gr̥hasthas* and *pravrajitas*.

At some point during this period, probably in the third century BCE or a bit earlier, new theological developments<sup>2</sup> appear to have taken place within the Brahmanical intellectual classes. One such development, as I point out in Chapter 5, was the *āśrama* system, which expanded the twofold Aśokan classification into four. This theological development alone, however, could not have been the catalyst for the creation of the new genre of literature. The reason is twofold. First, some early writers on *dharma*, such as Gautama and Baudhāyana, reject the *āśrama* system as propounded by its advocates proposing instead the “single-*āśrama*” (*aikāśramya*) theory: there is only one *āśrama*, namely, that of the *gr̥hastha*. Second, none of the early Dharmasūtras

<sup>2</sup> For an assessment of these developments, see Olivelle 1993: 58–70.

incorporates the system into the structure of their compositions; the sections on the system give the appearance of being parenthetical or appendices to the main body of the works. It is the *gr̥hastha*, now modeled after the Vedic householder and following a ritual cycle centered on the “five great sacrifices” (*pañcamahāyajña*), rules of purity and diet, and Vedic recitation, who occupies center stage. Yet, the writers never use the old Vedic term *gr̥hapati* but the novel *gr̥hastha*, a term that had no prehistory in the Vedic literature. So, the Dharmaśāstric writers, while rejecting or marginalizing the theology of *āśramas*, nevertheless operated within the newly emerging conceptual world and its vocabulary. Further, the Dharmaśāstric *gr̥hastha* is not simply a ritualist; the rules given in these texts promote virtuous and holy living. These texts present the *dharma*, in the sense of proper behavior called *ācāra*, to be followed by a *gr̥hastha*. I want to explore further these competing theological innovations to lay the groundwork for assessing the possible motives for creating this genre of literature.

The hypothesis I propose is that, rivaling the theology of the *āśramas*, which presented a variety of lifestyles, especially the *gr̥hastha* and the *pravrajita*, as alternative religious paths, a new theology appears to have been constructed asserting the centrality of the *gr̥hastha*. This theology probably represented the mainstream of Brahmanical tradition. Yet it was markedly different from the Vedic theology centered on Vedic rituals and represented, as Jamison puts it, “a conceptual discontinuity.” It had a lot in common with the *āśramic* theology, and the two coexisted in some fashion—sometimes in conflict and sometimes in harmony, but always in tension—throughout Dharmaśāstric history. Its debt to the *āśramic* theology and *śramaṇic* vocabulary is evident not just in the adoption of the term *gr̥hastha* for its central *homo religiosus*, but also in presenting the household life as an *āśrama*, indeed, as the only legitimate *āśrama* in the view of Gautama and Baudhāyana (see Chapter 5). I think it is the dialogue and disputes between these two Brahmanical theologies (and perhaps others that we cannot readily identify) that are captured in the texts of the Dharmaśāstric tradition, disputes that continue well into the medieval period. We see them articulated in the strong defense of the householder as the highest form of religious life. As Vasiṣṭha (8.14–8.16) says:

A householder alone offers sacrifices; a householder performs austerities. Of all the four *āśramas*, the householder is the best.

As all rivers and rivulets ultimately end up in the ocean, so people of all the *āśramas* ultimately end up in the householder.

As all living beings live dependent on their mothers, so all mendicants live dependent on the householder.

On the other hand, with the emergence of the ideal of liberation (*mokṣa*) shared by Brahmanism and ascetical theologies such as Buddhism, the wandering mendicant (*pravrajita* or *bhikṣu*) came to be seen as the figure most

closely associated with that ideal. This is clearly revealed in the vocabulary of Manu, who calls it *mokṣāśrama*, the *āśrama* leading to liberation.

It was this *gr̥hastha* theology that provided the impetus to the creation of the Dharmaśāstric genre of literature. This explains both the centrality given to the *gr̥hastha* and the appearance, often somewhat marginally, of the *āśrama* system. Yet, I think that the creation of this genre was not simply the result of the interactions between these two Brahmanical theologies. A major factor was what we may call interreligious debates on the concept of *dharma* between Brahmanical theologians and those representing the ascetical or *śramaṇa* ideologies, especially Buddhism. The concept of *dharma* was very much a site of contention and debate. What is *dharma*? And how and where do you find it? In other words, the epistemology of *dharma* (*dharmaparmāṇa*) was a central theological issue (see Chapter 3). Buddhist theologians had a clear position: *buddhavaṇa* (the words of the Buddha) is the sole epistemic source of *dharma*. Either proximately or ultimately all valid pronouncement on *dharma* must go back to the *ipsissima verba*, the very words, of the Buddha. This position is encapsulated in the opening words of every Buddhist scriptural statement: *evaṃ mayā śrutam* (Pāli: *evaṃ me sutam*), “Thus have I heard.” It thus comes as no surprise that all the early Dharmasūtras begin with the epistemology of *dharma*.<sup>3</sup> This feature of the texts on *dharma* stands in sharp contrast to other similar Brahmanical texts such as the Śrauta- and Gṛhya-sūtras, which saw no need to state where they get knowledge from, taking the epistemological issues as self-evident and noncontroversial.

It is, then, from within this theological ferment that the genre of Dharmaśāstra was born. Yet, I think there is another significant element that, even if it was not a causal factor, shaped the structure and tenor of these texts. That is the system of *varṇas*. It is clear that the *varṇa* system was not an objective and disinterested classification of ancient Indian society. It was from the start an ideologically driven enterprise designed to place the Brāhmaṇa at the top of a pyramidal social hierarchy, supporting the claim to power of the Kṣatriya class, and in a special way, reducing the Śūdras and other lower classes to a marginal and oppressed status. This is clearly indicated in the foundational document on the *varṇas*, the *Puruṣasūkta* (RV 10.90), in which the vertical structure of the human body provides the basis for the hierarchical structure of the *varṇa* system. The Śūdra, born from the feet, is placed at the bottom. So, to uphold and to promote the *varṇa* system is at the same time to uphold the supremacy of the Brāhmaṇa class and its exceptional status.

This, I think, was a crucial element of the Dharmaśāstric project. One may question the need for Brahmanical theologians to assert aggressively the *varṇa* system; many scholars, after all, take the system to be not just old but also

<sup>3</sup> For a detailed study of this topic, see Olivelle 2016a.

reflecting the social reality of the ancient Indian society. I think this is a mistake, because all the evidence presented for this claim comes from Brahmanical sources, which generally sought to shape rather than simply to reflect social reality. Aśokan inscriptions constitute one of the few independent sources, and they are completely silent on the *varṇas*; the very term is absent in them and so are terms for three of the four *varṇas*: Kṣatriya, Vaiśya, and Śūdra. They do mention the Brāhmaṇa but not as a *varṇa* but as a religious group, first as a counterpart to the *śramaṇa* and second as one among the many *pāṣaṇḍas*. Further, the Aśokan reforms greatly undermined Brahmanical exceptionalism. The special relation between king and Brāhmaṇa advocated in the Vedic texts was eliminated. The need to assert and reassert the centrality of the *varṇa* system with the Brāhmaṇa at its apex was never more urgent.

The *dharma* articulated in the Dharmaśāstras was not simply a narrowly religious one centered on the holy life of a *grhastha* or of those belonging to the four *āśramas*; it was also a sociopolitical blueprint for the proper management of society by the king. Even the early Dharmasūtras contain sections on family, civil, and criminal law, and on governance by the king, however rudimentary these appear in comparison to the detailed treatments of these topics by later authors such as Manu and Yājñavalkya. In the sociopolitical ethic of the Dharmaśāstra, the *varṇa* system and Brahmanical exceptionalism are fundamental elements.

Such, I think, was the religious, social, and ideological background for the creation of the genre of literature known as Dharmaśāstra. But what was the actual institutional framework of inquiry and education that produced the early texts on *dharma*? We can look at the parallel literature, the ritual sutras, for a model. These were produced within specific “schools” or *caraṇas* belonging to the various Vedic branches (*śākhā*). It is reasonable to assume that Dharmasūtras also were produced by the same kinds of individuals who produced the ritual sutras and within the same kinds of educational settings. Looking at the extant works, we have two that are attached to precisely such *caraṇas* and are ascribed to their respective founders: the Dharmasūtras of Baudhāyana and Āpastamba.<sup>4</sup> The other two, those of Gautama and Vasiṣṭha, however, are independent of any *caraṇa*. It is fair to assume that there were educational and intellectual homes other than the *caraṇas* to engage in scholarly activities, as demonstrated by the composition of the Upaniṣads, the grammatical treatises, and the literary activities that gave rise to the Sanskrit epics.

In this context, I think we should extend Jamison’s conclusion of “a conceptual discontinuity” from the notion of *grhastha* as such to the broader

<sup>4</sup> The Dharmasūtra of Hiranyakeśin also comes from a *caraṇa*, but this text is simply a slightly altered version of the text of Āpastamba.



literary genre of Dharmaśāstra in which the *gr̥has̥tha* occupies center stage. In other words, I think the theologians who composed these texts were operating with a different *Weltanschauung* than their ritual counterparts, even as they shared the Vedic ritual and mythological world. This *Weltanschauung* was very much molded by ascetic ideologies, values, and vocabularies, as we see most prominently in the term *gr̥has̥tha* itself and in the value that these texts place on sexual abstinence, fasting, and other ascetic practices. We need not assume that these new intellectuals shared a uniform theology; but they did share a broad vision of what it was to be a good and religious Brāhmaṇa.

### THE EARLY TEXTUAL PRODUCTION

When the earliest texts on *dharma* were composed is difficult to determine accurately, and all the dates proposed by scholars are at best educated guesses and conjectures. There are two anchors, however, that permit us to make an objective, though imprecise, assessment. The first consists of the various factors underlying the creation of this genre that I have discussed above. Although Aśoka provides us a definite date for their articulation, that is the third century BCE, some of Aśoka's vocabulary and classificatory systems, such as *pāṣaṇḍa* and *gr̥has̥tha*, may have preexisted their use by him.

The second consists of the use of the terms *Dharmaśāstra* and *Dharmasūtra* by authors external to this literary tradition. The earliest such reference comes from the grammarian Kātyāyana in his *Vārttika* 39 (on Pāṇini 1.2.64): *dharmaśāstraṃ ca tathā* ("Likewise also the Dharmaśāstra"). Patañjali commenting on this gives the examples of such Dharmaśāstric injunctions: "A Brāhmaṇa should not be killed. Liquor should not be drunk."<sup>5</sup> Elsewhere in his commentary, Patañjali (on Pāṇini 1.1.47: I: 115) himself uses the term *Dharmasūtra* in discussing the interpretive rule that special rules or exceptions set aside the provisions of general rules: *naiveśvara ājñāpayati nāpi dharmasūtrakārāḥ paṭhanty apavāḍair utsargā bādhyantām iti* / "Neither does the Lord command nor do the authors of *dharmasūtras* declare: 'Let general rules be set aside by exceptions/specific rules.'" Clearly, here Patañjali asserts the authority of *Dharmasūtras* in matters of hermeneutics. Now, the scholarly consensus today is that Kātyāyana should be assigned to a period after the Maurya reforms (Deshpande 2006), that is, to the end of the third or the beginning of the second century BCE, and Patañjali to the middle of the second century BCE.

<sup>5</sup> For an extended discussion of both Kātyāyana and Patañjali, see Olivelle 2010b, 34–6.

We cannot be far wrong, then, in dating the beginning of this genre of literature to the first half of the third century BCE. As the reference in Patañjali indicates, the earliest extant texts of the genre were composed in aphoristic prose and were therefore called *dharmasūtra*. The four extant ones are ascribed to Āpastamba, Gautama, Baudhāyana, and Vasiṣṭha, listed according to their probable chronological order. The relative and to a degree the absolute dating of these texts is aided by the term and category *dvija/dvijāti*, the twice-born or man with two births. As I have dealt with this issue extensively elsewhere (Olivelle 2012a), I will state its conclusions here briefly. The term and concept of *dvija* are absent in the entire Vedic corpus, including the ritual sutras. The term is also absent in the *Āpastamba Dharmaśāstra* and in Patañjali; the latter is instructive, because his Great Commentary is a mine of cultural information, and he is exceptionally well informed about Dharmaśāstric notions. The earliest extant text to use the term is the *Gautama Dharmaśāstra*. From then on it becomes a cornerstone of the Dharmaśāstric project and its use is common and frequent.

The conclusion, then, is that the category of *dvija* was absent in the earliest period of Dharmaśāstric textual production, and that the category was invented after about the middle of the second century BCE. The purpose, as I have noted in Chapter 5, was to bring under the hegemony of Brahmanical ideology articulated in the Dharmaśāstras all the “upper” levels of the social hierarchy and to thereby exclude other segments of society, including non-Brahmanical religious traditions, that are often termed Śūdra in these texts. That *dvija* was a technical term restricted to the Dharmaśāstric theologians is indicated by its complete absence in the Buddhist Pāli vocabulary. The term was probably invented toward the end of the second century or at the beginning of the first century BCE.

Using this and other criteria,<sup>6</sup> I have assigned the following probable dates to the four Dharmaśāstras: Āpastamba = third to early second century BCE; Gautama = late second to early first century BCE; Baudhāyana<sup>7</sup> = mid first century BCE to early first century CE; and Vasiṣṭha early to late first century CE.

These texts provide us a glimpse into what subjects the early writers on *dharma* wanted to include in their works and, thus, into what they considered *dharma*. First, we have as a preamble two topics: the sources of *dharma* and the four *varṇas* including the mixed castes and proper occupations of the respective *varṇas*. Then, there is a section on Vedic initiation and a student’s duties, including discussions on the teacher and the conclusion of the period of studentship. In somewhat overlapping sections, texts deal with the student

<sup>6</sup> One such criterion is the concept of *āryāvarta*, land of Āryas, first articulated by Patañjali and unknown to Āpastamba and Gautama but incorporated by Baudhāyana and Vasiṣṭha.

<sup>7</sup> The first two Praśnas. The second two Praśnas were probably a late addition. See Olivelle 2000: 191; Bühler 1879–82, II: pp. xxxiii–v).

who has returned home and the so-called *snātaka* (bath-graduate; Chapter 7), types of marriages and of sons (Chapter 8), including adoption, *dharma* with respect to women (Chapter 17), Vedic recitation, the annual course of study, and times when recitation is forbidden, salutation and rules of precedence, rules on answering calls of nature and on impurity, purification of body and articles, sexual intercourse, dietary rules (Chapter 12), hospitality and reception of guests, inheritance (Chapter 16), funerary rites, periods of impurity upon a death or birth in the family (*āśauca*), ancestral offerings (Chapter 13), and sins and penances (Chapter 24). Further topics outside the main ones dealing with the householder include rules during times of adversity (*āpad-dharma*; Chapter 19), the four *āśramas* (Chapter 5), family, civil, and criminal law (Chapter 23), and the duties of a king (Chapter 20). Some texts, such as that of Gautama, have more extended discussions of lawsuits and rules of legal procedure (Chapter 22).

Besides the opening discussion of the epistemology of *dharma* (Chapter 3), a unique feature of the Dharmaśāstras, as opposed to the ritual sutras is that they begin with the Vedic initiation of an adolescent boy. All ritual sutras begin with marriage, given that it is the gateway to the ritual life of a Brāhmaṇa. The reason why authors of the Dharmaśāstras departed from this tradition is instructive. The theology here is that a person comes under the regimen of *dharma* only after he has undergone Vedic initiation. This point is accentuated when this same rite is viewed as the second birth of the initiate, thus constituting him as a *dvija*, twice-born. Only twice-born individuals are capable of fulfilling the requirements of *dharma*.

Another significant literary and doctrinal feature of the early Dharmasūtras, as opposed to the texts of Manu and his successors, is that their authors do not pretend that the doctrines and rules they enunciate are anything more than scholarly statements. There is no preamble or story that presents the text as the pronouncement of a divine authoritative figure. Thus, the authors proffer divergent points of view indicative of scholarly give and take. We have already seen, for example, that Gautama and Baudhāyana give the *āśrama* system as a theory of some people which should be rejected. Likewise, Āpastamba departs from the common acceptance of polygamy and hypergamous marriage and supports monogamous marriages between partners belonging to the same social class. It is within this context of citing the opinions of others, especially of opponents, that we get a glimpse into the hidden history of the early Dharmaśāstric textual production.

The four authors whose works are extant cite or refer to seventeen other experts in the tradition.<sup>8</sup> It is instructive to read closely two passages of

<sup>8</sup> Aupajaṅghani (*BDh* 2.3.33); Bhāllavins (*BDh* 1.2.11; *VaDh* 1.14); Eka (*ĀpDh* 1.19.7); Hārīta (*ĀpDh* 1.13.11; 1.18.2; 1.19.12; 1.28.1, 5, 16; 1.29.12, 16; *BDh* 2.2.21; *VaDh* 2.6); Kaṇva (*ĀpDh* 1.19.3; 1.28.1); Kāṇva (*ĀpDh* 1.19.2, 7); Kapila (*BDh* 2.11.28); Kaśyapa (*BDh* 1.21.2); Kātya (*BDh*

Āpastamba in which the opinions of various authors are given with regard to two topics: a person from whom one may accept food (1.19.2–1.19.15), and whether and when someone can take what belongs to another without becoming guilty of theft (1.28.1–1.28.5). On the first issue, six opinions are cited: (i) Kaṇva: anyone who gives because he wants to; (ii) Kautsa: a virtuous person; (iii) Vārṣyāyaṇi: anyone who gives; (iv) Eka, Kuṇika, Kāṇva, Kutsa, and Puṣkarasādi: almsfood is always pure and may be eaten; (v) Vārṣyāyaṇi: anyone who gives food without being requested; (vi) Hārīta: provides a rider to the last opinion that it should not be given subsequent to an invitation. On the second issue, we have three opinions: (i) Kautsa, Hārīta, Kaṇva, and Puṣkarasādi: someone who takes what belongs to another, no matter the circumstance, is a thief; (ii) Vārṣyāyaṇi: some articles, such as legume pods and fodder for an ox, are exempt from the above rule; (iii) Hārīta, apparently in reply to Vārṣyāyaṇi, says that one must *always* obtain the permission of the owner.

These opinions provide insight, slight though it may be, to the views and personalities of these authors. Vārṣyāyaṇi appears to hold somewhat liberal views on both issues, while Hārīta here and elsewhere expresses conservative opinions. With reference to the opinion (ĀpDh 1.18.2) that certain kinds of food may be accepted from a person belonging to the Ugra caste, Hārīta objects, saying that it is permissible only if the giver is a pupil. Elsewhere, with reference to a penance for having sex with an elder's wife that ends in the penitent's death (ĀpDh 1.18.15–1.18.16), Hārīta objects, saying that killing oneself or another person is always a heinous sin. And he rejects the opinion (ĀpDh 1.29.15–1.29.16) that sorcery and cursing do not cause a person to lose his caste, saying that such acts do cause the loss of caste.

What we see, then, is that the first three or four centuries of Dharmaśāstric history were characterized by vigorous debates among scholars regarding the rules of *dharma*. Matters were not settled, and writers during this period cite the opinions of other scholars, some of which go against their own views.

## INNOVATIONS OF MANU

The century or so before and after the turn of the millennium was a period of profound social and political turmoil and transformation in Northern India.

1.3.46); Kautsa (ĀpDh 1.19.4; 1.28.1); Kuṇika (ĀpDh 1.19.7); Kutsa (ĀpDh 1.19.7); Mahājajñu (BDh 3.9.21); Manu (ĀpDh 2.16.1; GDh 21.7; 23.28; BDh 2.3.2; 4.1.13; 4.2.15; VaDh 1.17; 3.2; 11.23; 12.16; 13.16; 19.37; 23.43); Maudgalya (BDh 2.4.8); Puṣkarasādi (ĀpDh 1.19.7; 1.28.1); Vārṣyāyaṇi (ĀpDh 1.19.5, 8; 1.28.2). It is not clear whether all these actually wrote Dharmasūtras or were merely viewed as authoritative teachers.

The period witnessed repeated invasions from the northwest: first the Śakas (Scythians) in the first century BCE and then the Kushanas (Yuezhi) in late first and early second century CE. These foreign polities established kingdoms within the Indian heartland. Even though they became Indianized to some degree, the insertion of foreign values and strategies must have created a cultural shock within India, especially within the Brahmanical intelligentsia, who considered them *mleccha*, barbaric foreigners. They could not be legitimate kings. Further, the Kushanas converted to Buddhism and became great patrons of Buddhist projects, especially monumental buildings. The Kushana period represents also the beginning of what Pollock (2006) has termed the “Sanskrit Cosmopolis,” a millennium or so when Sanskrit became the medium both of expressing aesthetic beauty in literature and of projecting political power.

We, of course, do not have direct evidence about the Brahmanical attitudes toward these newcomers and their rule; Brahmanical authors hardly ever comment on contemporary social or political realities. But I want to propose that the ideologies of kingship—Who is an ideal king?—present in both Manu and the Sanskrit epics are in some way related to contemporary political realities. When Manu says: *na śūdrarāṅye nivaset* (“He should not live in a kingdom ruled by a Śūdra.” *MDh* 4.61), I think, the subtext is the foreign rule of the Kushanas that extended to much of Northern India during the second century BCE. Śūdra for Manu appears to be an epithet that could be hurled at anyone opposed to Brahmanical privilege. The term is used with regard to both rulers and Buddhist and other non-Brahmanical ascetic traditions. He states explicitly the reason why the ruling elite of foreign countries—Greeks, Śakas, Persians, and Chinese—have sunk to the level of Śūdras: “By neglecting rites and by failing to visit Brāhmaṇas, however, these men of Kṣatriya birth have gradually reached in the world the level of Śūdras” (*MDh* 10.43). The royal ideal is the very opposite: “Refusal to turn back in battle, protecting the subjects, and obedient service to Brāhmaṇas—for kings, these are the best means of securing happiness” (*MDh* 7.88).

This contemporary political and religious situation was the backdrop for the composition of Manu’s treatise on *dharma*. Composed probably in the middle of the second century CE, Manu represents a watershed in the history of Dharmaśāstra when the scholarly tradition of debate and disagreement of the previous centuries was abandoned, at least at the level of literary composition, and the authoritative voice of the author rises to drown out all dissent.<sup>9</sup> Stylistically, Manu composed his work entirely in verse, just like the Sanskrit epics. He also presents it within a narrative framework: the story of sages approaching Manu and asking him to teach them *dharma*. Manu tells them

<sup>9</sup> For a detailed assessment of Manu’s treatise (its author, date, composition, sources, and the like), see the introduction to my critical edition: Olivelle 2005a.

the genealogy of his treatise on *dharma* (1.102). It was originally composed by Manu's father, the self-existent creator of the universe, and handed over to his son (1.58).

Manu places the Brāhmaṇa and Brahmanical privilege at the very heart of his treatise. In an almost "over-the-top" eulogy of the Brāhmaṇa in the very opening chapter, Manu harks back to the *Puruṣasūkta* of the *Rg Veda* (10.90) to assert the supremacy of the Brāhmaṇa:

Because he arose from the loftiest part of the body, because he is the eldest, and because he retains the Veda, the Brāhmaṇa is, according to *dharma*, the lord of this whole creation (1.93). A Brāhmaṇa's birth alone represents the everlasting physical frame of *dharma*; for, born on account of *dharma*, he is fit for becoming Brahman. For when a Brāhmaṇa is born, a preeminent birth takes place on earth—a ruler of all creatures to guard the storehouse of *dharma*s. This whole world—whatever there is on earth—is the property of the Brāhmaṇa. Because of his eminence and high birth, the Brāhmaṇa has a clear right to this whole world. The Brāhmaṇa eats only what belongs to him, wears what belongs to him, and gives what belongs to him; it is by the kindness of the Brāhmaṇa that other people eat. (1.98–1.101)

One can feel the intensity and urgency with which Manu defends Brahmanical exclusivism and, *pari passu*, the relegation of the Śūdra to the level of a servile and oppressed class. For Manu, I think, Śūdra was not simply a particular social group; it was a catch-all category for all groups that would present a threat to Brahmanical hegemony. These included Buddhist and other "heretical" religious orders, whom Manu dubs *śūdrapravrajita* (Śūdra ascetics), as well as kings and polities that did not toe the Brahmanical party line, whom Manu calls *śūdrarājya* (Śūdra kings and kingdoms).

A significant advance of Manu pertains to law and legal procedure. It is clear that Manu had before him a copy of Kauṭilya's *Arthaśāstra* and incorporated much of the legal and procedural material from it.<sup>10</sup> These sections comprise Chapters 7–9, amounting to one third of Manu's text. His classification of the *vyavahārapadas* or subjects of litigation into eighteen remained paradigmatic in later Dharmaśāstric literature (Chapter 23).

Another significant subject Manu introduced into Dharmaśāstric discourse is *mokṣa* or liberation, a central idea of Indian religions that did not play a major role in early Dharmaśāstric history. He devotes the last chapter to this topic, even though it occurs frequently in the rest of the book as well. Significantly, he calls the life of a wandering mendicant *mokṣāśrama*, the *āśrama* devoted to liberation. This will remain an integral topic in later Dharmaśāstras and even in the legal digest of the medieval period.

<sup>10</sup> For more details and fuller argument, see McClish 2014, Olivelle 2004b.

## DHARMAŚĀSTRAS AFTER MANU

A major political transformation took place in Northern India early in the fourth century CE, about two centuries after Manu, when Candragupta and his successors asserted dominion over much of Northern India from their hereditary base in eastern India. For the first time since the Mauryas another Indian empire emerged, but, unlike the Mauryas, the Guptas were deeply Hindu and they satisfied Manu's ideal of a king devoted to Brāhmaṇas.

The Gupta empire is generally considered to be the golden age of Indian art, architecture, and literature. The great Sanskrit poet and playwright Kālidāsa flourished during this period. It appears that literacy also made gains, given the prominent place given to legal documents and written contracts in the legal literature of the period. The same literature shows that jurisprudential scholarship developed exponentially; it is reflected in the detailed discussions of court procedures and the nuanced technical vocabulary. In the area of religion, we have the development of strongly devotional (*bhakti*) movements reflected in both literature and art. It is within the context of these socio-political changes that we must locate the composition of Dharmaśāstras after Manu.

All the post-Manu writers of Dharmaśāstras were indebted to him in numerous ways; they followed his lead with regard to both literary style and content. Yet we see developments in a variety of areas of *dharma*, most especially in religious orientation and jurisprudence. Although, in all likelihood, there were dozens of such writers, there are only four whose works have survived:<sup>11</sup> Yājñavalkya, Viṣṇu, Nārada, and Parāśara.

Of these, Yājñavalkya was the most influential writer after Manu in terms of his effect on the later tradition. The text was composed probably in the fourth or fifth century CE in Eastern India during the rule of the Guptas. The ascription of the work to Yājñavalkya, the celebrated theologian of the *Bṛhad-āraṇyaka Upaniṣad*, the founder of the school of White Yajurveda, and close associate of Janaka, the renowned king of Videha in Eastern India, makes it likely that the work was commissioned at least in part to support the legitimacy of the Gupta emperors. My critical edition of the text (Olivelle Forthcoming) shows that the recension commented on by the ninth-century scholar Viśvarūpa is far closer to the original than that of the better known twentieth-century commentator Vijñāneśvara. It is clear that sometime in the tenth or eleventh century a drastically emended edition of the text was made that, through Vijñāneśvara's popular commentary, became the Vulgate version in medieval and modern times.

<sup>11</sup> I ignore here the *Vaikhānasa Dharmasūtra*, which was a sectarian text and had no impact on the later Dharmaśāstric tradition.

To a degree even more than Manu, Yājñavalkya incorporates much of the legal and procedural rules of Kauṭilya's *Arthaśāstra*. Indeed, some of Yājñavalkya's verses look much like versifications of the *Arthaśāstra* prose. His presentation of legal procedure, however, shows clear advances over that of Manu and Kauṭilya, pointing to a vibrant jurisprudential scholarship. For example, Yājñavalkya places emphasis on documents in his discussion of evidence; he is the first to use the technical terms *lekhya* and *likhita* with reference to legal documents. He is also the first to use the technical term *divya* for an ordeal, making it a significant part of legal evidence. For the first time we see in his work the enunciation of a hierarchy of courts with the possibility of appeals from the lower to the upper ones and ultimately to the king himself.

Another significant feature of Yājñavalkya is his focus on asceticism, yoga, and the search for liberation. Indeed, the very first word of the text is the epithet of Yājñavalkya: *yogīśvara*, the Lord of yoga, and throughout the text he is presented as a teacher of yoga and asceticism. He moves the discussion of the two ascetic *āśramas*, the forest hermit and the wandering mendicant, from the section of proper conduct (*ācāra*) to that on penance called *prāyaścitta*, which, I think, is viewed by him not simply as practices to expiate sins but more generally as extraordinary acts of penance and self-mortification. The section (*prakaraṇa*) on the ascetic (2.56–2.206) comprises 151 verses, by far the longest section comprising 15 percent of the entire text.

The text of Viṣṇu is one of the latest Dharmaśāstras, composed in between the sixth and eighth century CE in Kashmir by a person belonging to the Kāthaka branch of the Black Yajurveda who was a devotee of Viṣṇu (see Olivelle 2009a). Viṣṇu is presented as the person teaching the Dharmaśāstra to the goddess Earth. His authority alone guarantees the validity of the document, and this is the only Dharmaśāstra that does not present the traditional sources of *dharma*.

The contents of the text are unremarkable, except for the strongly devotional bent that stands in sharp contrast to all other Dharmaśāstras. The new institution that it introduces is the wife immolating herself besides her deceased husband, referring to this practice as *anvārohaṇa* at 25.14 and suggesting the term *anugamana* at 20.39.

During and after the fifth century CE, some Dharmaśāstric scholars appear to have engaged in writing texts focused on specific topics rather than the entire range of Dharmaśāstra. The two extant texts of this genre are those of Nārada and Parāśara. Nārada focuses on legal procedure (*vyavahāra*) and Parāśara on proper conduct and expiation.

Tradition explicitly presents Nārada's text as a recension of Manu, indicating its close connection to the latter. Nārada, however, far surpasses Manu, as also Yājñavalkya, in his jurisprudence; his is perhaps the most refined legal text from ancient India according to A. Barth's assessment: "If we except the



monuments of Roman legislation, antiquity has not perhaps left us anything which is so strictly juridical” (Lingat 1973: 102).

Nārada is probably later than Yājñavalkya and can be dated to between the fifth and sixth century CE.

Parāśara’s is a very brief and somewhat mediocre text whose existence in the manuscript tradition is probably due to the great commentary on it, the *Pārāśara-Mādhaviya*, written by the fourteenth century scholar Mādhava. In 592 verses, Parāśara deals with issues relating to proper conduct (*ācāra*) and penance (*prāyaścitta*). It was probably composed between the seventh and eighth century CE.

## EXTINCTION OF DHARMAŚĀSTRIC TEXTS

The age of Dharmaśāstric composition came to an end probably by the middle of the second half of the first millennium, even though texts calling themselves *smṛti* continued to be composed well into the medieval period. A statement by the great commentator on Manu, Medhātithi, shows that scholars accepted the possibility that even their contemporaries had the authority to write Dharmaśāstras. After stating that Manu was not some exceptional and divine being but simply an entrepreneurial scholar who gathered specialists and composed his treatise, he goes on to say, “Even in contemporary times, when a person endowed with the aforementioned qualities and with those very reasons composes a treatise, he becomes authoritative for future generations just as Manu and the like” (on *MDh* 2.6). And it appears that many scholars did undertake such projects; many of their texts are cited in medieval legal digests.

Manu generally does not cite or refer to his predecessors, but at *MDh* 3.16 he refers to Atri, Utathya, Śaunaka, and Bhṛgu. Yājñavalkya (1.4–1.5) is the earliest writer to give a list of authors of Dharmaśāstras: “The promulgators of legal treatises are: Manu, Viṣṇu, Yama, Aṅgiras, Vasiṣṭha, Dakṣa, Saṃvarta, Śātātapa, Parāśara, Āpastamba, Uśanas, Vyāsa, Kātyāyana, Bṛhaspati, Gautama, Śaṅkha, Likhita, Hārīta, Atri, as well as myself.” Of these, only the compositions of Manu, Viṣṇu, Vasiṣṭha, Parāśara, Āpastamba, Gautama, and Yājñavalkya are extant. Kane (1962–75, I: 304) estimates that approximately 100 Dharmaśāstras are cited in medieval legal digests. Thus, the conclusion we have to draw is that the vast majority, perhaps as much as 90 percent of the Dharmaśāstras have been lost in the manuscript tradition. Even if we question whether all the citations in the legal digests are from actual treatises and whether some may have been floating verses in the memory of experts, yet it is clear that a large number of these texts have simply disappeared.

The reasons for this large-scale extinction are unclear. The ultimate cause, of course, is that fresh copies of the manuscripts of these works were not made

because no one thought it important enough to spend time and money to do so. Given that manuscripts in the Indian climate last but a few centuries, if fresh copies are not made they will gradually become prey to decay and bugs. But why scholars thought it not important enough to copy them remains obscure. After all there were some Dharmaśāstras, namely the extant ones, that were copied and recopied. The voluminous commentaries and digests that presented topically arranged citations from the ancient texts may themselves have made experts and students alike less dependent on the original texts. There are indications in the digests themselves that later authors are citing not from the originals but from citations in earlier digests. If we knew more about the education system in medieval India, about how young students were taught the Dharmaśāstras, we would probably have a better idea about the reasons of this extinction. Did students, for example, simply study one or several legal digests rather than original Dharmaśāstras? Or, if they studied the original texts, did the curriculum include only a few major ones, such as that of Manu and Yājñavalkya?

A few lost Dharmaśāstras have been reconstituted by collecting medieval citations. The two most prominent ones are the texts of Bṛhaspati and Kātyāyana,<sup>12</sup> both great jurists dealing with legal procedure. Others still await close scrutiny by scholars.

The history of Dharmaśāstra from the middle of the first millennium takes a new turn. In place of original compositions, scholars began to write first commentaries on the major ancient Dharmaśāstras and then, from at least about the twelfth century CE, legal digests (*nibandha*). This period of the history is taken up in the second chapter.

<sup>12</sup> Bṛhaspati has been reconstructed by Aiyangar (1941a) and Kātyāyana by Kane (1933).

## Social and Literary History of Dharmaśāstra

### Commentaries and Legal Digests

*Donald R. Davis, Jr. and David Brick*

In perhaps the seventh century CE, the tradition of Dharmaśāstra developed, or rather began to use, a new written genre, the formal prose commentary (*bhāṣya*, *ṭīkā*, *vivṛti*, etc.). In the twelfth century CE, it developed another, the topical digest (*nibandha*). A formal commentary follows a single root-text (*mūla*) from beginning to end and strives both to explain grammatical difficulties (obscure, archaic, or unusual words; complicated compounds and syntax) and to elaborate the root-text's meaning by dispelling objections, providing examples, resolving conflicts with other texts, and elaborating underlying ideas (Tubb and Boose 2007: 3–5). A digest organizes many different root-texts according to topics, synthesizing a thematic logic to the textual corpus as a whole and using the same interpretive techniques as a commentary. To the extent that commentators cite other authors in support of their interpretations and digest authors provide long scholastic comments, the two genres merge, especially after the thirteenth century CE.

The present chapter first explores the question of why the commentarial and digest forms were adopted by authors of Dharmaśāstra.<sup>1</sup> It then surveys some important examples of both textual genres in order to show the main functions and goals of these works. Some authors of commentaries and digests wrote the most brilliant and insightful works in the whole tradition, and we want to highlight the originality and impact of these authors. Others, however, did little more than compile previous texts or provide simple glosses on the words of other authors. Thus, before looking at a few notable authors and their

<sup>1</sup> For a complete survey of the details about extant texts of Dharmaśāstra, see volume I of Kane.

works, we want to set the genres in some historical context and present a new explanation for their appearance.

## THE NATURE OF COMMENTARIES

Though it is impossible to prove, it seems certain that scholastic analysis of the early texts of Dharmaśāstra occurred in tandem with the production of the texts themselves. From other disciplines, we have two early and prominent examples of formal commentary (Patañjali on Pāṇini's *Aṣṭādhyāyī* in the second century BCE and Śābara on Jaimini's *Pūrvamīmāṃsāsūtra*, ca. fourth or fifth century CE) in which a familiar stylistic form is used. This style dominated all major disciplines of intellectual discourse. Together, the root-texts and their commentaries formed a tradition of analytical treatises known as *śāstra*. The fact that we do not have any formal commentaries on Dharmaśāstras dating from before the sixth or seventh century CE, however, suggests that most scholastic exposition was informal and oral. The density of expression in *sūtra* texts of all kinds seems to require a concomitant system for explaining them, whether oral or written. Even the earliest formal commentators whom we know already refer to predecessors and prior commentaries, though we no longer have these texts. Taken together, we can conclude that scholastic explanation itself was not new to Dharmaśāstra in the seventh century CE. Writing them down in formal treatises, however, may have been.

For the earliest period of Dharmaśāstra, we should imagine a collective enterprise in an educational setting (*gurukula*, *ācāryakula*, *ghaṭikāsthāna*), where groups of students gathered around a teacher (possibly more than one), memorizing the root-texts and listening to oral explanations (Scharfe 2002). Given that early Dharmaśāstra emerged in response to non-Vedic ascetic traditions (primarily Buddhist) and forged a new ideology of the Brahmin householder,<sup>2</sup> the composition and transmission of root-texts dominated textual production as a way to solidify the practices codified in the texts. As the transmission spread further and the gap in time grew from the original collection of the major root-texts, however, both decreasing familiarity with the practices described and the emergence of new religious and legal practices necessitated a formalization of explanations of the root-texts (Lingat 1973: 108–9). Distance in both time and space from the original sources thus encouraged formal commentaries to be written. The generally expanding use of writing attested within the later root-texts themselves also provides a context conducive to writing down commentarial explanations of now

<sup>2</sup> See Chapters 5 and 9 in this volume.

canonical texts. As the *śāstra* style of commentary was adopted in every field of intellectual inquiry in the middle of the first millennium, so also in the field of *dharma* did the formal, scholastic prose commentary become standard.

The most basic, yet most debated, question about Dharmaśāstra commentaries has been what were the commentators trying to do as authors? The two opposing answers go to the heart of how we should understand the tradition as a whole. The once standard view looks upon the commentators as updaters of the tradition who adjusted the texts to suit their contemporary times. Recently, Mathur has vigorously defended the position that “a very significant function of the medieval texts is to legitimize custom” and that “a commentator has to explain the provisions of a (nearly) fixed text before him and to show how it can be applicable to his times” (2007: xx, xix).<sup>3</sup> The main purpose of commentaries, according to this view, is the legitimization of customary laws that conflict with textual laws by creating new interpretations that make old rules apply to new social conditions.

In theory, this view seems quite reasonable, and there are, in fact, several instances where commentators read the texts in a way that clearly conforms to prevailing social norms. For example, it is beyond question that Mādhava’s defense of cross-cousin marriage as legal and proper emanated from his location in South India where such marriages were the norm (Trautmann 1981: 438–46). However, commentators almost never appeal to local legal or cultural norms as the authority for a rule of *dharma*.<sup>4</sup> Even Mādhava’s defense does not claim that cross-cousin marriage is legitimate because it is accepted in particular regions. The commentator’s real purpose, therefore, lies elsewhere.

In several important studies, Ludo Rocher has shown, “The commentators did not aim at introducing any novelties. Their sole purpose was a correct interpretation of the ancient texts as such” (2012: 427). Note the stark difference. Commentators meant to interpret the texts by harmonizing conflicts between them, not to update them or to apply them to prevailing social realities. Even the *Ṭodarānanda*, a text attributed to the “Vakil of the Mughal empire,” shows no direct influence from nor engagement with Islam or the Mughal polity: “the evidence shows that . . . the author did not attempt to adapt his text to sixteenth-century circumstances in Akbar’s India” (Rocher 2016: 12). In many ways, *dharma* authors could not have cared less about historical or social norms. Like most scholastic authors, they wrote in “sublime disregard of

<sup>3</sup> For reviews of this position, see Rocher 1993 and Lariviere 1997.

<sup>4</sup> More often, though still infrequently, texts set in the *smṛti* or root-text style will acknowledge legitimate deviations from a dharmic norm based solely on regional practice. Famously, the *BDh* 1.2.1–1.2.8 distinguishes five practices special to the North and to the South, though it also notes the rejection of this distinction by Gautama. Two thousand years later, in Kerala, an explicitly regional Dharmaśāstra text, the *Laghudharmaprakāśikā*, safeguards the regionally specific practice of matrilineal inheritance against the general norms of the traditions (Davis 2011).

history” (Kuttner 1980). Commentarial tradition does not permit one to simply ignore or weaken a rule without other textual support. Authors try to remain within a self-generated and circumscribed world of the texts, since interference from the outside can only taint the system found in the texts.

However, the fact that commentators were first and foremost scholars who focused on correct interpretation does not mean that they were untouched by historical and social pressures and changes. The root-texts discussed in the previous chapter had a closer connection to customary law than the commentaries, though even they set forth a “jurisprudential reflection on custom” (Olivelle 2005a: xxxix), not a simple record of custom. In all periods, custom exerted an influence on the various genres of Dharmaśāstra. We must remember that root-texts (*mūlasmṛti*) continued to be produced in the tradition long after the appearance of formal commentaries and digests. In fact, in some cases, it appears that commentators could create new root-texts and cite them as authoritative in their argumentation, so long as the position represented conformed to an accepted view. For example, several citations in the centuries-long debate over widow-burning (*sahagamana*) do not appear except in the commentaries that use them (Brick 2010). To us, this fact suggests that commentators could “invent” traditions that condensed prevailing opinions (and possibly practice) on the topic. In other cases, however, commentators descried forged or fabricated rules that supported unacceptable opinions or practices (see Olivelle 1986–7, II: 88–9). Lariviere (1997) has rightly criticized Derrett’s characterization of these new root-texts as “bogus” or “apocryphal,” since many new rules and new texts were in fact accepted within the tradition. The regular instances where innovative rules were also rejected tell us that the tradition maintained internal checks over the unfaithful transmission of its foundational textual material.

In summary, therefore, commentaries reveal social history by accident and indirectly. Commentaries can often be useful sources for contemporary historical and social facts, but it is crucial that we understand that, in most cases, the purpose of the texts was not to update or adjust the tradition to meet the times. One has to read between the lines of commentaries and to corroborate their testimony with other sources in order to glean reliable history. Dharmaśāstra commentaries are direct witnesses only to the legal and religious thought of their own tradition—an influential, perhaps hegemonic, discourse. They should be read primarily in these terms, and only secondarily as potential sources for information about historical and social realities.

No final word can ever be stated about the intentions of the commentators, because they were not always the same. As in any intellectual tradition, we find creative geniuses, great synthesizers, competent imitators, and inept pretenders. Tradition tends to silence most of the latter two groups by not passing down mediocre and incompetent works. At the same time, the commentators worked in different circumstances that certainly shaped the kind of

scholarship they produced. Some may have been luxuriantly supported and felt little need to engage with contemporary social issues; others probably felt threatened from within or from outside and thus felt compelled to address pressing social problems in their time. A great scholar such as Raghunandana in sixteenth-century Bengal produced the leading work on ordeals in this tradition, but his work gives no hint that he ever studied ordeals in practice (see Lariviere 1981a). Conversely, when ten or more highly reputable scholars of Dharmaśāstra voice contrary opinions about the controversial practice of widow-burning over many centuries and constantly citing earlier opinions, the stakes are more than academic (Brick 2010). The texts here reflect a change in the moral outlook of the times and provide critical insight into the history of this practice. The conventional idiom of Dharmaśāstra did not allow direct engagement with social history, but in numerous cases, history and society intruded nonetheless. Otherwise, we cannot explain why Mādhava wanted to defend cross-cousin marriage in the first place or why the *Laghudharmapra-kāśikā* defends matrilineal adoption in the only region of India where matriliney was widespread.

## WHY DIGESTS?

Sometime around the tenth century, a short-lived genre of Dharmaśāstra doxography (*saṃgraha*, *mata*) appeared in texts such as the *Caturviṃśatimata*, *Smṛtiśaṃgraha* and *Ṣaṭtriṃśatmata* (Kane I: 510, 535–8).<sup>5</sup> These texts paraphrased and summarized *dharma* topics without direct citation from older material, restating the rules and argumentation from the author's own perspective. Unfortunately, few complete examples of this doxographical interlude remain, and we know of their existence mostly because they are regularly quoted in the digests. This innovative format did not, however, survive long after the appearance of the new digests of *dharma*.

Prior to the appearance of the first extant digest (*nibandha*), the twelfth-century *Kṛtyakalpataru* of Lakṣmīdhara, Dharmaśāstra texts generally discounted or dismissed the authority of other texts that were not part of their orthodox tradition, namely the Vedas, the Mīmāṃsā, and the Dharmaśāstras themselves.<sup>6</sup> Purāṇas, for example, are hardly cited at all by the early commentators (tenth century CE or earlier) such as Bhāruci, Asahāya, Viśvarūpa,

<sup>5</sup> From its partial citations in later texts, it is possible that the *Smṛtiviveka* of Medhātithi is also a work of this type, though we cannot say for sure. See Olivelle 2016a: 123, n88).

<sup>6</sup> Two genres, *itihāsa* and *purāṇa*, say a lot about *dharma* and might be expected, therefore, to find a place in Dharmaśāstra references and argumentation. The *itihāsa* texts (probably meaning both *Mahābhārata* and *Rāmāyaṇa*) never find a prominent place in Dharmaśāstra, whether in commentary or digest.

and Medhātithi (Kane I: 410–11). The digests of *dharma*, however, were not merely topical rearrangements of older texts. Rather, they took shape primarily through a massive importation of Purāṇa material into a thematically organized collection.

Previously, Purāṇas were often held to be inferior sources of *dharma*. Consider the verse attributed to Vyāsa and found in several medieval *dharma* texts, including digests:

*ataḥ sa paramo dharmo yo vedād adhigamyate |  
avaraḥ sa tu vijñeyo yaḥ purāṇādiṣu sthitaḥ ||*

Thus, the highest Law is what is learned from the Veda. What is found in the Purāṇas, etc., however, should be regarded as inferior.

(*DhKośa*, *VaDh*, 1.163)<sup>7</sup>

In the *Tantravārttika* of Kumārila, we find a more elaborate dismissal or diminution of the Purāṇas. In this case, Kumārila (ad PMS 1.2.7) lumps the Purāṇas and Itihāsas together as examples of *arthavāda*, praising or disparaging statements, found even in the Vedas themselves. *Arthavādas* are authoritative, according to Kumārila, insofar as and because they help, encourage, or compel people to follow the injunctions or observe the prohibitions stated elsewhere in the Vedas. They thus promote good action and discourage evil acts, calling on people generally to do *dharma*. On the surface, this analysis gives *arthavādas* an authoritative, but supportive role. The category of *arthavāda*, however, is also widely understood to connote inferior or unimportant statements. The dignity and majesty of true injunctions overwhelms all merely supportive statements.

As we might imagine, some Purāṇas took umbrage at this sweeping categorization, for example, the *Nāradiya Purāṇa*:

*purāṇeṣv arthavādatvaṃ ye vadanti narādhamāḥ |  
tair arjitāni puṇyāni kṣayaṃ yānti dvijottamāḥ ||  
samastakarmanirmūlasāadhanāni narādhamāḥ |  
purāṇāny arthavādena bruvaṇ narakam aśnute ||*

O Best of Brahmins, vile men who say that the Purāṇas are merely *arthavādas* destroy all the merit they have acquired. The Purāṇas are the means to eradicate all karmas. By calling them mere *arthavāda*, a vile man receives hell.

(*NārP* 1.1.57–1.1.59, quoted in Kane V: 927)

The defensiveness of the text here is striking. It is, in any case, clearly a swipe against the Mīmāṃsā view as represented by Kumārila. This text will simply not accept a diminished or inferior status for the Purāṇas. The author feels compelled

<sup>7</sup> Cited also in Kane I: 410; Aparārka (p. 9) and *Kṛtyakalpataru* (*Brahmacārikāṇḍa*, p. 33).



to condemn (though not to disprove) the perhaps prevailing view of the Mīmāṃsā and their close philosophical partners in the Dharmaśāstra tradition.

Skepticism about the Purāṇas persisted, however. In the twelfth century, Yādava Prakāśa opened his digest of rules for religious renunciation by declaring, “The *dharma* that I present here has been gathered solely from those sections of their [major Dharmaśāstra authors’] books devoted to the topic of renunciation and not from other sections of those books or from the epics (*itihāsa*) and the Purāṇas” (Olivelle 1995a: 30).

In spite of these suspicions, the *nibandha* genre of Dharmaśāstra embraced the Purāṇas fully. Why? Purāṇas introduced or cemented a discursive and theological presence for a host of religious practices and ideas that had been either peripheral or absent from earlier Dharmaśāstra. Kane points to *yātrās* (pilgrimages), *vratas* (vows), and *bhakti* (devotion) all as “developments for which Purāṇas are largely responsible” (I: 412–13). Most or all of these practices are connected to Hindu temples, which had become powerful and widespread throughout India during the second half of the first millennium. When medieval digests “*dharma*-fied” pilgrimage, vow-taking, devotion, religious gifting, and *pūjā*, they had necessarily to draw extensively, sometimes exclusively, from Purāṇic sources, because the earlier Dharmaśāstra field did not consider these to be important enough to discuss in great detail, if at all, or because the practices were unknown or did not exist at the time. Huge new areas of *dharma* received elaborate exposition in the new digests. Other topics such as *vyavahāra* (legal procedure), *āhnikā* (daily ritual duties), and *śrāddha* (ancestral offerings) had little need for Purāṇa material and consequently quote little from the Purāṇas.

What motivated *dharma* authors to incorporate new practices and institutions into their direct scholarly consideration, when they had avoided them for many centuries? To answer this question, we should again point to internal boundary shifts within Hindu traditions. Several commentaries and digests in the period beginning around the twelfth century warn against or dismiss outright the proliferating texts of sectarian groups such as the Pāñcarātras and Pāśupatas, who were also building temple cultures dedicated to a form of worship that we generally call Tantra, based on texts called either Tantras or Āgamas.

The political and economic successes of temple-centered, sectarian communities in the second half of the first millennium CE brought prestige to their Āgamas and theologies. This social and textual success threatened the preeminence of Vedic Brahmanism and its different social organization. Vedic Brahmins were already busy defending their tradition against Purāṇic and Itihāsic Brahmanism, when Āgamic Brahmanism demanded a theological and philosophical refutation of its own. In response, we see a reconciliation of especially the Purāṇic and Vedic Brahmins, an alliance intended to undermine the growing power and position of Tantric Brahmins in temples patronized by rulers and lords of medieval Indian states. The *nibandha* genre within

Dharmaśāstra, therefore, should be explained as a response not so much to the incursions of Islam (see Pollock 1993: 105–6) as to the growing success of Āgamic Brahmanism and its sectarian temples and monasteries.<sup>8</sup> Dharma authors used the fuller range of religious life, practice, and theology in the Purāṇas and, to a lesser extent, the epics to forge a new orthodoxy for “Vedic” Hinduism.

It is important to note, however, that the rejection of the Pāñcarātras and Pāśupatas in *dharma* texts of the twelfth and thirteenth centuries (see Aparārka in Olivelle 2016a: 148ff.) yielded to cautious acceptance in the seventeenth century in the *Viramitrodaya* of Mitramiśra, a subcommentary on the *Mitākṣarā* commentary on the *Yājñavalkya Dharmaśāstra*. Mitramiśra states, “the word ‘treatise’ [in a passage cited from the *Bhaviṣya Purāṇa* in support of *YDh* 1.3] should be understood to include the Pāñcarātra texts also, because they, too, have authority just like the treatises of Manu and the rest.”<sup>9</sup> Later, relying on another author, he continues:

Taking all this into consideration, Śrīdattopadhyāya strenuously asserts that the claim that the mention of the Pāñcarātra in the discussion of daily rites is baseless is itself baseless. Likewise, the idea that the scriptures of the Pāñcarātras, Pāśupatas, and others are indeed authoritative in the portions where they do not contradict the Veda is stated in the *Pārijāta* and is made with great intensity in the settling of matters approved by all learned men. . . . even though the *Kalpataru* says no.<sup>10</sup>

Whether or not Mitramiśra’s case can be substantiated, the interest of his argument lies in the fact that he makes it at all. The prestige and power of the Pāñcarātra and Pāśupata was growing such that a twelfth-century Dharmaśāstra author could harshly reject them, while a seventeenth-century commentator could not and, in fact, seemed inclined to accept them meaningfully into the scheme of *dharma*. The intellectual history described here reveals both the internal tensions and negotiations within Hindu theological circles and the propensity for Hindu traditions such as Dharmaśāstra to change through incorporation, accretion, and domestication of other traditions.

Along with this acute pressure to recognize Hindu temples as more than peripheral institutions, Dharmaśāstra authors in the twelfth century CE also faced a palpable uncertainty in the state of their own textual tradition (Brick 2015: 15–21). Many of the “root-texts” of Dharmaśāstra—Bṛhaspati, Kātyāyana,

<sup>8</sup> We cannot say that Islam had no impact at all as a circumstantial factor in the production of digests, but the texts themselves point rather to the Āgama and Tantra traditions as the causal factor that led to the importation of Purāṇa material into the Dharmaśāstra.

<sup>9</sup> *smṛtipadena pañcarātrāṇy api grhyante teṣām api manvādismr̥tivad eva prāmāṇyāt* (p. 10).

<sup>10</sup> *etat sarvam abhisandhāyāhnikē pañcarātranirmūlatvābhīdhānam nirmūlam iti śrīdattopadhyāyanām simhanādaḥ | pañcarātrapāśupatādīny api śāstrāṇi vedāviruddhabhāge pramāṇam eveti pārijātaś ceti sakalaśiṣṭānumatārthavyavasthāpane kṛtaṃ bahubhir āveśair iti . . . neti kalpataruḥ* (p. 12). The texts referred to are uncertain. We have been unable to trace these lines of thought to either the well-known *Pārijāta* of Madana or the *Kṛtyakalpataru* of Lakṣmīdhara.

Vyāsa, Pitāmaha, Śankha-Likhita, and so on—are known to us only through their citation in the medieval digests and commentaries. A few famous texts have full and multiple commentaries through which we now have complete root-texts. In most cases, however, we only know authors' works through the extensive citations found in medieval digests. That fact suggests that an additional motivation for the digesting of Dharmaśāstra material beginning in the twelfth century CE was a fear of losing core teachings of the tradition. The textual foundations of Dharmaśāstra may have been in a precarious situation and the digest writers did the philological work to preserve important texts that might otherwise have been lost forever. Digest authors, therefore, may also be seen as producing and promoting a canon of Dharmaśāstra arranged by major theme. The same impulse may have underlain the doxography/summary genre in the tenth century or so, but it was the digest format that succeeded in saving key texts from the uncertainty that reigned in this period.

Turning now to the authors themselves, the most comprehensive review of both major and minor commentators and digest writers will long remain the first volume of Kane's *History of Dharmaśāstra*. He provides details of the commentators' biography, date, extant works, manuscripts, style, and contribution. Here, we have selected just five whom we consider to be representative of the tradition, either because the author made a unique contribution or because he exemplifies an authorial type.

## MAJOR COMMENTATORS AND DIGEST AUTHORS

### Medhātithi

Perhaps the most creative and intriguing commentator in the Dharmaśāstra tradition was also one of the earliest. Medhātithi, son of Virasvāmin, hailed from Kashmir and lived in the latter half of the ninth century CE. His complete commentary on the *Laws of Manu* was later known simply as "The Commentary" (Olivelle 2016a: 122). His work is referred to in many later *dharma* texts with great frequency and deference. A new copy of his commentary was ordered by King Madanapāla in the fourteenth century CE in order to complete a damaged, partial copy in his library (Bühler 1886: cxxv). Such restoration (*jīrṇoddhāra*) indicates the continuing importance of Medhātithi's work even centuries later.

Where some commentators remain content with rudimentary commentarial services such as word glosses, syntactical reconstructions, and breaking up compounds, Medhātithi elaborates, often in considerable detail, both on the likely motivations behind a rule or line of thought and on its religious, legal, or philosophical implications. Medhātithi's reputation, therefore, derives from

the fact that his “commentary” is also a text of great originality and, as such, exerted great influence over the later tradition. Derrett captures his distinctive quality when he writes, “in the course of his exposition he continually brings in views opposed to his own, and disposes of them by reasoning, rather than by the citation of conflicting texts from other *smṛtis*, which is, all too often, the method adopted by his successors in the science” (1967: 176). In other words, Medhātithi had influence and renown because he was far more than a harmonizer of texts.

In several places, Medhātithi deflates the pompous and literalist claim that all *dharma* is based on the Vedas. Drawing both on general word usage and on reasoned argument, he instead differentiates several nuanced meanings of *dharma*, most of which bear no connection to the Vedic texts as such. Laws for specific groups such as families, castes, guilds, and regions are *dharma*s (MDh 1.118); so also are actions that bring benefits of a worldly nature; so also are the reasoned pronouncements of a sage; and the norms accepted by good people as if they were based on the Vedas (MDh 2.6). Even the acts and edicts of a king must be counted as *dharma* even though “not all of them have the Veda as their root” (Olivelle 2016a: 138).

From the other side, Medhātithi, more than many *dharma* authors, puts clear emphasis on reasoning as essential to ethics, meaning what good people should do. Such reasoning moves between common sense and case-based reasoning in a legal sense. When dealing with documents as legal evidence, for example, he writes, “it is not possible to invalidate true facts of the situation simply because they contradict a statement in a text” (Olivelle 2016a: 239). Time and again, Medhātithi deftly moves between careful analysis of the textual norms, considerations of public opinion, and logical argumentation. The result is a pragmatic jurisprudence that conforms to a realist approach to law.

One final aspect of Medhātithi’s achievement deserves attention. He wrote, as Derrett (1976b: 176) put it, “prior to the *purāṇic* contamination of the *dharmaśāstra*.” As we have seen, the acceptance and appropriation of the Purāṇas as standard sources of Dharmaśāstra material ushered in major changes to the tradition as a whole. For contemporary scholars, the historical value of Medhātithi’s work derives not only from its inherent intellectual merits as religious jurisprudence but also from the fact that it captures an understanding of *dharma* in Dharmaśāstra that precedes many critical innovations in and expansions of the overall system of *dharma*.

### Vijñāneśvara

The most influential commentary in the Dharmaśāstra tradition was the twelfth-century *Mitākṣarā* (*Concise Summary*) by Vijñāneśvara, an explanation of the *Laws of Yājñavalkya*. Born in the Bharadvāja lineage (*gotra*), he

was the son of a teacher named Padmanābha-bhaṭṭa and the student of Uttama. He served at the court of the Cālukya king Vikramāditya VI (d. 1127 CE) and lived in the capital city of Kalyāṇa, today's Basavakalyan in northeastern Karnataka. Vijñāneśvara described himself as an ascetic and scholar (*yogin*, *pañḍita*, *paramahaṃsa*, *parivrājaka*) and not as a lawyer or jurist, as so many colonial-period authors asserted.

In Kane's estimation, the significance of the *Mitākṣarā* is equal "to that of the *Mahābhāṣya* of Patañjali in grammar or to that of the *Kāvyaprakāśa* of Mammaṭa in poetics" (Kane I: 599). Like these other watershed texts in their fields, Vijñāneśvara's distillation of Hindu religious law was not the first, but the best, summary statement of the received wisdom about *dharma* (Davis 2015). As far as the tradition was concerned, Vijñāneśvara struck the right balance between the scholastic harmonization of prior texts and the reasoned interpretation of difficult legal and religious principles. For the most part, his comments aim to elucidate the full meaning of a rule through the standard repertory of word glosses, syntactical clarifications, brief illustrative examples, and parallel citations from other root-texts. Such analysis he provides consistently over the course of the entire root-text. In several places, however, he goes further by providing long discussions of technical matters, contradictory texts, and central issues of *dharma*.

Vijñāneśvara's genius seems to lie in the fact that he can make innovative or controversial ideas seem natural, as though they were long part of the tradition. Like Medhātithi, Vijñāneśvara's work is a commentary that follows the structure and logic of its source. Unlike Medhātithi, Vijñāneśvara also quotes extensively from many other Dharmaśāstra texts both in support of his interpretation and as a way to expound on related topics not expressly addressed in the root-text. In this way, his work bridges the generic gap between commentary and digest. Though Yājñavalkya says nothing about inheritance by birth (certainly the most famous doctrine in the *Mitākṣarā*), Vijñāneśvara (at *YDh* 2.113–4) skillfully weaves together a host of other rules of *dharma* and principles of Mīmāṃsā to show, first, that ownership and property arise from worldly or social convention and, second, that partition at the time of inheritance must therefore divide what the heirs already own by virtue of their birth in the family (Rocher and Rocher 2001). In the same way, Vijñāneśvara provides illuminating exegeses of kinship, caste, ancestral rites, legal procedure, and expiation, without overwhelming his source.

The influence of the *Mitākṣarā* is shown first by the fact that it is the only Dharmaśāstra text to have been rendered into vernacular languages of India, namely Tamil and Telugu, plus Persian. Examples of Dharmaśāstra not in Sanskrit are exceedingly rare. More directly, H. T. Colebrooke, the dominant British judge and Orientalist in Calcutta in the early nineteenth century, named the *Mitākṣarā* and the *Dāyabhāga* of Jīmūtavāhana as the key texts of two "schools of Hindu Law." Rocher (2012: 120) has shown that this

division of Dharmaśāstra into “schools” was a colonial invention. Nevertheless, it was no accident that Colebrooke selected the *Mitākṣarā* as the principal text of “Hindu law” for all of India except Bengal. Though his division was artificial (mirroring the traditional divisions of Islamic law), Colebrooke simply echoed the high regard and widespread influence of the *Mitākṣarā* in many parts of India.

### Lakṣmīdhara

Among the most voluminous and wide-ranging works of Dharmaśāstra and the very earliest surviving examples of the *nibandha* or “digest” genre is the encyclopedic *Kṛtyakalpataru* (*The Wishing Tree of Duties*). In fact, so far as we know, its author, Lakṣmīdhara, invented the digest form within Dharmaśāstra and his work thus ushers in a major new period in the history of the tradition. Lakṣmīdhara identifies himself as a high-ranking minister of a king Govindacandra, whom scholars have conclusively identified as a ruler of the same name belonging to the Gāhaḍavāla dynasty, centered in modern-day Kannauj. Because epigraphic evidence allows us to establish the period of Govindacandra’s reign as roughly 1114–54 CE, Lakṣmīdhara’s work can confidently be dated to this same period.

As a treatise on Dharmaśāstra, the *Kṛtyakalpataru* is divided into fourteen large “books” or *kāṇḍas*, which in their printed editions range in length from 182 to 834 pages. Thus, taken in its entirety, it is a massive work, surpassed in size among Dharmaśāstra works by only the seventeenth-century digest *Vīramitrodaya*. It likewise covers an extremely wide array of topics, as is indicated by the titles of the twelve books of the *Kṛtyakalpataru* that have been conclusively determined:

1. *Brahmacārikāṇḍa* (“Book on Students”).
2. *Gr̥hasthakāṇḍa* (“Book on Householders”).
3. *Niyatakālakāṇḍa* (“Book on Daily Rituals and Rituals for Fixed Times”).
4. *Śrāddhakāṇḍa* (“Book on Rites to the Ancestors”).
5. *Dānakāṇḍa* (“Book on Gifting”).
6. *Vratākāṇḍa* (“Book on Vows”).
8. *Tīrthakāṇḍa* (“Book on Pilgrimage”).
10. *Śuddhikāṇḍa* (“Book on Purification”).
11. *Rājadharmakāṇḍa* (“Book on Statecraft”).
12. *Vyavahārakāṇḍa* (“Book on Judicial Procedure”).
13. *Śāntikāṇḍa* (“Book on Propitiatory Rites”).
14. *Mokṣakāṇḍa* (“Book on Liberation”).

Unfortunately, of these twelve books, the *Śāntikāṇḍa* has not yet been edited and published. Moreover, the identities of the seventh and ninth

books remain unclear. The printed edition of the *Pratiṣṭhākaṇḍa* (“Book on Image Consecration”) likely corresponds to either a substantial part or the entirety of one of these two books, while the other missing book probably deals with the topic of penance (*prāyaścitta*) (Brick 2015: 2–3). In any case, given the breadth of topics that it treats in great detail, one can rightly characterize the *Kṛtyakalpataru* as a virtual encyclopedia of orthodox Brahmanical *dharma* during the medieval period.

Importantly, many of the topics dealt with in Lakṣmīdhara’s work—such as particularly religious vows, pilgrimage, and image consecration—receive scant treatment within the Dharmaśāstras themselves, but are subjects of much discussion in the Purāṇas—a class of texts often disparaged in earlier Dharmaśāstra texts, as we have seen. Thus, in composing his books dealing with these topics, Lakṣmīdhara necessarily cites quite heavily from various Purāṇas. And, insofar as he does this and, thereby, incorporates Purāṇic texts and subjects into Dharmaśāstric discourse for the first time, his *Kṛtyakalpataru* represents a significant departure from the preceding tradition.

The other obvious way in which the *Kṛtyakalpataru* significantly departs from earlier works of medieval Dharmaśāstra is its general dearth of commentarial passages. Indeed, although the *Kṛtyakalpataru* contains a significant number of commentarial glosses in some places, as well as occasionally more substantial exegesis, it generally contains so little in the way of commentary that this could hardly have been the text’s primary purpose. Instead, it seems to be, first and foremost, an authoritative, fairly comprehensive, and topically arranged collection of *smṛtis* on *dharma*, rather than an exegetical work per se. For this reason, the *Kṛtyakalpataru* must also be understood as a response to widespread uncertainty regarding the contents of these Brahmanical scriptures during the early second millennium.

### Devanabhaṭṭa

Devanabhaṭṭa—whose name is also sometimes spelled Devaṇṇabhaṭṭa or shortened to simply Devaṇa—is the author of an early and especially erudite and illuminating digest on *dharma* called the *Smṛticandrikā* (*Moonlight on the Tradition*). Sadly, we have even less historical information about Devanabhaṭṭa than we do about the authors of many other *nibandhas*. One major reason for this is the absence of introductory verses and closing remarks of the type found in numerous other digests and commentaries, wherein authors give at least some basic information about themselves, such as the names of their patron kings and home-cities. Despite the general lack of information regarding Devanabhaṭṭa himself, however, his work can be confidently dated to the period 1150–1250 CE, based upon its references to earlier commentaries and the citations of it found in certain later works.

Moreover, Devaṇabhaṭṭa was undoubtedly of South Indian origin, as is indicated, for instance, by the *Smṛticandrikā*'s particularly strong influence in the region and its ardent defense of cross-cousin marriage—a distinctively South Indian custom.<sup>11</sup> Unfortunately, however, Devaṇabhaṭṭa's more precise provenance remains uncertain.

Like the earlier *Kṛtyakalpataru*, the *Smṛticandrikā* is divided into a number of lengthy books (*kāṇḍa*). But unlike the *Kṛtyakalpataru*, it provides no clear indication as to the total number of these books. At present, five books of the *Smṛticandrikā* have been published, which may or may not comprise all of the work's total *kāṇḍas*.<sup>12</sup> These published books of the *Smṛticandrikā* are as follows:

1. *Samskārakāṇḍa* ("Book on Life-Cycle Rites")—this book covers the rites and duties of a twice-born man from his conception up through his marriage.
2. *Āhnikakāṇḍa* ("Book on Daily Rites")—this book covers the regular rites and duties of a twice-born householder.
3. *Vyavahārakāṇḍa* ("Book on Judicial Procedure")—the longest of the *Smṛticandrikā*'s books, this deals with the settlement of legal disputes in a royal court of law.
4. *Śrāddhakāṇḍa* ("Book on Rites to the Ancestors")—this book treats the ritual disposal and commemoration of deceased relatives.
5. *Āśaucakāṇḍa* ("Book on Impurity")—this book lays down and analyzes the various rules surrounding the impurity stemming from the birth and especially the death of a relative.

From the above descriptions, it would seem that the life of a typical twice-born man, beginning with conception and ending with death and its ritual ramifications, provides the basic underlying structure of Devaṇabhaṭṭa's work. Furthermore, as one can see, the *Smṛticandrikā* does not treat in detail a number of subjects, such as gifting, vows, and liberation from cyclical rebirth, to which the *Kṛtyakalpataru* devotes entire separate books. And it is primarily for this reason that the *Smṛticandrikā* is a much shorter work, although still large. It is noteworthy, however, that like the *Kṛtyakalpataru*, the *Smṛticandrikā* appears to have an especially strong interest in the adjudication of lawsuits (*vyavahāra*), for both works contain exceptionally long books on the topic.

Aside from the breadth of topics covered, probably the most striking difference between the *Smṛticandrikā* and the *Kṛtyakalpataru* is the presence of abundant and tightly argued exegetical passages throughout the former work, whereas such passages are largely absent from Lakṣmīdhara's digest, as

<sup>11</sup> See *Samskārakāṇḍa* pp. 184–200.

<sup>12</sup> For instance, Kane (I: 738) states that Devaṇabhaṭṭa appears to have also written a book on penance, but gives no indication as to the basis of this claim.



mentioned above. Consequently, among the surviving *nibandhas* that attempt to cover something approaching the entirety of Brahmanical *dharma*, the *Smṛticandrikā* is the first to incorporate commentary of the type one finds in the celebrated earlier works of Medhātithi and Vijñāneśvara. Devaṇabhaṭṭa should, therefore, be regarded as one of the most learned and creative authors in Dharmaśāstra. His organization of topics and commentarial elaboration are unsurpassed in the tradition, a model of careful philological synthesis and lucid exposition.

### Nilakaṇṭha

Like his predecessors Lakṣmīdhara and Devaṇabhaṭṭa, Nilakaṇṭha Bhaṭṭa is the author of a massive, multivolume digest that treats in detail all or at least most of the major topics falling within the broad rubric of Brahmanical *dharma*. Nilakaṇṭha identifies his royal patron as the minor king Bhagavantadeva, who ruled the small North Indian city of Bhareha near the confluence of the Chambal and Yamuna rivers. And it is no doubt in honor of his royal patron that Nilakaṇṭha entitled his digest the *Bhagavantabhāskara* (*Bhagavanta the Sun*). Playing on the sun metaphor in his digest's title, he then referred to each of its various books as a *mayūkha*, which means "ray of light" or "beam." In total, the *Bhagavantabhāskara* consists of twelve such *mayūkhās* ("rays"). These are:

1. *Samśkāramayūkha* ("Ray on Life-Cycle Rites").
2. *Ācāramayūkha* ("Ray on the Proper Conduct of a Householder").
3. *Samayamayūkha* ("Ray on Rites for Particular Times").
4. *Śrāddhamayūkha* ("Ray on Rites to the Ancestors").
5. *Nītimayūkha* ("Ray on Statecraft").
6. *Vyavahāramayūkha* ("Ray on Judicial Procedure").
7. *Dānamayūkha* ("Ray on Gifting").
8. *Utsargamayūkha* ("Ray on Donating Public Works").
9. *Pratiṣṭhāmayūkha* ("Ray on Image Consecration").
10. *Prāyaścittamayūkha* ("Ray on Penances").
11. *Śuddhimayūkha* ("Ray on Purification").
12. *Sāntimayūkha* ("Ray on Propitiatory Rites").

In addition to the *Bhagavantabhāskara*, Nilakaṇṭha also wrote a work on judicial procedure called the *Vyavahāratattva*, which seems to be an abridgment of his earlier *Vyavahāramayūkha*.

Compared with most authors of Dharmaśāstra works, the personal history of Nilakaṇṭha can be constructed in unusual detail.<sup>13</sup> He hailed from the

<sup>13</sup> Interested readers should refer to Kane and Patwardhan (1933: ix–xii). More recently, see O'Hanlon 2010 and 2011.

well-known Bhaṭṭa family of North Indian Brahmins, which is famous for the many learned and prolific Sanskrit scholars that it has produced. Of particular relevance in this regard is Nīlakaṇṭha's paternal first cousin, Kamalākara, who wrote several well-known works on Dharmaśāstra, including the *Nirṇayasindhu*, a highly influential general treatise on the topic, and the *Śūdrakamālākara*, a fairly novel text that focuses on the rights and duties of Śūdras. Based upon various pieces of evidence, including the dates of some of his relatives, Nīlakaṇṭha's literary activity can be confidently dated to the first half of the seventeenth century.

Thus, Nīlakaṇṭha lived and wrote at the height of the Mughal Empire and in a location not far removed from the seat of Mughal power. Bearing this in mind, it is striking—at least to those unaccustomed to Brahmanical literature's ubiquitous silence on contemporaneous events—that his work says essentially nothing about Islam or the subordinate position of Hindu monarchs at the time. To the contrary, judging by its form and content, the *Bhagavantabhāskara* could have been written centuries earlier and virtually anywhere in the Indian subcontinent.

Despite its typical silence on historical matters, Nīlakaṇṭha's work, along with many others, shows the continuing vitality of older Dharmaśāstra literary forms and practices well into the seventeenth century, even in those areas of South Asia where Islam had become the dominant religion of royal power. Although by no means a radically innovative text, the *Bhagavantabhāskara* is, nevertheless, a work of deep erudition that regularly displays thoughtful and original engagement with the *smṛtis* and earlier commentaries. Nīlakaṇṭha stands in for comparable works of the early modern period (Ṭodaramalla and Mitramiśra), during which North India in particular experienced a renaissance of Sanskrit learning that has only begun to be revealed again.



Part II

Topics



## Epistemology of Law

### *dharmapramāṇa*

Patrick Olivelle

At one point in his discussion of *dharma*, Āpastamba, author of the oldest extant Dharmaśāstra, appears to show both exasperation at every Tom, Dick, and Harry trying to teach *dharma* and an awareness of the difficulties surrounding the epistemology of *dharma* when he exclaims: “*Dharma* and *adharma* do not go around saying: ‘Here we are!’ Nor do gods and Gandharvas, or the ancestors declare: ‘This is *dharma*. This is *adharma*’” (ĀpDh 1.20.6). He tells his readers not to become “vexed or easily deceived by the pronouncements of hypocrites, crooks, infidels, and fools” (ĀpDh 1.10.5). Who were these hypocrites, crooks, infidels, and fools? And what were they saying about *dharma*? We will never know, although I will present below some educated guesses; but at least this much is clear: *dharma* was a concept and term over which there were strong debates and disputes and thus a site of contention. This was the reason, I think, why all the Dharmaśāstras begin with a section on the epistemology of *dharma*: What is *dharma*? And how do we come to know it?

The explicit discussion of how we come to know *dharma*, about the sources of *dharma*, is a unique and unprecedented feature of Dharmaśāstras; no text of parallel expert traditions deals with this core issue.<sup>1</sup> The ritual texts—Śrautasūtras and Gṛhyasūtras, belonging to the same textual corpus of Kalpasūtras as some of the texts on *dharma*—have no similar discussion of their epistemic sources. Even in later times, the most that is offered is the mythical origin of a particular discipline such as medicine or drama. These unique epistemological discussions on *dharma* provide us with valuable clues regarding the sociological and theological underpinnings of the term *dharma* and its application to various legal sectors.

<sup>1</sup> For a more extensive discussion of the epistemology of *dharma*, see Olivelle 2016a.

The epistemological discussions within the Dharmaśāstra tradition fit neatly into broader concerns in the philosophy of law. In his pioneering and influential work *The Concept of Law*, H. L. A. Hart proposed a significant classification of law into primary and secondary rules. Most of the rules in the Dharmaśāstras fall into the category of primary rules or substantive law, that is, norms that govern individual and group activities. Hart's category of secondary rules, that is, rules *about* primary rules, encompasses three groups: rules of recognition, change, and adjudication:

While primary rules are concerned with the actions that individuals must or must not do, these secondary rules are concerned with the primary rules themselves. They specify the ways in which the primary rules may be conclusively ascertained, introduced, eliminated, varied, and the fact of their violation conclusively determined. (Hart 2012: 94)

Epistemology deals principally with the rules of recognition: how do we come to know the laws that apply to us? In the case of the Dharmaśāstras, how do we come to know *dharma*? It also deals with the ways in which laws, once in force, may be changed or abrogated. These are the two issues dealt with in this chapter. Rules of adjudication, on the other hand, provide criteria for determining whether a primary rule has been violated, identify individuals who are competent to adjudicate, confer judicial powers on them, and provide legal procedures to be followed in adjudicating cases in a court of law. We will deal with this aspect of *dharma* in Chapter 22.

Gautama is the first to present in unambiguous terms the party line of the Dharmaśāstra tradition and of its companion school Mīmāṃsā with regard to the epistemology of *dharma* when he opens his treatise with the thesis: “Veda is the root of *dharma*” (*vedo dharmamūlam*, *GDh* 1.1). Making “Veda” the very first word of his treatise, Gautama clearly demonstrates the unrivaled position of the Veda as the root or epistemic source of *dharma*; *dharma* is essentially Vedic. This epistemological position, in Wezler's (2004) felicitous expression, is the *vedamūlatva* ideology. Although Gautama does not appear to take this final step, later scholars of Dharmaśāstra will present the Veda not just as one, but as the sole epistemic source of *dharma*. If there are other sources, as most authors will acknowledge, they are only secondary and proximate and must go back to and be based on the Veda from which alone they derive their authority. This position is clearly articulated at the very beginning of the *Mīmāṃsā Sūtra* (1.1.2): “*Dharma* is something beneficial disclosed by a Vedic injunction” (*codanālakṣaṇo 'rtho dharmah*), complemented by the exclusionary provision given later (*PMS* 1.3.1): “Because Vedic texts are the foundation of *dharma*, anything lying outside the Vedic texts should be disregarded” (*dharmasya śabdāmūltvād aśabdām anapekṣam syāt*).

This theological position, however, was not original or unchallenged, and two of the earliest writers on the subject, Āpastamba and the second-century

BCE grammarian Patañjali, offer quite different explanations of the nature and the major epistemic sources of *dharma*. Patañjali's views are especially significant and interesting because it comes from a scholar not directly attached to the expert tradition of Dharmaśāstra. As we have already seen, Āpastamba, in stating explicitly that “gods and Gandharvas, or the ancestors do not declare: ‘This is *dharma*. This is *adharmā*’” (*ĀpDh* 1.20.6), appears to dismiss any kind of divine revelation of *dharma*, something we find later in the opening scene of Manu's text.

Āpastamba addresses the epistemological issue indirectly in the opening sentence, defining the kind of *dharma* he will explore in his treatise: “Now, then, we shall explain the *dharma*s derived from agreed-upon normative practice. The authority is the agreement of those who know *dharma*; and the Vedas”—*athātaḥ sāmāyācārikān dharmān vyākhyāsyāmaḥ | dharmajñāsamayaḥ pramāṇam | vedāś ca* | (1.1.1–3). Āpastamba uses the technical term *pramāṇa*, also employed by philosophers dealing with logic and epistemology, in this context with the meaning of “means of knowing” or epistemic source, as well as of authority, especially in the context of scriptural sources recognized in Indian logic as verbal authority (*śabdapramāṇa*). This usage will be continued by later authors. Āpastamba gives a twofold answer to this epistemological question. *Dharma* rests first on agreed-upon normative practice and second on the authority of the Veda. The two words in this expression, *agreement* and *normative practice*, give us an insight into what Āpastamba had in mind when he characterized *dharma* in this way. In Āpastamba's vocabulary the term *ācāra* refers specifically to normative practice that becomes a source of knowledge with respect to *dharma*: one can learn *dharma* by observing the practice of those who know and follow *dharma* just as one can learn good Sanskrit—so Patañjali would argue—by observing the speech patterns of particular individuals and communities. The term's usage in the grammatical texts shows that it refers to behavior patterns characteristic of a particular group of people, behavior patterns that become models for others to follow.<sup>2</sup>

The expression that qualifies *dharma* in the opening sentence of Āpastamba, then, indicates that the epistemic source of *dharma* is the normative behavior patterns that are generally accepted. But accepted by whom?

<sup>2</sup> Patañjali's use of the term also points to similar conclusions. On Katyayana's *Vārttika* on Pāṇini 1.1.1 (I: 10–11), *ācāra* is opposed to *jñāna* (knowledge) and *prayoga* (application, usage). Here *ācāra* is the general behavior pattern, while *prayoga* is a particular act, both of which are opposed to *jñāna* (knowledge): one can know, for example, the various nonstandard words for a cow (*gāvi*, *gonī*, etc.), but simply knowing these does not entail a fault or sin but only when one actually uses them (*prayoga*). Even a stronger case for the meaning of *ācāra* as behavior pattern or practice that is habitual is found in his comments on Pāṇini 3.1.11 (II: 21), where the denominative word *śyenāyate* (“acting like a vulture”) is said to be used when a crow's *ācāra* or behavior pattern resembles that of a vulture.



According to Āpastamba, by those who know *dharma* (*dharmajña*). This is a somewhat circular argument: how would one know that some people know *dharma*, when it is through their conduct that one comes to know *dharma* in the first place? Or, were the *dharmajña* a demographically identifiable group similar to *śiṣṭa* of Patañjali? This is a problem similar to that confronted by Patañjali (Ch. 1.II: 2) in defining the category “cultured elite” (*śiṣṭa*). Patañjali resorts to the notion of a cultural or sacred geography (*āryāvarta*), the region where the cultured elite live, while Āpastamba does not directly address the issue.

The second way to know whether a particular practice is authoritative is to see whether it is enjoined in the Vedas. Note, however, that the Vedas are given here only as an external check regarding the validity of a particular practice of a particular community; it is not given as the direct source of *dharma* and, unlike the prominence given to it by Gautama, it is here tucked away at the very end of the passage. That for Āpastamba the Veda is not the single source of *dharma* is clear also from his statement at the very end of his treatise (*ĀpDh* 2.29.11–2.29.15) that *dharma* can be known from women and Śūdras. This position is astonishing, given that in the mainstream of Brahmanical theology it would have been inconceivable to present Śūdras and women as having access to Vedic knowledge or as models of correct behavior.

The second-century BCE grammarian Patañjali draws an interesting and significant parallel between correct Sanskrit and proper *dharma*. For him, there are two distinct and parallel domains of correct Sanskrit, the “Vedic” (*vaidika*) and the “worldly” (*laukika*).<sup>3</sup> The first is found in the extant Vedic texts, and the second, correct contemporary Sanskrit, in the speech of a special group of Brahmans whom he identifies as “cultured elite” (*śiṣṭa*). What is significant for our discussion is that these two categories also comprehend the Vedic and the worldly realms of law. The dual domains of *dharma* of Āpastamba parallel the two domains of Sanskrit in Patañjali.

The examples of worldly speech given by Patañjali are not common everyday expressions but, significantly, are all derived from Dharmaśāstric statements. What is significant here is that for grammarians both the Veda and the “world,” the two domains of Sanskrit, are authoritative with respect to correct Sanskrit. This authoritative nature of the “world” is carried over into the framework of *dharma* when Patañjali cites worldly injunctions. Clearly, not everything that is said or done in the world is so authoritative. Thus *world* for Patañjali referred to Dharmaśāstra. We have confirmation of this conclusion.

<sup>3</sup> Deshpande (1993: 17–32) has shown that for Patañjali the terms *laukika* and *vaidika* refer to the two distinct subdomains of Sanskrit language. What is significant for our investigation is that *laukika* in the realms of both language and law refers to areas that are distinct from the Vedic and reflect the usages of living and historical communities. Patañjali is commenting on these terms that are used by Katyayana: *Vārttika* 2 on Panini 1.2.45 (I: 217); 15 on 6.1.1 (III: 3); 5 on 6.1.83 (III: 55); 2 on 6.2.36 (III: 125).

The two examples of not killing Brahmins and not drinking liquor that Patañjali (on Pāṇini 6.1.84; III: 57–8) takes to be worldly are cited by him again in his comments on Kātyāyana's statement (*Vārttika* 39 on Pāṇini 1.2.64), which reads: "And so also the Dharmaśāstra." And as an example of such a statement Patañjali gives the two injunctions: "One should not kill a Brahman. One should not drink liquor." Clearly, for Patañjali *world* and *Dharmaśāstra* are, if not synonyms, at least equivalents with respect to authoritative speech. So for Patañjali, just as for Āpastamba, large areas of the Dharmaśāstra, the rules regarding proper conduct, are not derived from the Vedas but from normative practices in the world. For Patañjali, moreover, these practices come encoded in injunctions that are part of texts, and it is these textual forms, that is, the Dharmaśāstra, that invest them with authority.

Two authors of Dharmaśūtras who come after Gautama, namely, Baudhāyana and Vasiṣṭha, advance the discussion of epistemology only marginally. Both authors take the category of "recollection" (*smṛti*), introduced as a root of *dharma* by Gautama, as not simply orally articulated recollections but actual texts that record the authoritative recollections of the Brahmanical elite, which is the general meaning ascribed to this important category in later Indian literature. Yet neither Baudhāyana nor Vasiṣṭha explains what precisely these "texts of recollection" are. It seems unlikely that the category is self-referential, which would be tautological: the *dharma* that they are expounding in their texts cannot have as its authoritative source the very texts they are composing. We will have to wait until Manu to have this question answered.

Whereas Gautama presents the practice of "those who know the Vedas" as an epistemic source of *dharma*, both Baudhāyana and Vasiṣṭha use instead the expression "cultured elite," who are presented as the standard for correct *dharma* as they are for correct Sanskrit in Patañjali. But we see the authors still groping for a proper technical term to use with regard to the behavior patterns of these individuals that provide the basis for *dharma*. Baudhāyana uses the term *āgama* with a meaning something like traditions that have come down from generation to generation. Elsewhere in his text, Baudhāyana uses the expression *śiṣṭa-smṛti*, that is, the recollection of the cultured elite. Vasiṣṭha, on the other hand, uses the term *ācāra*, normative practice, already employed by Āpastamba and Patañjali, and this term will become the standard in later Dharmaśāstras for the third epistemic source of *dharma*.

One other significant innovation introduced by Vasiṣṭha is the term *śruti* in place of Veda in discussing the epistemic sources of *dharma*. The term literally means "hearing or what is heard," and it emphasizes the aural nature of the Veda; you can actually hear it being recited at any given point in time. And Vedic recitation is a central duty of every Brahman. One can find out the exact textual form of a Vedic passage from this hearing, and not its gist or meaning. The term is probably related to the pedagogy of Vedic instruction; the students recite exactly what they hear from the mouth of the teacher. Vasiṣṭha's text

represents the first use of this important term in the discussion of legal epistemology, and its use by him in the coordinative compound *śruti-smṛti* (scripture and text of recollection) referring to the dual textual sources of *dharma*, will become standard in later legal literature.

The three major treatises of the first millennium CE, those ascribed to Manu, Yājñavalkya, and Viṣṇu, present new elements and raise new issues into the discourse on the epistemology of *dharma*. As we have seen in Chapter 1, Manu introduces several literary innovations including a frame story presenting his text as the work of the creator god himself, and on the issue of the sources of *dharma* Manu gives not three but five: “The root of *dharma* is the entire Veda, as also the recollection and conduct of those who know it; likewise the practice of good people, and satisfaction of oneself” (*MDh* 2.6). The first part of this statement is almost identical to Gautama’s, but Manu then appends two other sources: practice (*ācāra*) of good people and satisfaction of oneself.<sup>4</sup> The latter is repeated by Yājñavalkya, but it had little impact on later discussions. The former, on the other hand, in the handy expression *sadācāra* (conduct of the good) becomes the standard third source of *dharma*; Yājñavalkya, for example, gives this while dropping the category *practice of those who know the Veda*. By substituting *good people* for *people* (i.e., *Brahmans*) *who know the Veda*, Manu has broadened the authoritative community. This was a smart move, because broad swaths of *dharma*, such as the *dharma* of villages, families, and corporations, cannot be located among just people who know the Veda, and *good people* connects it to the deeply moral connotation of *dharma* in Manu’s understanding of the term.

Another significant development concerns the ambiguous term *recollection* (*smṛti*): is it simply live memory or memory fixed in texts, or both? If it consists of texts, what are they? Manu clears up this ambiguity with the straightforward statement: “Scripture” (*śruti*) should be recognized as the Veda and “recollection” (*smṛti*) as Dharmaśāstra (*MDh* 2.10). In the early texts, recollection is presented as the source of *dharma* and thus external to the texts that the authors are engaged in composing. Manu, on the other hand, identifies recollection with these very texts on *dharma* and specifically with his own composition. Recollection that remained ambiguous in the zone between living recollection and textualized recollection is now firmly and unambiguously presented as Dharmaśāstric texts.

The second phase in the epistemology of *dharma* is represented by the major commentaries on Manu and Yājñavalkya composed between the fifth and ninth centuries CE. These commentators take as their basis the epistemology

<sup>4</sup> For the last epistemic source of *dharma*, see Davis 2007a. The connection, if any, between *ācāra* and *śīla* is a subject of discussion by Manu’s commentators, especially Medhātithi in his long and detailed gloss on *MDh* 2.6.

of *dharma* presented in the Dharmaśāstras that we have discussed above. In particular, they all assume as a fundamental principle that Veda is the sole foundation of *dharma*, even though some, like Medhātithi, think that some kinds of *dharma* may be extra-Vedic. We find this basic principle articulated at the very beginning of the foundational text of Mīmāṃsā: “*Dharma* is something beneficial disclosed by a Vedic injunction”—*codanālakṣaṇo ‘rtho dharmah* (PMS 1.1.2). They also take for granted that *smṛtis* are also a legitimate epistemic source of *dharma*. Even though they also accept proper conduct as a third epistemic source, their discussion focuses primarily on *smṛtis* and their relationship to the Veda.

The two statements—Veda is the sole epistemic source of *dharma*, and *smṛtis* constitute a valid epistemic source of *dharma*—create a serious theoretical and theological problem for our authors. The two, *prima facie*, appear to be contradictory. The easy solution is to ditch the second proposition and affirm unambiguously that the Veda is not only the primary but also the sole epistemic source of *dharma*; what is outside of the Veda, what is not found in the Veda, is not and cannot be *dharma*. This extreme conservative position is held by a hypothetical opponent (*pūrvapakṣa*) whose arguments are presented in PMS 1.3.1 and by all our commentators. He could possibly be just a straw man, a foil used by our authors to present and then rebut his arguments and thereby buttress their own positions. Yet, I think this hypothetical opponent probably represented the real views of a segment of the thinkers in the Mīmāṃsā tradition and, perhaps, even in Dharmaśāstra itself. I base this, among others, on Viśvarūpa’s commentary on Yājñavalkya (1.7), which reproduces an almost excessively long argument of the opponent that, in the printed text of the original Sanskrit, occupies over eight pages, including objections raised by the opponent’s opponents. However, this extreme position never established itself in the mainstream of either Mīmāṃsā or Dharmaśāstra.

So we are left with both horns of the dilemma: how can one hold on to both the Veda and *smṛti* as valid epistemic sources of *dharma*? Two solutions, neither without serious problems and undesirable consequences, are offered: (I) The first, already proposed by Śabara (fifth century CE), the commentator of the *Mīmāṃsā Sūtras*, posits that the Vedic texts extant today do not comprise the entire Veda; many texts have been irretrievably lost. It is the memory of the basic injunctions contained in these lost texts—not their exact verbal form but the gist of their content—that is preserved in the *smṛtis*. So, these latter texts are actually *rooted in* the Veda: *vedamūla*. This theory, therefore, posits two kinds of Vedic texts available to us. The first consist of texts actually recited in contemporary Vedic schools, and they are referred to by the technical term “perceived Vedic texts” (*pratyakṣaśruti*). The second, on the other hand, are Vedic texts whose existence must be inferred on the basis of injunctions given in *smṛtis* (and by extension in normative practice or *ācāra*), and they are

referred to as “inferred Vedic texts” (*anumitaśruti*).<sup>5</sup> (II) Kumārila, writing a subcommentary on Śabara a couple of centuries later, is quite troubled by the implications of this theory. If the *smṛtis* are based on the Veda and thus authoritative, what is to prevent Buddhists and others from claiming a similar status to their own heterodox scriptures? To obviate such drawbacks inherent in the theory of a lost Veda, Kumārila proposes a novel solution to the problem of the connection between *smṛtis* and the Veda. He says that all *smṛtis* are based not on some hypothetical lost Vedas but on currently available Vedic texts. Then why can we not find them? Because, Kumārila contends, the Vedic branches that preserve their respective Vedic texts are scattered (*viprakīrṇaśruti*) across the vast country of India and no single individual is able to collect and study them all at any given moment. To help people find out the entirety of the Vedic *dharma* contained in the texts of all these branches, the authors of *smṛtis* presented the content of those texts not verbatim but in their own words and in a logical order. Thus, Kumārila presents the novel proposition that there cannot be any contradiction between Vedic provisions and those of *smṛtis*. Thus, all injunctions found in *smṛtis* have an authority equal to that of explicit Vedic texts, and when two *smṛtis* or a *smṛti* and a Vedic text contradict each other, there is an option or, more likely, according to Kumārila, a simple inability on our part to understand the specific scope of each injunction.

There is a divide, however, between the scholars representing Mīmāṃsā and those belonging to the Dharmaśāstra tradition. Although the two scholarly enterprises are joined at the hip, their focus is different. Mīmāṃsā has a narrow focus in its preoccupation with the interpretation and correct performance of Vedic ritual. Dharmaśāstric scholars, on the other hand, have broader perspectives and interests: they have to deal with the real life situations of individuals and social groups, with differing customs and norms of different regions and groups, with court procedures and the resolution of disputes, and with the civil and criminal laws governing societies. Can one expect to find all these diverse laws in the Veda, which by definition is supra-historical and cannot be seen to engage in temporally or geographically specific issues?

This epistemological conundrum is often left without direct engagement or resolution, but Medhātithi, possibly the greatest jurist of ancient India, provides a forthright answer: not all of *dharma* is based on the Veda. In his comments on the duties of a king (*MDh* 7.1), he acknowledges that “the *dharmas* explained here have their roots in various epistemic sources; not all of them have the Veda as their root”—*pramāṇāntaramūlā hy atra dharmā ucyante na sarve vedamūlāḥ*. He presents five possible answers to the

<sup>5</sup> This must have been a very old interpretive tool, because a version of it is already given by Āpastamba (1.12.10–1.12.12; 1.4.5–1.4.10).

relationship of texts of recollection to the Veda and finds them all wanting. So, then, what solution does the great jurist present to this dilemma? Being one of the most refreshingly frank and honest scholars of the period, he is able to throw up his hands and admit defeat. His basic answer is that there *must be* some sort of a connection between the texts of recollection and the Veda, but we have no idea what that connection might be! He concludes enigmatically: “There is no authority, however, to specify the particulars, nor is it useful.” But after reviewing the five alternatives, he presents a clearer conclusion:

Therefore, there certainly exists a connection between the Veda and Manu and others with respect to this issue (*dharmā*). It is, however, impossible to determine the specific nature of that connection. When people who know the Veda have the doggedly resolute conviction that something must be carried out, then it is appropriate to assume that it is, indeed, rooted in the Veda and not rooted in something else, such as an error. In this way, an assumption comes to be made with respect to the cause that is in keeping with that conviction.<sup>6</sup>

The third phase of the epistemology of *dharmā* is represented by commentaries and legal digests produced in the second millennium CE. With rare exceptions, the deep interest in this topic exhibited by the scholars of the earlier period is absent among those of the second millennium. Most frequently they simply give the epistemic sources of *dharmā* found in the Dharmaśāstras with minimal comment and do not engage seriously with the many theoretical problems raised by them. The intellectual milieu was probably different, and new issues probably came to dominate the conversation. That *dharmā* was based on the Veda and *smṛtis* was taken as a given. Only Aparārka (commenting on *YDh* 1.7) takes seriously the epistemological issues in the context of the rising importance of Hindu sects, both Vaiṣṇava and Śaiva, and the prominence of their respective sacred texts. Buddhists and Buddhist texts that loomed large in the discussions of the scholars of the second phase are, for the most part, absent.

We noted earlier the threefold division of Hart’s secondary rules encompassing rules of recognition, change, and adjudication. I have dealt above with the first under the rubric of epistemology of law. Rules of change identify the legitimate ways in which existing laws can be modified and annulled, or new laws enacted. It is to this aspect of law and *dharmā* that I now turn. Rules of change are, furthermore, integral to the epistemology of law; an individual or institution with the authority to enact laws will also have the authority to change and annul existing laws and to enact new ones. Without such an

<sup>6</sup> *tasmād asti manvādīnām asminn arthe vedasaṃbandho na punar ayam eva prakāra iti nirdhārayitum śakyam | dradhīyasī kartavyatāvagatir vedavidām vedamūlaiva yuktā kalpayitum na bhrāntyādīmūlety avagatyanurūpakāraṇakalpanā kṛtā bhavati ||* Medhātithi on *MDh* 2.6 (ed. Jha, p. 65).

explicit agency for enacting laws, Indian epistemology of law needed to come up with hermeneutical principles to account for change.

Given the theory that law as *dharma* is derived from the Veda and that the Veda is eternal, it is theoretically impossible to (i) change any *dharma*, (ii) annul any *dharma*, or (iii) enact any new *dharma*. All change is theoretically foreclosed. But human societies and their customs and mores inevitably change, whatever the theoreticians of *dharma* may say. Changes in customary laws within various communities reflecting these societal changes are imperceptibly introduced when those laws are unwritten. As laws and customs change, the older ones are simply forgotten by new generations, creating an appearance of immemorial custom. The *dharma* articulated in *smṛtis*, on the contrary, was written down, and these treatises were studied, commented on, transcribed in new manuscripts, and handed down from one generation to another. How do you introduce change into such immutable and inscribed laws? Or better, how do you theoretically manage and justify any change that invariably occurs? This is the challenge that faced the jurists and their scholastic techniques.

An early strategy is employed by Āpastamba. He is concerned about the seeming immoral acts performed by ancient seers recorded in the Veda. In general, the practices of such great sages, just like the behavior of contemporary elite, would be a source of *dharma* and something to be emulated. How do you abrogate such a *dharma* and prevent people from following those ancient practices? Āpastamba, of course, cannot abrogate such exemplary activities of ancient sages, but he does the next best thing; he makes such examples inapplicable to his own time. “Transgression of *dharma* is seen, as also violence, among men of ancient times. They incurred no sin on account of their extraordinary power. A man of later times who, observing that, does the same, perishes.”<sup>7</sup> Implicit in Āpastamba’s argument is that times change and with it the capacities and strength of human beings.<sup>8</sup> At least by the time of Manu, that is the middle of the second century CE, the general argument of Āpastamba became incorporated into the doctrine of the four world ages (*yuga*) that came to be applied to the functioning of *dharma* in society. As the lifespan, strength, and virtue of human beings decline in each subsequent world age, the *dharma* that govern their lives changes correspondingly. Manu enunciates this doctrine: “There is one set of *dharma*s in the Kṛta Age, another in the Tretā, still another in the Dvāpara, and a different set in Kali, in keeping with the progressive shortening taking place in each Age” (*MDh* 1.85). The *Parāśara Smṛti* (1.24), a text composed in the second half of the first millennium CE, goes so far as to limit the authority of different *smṛtis* to specific ages,

<sup>7</sup> *dr̥ṣṭo dharmavyatikramah sāhasam ca pūrveṣām | teṣāṃ tejoviśeṣeṇa pratyavāyo na vidyate | tad anvikṣya prayujñānaḥ sīdaty avaraḥ ||* *ĀpDh* 2.13.7–2.13.9.

<sup>8</sup> A similar view is expressed in *GDh* 1.3.

Parasara's own composition being the one most appropriate for the current age: "In the Kṛta Age the *dharmas* proclaimed by Manu are said to be operative, in Tretā those of Gautama, in Dvāpara those of Śaṅkha-Likhita, and in Kali those of Parāśara" (*Par* 1.24). The hermeneutical strategy based on the world ages permits jurists to relegate rules of *dharma* that they found objectionable to a previous world age and to make them inapplicable to contemporary times. For all intents and purposes, therefore, these rules are abrogated and rendered null and void.

The legal fictions created by jurists, both ancient and medieval, to introduce novelty and change into the *de jure* unchangeable and eternal *dharma* are instructive with respect to the scholastic enterprise within the Science of Dharma. They also demonstrate the singular importance of customary laws, mostly unwritten, within the edifice of Indian jurisprudence that is theoretically supposed to be derived from and based on the immutable Veda. As Lariviere (1997) and Wezler (2004) have argued, the idea of *vedamūlatva* of *dharma* was a theological construction. The historical reality at the beginnings of Dharmaśāstric composition, as during the medieval period when the Nibandhas were written, was that *dharma* of the Dharmaśāstras was very much anchored in the actual customary laws of various geographically and temporally dispersed communities.



# 4

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## Social Classes

*varṇa*

*Mikael Aktor*

### VARṆA AS DHARMA POWER

How should a Hindu king expand his power into foreign land and how should he incorporate the conquered people into his kingdom? This is discussed by the eighth-century commentator on Manu, Medhātithi, in his commentary on *MDh* 2.23. The verse occurs in the first part of the second chapter, which deals with the sources of the law (*dharma*), of which one is “the conduct of good people” (*sadācāra*). That conduct is further defined both geographically and demographically (*MDh* 2.17–2.24). It is the conduct that is handed down through generations among the people who live in the sacred land of the Āryas, extending from the Himalayas in the North to the Vindhya Mountains in the South, and who belong to the four social classes and the “intermediate classes” (*MDh* 2.18), consisting of castes that were regarded as having their origin in a mixture of these four.

Manu (2.23) defines the heartland of this sacred territory as “the natural range of the black buck” and categorizes it as “fit for sacrifice,” thereby explicitly associating the country with Hindu rule. Beyond that land lie the countries of the barbarian foreigners (*mlecchas*). Medhātithi, however, adds a rider:

If a good king from the warrior caste and the like gained victory over those foreigners and settled people from the four classes there, relegating the local foreigners to the status of *caṇḍālas*, just as in the land of the Āryas, then that land also would be “fit for sacrifice.” This is because land is not defiled by itself, for it becomes defiled through contact, as when it is sullied by something impure. Therefore, even apart from the regions specified, all people from the three upper classes must perform sacrifices whenever sufficient means are available even outside the natural range of the black buck.

(*Medh* 2.23 translated from Dave 1972–85, vol.1: 200)

In other words, when foreign land is purified by the presence of people from the four classes settled there by a pious king, it becomes pure and fit for sacrifices. From then on, however, the local people must be regarded as *caṇḍālas*, the lowest caste in the Hindu society, which was considered untouchable, even according to the earliest Dharmasūtras. Shortly before this quote, Medhātithi had made it clear that “foreigners are known as people beyond the castes comprising the four classes, not even allotted the status of mixed castes of the reverse order” (*Medh* 2.23 in Dave 1972–85, vol.1: 199).<sup>1</sup>

This quote and its context in Manu’s text give us a lot of information about the ideas behind the Hindu social structure as it was understood in Dharmaśāstra in terms of “class” (*varṇa*) and castes regarded as “intermediate” (*antarāla*) or as a “mixture of classes” (*varṇasaṃkara*). It indicates that these categories were conceived by the Brahmin authors of these texts as both a political and a social structure closely connected with the ideology and aspirations of this priestly class. More precisely, it was a system meant to guarantee a special alliance between the Brahmins and the warrior rulers, including the specific privileges that such an alliance would yield. Hindu rule is made conditional on Vedic sacrifices, which is the specific sphere of expertise of Brahmins. The *varṇa* system is the prerequisite for Hindu rule, and it is the foundation of *dharma*. The conduct of the people from the four classes is one of its main sources, and the king will have to settle the four *varṇas* in the new territory in order to make it fit for the rituals that are the foundations of *dharma*.

The promotion of this special alliance between Brahmins and rulers is made explicit even in the earliest texts. According to Gautama:

There are in the world two who uphold the proper way of life—the king and the Brahmin deeply learned in the Vedas. And on them depend the life of the fourfold human race and of internally conscious creatures that move about, fly, and crawl; as well as their increase, protection, non-intermixture, and adherence to the Law.  
(*GDh* 8.1–8.3 in Olivelle 2000: 137).<sup>2</sup>

The four classes (“the fourfold human race”) are the priestly class, that is the Brahmins (*Brāhmaṇa*); the warrior class (*Kṣatriya*), from which rulers are

<sup>1</sup> Viṣṇu, likewise, states, “Any region where the system of the four social classes is not found should be recognized as a region of foreigners; beyond those is the land of the Āryas” (*ViDh* 84.4 in Olivelle 2009a: 146).

<sup>2</sup> The special relationship between the *Brāhmaṇa* and the *Kṣatriya varṇa* remained a central theme also in later Dharmaśāstra literature. This is sometimes expressed in symmetric juxtapositions of the two spheres, where the one is eulogized by metaphors of the other: “Whatever the Twice-born [here meaning *brāhmaṇas*] should say, even for fun, that, according to tradition, is the highest law, for they have mounted the war chariot of Dharmaśāstra, and they carry the sword of the Veda” (*Par* 8.26); and symmetrically: “When in battle the blood of the warrior flows on the forehead and enters the mouth, that, duly, must be regarded as equal to drinking soma in a sacrifice of war” (*Par* 3.38). Similarly, Smith 1994: 37–8.

recruited or into which they are enrolled; the agricultural and merchant class (*Vaiśya*); and the service class (*Śūdra*), understood mainly as people engaged in various crafts and the working class.

Note that while Medhātithi advised the king to settle all four *varṇas* in the new conquered territory, he only called on the upper three of them to perform sacrifices there. This is because the *varṇa* and caste systems are also a system of marginalization. It was only the three upper classes that were allowed to have Vedic sacrifices performed for them; the *Śūdras* were excluded from such rituals and altogether from studying and using Vedic texts. Accordingly, boys from the three upper classes passed through an initiation ceremony (*upanayana*) that involved training in recitation of the Vedas. This initiation was regarded as a symbolic new birth, and, therefore, these three classes were labeled collectively as “twice-born” (*dvija*), whereas the *Śūdras* was labeled as “once-born” (*ekeja*).<sup>3</sup>

A further marginalization is indicated by the category of the “intermediate” classes that were understood as castes having their origin in a mixture of the four classes. Although these castes were not classified as belonging exclusively to any one of the four ideal classes but rather as the results of improper sexual mixing among them, they were still part of the Hindu social structure, collectively forming its hierarchical lower limit. This is expressed in precise terms by the fourteenth century commentator Kullūka: The conduct that is a source of *dharma* is that “of the classes starting with the Brahmins and extending as far as the mixed castes.”<sup>4</sup> Within this group of mixed classes, yet another hierarchical distinction is made. One group of castes are regarded as formed through *hypergamous* relations between two classes, say between Brahmin men and *Vaiśya* women, while another group is understood as formed through *hypogamous* relations, for instance between *Kṣatriya* men and Brahmin women. The principle behind the former is that the “father” must belong to a higher class than the “mother,” and behind the latter that the “father” belongs to a lower class than that of the “mother” (the quotation marks here indicating that the parents must be understood more in terms of some hypothetical past origin of these caste formations than as actual contemporary parents, although there are overlaps between the two cases, to which I shall return later). Generally, hypergamous relationships are tolerated, while hypogamous relationships are condemned. This is indicated by the

<sup>3</sup> Louis Dumont, inspired by Georges Dumézil, saw the *varṇa* system as a series of embedded marginalizations. First *Śūdras* as *ekajas* are marginalized in relation to the three *dvijas*; next, the *Vaiśyas* are marginalized in relation to the governing *Brahma-Kṣatra* alliance with *Kṣatriyas* as rulers and *Brāhmaṇas* as advisers and law makers; finally all three lower *varṇas* are marginalized in relation to the *Brāhmaṇas*, which is the only class that can perform the rituals on behalf of the three lower classes the members of which can only order them (Dumont 1970: 67). Similarly, Smith 1994: 28–9.

<sup>4</sup> *brāhmaṇādīvarṇānām saṃkīrṇajātīparyantānām* (Kullūka on MDh 2.18).

Sanskrit terminology according to which the former type of relationship is “natural,” literally “with the hairs” (*anuloma*), and the latter is “unnatural” or literally “against the hairs” (*pratiloma*). We see here a blend of two hierarchical systems. One is the patriarchal ordering of gender (men higher, women lower), and another is the Brahmanical ordering of class (Brahmin higher, the other three gradually lower).

It follows logically from this system of class mixtures that the lowest group must be that resulting from the hypogamous union between Śūdra men and Brahmin women. This is the Caṇḍāla caste mentioned by Medhātithi in his comments on Manu 2.23 at the start of this chapter, and their lowness is emphasized by the idea that people from this caste are untouchable—members of higher castes have to take a bath in the event they come into physical contact with them. But notice that, according to Mehdātithi, the local people in the land that is conquered by a righteous Hindu king must be relegated into the status of the Caṇḍāla caste in order to make the conquered land “fit for sacrifice.” This means that, in spite of the low status of this caste, it is still an integrated part of the Hindu society that makes a land fit for the sacrifices performed by the three higher classes. In this respect the Caṇḍāla marks the final marginalization of this whole demographic ideology, that between the people belonging to such a Hindu social structure—including the Caṇḍālas at the bottom of it—and the “foreigners” (*mlecchas*) outside it. To repeat, Medhātithi maintained that “foreigners are known as people beyond the castes comprising the four classes, not even allotted the status of mixed castes the reverse order” (Medh 2.23), that is, not even allotted a status as that of the hypogamous *pratiloma* castes of which the Caṇḍāla is the lowest.

In what follows, more will be said about each of these social categories,<sup>5</sup> but let me sum up the system for the sake of clarity:

The *varṇa* system consists of

- (A) the three “twice-born” (*dvija*) classes
  - Brāhmaṇa
  - Kṣatriya
  - Vaiśya
- (B) beyond these three, the “once-born” (*ekaja*) class
  - Śūdra

Each of these four *varṇas* contains a number of castes (*jāti*), which also can be ordered hierarchically. Thus, there are high, learned Brahmins (*bhrūṇas*) and lower Brahmins officiating in temples (*devalakas*); there are “good Śūdras” (*sacchūdras*) and “bad Śūdras” (*asacchūdras*).

<sup>5</sup> For detailed information on each category according to a great variety of Dharmaśāstra texts, the best source is Kane II: 19–179.

Beyond the four *varṇas*, there are the mixed classes (*varṇasaṃkaras*): (A) hypergamous or *anuloma* castes, which are more or less tolerated; and (B) hypogamous or *pratiloma* castes, which are more or less condemned and looked down upon, of which the Caṇḍāla caste is regarded as the lowest and as untouchable.<sup>6</sup>

This constitutes the Hindu society, and beyond that are the foreigners (*mlecchas*). An obvious question that needs to be addressed is how far this ideologically motivated social classification existed as an empirical reality in ancient and medieval India. For sure, this question cannot be answered on the basis of Dharmaśāstra texts alone, but must involve a study of evidence outside this tradition. Patrick Olivelle has drawn the attention to the Aśokan inscriptions in which the word “*varṇa*” does not occur at all; even the names of the *varṇas* are absent except for “*Brāhmaṇa*” which however is mentioned as a religious community rather than as a class in a hierarchical social system (see Chapter 1 in the present volume). The grammatical literature is another source of evidence. Olivelle notices that the term “*dvija*” (twice-born), which is a prominent classificatory concept in three of the four Dharmaśūtras (from early second to first century BCE) is missing from Patañjali’s *Mahābhāṣya*, dated mid-second century BCE, and from the literature before that period (Olivelle 2012a: 118–19). These findings indicate that these concepts (*varṇa* and *dvija*) were promoted specifically by Dharmaśāstra authors.

Although Manu incorporated much material from the Arthaśāstra (Kauṭilya’s treatise on government), this text differs from Manu’s text in its view both on Brahmins and Śūdras. It does not eulogize the Brahmins as Manu and other Dharmaśāstra texts do, and it acknowledges the Śūdras as artisans (AŚ 1.3.8) and not merely as servants of the three upper classes like Manu. Kangle remarks, “This appears to be more in consonance with the actual state of things than the views of Smṛti writer like Manu” (1965: 143). Finally, evidence from precolonial endowment records also give another picture than the one we meet in the Dharmaśāstra sources. In these records we get an impression of the identities that people ascribed to themselves. Cynthia Talbot concludes from material from Andhra Pradesh that “few of the donors of the endowments recorded in these documents choose to describe themselves in these terms” [*varṇa* and *jāti*]. Instead, “the classical *varṇa* scheme was meaningful primarily to those who considered themselves brahmins.” Also the word *jāti* is “rarely found in the thirteenth-century inscriptions from Andhra, but there are also no references to specific subcastes by names.” (Talbot 2001: 50–2).

<sup>6</sup> For a discussion of the different theoretical views on the distinction between *varṇa* and *jāti*, see Smith 1994: 317–19. With reference to among others J. C. Heesterman, Smith argues that the *varṇas* as the overall classifying system emphasized an ideal separation, whereas the notion of the *jātis* testified to an actual interrelation between them expressed in the idea of intermixture (*varṇasaṃkara*).

All together, these different types of evidence confirm the hypothesis that the articulation and promotion of the *varṇa* system were primarily part of a priestly ideological strategy motivated by the specific interests of this class.

### THE ESSENTIALS: SVABHĀVA, SVAKARMAN, SVADHARMA

According to Manu, the four classes emerged together with the creation of the world. Like other species of living beings, they are each born with the inborn propensities (*svabhāva*) that were placed in them by the Self-existent One at the time of creation. These specific propensities determine the activities (*karmāṇi*) of each species, both animals and men. For men, however, “activities” in this context denotes first of all the specific occupation (*svakarman*) and duty (*svadharma*) prescribed for each class:

As they are brought forth again and again, each creature follows on its own the very activity assigned to it in the beginning by the Lord. Violence or non-violence, gentleness or cruelty, righteousness (*dharma*) or unrighteousness (*adharma*), truthfulness or untruthfulness—whichever he assigned to each at the time of creation, it stuck automatically to that creature. As at the change of seasons each season automatically adopts its own distinctive marks, so do embodied beings adopt their own distinctive acts. For the growth of these worlds, moreover, he produced from his mouth, arms, thighs, and feet, the Brahmin, the Kṣatriya, the Vaiśya, and the Śūdra. (*MDh* 1.28–1.31 in Olivelle 2005a: 88)

The body parts mentioned here are obviously a reference to the twelfth stanza of the *Puruṣasūkta* (*ṚV* 10.90.12). The four *varṇas*, according to Manu, are not the product of any social negotiation or political reasoning but emerged out of the body of Cosmic Man and are, as such, direct manifestations of creation, just as the differentiations between horses, cows, and sheep (*ṚV* 10.90.10).

Kullūka spells out the significance of these verses of Manu just quoted. The violent acts of a lion are the manifestations of the violent inborn propensity of this animal, just as the gentle acts of priests and the violent acts of warriors are the direct results of the inborn nature of people born into these two classes (on *MDh* 1.29).

There can be no doubt that, according to these verses and according to the view of *Dharmaśāstra* in general, *varṇa* (and, accordingly, caste) is determined by birth; it is not the case that *varṇa* and caste can be decided solely on the basis of the character and skills of each individual (Smith 1994: 28). This is because, ideally, birth (*jāti*), inborn nature (*svabhāva*), and work (*svakarman*) will be harmoniously correlated as they were from creation. That said, however, other genres of literature, especially the Sanskrit epics, are full of

examples of persons whose activities and wishes are in conflict with the norms of the class or caste they are born into. But eventually, *dharma*, that is the ideal order of birth, duty, work, and personal character, will prevail.

One episode from the *Mahābhārata* is especially telling. During the long instruction on *dharma* that king Yudhiṣṭhira receives after the war from the dying Bhīṣma, Yudhiṣṭhira asks the controversial question about how persons from the three lower classes can attain the same status as Brahmins. The answer he receives is that this status is unobtainable for these classes because it is the highest stage of the whole of creation. Only through innumerable births may people from the lower classes hope to be born one day in the Brahmin class (*MBh* 13.28.4–13.28.5).

The implicit premise is that birth determines class status. Consequently, differences and unequal possibilities in life are inherited through the generations, just as species transmit specific predispositions for wings or forelegs. To cross classes is like crossing species, a breach of the natural order established at creation. But even though crossing of classes (*varṇasaṃkara*), unlike crossing of species, cannot always be known from their physical appearance, their identity will inevitably be revealed through the pattern of behavior that originates from their inborn propensities.<sup>7</sup> Bhīṣma illustrates this point by telling Yudhiṣṭhira the sad story of Mataṅga.

Mataṅga grew up as the son of a pious Brahmin. He was a good boy keen on living up to the expectations of his father. One day his father sent him to the town to get materials for a sacrifice. Mataṅga went on a cart pulled by a young donkey, which, however, did not want to leave its mother. Eager to fulfill his father's wish, Mataṅga hit the donkey with the whip. The mother donkey comforted her crying child, telling him that such behavior is only to be expected from a Caṇḍāla like Mataṅga. Shocked by these words, Mataṅga asked the mother donkey how she knows about his identity. She answers that a true Brahmin embodies the quality of nonviolence (*ahiṃsā*).<sup>8</sup> Therefore, this

<sup>7</sup> Compare Manu:

An unknown man without the proper complexion [*varṇa*], born from a squalid womb, a non-Ārya with some measure of Ārya features—one should detect such a man by his activities. Un-Ārya conduct, harshness, cruelty, and the neglect of rites reveal in this world a man who is born from a squalid womb. He will possess the character of either his father or his mother, or of both; a man born from an evil womb is never able to conceal his nature. (*MDh* 10.57–10.59 in Olivelle 2005a: 211)

See also the note to 10.57 at page 337 about the translation of *varṇa* as “complexion.” *Outward appearance* and *color* are among the meanings of the word *varṇa*, and the connection between complexion and class is made explicit by the grammarian Patañjali on Pāṇini 2.2.6.

<sup>8</sup> “A good man” (presumably including a Brahmin), however, is allowed to beat a low-caste person right away, without any interference from the state (the king), if he is assaulted verbally by the low person (including a Śvāpāka and a Caṇḍāla) according to *NSm* 15/16.12–15/16.14 and *BrSm* 21.5. These texts (*Nāradaśmṛti* and *Bṛhaspatishmṛti*) are both dated to fifth–sixth century CE by Olivelle 2010b: 57.

single act of violence inevitably reveals Mataṅga to be the bastard son of a Śūdra (in this case, a barber) with his Brahmin mother, in other words, an untouchable Caṇḍāla.

Now Mataṅga embarks on a severe regimen of extreme asceticism in order to change his destiny. Hard asceticism has the power to force the gods to appear and fulfill the wishes of the ascetic. Indra appears, promising to fulfill any wish that Mataṅga may have. However, confronted with Mataṅga's only wish—the attainment of Brahmin status like that of his dear foster father—Indra has to refuse. That is beyond the possibilities of any god. When Mataṅga intensifies his ascetic exercises to the extent of almost dying, Indra reappears only to grant him the boon of being worshipped by women after his death, and eventually Mataṅga dies (*MBh* 13.28.7–13.30.16).

The most famous example, however, is that of Arjuna, caught in between his obligation with respect to his family and friends and his duties as a warrior. But the divine authority makes no exceptions:

Better to do one's own duty (*svadharma*) imperfectly than to do another man's well; doing action intrinsic to his being (*svabhāva*), a man avoids guilt. Arjuna, a man should not relinquish action he is born to (*sahajaṃ karma*), even if it is flawed; all undertakings are marred by a flaw, as fire is obscured by smoke.

(*BhG* 18.47–18.48 in Miller 1986: 149–50)

These two verses echo the view of Manu:

If a man of inferior birth out of greed lives by activities specific to his superiors, the king shall confiscate all his property and promptly send him into exile. Far better to carry out one's own Law imperfectly than that of someone else's perfectly; for a man who lives according to someone else's Law fall immediately from his caste. (*MDh* 10.96–10.97 in Olivelle 2005a: 213)

Modern social reformers have seen this caste ideology as a serious hindrance to social mobility. My hypothesis is that this, precisely, has always been the intention of the Dharmaśāstra authors: to control upward social mobility.

## CONTROLLING SOCIAL AND ECONOMIC MOBILITY

Manu proposes a connection between the progression of the world ages (*yugas*) and the gradual weakening of *dharma*, the ideal norm on which society rests:

In the Kṛta Age, the Law is whole, possessing all four feet; and so is truth. People never acquire any property through unlawful means. By acquiring such property, however, the Law is stripped of one foot in each of the subsequent Ages; through theft, falsehood, and fraud, the Law disappears a foot at a time.

(*MDh* 1.81–1.82 in Olivelle 2005a: 91).



What might these unlawful means possibly be by which people acquire property and thereby ruin *dharma*, and who are those “people”? We get a direct answer, I think, in a section of the text that sets the norms for the livelihood of Śūdras: “Even a capable Śūdra must not accumulate wealth; for when a Śūdra becomes wealthy, he harasses Brahmins” (*MDh* 10.129 in Olivelle 2005a: 214).

The religious idea behind this statement lies in the role of Brahmins as officiants of sacrifices. It is sacrifice that procures rain at the right time, producing rich crops and healthy cattle. As such, sacrifice is the foundation of all kinds of material wealth. The Brahmins are indeed self-assured about the significance of their role: “This whole world—whatever there is on earth—is the property of the Brahmin. . . . The Brahmin eats only what belongs to him, wears what belongs to him, and gives what belongs to him; it is by the kindness of the Brahmin that other people eat” (*MDh* 1.100–1.101 in Olivelle 2005a: 91–2, 242).

The economic reality of this idea is that sacrifice is also a source of income for Brahmins as receivers of donations. Since everything belongs to the Brahmin performers of sacrifice, what they receive in donations (*dakṣiṇā*) at the end of the sacrifice has always been their property. While it is the prescribed “activity” (*karman*) of all three twice-born classes to have sacrifices performed, to recite the Veda, and to offer donations in connections with these sacrifices and the other services from the Brahmins, it is the exclusive right and livelihood of the Brahmins to officiate at the sacrifices, to teach the Veda, and receive the donations from the members of all three upper classes. In addition, Kṣatriyas must protect the subjects by the use of weapons and be self-restrained, and Vaiśyas must look after cattle and live by agriculture, trade, and moneylending (*MDh* 1.88–1.90, 10.74–10.80). “A single activity did the Lord allot to the Śūdra, however: the ungrudging service of those very social classes” (1.91 in Olivelle 2005a: 91). The Śūdras, it seems, cannot be a direct source of income for Brahmins even though they might have accumulated wealth. They cannot study the Vedas, and they cannot have sacrifices performed; so they do not have any opportunity to offer donations. Whatever wealth they may possess therefore “harasses the Brahmins,” to whom it truly belongs. Besides, as servants they should not be in a position to accumulate wealth at all. Or, so it seems.<sup>9</sup>

Reading behind the text and its strategies, however, we get another picture. One of these strategies is the notion of “times of adversity” (*āpad*). Patrick

<sup>9</sup> According to Ananya Vajpeyi, who has studied medieval Dharmaśāstra digests with specific focus on “Śūdradharmā,” it is typical of the Dharmaśāstra discourse related to the Śūdras that these are represented as silent listeners without any verbal agency of their own. “It turns out that the figure of the Śūdra haunts the Brahmanical literature from some of its earliest phases, and always at the heart of the othering of the Śūdra lies a set of maneuvers whose locus is language” (Vajpeyi 2010: 159).

Olivelle suggests in the first chapter of the present volume that Manu's Dharmaśāstra was composed during a period with repeated invasions from the northwest that "created a cultural shock" among the Brahmin elite. These invasions caused the Brahmin authors to be explicit about the expectations of a true Hindu king, especially in regard to his relationships with the Brahmins. But even apart from these strained political conditions, and especially in the light of the nostalgic and utopian ideals of the perfect Hindu society envisaged in the texts, times are always adverse. We live in the degenerate Kali age, and *āpad* is more or less the new normal.

Ideally, Śūdras do not count among the paradigmatic givers, but during *āpad* Brahmins may receive gifts from anybody (*MDh* 10.102).<sup>10</sup> However, while "officiating at sacrifices and teaching always pertain to those who have undergone consecratory rites [whose donations therefore are pure], . . . accepting pertains even to a lowest-born Śūdra" (*MDh* 10.110 in Olivelle 2005a: 213), meaning that, although gifts from Śūdras who maintain their lives by other means than by serving Brahmins are not desirable, they are nevertheless received. Manu is at pains to ensure that this should not tip the balance of dependency: While "a man who knows the Law should never beg money from a Śūdra" (*MDh* 11.24 in Olivelle 2005a: 216), a Brahmin whose sacrifice is interrupted for want of an item "may freely take two or three items from the house of a Śūdra; for a Śūdra has nothing to do with sacrifices" (*MDh* 11.11 in Olivelle 2005a: 215). Begging is one thing; taking from a Śūdra's property what truly belongs to the Brahmins is quite another.

What were the services that Śūdras had Brahmins performing for them, and what made the Śūdras wealthy enough to pay for these services in the form of donations? The historical development of the economic situation of the Śūdra class and the religious possibilities connected to it cannot be deduced from the Dharmaśāstra texts alone, but requires a study that includes many other types of sources, literary as well as epigraphic and archaeological. R. S. Sharma's *Śūdras in Ancient India* (1990) is an attempt in that direction. Sharma describes a gradual improvement of the economic situation of Śūdras through the Gupta dynasty and early medieval period including the times when the late Dharmaśāstras of Yājñavalkya and others were composed. He concludes:

Perhaps the reason for the broadening of the religious rights of the śūdras lay in the improvement of their material conditions, which enabled them to perform sacraments and sacrifices by paying for priests. For the ability to sacrifice was rightly believed to be intimately connected with the ability to pay.

(R. S. Sharma 1990: 312–13)

<sup>10</sup> For a systematic presentation of the occupations of the four *varṇas* both under normal conditions and during stressed situations (*āpad*), see Rocher 1975c.

The “sacraments and sacrifices” that gradually became part of the religious rights of Śūdras were those such as *prāyaścitta* (penance), *śrāddha* (ancestral offerings), *mahāvajñas* (Great Sacrifices), certain *saṃskāras* (life cycle rites), *pūjā* (worship), *vratas* (votive observances), and *dāna* (donations).<sup>11</sup> Commenting on the statement that the wealth of Śūdras harasses the Brahmins (*MDh* 10.129), the eighth-century commentator Bhāruci rejects the idea that receiving the gifts of Śūdras should amount to receiving gifts from unworthy givers (*asatpratigraha*). For, if it would be wrong for Brahmins to accept the donations from them, Śūdras would not be able to perform *śrāddhas*, which involve presenting the priests with a donation, obviously an indication that Brahmins performed *śrāddhas* for Śūdras. Penance is perhaps the most significant case, for here the inequality between Brahmins and Śūdras in terms of religious merit and material wealth is spelled out. The lower the *varṇa* of a penitent, the lesser the amount of the observance (typically fasting) but the more the value of the donations—often in the form of cattle—that must be given to the Brahmins who advised the penance. Thus, Brahmins observe harder penance but give a small donation, while the opposite holds for Śūdras.<sup>12</sup>

Another of Manu’s *āpad* rules, which probably prescribes what already had become the normal state of affairs, allows Śūdras who are “unable” (or perhaps unwilling) to provide for their families by serving twice-born people to earn their living as craftsmen, provided they work in a craft that “best serves the twice-born” (*MDh* 10.99–10.100 in Olivelle 2005a: 213). And according to Viṣṇu, who composed his *Dharmaśāstra* five hundred years or so later than Manu (i.e., seventh-century CE), these crafts are not restricted to times of adversity but do constitute the livelihood by which Śūdras fulfill their duty to serve the twice-born (*ViDh* 2.8 and 14). The *śūdravarṇa* comprised many crafts that were necessary for big building enterprises like royal temple building projects, crafts such as those of blacksmiths, carpenters, bricklayers, and artists (Sharma 1990: 262–3). With increased trade, furthermore, the demand for goods produced by Śūdra artisans may have grown.

Śūdras were also allowed to trade according to Yājñavalkya (*YDh* 1.120) and other late *Dharmaśāstras* (Sharma 1990: 267), and, apart from the Śūdras’ exclusion from Vedic recitation and rituals, the borderline between Vaiśyas and Śūdras became gradually more porous. R. S. Sharma (1990: 322) speaks of medieval India as a “vaiśya-śūdra society”: “Since the social fabric of ancient India was based on the vaiśya tax and the śūdra labour, it may be called a vaiśya-śūdra society, but from the ideological and ritualistic point of view it may be called a brāhmaṇical society.” This is an indication of the pyramid structure of the Indian social hierarchy even from early times: the number

<sup>11</sup> See R. S. Sharma 1990: 296–307.

<sup>12</sup> See, for example, *Par* 11.1–3, and Chapter 17 on Impurity and Purification.

of producing, trading, and laboring castes at the relative bottom of the Brahmanical hierarchical model outnumbered by far the warrior and priestly castes at the top.

With the growing economy and improved religious rights of the Śūdras, starting during the Gupta period and continuing into medieval India, their upward economic mobility could not be prevented. This was noticed by the Brahmin authors of Dharmaśāstra works, who reluctantly allowed Brahmins to receive as donations a part of the accumulated Śūdra wealth.

### THE MIXED CLASSES

The *Dharmaśāstra* doctrine asserting that the vast number of low castes below the four classes have originated from a mixing of those classes (*varṇasaṃkara*) has puzzled scholars including me.<sup>13</sup> In line with the preceding part of this chapter, however, I think it is reasonable to regard this doctrine as basically another attempt by the Brahmin authors to control upward social and economic mobility, in this case, not the mobility that took place through work and trade but the more tangible one that occurred through sexual relations. Whereas economic mobility created better possibilities and perhaps increased influence, it did not, from the point of view of Dharmaśāstra, change class and caste identities.<sup>14</sup> But that was possible through intermarriage. Intermarriage could have been initiated by the dissatisfaction of artisans and workers who protested against the occupational obligations they were assigned according to the Dharmaśāstra rules, and it could have been initiated by peasants who protested against the taxes that were demanded from them by the king (Sharma 1990: 261).

Manu's terminology on mixed classes is not entirely clear, but theoretically, it should be possible for descendants of mixed relationships to raise their status to that of the highest of his/her parents within a certain number of generations. That is, if the child of a mixed relationship marries upward, and the same happens in the next generations, at a certain time, the progeny will have the caste or class of the highest of the parents (*MDh* 10.64–10.65).<sup>15</sup>

<sup>13</sup> Aktor 1999: 269–74; Aktor 2008: 87–104 is a detailed discussion of the themes also presented here in brief. See, also, e.g., Jha 1970; Tambiah 1973b; Brinkhaus 1978; Rocher 1981–2.

<sup>14</sup> Nevertheless, we know from records of caste disputes during sixteenth through nineteenth century that groups of Śūdras tried to be recognized as belonging to one of the higher *varṇas*. Thus, paradoxically, “the positive assertion—‘This group here consists of Śūdra individuals’—comes from the Brahmin side, while the denial—‘We are not Śūdras’—comes from the Śūdra litigants themselves” (Vajpeyi 2010: 160).

<sup>15</sup> The rule is already mentioned by Gautama (*GDh* 4.22–4.24). The medieval commentators disagree on how to understand it. Some think that this kind of upward mobility is only possible

The practical realities behind this rule can only be guessed, but it seems to indicate that, after a certain amount of time, descendants from mixed relations would be accepted (or their descent would be forgotten) and assimilated into the superior class, as it actually happens when distinct ethnic bodily features gradually vanish through generations of mixed marriages.

The comparison with ethnic features is not far from the sense of the texts. We saw that *varṇas* were correlated with zoological species when they emerged from the body of Puruṣa. The idea is the same with mixed *varṇas*. This is made very clear by Kullūka in his comment to Manu's overview of the *varṇas*, which states: "Three classes—Brahmin, Kṣatriya, and Vaiśya—are twice-born; the fourth, Śūdra, has a single birth. There is no fifth" (*MDh* 10.4). Kullūka explains:

Moreover, there is no fifth. As with a mule, the mixed castes do not belong to any class because their caste is different from both of the different castes of the parents. And this clarification in the text about these other castes is for the sake of the regulation of mutual interactions. (on *MDh* 10.4)<sup>16</sup>

Caste definitions were meant as a way of regulating the occupations of individual castes and their mutual interactions, although occupation and caste definition are mutually dependent: "From the function pursued, the caste as laid down by the *śāstra* can be inferred. And by indicating the caste they can be enjoined to perform their functions" (*Bhāruci* on *MDh* 10.40 in Derrett 1975, vol. 2: 310).

But to define castes "genealogically" as descendants from former mixed-class relations seems artificial. When did these relations take place? Should they merely be regarded as speculative myths of origin? The question gets complicated because the notion of *varṇasaṃkara* is used in the texts in two different ways. One is as caste definitions, that is, in terms of some hypothetical past origin of the caste. Another is with regard to contemporary mixed marriages or sexual relations as when specific punishments are laid down for men and women who have such illegitimate relations,<sup>17</sup> or when the texts lay down exact rules about inheritance for descendants of mixed marriages.<sup>18</sup> In

though the female line, that is, for females born from relations in the direct order (*anuloma*). Others think that it also holds for sons, that is, through relations in the reverse order (*pratiloma*). For an overview, see the note in Bühler 1886: 416–17.

<sup>16</sup> The text is an example of the fluidity of meanings of the Sanskrit word *jāti*, meaning *birth*, *species*, and *caste*: *pañcamahṃ punar varṇo nāsti/saṃkīrṇajātinām tv aśvataravan. mātāpitṛjāti-vyatiriktajātyantaravān na varṇatvam/ayam ca jātyantaropadeśaḥ śāstre saṃvyavahara-nārthaḥ*||.

<sup>17</sup> *ĀpDh* 2.27.9; *GDh* 12.2–12.3, 23.14–23.15; *BDh* 2.3.52; *VaDh* 21.1–21.5. Also, it is the duty of the king to prevent *varṇasaṃkara* (*GDh* 8.3), and Brahmins and Vaiśyas are encouraged to take up arms against men and women who are guilty of it, although only in a quoted verse: *BDh* 2.4.18.

<sup>18</sup> *GDh* 28.35–28.45; *MDh* 9.149–9.155; *YDh* 2.125; *ViDh* 18.1–18.33, 18.38–40.

these latter cases, Dharmaśāstra texts do not label these mixed relations by the caste names known from the caste definitions. Probably the children of such relations were not regarded as actually belonging to the castes that the relations between their unequal parents would suggest according to the genealogical-mythical caste definitions. As we saw with the Mataṅga story, it is different with the epics, whose object is not to make prescriptions for actual real-life situations but more to exemplify moral dilemmas in literary form.

Connecting certain tribes and castes, whose life styles and livelihood appeared appalling to Brahmin sentiments, with illegitimate sexual relations between persons from the four *varṇas* accomplished a double aim. It marginalized these castes and tribes thereby expressing the exclusivity of the original classes from the mouth, arms, thighs, and feet of Puruṣa, at the same time, connecting them to these very classes and thereby including them in the emerging larger Hindu social order.

It is plausible, as has been suggested by many scholars, that the notion of *varṇasamkara* arose in the process by which various groups of the indigenous population were gradually included in the networks of transactions with the *āryas*.<sup>19</sup> Some of the names of these groups are known from earlier texts, but it is the invention of the early Dharmaśāstra texts to stipulate a specific *varṇa-samkara* genealogy to each of them. They do this in the context of marriage or they speak of these groups as “sons” from men and wives from different *varṇas*.<sup>20</sup> Perhaps this idiom was even used as a deliberate expression of inclusion.

It is in these early texts we get the distinction between relations in “the direct order” (*anuloma*) and relations in the “reverse order” (*pratiloma*). The latter is “outside the law” according to Gautama and cannot improve their status by intermarrying upward (*GDh* 4.25). An explicit distinction is also made by Yājñavalkya: “Those born in the reverse and those born in the direct order are known respectively as bad and good” (*YDh* 1.95c–d).

The notion of *pratiloma* as known from other textual genres is also used in contexts where a norm has been violated, where a situation is unnatural, or where a relationship has been reversed. When, according to the *Bṛhadāraṇyaka Upaniṣad*, Gārgya, the Brahmin, admitted his ignorance and asked to be instructed by King Ajātaśatru, the latter remarked, “Isn’t it a reversal of the norm [*pratilomaṃ*] for a Brahmin to become the pupil of a Kṣatriya?” (*BṛU* 2.1.15 in Olivelle 1998: 63). But eventually he taught Gārgya about the states of consciousness during dream and deep sleep. Purāṇic instructions for royal astrologers regarding favorable and unfavorable omens constitute another case.

<sup>19</sup> Jha 1970: 277, 283–5; R.S. Sharma 1990: 240, 336–7; Tambiah 1973b: 218, 223; Parasher 1991: 185; Brinkhaus 1978: 7–8.

<sup>20</sup> For a synoptic presentation of these rules as they appear in *GDh*, *BDh*, and *VaDh*, see Olivelle 2005f: 41–3.

The former belong to the *anuloma* class of signs, whereas the latter belong to the *pratiloma* signs. These latter would typically be related to various classes of unnatural events (Inden 1985: 32). The rhetoric about *varṇasaṃkara*, like the worst of these omens, is not without a touch of apocalyptic associations: “Wherever these delinquent-born individuals, who corrupt the social classes, are born, that realm quickly comes to ruin together with its inhabitants” (*MDh* 10.61).

In relation to the Dharmasūtras, Manu’s discussion of mixed classes was innovative in that he stipulated specific occupations for each of the *varṇasaṃkara* castes (see, e.g., *MDh* 10.46–10.49). I think this is an expression of an increased inclusion of these groups in concrete transactions and, consequently, increased social complexity. Whatever was the ethnic or other demographic identity of the groups mentioned in the Dharmasūtra lists of mixed classes, they are now regarded as occupational castes with which the people from the four *varṇas* make transactions. The number of castes has also increased considerably, and added to the earlier listed *varṇasaṃkaras* we get *varṇasaṃkaras* of *varṇasaṃkaras*, many of whom are associated with specific occupations (*MDh* 10.26–10.39). Clearly, the system tended to proliferate and multiply itself expanding the bottom of the pyramid.

## THE UNTOUCHABLES

One feature that clearly distinguished the bottom of the caste system from the layers above it was that of permanent untouchability. In the early texts, this feature did not yet have its own technical term but was articulated as the need for other people to have a bath in case they had been in physical contact with these persons. Untouchability, however, was not limited to persons from low castes but was a temporary condition attached to various persons in the domestic sphere, such as menstruating women and those in a period of impurity resulting from a birth or a death (see Chapter 17 on impurity). What made the untouchability attached to a caste special was that it was made permanent, inborn, and professional in the sense that it involved certain scorned occupations.<sup>21</sup>

I have already mentioned the Caṇḍāla caste as untouchable, but the name was generic, and, like the term Śūdra, it could apply to various despised groups at the lowest rungs of society. Alternative names are used, such as Śvapaca or Śvapāka, Paulkasa or Pulkasa, and Divākīrti. The explicit rule that prescribes a bath after having been in physical touch with a Caṇḍāla is recorded in all four Dharmasūtras (*ĀpDh* 2.2.8; *GDh* 14.30; *BDh* 1.9.5; *VaDh* 23.33). It is repeated

<sup>21</sup> For a detailed study, see Aktor 2008. For an overview, see Aktor 2010.

by Manu (5.85) and taken for granted in all medieval Dharmaśāstric texts along with the *varṇasaṃkara* definition of the *Caṇḍāla* as the *pratiloma* progeny of Śūdra men with Brahmin women.<sup>22</sup> Indeed, he is “the worst of all men” (*MDh* 10.12). As such, he is also classified as one of seven *antyāvasāyins* together with other *pratiloma* castes; often the term *antyāvasāyin* is just another generic term for untouchable castes.

As the term (*antyāvasāyin*) indicates, *Caṇḍālas* were associated with remoteness in space or sequence (*antya* meaning remotest, last, or lowest). This reflects the fact that *Caṇḍālas* were geographically segregated and forced to live in areas outside or at the edge of villages and cities (*MDh* 10.51).<sup>23</sup> But *antya* applies to an end in more than one sense. Already in the *Chāndogya Upaniṣad*, we learn that persons of “foul behavior can expect to enter a foul womb” after they have died—“like that of a dog, a pig, or an outcaste [*Caṇḍāla*] woman” (*ChU* 5.10.7 in Olivelle 1998: 237). In a structurally similar manner, the twice-born family man is instructed to throw some food on the ground to *Caṇḍālas*, dogs, and birds outside his house at the end of the domestic *vaiśvadeva* offerings (*ŚāṅkhGr* 2.14).<sup>24</sup> *Caṇḍālas* are at the end, together with village dogs, pigs, and birds, not only in the spatial sense of the home and the village areas. As the lowest of men, they also mark the boundary in *saṃsāra* between human and animal existence.

Untouchable castes were typically assigned jobs connected with pollution in the form of death (cremation workers, executioners), products from dead animals (leather workers, drummers), or trash (cleaning the streets of villages). They came to form a large and indispensable unskilled labor force, not only in such traditionally assigned jobs but also as day laborers in the fields and on building sites. Unlike the Śūdras, they could be prevented from upward mobility by a systematic series of discriminating practices, all prescribed in Dharmaśāstra texts.<sup>25</sup> These included isolation in terms of sexual relationships, sharing food and food vessels,<sup>26</sup> communication, habitation, use of wells, participation in religious practices including temple worship, and, significantly, giving gifts (gift exchange remained crucial for economic transactions and mobility). In addition, they were forced to make themselves both visible and audible at markets and in the streets. It was not until the period of social reform

<sup>22</sup> The latter is confirmed by Ludo Rocher based on nine different descriptions in seven different texts (*GDh*, *BDh*, *VaDh*, *ViDh*, *MDh*, *YDh*, and *AS*) (2012: 257–8, §7).

<sup>23</sup> The connection between terminology and spatial segregation was also pointed out by Vivekanand Jha (1975: 14–16).

<sup>24</sup> Similarly, *ĀpDh* 2.3.1–2.4.20, 2.9.5–2.9.6; *VaDh* 11.3–11.11; *MDh* 3.84–3.93.

<sup>25</sup> For details, see Aktor 2008: 116–88.

<sup>26</sup> The technical term for the latter is *apapātratva*. The practice was defined by the grammarian Patañjali as the idea that food vessels used by *Caṇḍālas* cannot be used by others, even though they have been cleaned properly by regular washing (Patañjali on Pāṇini 2.4.10: I: 475.8–475.10).



movements during the nineteenth and twentieth centuries that some of these discriminations were slowly but effectively lifted.

## MOBILITY CONTROL, BRAHMIN FRAILTY, AND THEORIES OF CASTE

In fact, the attempt to restrict upward social and economic mobility, which I think runs all through the *varṇa* and caste rules in the Dharmaśāstra texts, did not go unchallenged, even during the history of that literature. Buddhist and other early renouncer movements, medieval ascetic and tantric groups, *bhakti sant* poets of both *nirguṇa* and *saguṇa* orientation, and Sikhs who included their poetry in the Ādi Granth, all challenged the Brahmin social order. The marginalization of Brahmins in the South with the rise of Maharashtrian and Dravidian self-assertiveness led by Jyotirao Phule and E. V. Ramasamy, respectively, marked a definite turn of authority, but perhaps a certain Brahmin frailty already lay behind the opulent self-promotion that we read in large parts of the Dharmaśāstra texts. After all, Brahmins have always been a service class dependent on kings and local landowners.

This, I think, comes through in some of the recent debates on caste theory. These debates took their departure in a critique of Louis Dumont's hierarchical model. According to this model, the social system is oriented top-down, from the Brahmin to the Untouchable. Status, defined in relation to an ideology, is hierarchically superior to power. Therefore, Brahmanical values of personal and inherent ritual purity are the parameters in relation to which all else is defined (Dumont 1970: 36–42).

Critiques of this Brahmanical-inspired hierarchical model, such as those of Gloria Goodwin Raheja (1988) and Declan Quigley (1993), were inspired by the alternative model of the British ethnographer A. M. Hocart. Unlike Dumont, who saw society as structured from a hierarchical top, Hocart saw it as organized around centers of power. The basic idea in Hocart's theory is that the state is a ritual organization that includes the services of the *varṇas* and castes. The occupations assigned to these groups are primarily ritual services. Drummers may make their primary living as day-workers rather than by playing drums, but they are known as drummers because this is their ritual service at funerals and weddings. The king, as the paradigmatic sacrificer (*yajamāna*), is the pivotal character of the whole organization. However, the system is multicentric, reaching down through the society, as well as up through the skies:

The King's state is reproduced in miniature by his vassals: a farmer has his court, consisting of the personages most essential to the ritual and so present even in the smallest community, the barber, the washerman, the drummer and so forth....

The temple and the palace are indistinguishable, for the king represents the gods.... The god in his temple has his court like the king in his palace: smiths, carpenters, potters, all work for him. (Hocart 1950: 68)

The centrality model highlights the true relationship between Brahmins and kings. Brahmins may be sacrificers themselves, but ultimately, they depend on other sacrificers for their living. The praise of the righteous Hindu king who expands his kingdom and makes the conquered land “fit for sacrifice” by settling the four *varṇas* on the new land is also an appeal for support and moral-social leadership, which is a basic motivation behind the Dharmaśāstra texts.

## Orders of Life

### *āśrama*

*Patrick Olivelle*

The system of *āśramas*, along with that of the *varṇas*, is traditionally viewed as constituting the very core of Hinduism expressed in the pithy compound *varṇāśramadharmā*—“*dharma* of the *varṇas* and *āśramas*.” The growing centrality of *āśramas* is evidenced in the opening verses of Manu and post-Manu writers. Even though the *āśrama* system is integral to the structure of Manu’s work, the initial question (1.1) of the seers only pertains to the *dharma* of *varṇas*, whereas in Yājñavalkya (1.1) and in Viṣṇu (1.48) the question refers to the *dharma* of both *varṇas* and *āśramas*. Like the *varṇas*, the *āśramas* also number four: student, householder, forest hermit, and wandering ascetic. Unlike the *varṇa* system, however, the *āśrama* system is very much the creation of the Dharmaśāstric tradition; the earliest descriptions of it come solely from the Dharmaśūtras and they are embedded with an intense debate about its legitimacy.<sup>1</sup>

A relatively new term in the Sanskrit vocabulary, *āśrama* does not occur in the Vedic literature or even in the early Upaniṣads. In all likelihood, the term originated as a neologism, a word coined at a particular time in Indian history to express a novel idea or to indicate a novel phenomenon or institution. Like the two etymologically related terms *śrama* (ascetic toil) and *śramaṇa* (ascetic), *āśrama* is linked to new religious modes of life connected with asceticism. It has two related meanings. The first—and possibly the earlier meaning—is that of a residence or hermitage, often located in forests, where people devoted to asceticism live and perform religious austerities. This is by far its most common meaning; it is so used in Brahmanical, Buddhist, and Jain literary sources, as well as in non-religious texts such as drama, poetry, and fables. The second

<sup>1</sup> For a detailed study of the *āśrama* system, see Olivelle 1993.

meaning of the term is that of a religious or holy way of life. The latter is, in all likelihood, a technical usage, as it occurs exclusively in Brahmanical literature and mainly within the context of the *āśrama* system.

As first articulated in the early Dharmasūtras, the *āśrama* system envisages four distinct and legitimate modes of religious life. The system originated as a theological construct, and *āśrama* in its technical usage within the system is a theological concept. The system, therefore, is only indirectly related to the institutions that underlie it and are the subject of its theological evaluation. In other words, the institutions existed prior to and outside of the system, which imparts to them a particular theological valuation. The purpose of this theological innovation was to create a scheme within which the pivotal category of *dharma* could be extended to include religious modes of life different from that of the Vedic householder. Its architects were not, as is often assumed, the reactionary defenders of orthodoxy, but “liberal” reformers bent on leading the Vedic tradition in new directions. The *āśrama* system can thus be seen as a structure for inclusion aimed at managing diversity not by eliminating it but by recognizing and including diverse religious modes of life within an overarching theological system. In this sense, it was a forward-looking and reformist scheme rather than a defensive wall put up by beleaguered conservatives.

The newly discovered history of the term *grhastha* and its underlying mode of life as divergent from and related to the *pravrajita*, discussed in Chapters 1 and 9, however, provides a new lens through which to explore the origins of the *āśrama* system.<sup>2</sup> In the classification provided by Aśoka (Rock Edict 12, Pillar Edict 7), the various religious groups identified as *pāṣaṇḍa* are presented as comprising two kinds of members: *pravrajita*, that is, people who have wandered forth, as the Buddhist texts say, “from home to the homeless state,” and *grhastha*, that is, “the stay-at-home” members, who opted to remain at home following the household life while still belonging to and following the tenets of his or her *pāṣaṇḍa*. What is remarkable is that Aśoka in his Pillar Edict 7 identifies one *pāṣaṇḍa* as Brāhmaṇa. Thus it appears that for Aśoka, the Brahmanical *pāṣaṇḍa* also comprised two kinds of persons: *pravrajita* and *grhastha*. I want to propose that this religious formation was at the root of the creation of the *āśrama* system.

The conclusion that the Brahmanical *pāṣaṇḍa* group had both *pravrajitas* and *grhasthas* based on Aśoka’s inscriptions is confirmed by the novel institution of the four *āśramas* invented by some segments of the Brāhmaṇas connected in some measure also to the new genre of literature known as Dharmaśāstra (Chapter 1). Now, one may ask how the twofold division of *pāṣaṇḍa* corresponds to the fourfold division of the *āśramas*. If we look closely

<sup>2</sup> This is an emendation of and correction to what I have said in my monograph on the subject: Olivelle 1993.

at the four *āśramas*, however, we find that they actually represent two institutions each subdivided into two. The man who chooses to “stay at home,” the *grhastha*, is contrasted with the man who chooses to “go forth,” the *pravrajita*. The former, however, includes the *brahmacārin*, that is the student of the Veda who chooses neither to return home and get married nor to go forth as a *pravrajita*, but who opts to stay on permanently at his teacher’s home devoting himself to Vedic studies. Instead of creating a new household, one’s own *grha* with wife and sacred fire, he remains part of his teacher’s household, serving the teacher’s wife, son, or fire after the teacher passes away.

The man who chooses to “go forth” also has two options: he can become a *vānaprastha*, forest hermit, or a wandering mendicant variously called *bhikṣu*, *parivrājaka*, *pravrajita*, *muni*, and *yati*. Significantly, the verb *pravrajati* applies to both these institutions. This is demonstrated by the way Āpastamba, the author of the oldest extant Dharmaśāstra, introduces the two institutions with identical phrases:

*atha parivrājakaḥ | ata eva brahmacaryavān pravrajati ||* (ĀpDh 2.21.7–8)

Next, the wandering ascetic. From that very state (*brahmacarya*), remaining chaste, he goes forth.

*atha vānaprasthaḥ | ata eva brahmacaryavān pravrajati ||* (ĀpDh 2.21.18–19)

Next, the forest hermit. From that very state (*brahmacarya*), remaining chaste, he goes forth.

The conclusion that both the wandering ascetic and the forest hermit belong to the category of *pravrajita* is also supported by an interesting statement in Kāṭilya’s *Arthaśāstra*. In his discussion of the *janapada* or countryside (as opposed to the *pura*, city or fort), he lists people and groups who should be barred from entering or living in the *janapada*. In this context, he states: *vānaprasthād anyañ pravrajitabhāvaḥ*—“any kind of *pravrajita* other than forest hermits” (AŚ 2.1.32). Here *pravrajitabhāva*, the category of *pravrajita*, includes the *vānaprasthas*, who alone are permitted to reside within the *janapada*.

The list of the *āśramas* given by Āpastamba further confirms this 2 × 2 view of the four: *catvāra āśramā gārhaस्थ्यam ācāryakulaṃ maunaṃ vānaprastham iti*—“There are four *āśramas*: the householder’s life, living at the teacher’s family, the life of a sage, the life of a *vānaprastha*” (ĀpDh 2.21.1). Here, departing from the normal enumeration, we have the householder placed ahead of the student and sage (*muni*), by which is meant the *parivrājaka* (see ĀpDh 2.21.7), ahead of the *vānaprastha*, pointing to the latter two being variants or subcategories of the former two. Thus, I think, the original formulation of the *āśrama* system found in the Dharmaśūtras can be seen as an elaboration of the actual demography within the ancient *pāṣaṇḍa* groups as described by Aśoka, groups that according to him included the Brāhmaṇas.

The expansion of Aśoka's two into four can be readily explained by the centrality that "4" played in Brahmanical thought: four Vedas, four *varṇas*, four *yugas*, and the like. There is one element in the *āśrama* elaboration, however, that is crucial and significant.

Aśoka's discussion of *pāṣaṇḍa* assumes and, indeed, celebrates religious pluralism, or at least the pluralism of *pāṣaṇḍa* communities. They are viewed as many and on an equal footing, in spite of Aśoka's partiality to the Buddhist *saṅgha*. In the same inscription (Pillar Edict 7) Aśoka lists four specific *pāṣaṇḍa* communities: Buddhist, Brahmanical, Ājivaka, and Jain. The *āśrama* system, on the other hand, eliminates this pluralism, making Vedic initiation followed by Vedic studentship obligatory on all members of the three upper *varṇas* (Brāhmaṇa, Kṣatriya, and Vaiśya) as the gateway to the *āśramas*, an initiation that makes them twice-born (*dvija*: Chapter 1). The four *āśramas* are the only legitimate modes of religious life and are open only to members of these three twice-born *varṇas*. Thus, the Śūdras and other lower classes of society, who are viewed as having a single birth, are excluded from religious modes of life and relegated to the margins of society and religion. Brahmanical hegemony is thus imposed on the whole of society. Brāhmaṇas are not simply one *pāṣaṇḍa* among many. The system of *āśramas* makes both Brāhmaṇas and the other two upper classes part of a single system of religious living; it comprehends all the upper echelons of society. The term *pāṣaṇḍa* is given, *pari passu*, a pejorative meaning, referring to the "other," the excluded ascetic orders, who are equated with Śūdras by Manu.

Two ingredients of the original formulation of the *āśrama* system also betray its dependence on the *pāṣaṇḍa* division into *grhasṭha* and *pravrajita*. First, *āśramas* are permanent modes of life rather than life stages. Second, they are voluntary modes of life; a person chooses one *āśrama* in which he will spend his adult life. Both of these can be seen as reflecting the reality of the *grhasṭha* and *pravrajita* within the *pāṣaṇḍa* organizations.

Given that the system is first articulated in the early Dharmasūtras, its dating is to some degree dependent on the earliest date assigned to Āpastamba, the author of the oldest extant Dharmasūtra. I have argued (Chapter 1) that he cannot be dated too much earlier than the third century. Thus the *āśrama* system was invented probably in the third century BCE or a bit earlier.<sup>3</sup> We have to distinguish the early formulation of the system that envisaged the four *āśrama* as lifelong and voluntarily adopted vocations from what I have called the "classical system" created around the time of Manu, that is, the second century CE. The classical system presents the *āśramas* as stage of life through which a person ideally passed, paralleling the system of *saṃskāras* or rites of passage.

<sup>3</sup> This is a revision of my earlier estimate (Olivelle 1993: 102) of the fifth century BCE.

There are several unique features of the original formulation of the *āśrama* system found in the Dharmasūtras that both distinguish it from the classical system and provide significant insights into the theological reasoning that led to its creation: (i) *āśramas* are permanent modes of life; one is expected to live in one's *āśrama* of choice all one's life; (ii) *āśramas* are adult vocations and are unrelated either to adolescence or to old age and retirement; (iii) they are envisaged as alternate and equally legitimate modes of life; (iv) a person is permitted to choose freely one of those modes; (v) the person competent to make that choice is a young adult male who has completed his Vedic studentship; (vi) the period of temporary studentship following Vedic initiation is not considered an *āśrama*; confusion is often created because both share the common name *brahmacarya*. The *āśrama* of a student (*brahmacārin*), like all others, is also an adult vocation and the subject of a permanent choice made after completing the temporary studentship. It is carefully distinguished from the latter in these documents.

The clearest and most succinct account of this early formulation of the *āśrama* system, along with a description of the lifestyle of each *āśrama*, is given by Gautama:

He<sup>4</sup> has a choice, some assert, among the *āśramas*: student, householder, mendicant, or anchorite. The householder is their source, because the others do not produce offspring.

Among these, the rules of a student have already been given. He shall remain subject to his teacher until death and engage in soft recitation during any time that remains after attending to his teacher's business. When his teacher is no more, he should serve his son; and if there is no son, an older fellow student or the sacred fire. A man who conducts himself in this manner attains the world of Brahman and becomes a man who has mastered his senses.

All these rules of a student apply to people in subsequent *āśramas* as well, so long as they are not inconsistent with the provisions specific to each.

A mendicant shall live without any possessions, be chaste, and remain in one place during the rainy season. Let him enter a village only to obtain almsfood and go on his begging round late in the evening, without visiting the same house twice and without pronouncing blessings. He shall control his speech, sight, and actions; and wear a garment to cover his private parts, using, according to some, a discarded piece of cloth after washing it. He should not pick any part of a plant or a tree unless it has fallen of itself. Outside the rainy season, he should not spend two nights in the same village. He shall be shaven-headed or wear a topknot; refrain from injuring seeds; treat all creatures alike, whether they cause him harm or treat him with kindness; and not undertake ritual activities.

An anchorite shall live in the forest, living on roots and fruits and given to austerities. He kindles the sacred fire according to the procedure for recluses and

<sup>4</sup> The referent of the pronoun is the Vedic student who has just completed his studies.

refrains from eating what is grown in a village. He shall pay homage to gods, ancestors, humans, spirits, and seers, and entertain guests from all classes, except those who are proscribed. He may also avail himself of the flesh of animals killed by predators. He should not step on plowed land or enter a village. He shall wear matted hair and clothes of bark or skin and never eat anything that has been stored for more than a year.

There is, however, only a single *āśrama*, the teachers maintain, because the householder's state alone is prescribed in perceptible Vedic texts. (GDh 3.1–36)

This passage contains several significant elements that are crucial both to understanding the early *āśrama* system and for the way the system is dealt with in later Dharmaśāstric literature. Two significant aspects of the system we have already identified are highlighted. With the words “He has a choice,” Gautama signals both personal choice in following a particular *āśrama* and the time when that choice is to be exercised: after a young man has completed his Vedic studentship. This is the time when he is normally expected to return home and to get married. But the *āśrama* system disrupts this passage by stating that the young man may choose not to get married but pursue one of the three other modes of life that do not entail family life. The second element is the lack of detail with regard to two of the *āśramas*: Vedic student and married householder. With regard to the former, Gautama simply says that rules for a Vedic student have already been given, namely, in the previous two chapters (GDh 1.5–2.50). Thus the rules for the student's *āśrama* are the same as those followed by a temporary student following his Vedic initiation. Gautama passes over the householder in silence, clearly, because much of his treatise is devoted to the rules governing his life; he is the silent subject of most of the rules. The most detailed treatment of the rules governing *āśramas* pertains to the forest hermit and the wandering ascetic. It is within the context of the *āśrama* system, as we will see (Chapter 18), that the Dharmaśāstric tradition integrated material dealing with these two ascetic modes of life.

A significant aspect of Gautama's and Baudhāyana's expositions of the *āśrama* system is that both reject the theory that a person can choose any one of the *āśramas* and subscribe to a theology they call *aikāśramya*, the position that there is in reality only a single *āśrama*, namely, that of the householder or *grhastha*. I have already drawn attention to a competing theology asserting the centrality of the *grhastha*. This theology underpins the Dharmaśāstric project. Gautama and Baudhāyana provide different but complementary reasons why the householder's is the only legitimate *āśrama*. Gautama says that it is so “because the householder's state alone is prescribed in perceptible Vedic texts.” This argument is based on hermeneutical principles articulated in the Mīmāṃsā school of Vedic exegesis. Vedic injunctions may be found either in actually available, that is, “perceptible” Vedic texts (*pratyakṣaśruti*) or in Vedic texts whose existence has to be inferred (*anumitaśruti*) on the basis of other factors, such as injunctions in “texts of recollection” (*smṛti*) or observed normative



practice (*ācāra*). The former, according to Mīmāṃsā principles, is stronger than the latter. Gautama, thus, asserts that the householder's state is explicitly enjoined in perceptible Vedic texts, while the other *āśramas* are not. Bau-dhāyana, on the other hands, says that there is only one *āśrama* because no offspring is produce in the other *āśramas* (*aprajananatvād itareṣām*; 2.11.27). The argument here has two steps: the obligation to father offspring is stated explicitly in Vedic texts, and it is only as a householder that a man can produce offspring legitimately.

The *aikāśramya* thesis proposed by Gautama and Bau-dhāyana is based on the *gr̥hastha* theology that, as I noted in Chapter 1, both opposed the *āśrama* theology and provided the theological basis for the Dharmaśāstras. Yet, both these theologies are based on the ascetic or śramaṇic vocabularies and theologies seen in the Aśokan inscriptions. The very term *gr̥hastha*, as we have seen, is not derived from the Vedic vocabulary but from śramaṇic discourse.

The classical formulation of the *āśrama* system, articulated for the first time by Manu, makes the *āśramas* part of the rites of passage; they follow a person as he grows from adolescence to adulthood and finally to old age. Although Manu does not explicitly state that Vedic initiation is the entry into the first *āśrama*, he comments explicitly on the passage from this *āśrama* to that of the householder: "After he has learnt in the proper order the three Vedas or two of them, or at least one, without violating his chastity, he should undertake the householder's *āśrama*" (2.2). Then at 6.1, he gives the passage from the latter to the *āśrama* of a forest hermit: "After living this way in the householder's *āśrama* according to rule, a twice-born bath-graduate (*snātaka*; Chapter 8) should duly live in the forest, controlling his self and mastering his organs." Manu (6.33–6.34) assigns to the final period of a man's life the *āśrama* of a wandering mendicant: "After spending the third quarter of his life this way in the forest, he should cast off his attachments and wander about as an ascetic during the fourth. When a man goes forth as an ascetic after he has moved from *āśrama* to *āśrama*...he will prosper after death." This is the most explicit and detailed statement of the classical formulation of the *āśrama* system in the Dharmaśāstras, even though all post-Manu authors take this model as the basis for their comments on the *āśramas*.

The centrality that the *āśrama* system assumed in later Brahmanical theology is indicated by the novel term *anāśrama* (with the corresponding *anāśramin*), that is a state outside the *āśramas*. In the Vulgate version<sup>5</sup> of Yājñavalkya (3.241) living in such a state (*anāśrame vāsaḥ*) is viewed as a minor sin. A Dharmaśāstric text cited by Śaṅkara<sup>6</sup> states: "A twice-born should not remain an *anāśramin* even for a single day."

<sup>5</sup> This verse has been eliminated in my critical edition: Olivelle, Forthcoming.

<sup>6</sup> See Śaṅkara on *Vedānta Sūtra* 3.4.39: *anāśramī na tiṣṭheta dīnam ekam api dvijaḥ*.

At the other end of the spectrum is a person who is so holy and enlightened that he is viewed as beyond all categories, including *āśrama*. He is referred to as *atyāśramin*, a person who has transcended the *āśramas*.

The centrality that the *āśrama* system occupied in the Dharmaśāstric social ideology is indicated by its presence in the descriptions of a king's duties. Manu says that the king "stands as the surety for the *dharma* with respect to the four *āśramas*" (7.17); and "The king was created as the protector of people belonging to all *varṇas* and *āśramas*" (7.35). Nārada in his disquisition on legal procedure (*vyavahāra*) says that it is said to have four beneficiaries because it protects the four *āśramas* (*NSm* Mā 1.12). Elsewhere he says that the king should protect all four *āśramas* (*NSm* 18.5).

From the time of Manu, that is, the second century CE, the *āśrama* system became a central and integral part of Brahmanical *dharma*, paralleling the older *varṇa* system and making the compound *varṇāśrama* a shorthand for the totality of Brahmanical *dharma*, or what later came to be called Hinduism.

# 6

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## Rites of Passage

*saṃskāra*

*Axel Michaels*

Life-cycle rituals—or *rites de passage* as they have been termed since Arnold van Gennep (1909)—are universally observed ceremonies to ritually identify changes in life. They thus mark major physical and/or psychological developmental stages. In the Indian (Hindu, Buddhist, and Jain) contexts, these rituals are called *saṃskāra*. When Ron Grimes says, “(i)f van Gennep had not coined this idea, we would not see births, initiations, weddings and funerals as being similar rituals, because these ritual types are not always combined by their practitioners,”<sup>1</sup> he is only half way right. The term *saṃskāra* is already such a cover term for life-cycle rituals.

Hindu tradition recognizes up to forty *saṃskāras*,<sup>2</sup> of which, by the medieval period, sixteen had achieved a nearly canonical status even though they are sometimes given different names (see Table 6.1). Almost all traditional Hindu families observe until today at least three *saṃskāras* (initiation, marriage, and death ritual). Most other rituals have lost their popularity, are combined with other rites of passage, or are drastically shortened. Although *saṃskāras* vary from region to region, from class (*varṇa*) to class, and from caste to caste, their core elements remain the same owing to the common source, the Veda, and a common priestly tradition preserved by the *Brahmin* priests.

### THE TERM SAṂSKĀRA

*Saṃskāra* is usually translated as “rite of passage” or “sacrament,” but these concepts encompass only a part of its meaning. As Śābara, a fifth-century

<sup>1</sup> Grimes 2000: 103.

<sup>2</sup> *GDh* 8.14–8.24, with additional eight *saṃskāras* of the soul.

Table 6.1. Hindu life-cycle rites

Phases of Life	Ritual
Prenatal rituals	1. Procreation, insemination ( <i>garbhādāna</i> , <i>niṣeka</i> ) 2. Transformation of the fruit of love to a male fetus ( <i>pūṃsavana</i> ) 3. Parting of the hair of the pregnant woman ( <i>sīmantonmayana</i> )
Birth and childhood	4. Birth ritual ( <i>jātakarma</i> ) 5. Name giving ( <i>nāmakaraṇa</i> ) 6. First outing ( <i>niṣkramaṇa</i> ) 7. First solid food ( <i>annaprāśana</i> )
Adolescence	8. Tonsure or first cutting of the hair ( <i>cūḍākaraṇa</i> , <i>caula</i> ) 9. Ear piercing ( <i>karṇavedha</i> ) 10. Beginning of learning ( <i>vidyārambha</i> ) 11. Initiation or Sacred Thread ceremony ( <i>upanayana</i> , <i>vratabandhana</i> ) 12. Beginning of learning ( <i>vedārambha</i> ) 13. The first shave ( <i>keśānta</i> ) 14. The end of study and returning to the house ( <i>samāvartana</i> )
Marriage	15. Wedding ( <i>vivāha</i> , <i>pāṇigrahaṇa</i> )
Death and Afterlife	16. Death ritual ( <i>antyeṣṭi</i> ) Joining the ancestors ( <i>sapīṇḍikaraṇa</i> ) Ancestor worship ( <i>śrāddha</i> )

scholar, says, the decisive thing is that the *saṃskāras* are applied to make someone or something fit or suitable for some purpose (*yogya*), for wholeness or “salvation,” for example, as a sacrificial offering.<sup>3</sup> The gods accept only what is suitable to them, that is, properly composed or put together, and therefore perfect. Similar to “Sanskrit,” literally, “the totally and (correctly) formed [speech]”), *saṃskāra*, therefore, means the perfection of ritual acts. So, in Vedic ritual context the term *saṃskṛta* is often used for purification actions.

The special suitability (*yogyatā*) of *saṃskāras* is generally understood in a double sense, at least: first, as the elimination of the unclean, the faulty, and tainted, and second as creating the eligibility to carry out sacrificial rituals. Impurity and faults are created through natural birth. Thus, in Manu’s Law Code (*MDh* 2.26–28), it is said that the fire sacrifices (*homa*) carried out during pregnancy, the ritual of birth, the tonsure, and the girdling eliminate the unclean substance (*enas*) of the twice-born, which is created by semen and the uterus:

The perfection (*saṃskāra*) of the body, should be performed for twice-born men with auspicious Vedic ritual actions beginning with the rite of impregnation that purifies a man both in the hereafter and here (in this world). The fire offerings for the foetus, the birth rites, the first haircut and the tying of the Muñja-grass belt, wipe away from the twice-born men the guilt of the seed and the guilt of the

<sup>3</sup> See Śabara on *PMS* 3.1.3: *saṃskāro nāma sa bhavati yasmiñ jāte, padārtho bhavati yogyaḥ kasyacid arthasya*. For further evidence, see Pandey 1969: 16.

womb. By the study of the Veda, vows, offerings into the fire, study of the triple Veda, sacrifices, sons, the (five) great sacrifices and the (other) sacrifices, the body is made fit for the Veda (or the *brahman*, ultimate reality).

The commentator Medhātithi emphasizes that semen and uterus are the causes of uncleanness. Harita, another legal scholar quoted in the *Samśkārataṭṭva*, makes it even clearer, saying that the man places the fetus in the womb of his wife by means of the ritually carried out procreation (*garbhādāna*).<sup>4</sup> The womb thus becomes suitable for the reception of Veda. With the *pumsavana* ritual, he then transmutes the embryo into a male fetus. With the ritual of parting the hair of the pregnant woman (*śimantonnayana*), he eliminates the impurity imparted by the parents, and the uncleanness of semen, blood, and uterus are eliminated by the rituals of birth (*jātakarma*), naming (*nāmakaraṇa*), presenting the first solid food (*annaprāśana*), tonsure (*cūḍākaraṇa*), and the bath that concludes the period of study (*samāvartana*).

## SOURCES

The sources for the *saṃskāras* are mostly texts on domestic rites (*Gr̥hyasūtras*), legal texts (*Dharmaśāstras* and *smṛtis*), medieval compendia (*Nibandhas*), and numerous ritual handbooks (*paddhati*, *vidhi*).<sup>5</sup> The authors of these texts often refer to local customs and variations. The *Dharmaśāstras* do not normally give detailed descriptions of the performance of the rituals; only the *Gr̥hyasūtras* and the ritual handbooks do so. Neither do Vedic *Samhitās* and *Brāhmaṇas* contain detailed rules for the *saṃskāras*, but verses and passages from these texts have been used as mantras in the *saṃskāra* rituals.

It is in the *Gr̥hyasūtras* that we find detailed descriptions of the main bodily (*śarīra*) *saṃskāras*.<sup>6</sup> Generally, they begin—as in the *Pāraskaragr̥hyasūtra* (*PārG*)—with marriage (*vivāha*), followed by the pregnancy rites (*garbhādāna*, *pumsavana*), the ritual parting of the hair (*śimantonnayana*), the name-giving ceremony (*nāmakaraṇa*), the first feeding of solid food (*annaprāśana*), the first haircut (*cūḍā-karaṇa*, *-karma*), the initiation (*upanayana*), and other educational rites such as the taking leave of one's teacher (*samāvartana*).<sup>7</sup>

<sup>4</sup> See Kane II: 192.

<sup>5</sup> Major indological studies on *saṃskāra* include Hillebrandt 1897; Kane 1962–75 (especially vol. II.1); Pandey 1969; Gonda 1977; Kapani 1992; Olivelle 1993; Michaels 2004. Comprehensive studies of the practice of *saṃskāras* one finds in Stevenson 1920 and Gutschow/Michaels (2005, 2008, and 2012), who present a description of all major life-cycle of rituals of a specific region (Bhaktapur, Nepal), the edition and translation of concerning handbooks and detailed bibliographies of the *saṃskāras*.

<sup>6</sup> For a detailed description, see Kane II: 195–267.

<sup>7</sup> For a discussion of the sequence of the *saṃskāras*, see Lubin 2005: 87–9.

The death and ancestor rituals (*antyeṣṭi*, *śrāddha*) are mostly dealt with in a different place—in the *PārG*, for instance, at the end of the text.

The Dharmaśāstras generally list the *saṃskāras* in their sections on right conduct (*ācāra*) with a focus on marriage and initiation but do not give many details of the ritual procedure of the *saṃskāras*. Some Smṛtis like that of Nārada even mention these rites only indirectly. However, the Smṛtis presuppose the *saṃskāras* inasmuch they mark the transition from the Vedic world to the class and caste society of Hinduism, that is, the establishing of Smārta Hinduism.

The Nibandhas mostly follow the traditional list of the sixteen *saṃskāras*. Thus, the Saṃskāra section of the *Smṛticandrikā* of Devanabhaṭṭa (composed between 1200 and 1225), begins with the rite of impregnation (*garbhādhāna*) and ends with marriage (*vivāha*). The *Dharmasindhu* by Kāśinātha Upādhyāya (1790/91) follows the same order and deals with numerous qualifications and exceptions. The Nibandhas also include many variations mixed with other rites and astrological considerations.

## HISTORY OF SAṂSKĀRAS

Saṃskāras have been shaped in the middle Vedic period, starting around 500 BCE, when the higher classes of the Āryans began to settle in the Gangetic plains. In the early Vedic phase, the initiation was a consecration (*dīkṣā*) into secret priestly knowledge and an initiation, a kind of “proto-upanayana,” into certain sacrifices. It was also a privilege for those who wanted to learn the Veda or to perform a sacrifice, a privilege mostly restricted to the twice-born men. The *dīkṣā* was then more a ritual preparation for the institutor of the sacrifice than a life-cycle ritual. The initiation (*upanayana*) of the middle Vedic phase, on the other hand, demarcated the social and ritual boundaries between different social groups and the separation of the higher classes (*varṇa*) from the rest of the society (cf. Tab. 6.3).<sup>8</sup>

Various factors may have been responsible for this development, especially acculturation problems vis-à-vis the indigenous population owing to the transition of the Āryans from a semi-nomadic to a settled life. In the transculturation processes, such as mingling with the resident population and their doctrines and religions, the admission to the Vedic rituals, mainly the fire sacrifice, and the marriage rules had to be regulated. By this, the Āryans demarcated themselves from the indigenous population. From the beginning of the Common Era, the sacred thread became their symbol of this boundary.

<sup>8</sup> Cf. Zotter 2010: 19f.

The non-initiated were outsiders, marginal groups, or even enemies (e.g., the *vrātyas*). Only by celebrating *upanayana*, that is, the ritual birth of the boys into the Veda, did one become a twice-born; those who could not be initiated—young children and, to a certain extent, women—remained in the impure state of a Śūdra. The non-initiated were not allowed to take part in the Brahmanical rituals; they could not maintain the Vedic domestic fire, intermarry with the twice-born classes, or partake in joint meals. Thus they remained “out-casts.”

This linkage of life-cycle rituals with social status was the basis of the Hindu caste society creating a deep connection between descent and matrimony. Initiation now meant acceptance into patriarchal society and instruction in the study of the Veda—the literal meaning of *upanayana* is “leading (to the teacher)” or more precisely “leading” (of the student by the teacher to his self)—along with the initiation into the sacrificial practices derived from that. All this also resulted in his ability to marry. Through initiation, the youth becomes a member of a caste, an apprentice, entitled to perform sacrifices, and a candidate for marriage all at once.

## THE TRADITIONAL HINDU RITES OF PASSAGE

Among the sixteen bodily (*śarīra*) *saṃskāras* that are still performed are the name-giving ceremony (*nāmakaraṇa*), the first rice feeding (*annaprasāna*), tonsure (*cūḍākaraṇa*), initiation (*upanayana*), marriage (*vivāha*), and the funeral (*antyeṣṭi*). There are many additional life-cycle rituals, with a great number of local variations, still performed in South Asia. Thus, a small Newar Buddhist compendium from the eighteenth century (Bajrācāryya and Bajrācāryyā 1962) lists the following *saṃskāras* (Table 6.2).

The list of Table 6.2 is interesting for many reasons. It contains a mixture of all kind of Hindu and Buddhist life-cycle rituals, including the death and ancestor rituals. Rituals for the male are combined with rituals for girls, women, and the aged. Sometimes subrituals are listed separately. It is also an example of the local variations that *saṃskāras* can demonstrate. The structure is, however, similar to other lists of *saṃskāras*, which—following the age groups—can be classified into prenatal, birth and early childhood, initiation (educational), marriage, old-age, death, and ancestor *saṃskāras*.

### Prenatal *Saṃskāras*

The prenatal life-cycle rituals are mainly concerned with the promotion of the fertility of the woman and health of the fetus and mother. The authors of

Table 6.2. Newar Buddhist life-cycle rituals

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1. (Introduction on embryology) <sup>9</sup>
2. Cutting the umbilical cord ( <i>nābhikṣedana</i> [sic])
3. Birth purification ( <i>jātakarma</i> )
4. Name giving ( <i>nāmakarma</i> )
5. Showing the sun [ <i>niṣkramaṇa</i> ]
6. First feeding of fruits and cooked rice ( <i>phalaprāśana</i> , <i>annaprāśana</i> )
7. Protection against the <i>grahas</i> with a necklace ( <i>graharakṣā</i> )
8. Opening the throat ( <i>kaṇṭhaśodhana</i> )
9. First head shaving [ <i>cūḍākarma</i> ]
10. Initiation ( <i>bartabandhana</i> [sic], <i>vratibandhana</i> )
11. First monastic initiation ( <i>pravaryyāgrahana</i> )
12. Consecration of a Vajrācārya priest ( <i>vajrācāryyābhiṣeka</i> )
13. Marriage of the girl to the <i>bel</i> fruit ([= Nev. <i>ihi</i> ], <i>pāṇigraha</i> )
14. Marriage ( <i>kanyādāna</i> )
15. Eating dishes together from the same ritual plate (Nev. <i>nikṣāḥbhū</i> )
16. Dressing the hair ( <i>keśabandhana</i> )
17. Girl's seclusion (Nev. <i>nārī jāti yāta yāyāgu kriyā rāja śolā bidhi</i> , <i>bādhā taye</i> [= <i>bārḥā taye</i> gu])
18. Worship of the aged 1 (Nev. <i>bhimaratha kriyā</i> , <i>br[hat] nara br[hat] nārī</i> , 1 (Nevāri) <i>jaṃko</i> )
19. Worship of the aged 2 ( <i>debaratha</i> [sic, <i>devartaha</i> ], 2 <i>jaṃko</i> )
20. Worship of the aged 3 ( <i>mahāratha</i> , 3 <i>jaṃko</i> )
21. Ripening of the <i>karma</i> ( <i>karmavipāka</i> )
22. First death rites ( <i>utkrānti</i> )
23. Death rites ( <i>mṛtyukriyā</i> )
24. Removal of impure things from the deceased (Nev. <i>chvāse vāyegu</i> )
25. Fumigation (Nev. <i>pākhākūṃ tha-negu</i> )
26. Removal from the house and making the litter (Nev. <i>duḥkhā pikhām tiya</i> , <i>sau</i> , <i>sāyegu</i> )
27. Death procession (Nev. <i>siṭhaṃ yaṃkegu</i> )
28. Rituals at the cremation <i>ghāt</i> (Nev. <i>dīpe yāyāgu kriyā</i> )
29. Disposal of the ashes ( <i>aṣṭi parikṣāraṇa</i> )
30. Drawing a <i>maṇḍala</i> to prevent a bad rebirth ( <i>durgati pariśodhana maṇḍala kriyā</i> )
31. Feeding of the deceased (Nev. <i>nhenumā</i> )
32. Setting out cooked rice etc. for the departed spirit (Nev. <i>pākhājā khāye</i> )
33. Removal of death pollution (Nev. <i>duveṃke</i> )
34. House purification ( <i>gr̥ha sūddha gvāsagaṃ kriyā</i> )
35. Offering of balls ( <i>piṇḍa</i> ) for ten days ( <i>daśapiṇḍakriyā</i> )
36. Offering of <i>piṇḍas</i> on the eleventh day after death ( <i>ekādaśa piṇḍa kriyā</i> )
37. Further <i>piṇḍa</i> rituals (Nev. <i>piṇḍa thayegu kriyā</i> )
38. Offering of <i>piṇḍas</i> to three generations (Nev. <i>līna piṇḍa</i> )
39. Protection of the guru ( <i>gururakṣaṇa</i> )
40. Ancestor ritual ( <i>śrāddha</i> )
41. Removal of the <i>piṇḍas</i> (Nev. <i>piṇḍa cuyegu sthāna</i> )

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Dharmaśāstras discussed whether the rites are more concerned with the fetus and male semen (*garbha*) or the mother and the womb (*kṣetra*). In the latter case, the rite should be performed only once. Since conception is regarded as a

<sup>9</sup> According to Bajrācāryya/Bajrācāryya 1962; Nevāri (Nev.) terms have only been listed in case of lack of Sanskrit equivalents; see Lewis 1994 and Gutschow/Michaels 2008: 10f.



ritual and spiritual act, the ritual through which the man places his semen in the womb, that is, the insemination (*garbhādāna*, *niṣeka*), should be performed on the fourth (*caturthī*) day after the beginning of the menstruation, together with prayers and purifications.<sup>10</sup> It is doubtful that this ritual was often practiced.

The transformation of the fruit of love to a male fetus (*pumsavana*), which occurs in almost all manuals, is to be performed in the third or fourth month of pregnancy. In ancient India, some people believed that the gender of a child is already fixed at the time of insemination, while others opined that the embryo remains in an undifferentiated status for three months and assumes its sexual identity only after three months. The *pumsavana* is performed by feeding certain food items or juices to the wife after she has fasted, taken a bath, and put on new garments.

The parting of the hair of the pregnant woman (*śimantonnayana*) is performed between the fourth and eighth month of pregnancy in order to protect mother and fetus from evil influences. The main act consists of the husband parting the hair of his wife with *darbha* grass or a porcupine quill and placing vermilion in the parting of her hair.

To the prenatal rites belongs also the South-Indian *viṣṇubali* ritual performed in Vaikhāṇasa families along with *śimantonnayana*. It consists of an offering (*bali*) to Viṣṇu and a sweet rice pudding (*pāyasa*) given to the pregnant woman in order to make the child a devotee of this god (Huesken 2008). It is believed that Viṣṇu himself will then initiate the newborn child so that it does not need any other sacrament or initiatory rite to make it a Viṣṇu-devotee and to make it eligible to become a Vaikhāṇasa priest.

### Birth and Childhood *Samśkāras*

The majority of the life-cycle rituals focus on childhood and adolescence, the most perilous time of life in premodern societies. The birth ritual (*jātakarma*) consists of cutting the umbilical cord, feeding honey (*medhājanana*), and blessing the new child (*āyusya*) and the mother (*mātrābhimantraṇa*), or touching the shoulders of the child (*aṃsābhimarśana*). Other acts, such as the first breastfeeding, might also become ritualized by chanting a *mantra*. Some texts prescribed that the father or five Brahmins blow over the child.

The name-giving ceremony (*nāmakaraṇa*) is only performed after the eleventh day, but it is often celebrated together with the next two or three *saṃskāras*. It concerns the astrologically determined name whispered by the house priest into the left ear of the child. The name is mostly kept secret and only used for ritual purposes. The first outing (*niṣkramaṇa*) is a ritual where

<sup>10</sup> See, however, Slaje 1997.

on an auspicious day within the first three months the child is taken out of the house and shown to the sun (*ādityadarśana*). This ritual demarcates the end of the impure period. After six months, the child is given the first solid food (*annaprāśana*), most often a sweet rice preparation.

The tonsure or first cutting of the hair (*cūḍākarāṇa*, *caula*) is an ancient ritual that takes place between the first and third year of the child. The ideal time is when the fontanel in the skull of the child is closed, but today the ritual is mostly combined with the initiation (*upanayana*). The priest with the help of the father or maternal uncle cuts small locks of hair from four sides of the child's head. The barber then shaves the rest of the hair except for a little tuft (*śikhā*) that is regarded as the seat of the paternal lineage. The ear-piercing ritual (*karnavedha*), during which the priest or father pierces both earlobes with a gold, silver, or iron needle—depending on the class (*varṇa*) of the family—is to be performed on an auspicious day in the seventh or eighth month.

### Initiatory Saṃskāras

Most childhood rituals are performed for both male and female children. The initiatory rituals, however, are only for boys. The marriage is regarded as the initiation of the girls. The *saṃskāras* of adolescence are often presented as educational rituals. In fact, they focus on introducing the boy into the adult world and preparing him to take on his social and ritual responsibility. They usually begin with the cutting of the hair (*cūḍākarāṇa* given above), followed by the ritual beginning of learning (*vidyārambha*) through which the boy is authorized to learn the Veda.

This initiation or sacred thread ceremony (*upanayana*) is the first of the more complex rituals (see Table 6.3).<sup>11</sup> The age of initiation varies according to status and class. The time of initiation is determined astrologically. The actual preliminary rituals begin with the tonsure (*cūḍākarāṇa*), when the hair of his head is shaved, except for a small strand (the *śikhā*). After this, the actual initiation (*upanayana*) takes place. It is considered a second birth, and is divided into the dedication as an ascetic, as a pupil, and as a man. The primary act in the dedication as an ascetic is the laying-on of the holy cord. During this dedication, the son, if he is a Kṣatriya, is given, among other things, an antelope skin and a stick, the few possessions of an ascetic. In the subsequent dedication as a pupil, the priest teaches the son, both covered by a blanket, the Gāyatrī hymn (RV 3.62.10), which is considered to be a condensed form of the entire Veda. In return, the son honors the priest as his teacher and, according

<sup>11</sup> The description follows Michaels 2004: 77–99 and Gutschow/Michaels 2008.

**Table 6.3.** Class distinctions in initiation according to the Dharmaśāstras

	Brāhmaṇa	Kṣatriya	Vaiśya <sup>12</sup>
Youngest and oldest age	8/16	11/22	12/24
Season	Spring	Summer	Autumn
Week day	Sunday	Tuesday	Saturday
Skin ( <i>uttariya</i> , <i>ajina</i> )	Black antelope	White gazelle, game, tiger	Brown goat or cow
Sacred thread	White cotton	Red wool	Yellow linen
Staff ( <i>daṇḍa</i> )	<i>Palāśa</i> or <i>Bilva</i> wood ( <i>Butea Frondosa</i> , <i>Aegle Marmelos</i> ): gives spiritual strength ( <i>brahman</i> , <i>tejas</i> )	Fig tree ( <i>nyagrodha</i> , <i>Ficus Indica</i> ): gives physical strength ( <i>ojas</i> )	<i>Badara</i> or <i>Udumbara</i> wood ( <i>Zizyphus</i> <i>Jujuba</i> , <i>Ficus</i> <i>Glomerata</i> ): gives nourishment ( <i>ūrj</i> )
Height of the staff	To the head	To the forehead	To the nostrils
Meter of the Sāvitrī verse ( <i>RV</i> 3.62.10)	<i>gāyatrī</i> : 8 syllables per metric foot	<i>triṣṭubh</i> : 11 syllables per metric foot	<i>jagatī</i> : 12 syllables per metric foot

to ancient tradition, brings him firewood to keep up his fire. He goes on a begging tour round the invited guests, too. After this, once more, there is the symbolic and ritual celebration of the study of the holy texts. The son again goes on a round of begging, lights a special fire, and takes a special bath, which makes him into a pupil of Vedic (*snātaka*), although in the classical ritual, the ritual bath is taken at the end of the period of studentship. In a more playful episode called (*deśāntara*), the pupil sets off to Benares for twelve years of studies, a short time after which, his uncle on his mother's side and the priest hold him back at the garden gate, promising to find him a beautiful woman to marry. The end of these "studies," too, is arranged as a ritual. First, the *samāvartana* fire is lit and honored, and then the son receives yogurt and other foods from the priest, as well as a white loincloth and the holy cord. Finally, the initiate dresses in new, worldly (nowadays generally Western) clothing and looks at himself in the mirror. With the *upanayana* the boy is considered a *dvija* or twice-born, that is, he is ritually born into and through the Veda and has completed his second birth after the physical birth from the mother, which is the first birth. Traditionally the boy is to stay in the house of the priest or teacher (*guru*) for many (ideally twelve) years until he has mastered the Veda. But this nowadays happens only in very traditional Brahmanical families. With the *samāvartana* ritual and his returning from the first traditional life-stage (*āśrama*), the liminal phase of celibacy and learning (*brahmacarya*), the boy enters into the second life-stage as a married householder (*grhastha*).

<sup>12</sup> After Smith 1986: 69f. and Pandey 1969: 126ff.; cf. Michaels 2004: 81.

### Marriage Saṃskāras

For the Gṛhyasūtras, a man becomes only complete and fit to sacrifice when he has married. Most Hindu weddings (*vivāha*, *pāṇigrahaṇa*) last for days and contain a great number of subsidiary rites. The core elements involve the selection (*guṇaparīkṣā*) of the bridegroom by the parents of the bride, engagement (*vāgdāna*), the marriage procession (*vadhūgrhagamana*), the reception of the bridegroom's procession, the bestowal of the bride by her father to the groom (*kanyādāna*), taking the bride's hand (*pāṇigrahaṇa*), exchange of garlands between the bride and groom, the lighting and circumambulation of the sacred fire (*agnipradakṣiṇā*, *parikramaṇa*, *pariṇayana*), seven steps (*saptapadī*), and a meal eaten together. Often a sacred necklace (*maṅgalasūtra*) is given to the bride by the groom, who also may apply vermilion (*sindhūra*) on the bride at the parting of her hair.

### Old-Age, Death, and Ancestor Rituals

In the “canon” of the sixteen traditional Hindu rites of passage, only the death ritual (*antyeṣṭi*) is mentioned. Other rituals, however, have to be included in this category. This holds true, for instance, for rituals that concern the third and fourth life-stage (*āśrama*), the ascetic withdrawal from the family home and forest dwelling (*vānaprastha*) and the complete renunciation without domestic fire and wandering (*saṃnyāsa*). In some areas, there are non-ascetic old-age rituals, such as the worship of the aged: for instance, when, among the Newars of Nepal, someone becoming seventy-seven years, seven months, and seven days old (eighty-eight years, eight months, eight days, etc.) is worshiped in a large clay vessel and then carried on a little chariot through the vicinity of his or her house (*bhīmaratharohana*).<sup>13</sup>

In the death ritual (*antyeṣṭi*), specialized “impure” priests perform the final *saṃskāra*, which is meant to prepare the deceased for his or her journey through the underworld to heaven. The corpses of Hindus are cremated—with the exception of small children, ascetics, and persons inflicted by certain diseases. Upon the death of an individual, the body is wrapped and brought to the place of cremation, where the eldest son or some other male relative lights the pyre, together with the priest. The fire is meant to bring the deceased to the ancestors. This is sometimes regarded as the third birth. The ashes are generally thrown into a river.

After the death ritual, close relatives are regarded as impure for a certain period, generally eleven to thirteen days. During this period, they are not

<sup>13</sup> See von Rospatt 2014.

allowed to enter a temple or consume salt. The deceased (*preta*) are then in a weak ghostly state. They are always hungry and without a place to live, until the chief mourner has made a body out of wheat-flower or rice balls (*piṇḍa*). On the twelfth day, or after one year, the deceased is united with his ancestors in a ritual called *sapiṇḍīkaraṇa*. In this ritual, a *piṇḍa* representing the deceased is mixed with three other *piṇḍas* representing the father, grandfather, and great-grandfather. Afterwards the deceased will be worshiped in common and obligatory *śrāddha* rituals as an ancestor by his relatives.

### SAṂSKĀRAS AS RITUALS OF TRANSCENDENCE

For the Gṛhasūtras and Dharmaśāstras a *saṁskāra* is a ritual identification with the eternal and ineffaceable, the Absolute. Thus, the initiation of the son is equated with, among others, the father, the Veda, the sacrifice, and the fire because it is only in this way that he can participate in the wholeness and immortality. If this substitution is perfect (*saṁskṛta*), the rite has an effect *ex opere operato*, of and in itself, without any belief in it, by virtue of the ritual equivalence. The second birth proceeds from the womb of the Veda and the sacrifice, with which the Brahmanical teacher and the boy are identified, and not from the womb of the mother. This regulation is based on ritual chains of identification, important in Brahmanical Hinduism, such as the following: Veda/gods (= immortality) = sacrifice = man (mortality), or, as the Brāhmaṇa of the Hundred Ways, the *Śatapathabrāhmaṇa*, says, “Man is the sacrifice” (ŚB 1.3.2.1). In middle Vedic texts, sentences like the following occur repeatedly: “The person who does not sacrifice is not even born yet” (ŚB 12.2.1.1). By equating the immortal sacrifice with mortal man, immortality itself can only be saved by man becoming (at least thought of as becoming) immortal; this occurs by means of a substitution of the father by the son.

Certainly, this *saṁskāra* theory of the ancient Indian legal scholars brings in a new viewpoint—that of transcendence—in the discussion of rites of passage, which, ever since van Gennep, has been loaded down too much with functional and structural aspects. Van Gennep and Victor Turner (the latter less so than the former) saw the rites of passage in the life cycle for the most part as a means of cementing and renewing social relations, as social mortar, so to speak. And indeed, even though *saṁskāras* mostly focus on individuals,<sup>14</sup> they should not primarily be regarded as events in the life of individuals but as events that constitute and reaffirm socioreligious relations and groups.

<sup>14</sup> *Saṁskāras* are also performed on statues or *stūpas*: see *Kriyāsaṁgrahapañjikā*.

But in rituals of the life cycle, the fear of man confronted with his finite existence is also expressed. For evidently every change, whether of a social or biological kind, represents a danger for the cohesion of the vulnerable community of the individual and society. Irruption and dissolution threaten, particularly with drastic events, especially in extensions and shrinkages of the social group, namely the family: births, in which a new human being is accepted; marriages, in which a family member is integrated into a new assemblage and leaves another; or death, when a member leaves forever. These are also radical interventions in the social group as an economic unit. With marriage, a source of labor leaves one family and enters another—in Hinduism, the bride, as a rule, is regarded as a gift (*kanyādāna*), which does not create a reciprocal obligation in the bridegroom; in initiation, a boy is fully integrated into the economic cycle; death removes a person from this cycle.

In that man equates himself with the unchangeable in certain rites of passage, he appears to counteract the uncertainty of the future, of life and death. Usually it is a matter of relegating the effects of nature or of mortality: birth, teething, sexual maturity, reproduction, and dying. In many life-cycle rites of passage, the natural is recreated again, so that nature becomes sacral culture. “Man is born (by means of initiation) into a world he (ritually) creates himself,” says the *Śatapathabrāhmaṇa* (6.2.2.7).

Thus, a classificatory case is made of the individual, and rituals help to classify. A legitimate and socially accepted father is made of a procreator; a legitimate mother of a child bearer; a legitimate wife is made of a woman; and a full member of the social group is made of a boy or girl. In ancient Rome, the *pater familias* had to lift the child up before it was recognized as legitimate. One who is dead is made an accepted ancestor; in the Hindu death ritual, he receives a new body from the mourners, and thus the strength to “survive,” or, more appropriately, to attain heaven.

If these ritual substitutions and equivalences were not made, disorder would dominate. A bisexual union without a marriage ritual is mere cohabitation; a dead soul not ritually cared for is an unpacified soul, which can quickly become a threatening ghost; a non-initiated member is the same as a child without rights. A non-initiated Brahmin, say the Indian legal texts, is a Brahmin by birth only. He is a once-born, the same as one who may not hear nor teach the Veda; he is as one who is ill or cast out. Rites of passage in the life cycle establish and repeat this identification with the immortal by constant repetition of the perpetually unchanging, or by referring to it. They create, preserve, and strengthen identity, and in this manner, they strengthen the individual and the social group.<sup>15</sup>

<sup>15</sup> I am grateful to Christof Zotter for valuable suggestions.

## The Vedic Student

*brahmacārin*

*Timothy Lubin*

The whole system of Dharmaśāstra presupposes the existence of disciplined, learned persons who know and act upon the vast body of precepts that constitute the Brahmanical model of right conduct (*dharma*). The literature of Dharmaśāstra, in fact, came into existence precisely as part of the process by which such persons were trained, and trained others in turn.<sup>1</sup> The training combined strict adherence to elaborate ritualized rules of practice with largely oral textual study with a preceptor. Notionally, at least, this *dharma* has its roots in the Veda, the transcendent wisdom revealed to the ancient poet-sages, crystalized in collections of verse, ritual formulas, and explanatory (exegetical) prose. The oldest verses were collected in canonical form as the *Ṛgveda* (composed ca. 1400–1200 BCE), for use by a particular class of priests in the Vedic fire-offering rites (*yajña*). Two distinct collections of liturgical verses and ritual formulas were later likewise transmitted as Veda (the *Sāmaveda* and *Yajurveda*). A fourth collection of texts pertaining to a separate group of ritual specialists dealing with domestic ceremonies, healing rites, and sorcery, some of it quite ancient, was eventually reclassified as a fourth Veda, the *Atharvaveda*.

These mnemonically transmitted utterances, considered timeless and not of human authorship, were called *brahman*, and the process for learning them by rote and thus embodying them was called *brahmacarya*, literally “pursuit or practice of *brahman*.” This term very early took on a specific technical sense: starting with an initiation by the teacher, symbolically a rebirth, *brahmacarya* required adherence to a set of disciplinary rules (including celibacy) as well as

<sup>1</sup> Scharfe 2002 (esp. Chapter 7 and 11–13) discusses the initiation and *brahmacarya* as an educational system that helped establish Brahmins’ reputation for expertise in religious but also literary and administrative fields.

study, and concluded with a ceremonial bath. The Vedic student (*brahmacārin*) served his preceptor as an apprentice, residing in his home. It is likely that, at first, it was this training itself that constituted a person as a Brahmin (*brāhmaṇa*), that is, a specialist in *brahman*. Even so, it is also clear that the profession soon came to be passed down in families as a birthright and became, in social terms, an ascriptive caste status. This chapter examines the form and purpose of the Vedic studentship, and the special importance that came to be attached to it as Brahmins sought to reposition their tradition as a basis for establishing religious and legal norms for society.

## THE STUDENT IN THE EARLIEST SOURCES

The Vedic initiation and rule of *brahmacarya* closely parallel the rites and regimens of consecration (called *vrata* and *dīkṣā*) undertaken by the sponsor of Vedic “high-cult” fire-offering services. The dominant symbolism in all of these is the overcoming of human weaknesses and the attainment of a quasi-divine status during the period of consecration. Like the *dīkṣā* for the Soma ritual, the *upanayana* is presented as a ritual rebirth, but while in the *dīkṣā* the sacrificer regenerates himself in the “womb” of the Veda, the *upanayana* casts the Vedic preceptor (*ācārya*, “guide, authority on correct practice”) as spiritual parent. Thus, whereas in the consecrations for worship the sponsor performs the ceremony of “approaching” (*upāyana*) the state of consecration, the rite of initiation into Veda study is more commonly spoken of as an “inducting” (*upanayana*) because the teacher “leads” the student into *brahmacarya*.<sup>2</sup>

Probably the earliest work to mention *brahmacarya* is a hymn of the *Atharvaveda* (11.5).<sup>3</sup> The *Atharvaveda* generally is more concerned with subjects that would later be treated systematically in the codes of domestic ritual (*Gr̥hyasūtras*), e.g., life-cycle ceremonies, among which the initiation comes to be classed. The hymn eulogizes the Veda student in grandiose terms—even cosmic terms, as the sun itself—mentioning several distinctive attributes familiar to us from later sources: the characteristic grass belt, the antelope skin, the beard allowed to grow uncut (after the initiatory

<sup>2</sup> For an extended comparison of *dīkṣā*, *brahmacarya*, and related *vratas* as a class of ritual practices, as well as more detailed evidence for the historical development reflected in the ritual and dharma codes’ treatments of initiation, see Lubin 1994 and 2005. This chapter is a somewhat updated summary of the analysis presented there. Gonda 1965 (esp. Chapters 8–10) assembles the relevant textual evidence and notes some of the formal parallels between *dīkṣā* and *brahmacarya*.

<sup>3</sup> In the Śaunaka recension; 16.5 in the Paippalāda is quite similar. Oguibénine 1990 and Kajihara 2002 (esp. Chapters 3–7) give particular attention to the *Atharvaveda* as an early source on the *brahmacārin*.



shaving), the duty of bringing of firewood to tend (*upāste*) the fire, the begging of alms (*bhikṣā*), and the state of being consecrated (*dīkṣita*, v. 6). The initiation rite is presented as a pregnancy, with the teacher as the expectant mother: “The preceptor, drawing the *brahmacārīn* near (*upanāyamāna*), makes him an embryo within. Three nights he carries him in his belly; the gods gather to see him when he is born” (v. 3). The student is repeatedly said (vv. 1–5) to heat his teacher, the gods, and the world with his fervor (*tapas*). *Brahmacarya* and *tapas*, virtually equated, are said to be the energy by which all beings attain their natural aims: thereby, the ox and horse win food; a girl wins a young husband; a teacher seeks a student; a king protects his realm; Indra wins heaven; and the gods overcome death (vv. 17–19).

The *upanayana* is not an integral part of the sacrificial ritual, so it is barely mentioned in the other three Vedas; the only discussion of it is in *Śatapatha Brāhmaṇa* 11.5.3–11.5.4, where a debate between Śauceya Prācinayogya and the sage Uddālaka Āruṇi ends with Śauceya asking to become Uddālaka’s student: “‘Here are sticks of firewood. May I approach (*úpāyāni*) you (for study).’ And he said, ‘... Come, approach (*úpehi*).’” The request is an opportunity to enumerate the key features of the rite: “‘I have come to *brahmacārya*,’ he says—thus he announces himself to *brāhman*. ‘Let me be a *brahmacārīn*,’ he says—thus he gives himself over to *brāhman*. ... Then (the teacher) takes his hand, saying, ‘You are Indra’s *brahmacārīn*, Agni is your teacher, I am your teacher, O so-and-so.’” After placing the student in the care of various divinities, the preceptor declares, “You are a *brahmacārīn*,” and enjoins upon his new disciple the rules of the discipline: “Eat water” (*ápo śāna*). “Do work” (*kárma kuru*). “Lay on a stick of firewood” (*samídham ādhehi*). “Do not sleep” (*mā suṣupthāḥ*). “Eat water” (again). Finally, the teacher recites for him the Sāvitrī-mantra (*RV* 3.62.10): *tāt savitúr vārenyam bhārgo devāsya dhīmahi/dhíyo yó naḥ pracodáyāt* (“May we attain that desirable splendor of the Heavenly Impeller [Deva Savitṛ], that he might stimulate our thoughts”), first one *pāda* at a time, then by hemistichs, then all together. This marks the start of Veda study.

Some say that a preceptor who is “pregnant” (*garbhín*) with a student should abstain from sexual relations, but the *Śatapatha* disagrees: “Human progeny are born from the procreative organ (*prajānanāt*). The divine progeny are the meters—he generates them from the mouth, and from there he generates the (student). That is why he may follow his desire” (*ŚB* 11.5.4.17). However the student girds himself with a belt (*mékhalā*), to separate the pure, immortal parts, above the navel, from those below (*TS* 6.1.3.4; cf. *ŚB* 6.7.1.9–6.7.1.11; 10.1.2.11).

Thus, the canonical Vedic texts describe many features of the rite of initiation into studentship: the student approaches with firewood in hand; the teacher takes him by the hand, and commits him into the care of deities, enjoins upon him the rule (*vrata*), and commences teaching with the Sāvitrī

stanza. The *Atharvaveda* mentions the student's beard, belt, deerskin, and alms-gathering (*bhikṣā*). The *Śatapatha Brāhmaṇa* summarizes the rule of conduct with four commands (to "eat water," perform work (*karman*), tend the fire, and avoid sleep). Notable by its absence is any reference to celibacy, which is perhaps the most famous aspect of *brahmacarya* in later sources—so prominent, indeed, that in Buddhist literature, *brahmacarya* becomes the usual term for monastic celibacy.

## THE STUDENT IN THE VEDIC DOMESTIC RITUAL CODES (*GR̥HYASŪTRAS*)

Following the codification of the Vedic "high cult" in the śrautasūtras, priestly authors undertook to codify household ceremonies as well, which came to include a diverse assortment of sacraments (*saṃskāras*), domestic offerings to the gods performed by the head of household, rites to appease various spirits and *genii loci*, and rites to avert misfortune. Initiation into studentship is included in the sequence of sacraments, but there are a number of important and revealing differences in how it is presented in the various codes. These differences can in fact provide an index of a shift in the mode of presentation, which further provides clues to the changing significance of studentship in priestly doctrine.

The first important difference is that while the codes naturally present the sacraments mostly in chronological order from the rite of impregnation onward, some of them present the marriage ceremony first, while others begin with the initiation. The marriage-first order is probably the older one, since this rite creates the ritual agent of all other rites in the *Gr̥hyasūtras*—in fact, when no subject of a verb of ritual action is stated, it is presumed to be the married man of the house. The other sacraments follow from the marriage insofar as they are to be performed by the father upon his child.

The shift toward moving the Vedic initiation forward to be first in sequence happened largely in tandem with a greater emphasis on Veda study as a requirement incumbent upon and distinctive of all three of the higher social strata (*varṇas*)—viz., Brāhmaṇas (Brahmins), Kṣatriyas ("rulers"), and Vaiśyas ("commoners")—and a sign of their status as "Āryas" (roughly, "noble ones") in contrast with the Śūdras ranked below them. The primary sign of this shift is that whereas initiation and studentship were earlier said to constitute a person as a Brahmin, now they constituted people as belonging to one of three different ranked groups, differentiated on the basis of symbolic variations in how the rite was to be performed. Each of the variables in the ritual—proper age at initiation; proper type of animal skin, garment, belt, and staff; proper

season for the rite—could have three values, corresponding to the three strata respectively. These separate values reaffirmed the distinctions between the classes, and the hierarchy implied in them, while linking them within the shared privilege (and duties) of Veda study. It asserted their solidarity vis-à-vis the Śūdra class, providing a justification for their relative superiority. On account of being eligible for the ritual rebirth of Vedic initiation, the three “upper” *varṇas* were called “twice-born” (*dvija*). In fact, the word *dvija* begins to be used in this sense only during the period when this new doctrine was explicitly formulated, in order words, with the promulgation of the Dharmasūtras.

While the Ṛghyasūtras show many disagreements on these points, the direction of change is made evident in that the fully elaborated three-part model, with eight, eleven, and twelve as the ideal ages of the initiation, is the model that all the dharmasūtras univocally adopt, and which becomes ubiquitous the later dharmaśāstras. *Śatapatha Brāhmaṇa* 11.5.4 made no mention of different social classes (*varṇas*) in connection with initiation. By contrast, most of the Ṛghyasūtras do so. But they do not always do so for all of the variables, nor do they agree on what values to assign to each variable in each case. The lists of distinctions generally come in a bundle at the beginning of the description of the rite (*Pāraskara* alone has them at the end), but they are sometimes inserted haphazardly and out of context.<sup>4</sup>

The first distinction made has to do with the proper age for initiating a student. The classical pattern recognized by *Mānava Dharmaśāstra* and all later authorities dictates that initiation be performed for a Brahmin ideally at age eight, for a Kṣatriya at age eleven, and for a Vaiśya at age twelve. This rule is coupled with a corollary: initiation should occur by ages sixteen, twenty-two, and twenty-four (respectively)—that is, at twice the lower age limit. One who remains uninitiated after that age will be deemed *patitasāvitrika*, disqualified from learning the Sāvitrī mantra (the verse to Savitr that the teacher recites for new initiates), and is subject to social sanction (exclusion) and the performance of penance.

The rationale for the three separate ages is never given directly, but a deliberate correlation does appear between these ages and the number of syllables in a metrical foot (*pāda*) of each of the three common meters, *gāyatrī*, *triṣṭubh*, and *jagatī*. The stanza taught to the student during the initiation is thus supposed to be a Savitr-verse in the appropriate meter (as *Śāṅkhāyana Ṛghyasūtra* makes clear). Yet it is the Sāvitrī verse in the *gāyatrī* meter, the

<sup>4</sup> For example, the rite for donning the garment comes at the beginning of *Jaiminīya Ṛghyasūtra* 1.12, with no mention of differences of fabric. Later, just after the tying of the belt has been described, the text inserts an enumeration of materials for the belt, and the opportunity is taken to list the materials for the garment and the skin as well. This may suggest that the distinctions were added later to a preexisting treatment of the rites. I have represented the variant differentiations in a chart in Lubin 2016: 328–9.

famous RV 3.62.10, that is cited in most of the texts (with the exception of *Vārāha* 5.23–5.26, which provides an example of each). As so often, the Brahmin is the default category in descriptions of the ritual, and the sūtras in general assume a Brahmin student.

Yet very few of the Gṛhyasūtras prescribe these ages unambiguously. The *Mānava* does not make distinctions of class by age at all, simply prescribing initiation at age seven or nine. All the others do make the class distinctions, but the *Kāṭhaka* prescribes 7:9:11 as the ages; the *Hiranyakeśin* and *Jaiminiya* give 7:11:12 (*Jaiminiya* offering other options for the Brahmin).<sup>5</sup> Altogether, four codes (*Kāṭhaka*, *Mānava*, *Hiranyakeśin*, and *Jaiminiya*) give the age for a Brahmin as seven; of these, two (*Mānava* and *Jaiminiya*) offer other options, but age eight is not one of them. Of those that prescribe age eight for the Brahmin, four (*Śāṅkhāyana*, *Kauṣītaki*, *Vārāha*, and *Bharadvāja*) allow other options for the Brahmin only.<sup>6</sup>

In light of the fact that most of the Gṛhyasūtras take some notice of the tripartite scheme, it is surprising that so little effort has been made to ensure consistency. For this reason, I argue that the distinctions by class were deliberately introduced during the period when the Gṛhyasūtras were being codified in an effort that was only partially coordinated across schools. Because the rules were already circulating in an older oral form, the editors of the codes were reluctant to do away completely with traditionally authoritative views on the proper age. Hence, the prescriptions for the age of Kṣatriya and Vaiśya initiates are relatively consistent, as are the upper age limits as a set,<sup>7</sup> which were devised with the triple distinction already in mind. The original diversity of views is preserved only in the case of the proper age of initiation for a Brahmin. The fact that the age seven appears so often as the first or only choice for a Brahmin, even when it spoils the symmetry of the pattern, in a telling clue that seven was once widely regarded as a standard age for initiates—perhaps *the* standard.

An interesting circumstance supports this view. Many of the discussions of *upanayana* use a peculiar method for calculating the initiate's age: they begin counting from conception rather than from birth (e.g., *garbhāṣṭame varṣe* ...). This system is used only in this context, and only by Gṛhyasūtras that prescribe age eight for a Brahmin initiate. By this method of calculation, the number

<sup>5</sup> Even the late *Vaikhāṇasa Gṛhyasūtra* does not present age eight as standard but only one of three options (5, 8, or 9) based solely on whether one desires the glow of *Brahman*, long life, or eminence.

<sup>6</sup> This section adapts the discussion found in Lubin 2005 and Lubin 2016: 327–32.

<sup>7</sup> Only the *Jaiminiya* gives just one age as the upper limit, sixteen, in spite of the fact that its lower limit ages are five or seven or nine for a Brahmin (not eight!), eleven for a Kṣatriya, and twelve for a Vaiśya). Hence, the newly designated upper limit is anomalously inserted, taking only the case of the Brahmin into account. The sūtra authors frequently assumed the Brahmin as the default category.

eight can be adopted without conflicting with an established tradition of initiation at seven years (from birth). Yet here too, the application of a novel principle is inconsistent: all (except the *Mānava*) give the other ages as eleven and twelve (and the upper limits as sixteen, twenty-two, twenty-four) regardless of the method of reckoning used. Thus *Hiranyakeśin* gives the ages: seven, eleven, twelve. *Āśvalāyana* and *Pāraskara* acknowledge both methods. But with the composition of a new set of rules on the subject, embodied in the dharmasūtras, the ambiguities of age disappear: The *Mānava Dharmaśāstra* diverges from the *Mānava* tradition (to which it nominally belongs) under the impulse toward catholicism on this point.

There are other sorts of indications that initiation into *brahmacarya* was earlier reserved for Brahmins (or at least expected only of Brahmins). Thus, *ŚB* 11.5.4.16 speaks of the teacher “initiating a Brahmin into *brahmacarya*.” *Taittiriya Saṃhitā* (of the Yajurveda) 6.3.10.5 makes study a duty, but only for Brahmins: “A Brahmin, even as he is born, is born indebted with three (debts): (first), to the sages (he is indebted) with *brahmacarya* . . .” *Chāndogya Upaniṣad* 4.4.5 presupposes that birth in a Brahmin family is a prerequisite for initiation, since Hāridrumata Gautama accepts Satyakāma Jābāla as a student only when he determines that the boy’s truthfulness is a sign of his Brahmin ancestry.<sup>8</sup>

Otherwise, though, it sometimes appears that *brahmacarya* is precisely what defines the status: one pursues *brāhmaṇ* and thus is deemed *brāhmaṇa*. Thus the verse from *ŚB* 11.5.4.12 (quoted above) has the teacher’s “pregnancy” issue in the birth of a *brāhmaṇa* on the third day. In any case, there is an awareness that merely being related to Brahmins (*brahmabandhu*) does not by itself make one a *real* Brahmin (*AitB* 7.27, *ChU* 6.1.1; cf. *Sutta Nipāta* 2.7, v. 312, etc.).

Another possible indication of the novelty of initiation for lower varṇas is the fact that the term *dvija* (or *dvijāti*) was never used to designate the three higher *varṇas* in any text definitely prior to the younger dharmasūtras.<sup>9</sup> In later Brahmanical sources, by and large, the term designates Brahmins in particular, which probably should be taken as a tacit acknowledgment that, in practice, Veda study was regarded as the province mainly of Brahmins. The same may be said about the sacred thread supposed to be worn by those who have had initiation into Veda study. In the *Gr̥hyasūtras* and older dharmasūtras, the word *yajñopavīta* (“wrapped for worship”)

<sup>8</sup> We may ask whether this judgment is meant to imply that “what’s bred in the bone will out in the flesh” or rather that Brahminhood is a function of personal virtues (as the *Dhammapada* argues).

<sup>9</sup> Āpastamba, clearly the earliest Dharmasūtra, does not use the term at all; *dvijāti* occurs five times in *Baudhāyana*, four times in *Gautama*; *Vāsiṣṭha* has *dvijāti* once and *dvija* twelve times. *Dvija* becomes ubiquitous in the verse Dharmaśāstras. I first made this observation in Lubin 2005: 87–8, especially fn. 23; Olivelle 2012a discusses the matter at more length.

refers only to the particular mode of wearing the upper garment (or in place of that, a string, as in *Āpastamba* and *Gautama*) over the left shoulder and under the right arm while worshipping the gods and for other auspicious activities such as sipping water. It is only beginning with the *Baudhāyana* and *Vāsiṣṭha Dharmasūtras* that the word is applied to a special string conferred upon the student at initiation, to be worn thenceforth, serving as a badge for properly credentialed Āryas of all three classes—though in this case too it has generally been understood more narrowly as a marker of Brahmin status.<sup>10</sup>

The gear assigned to the Vedic student in the ritual codes is also sometimes (but not always) subject to distinctions according to class. Around his waist, a Brahmin must bind a triple cord of *muñja* grass, worn also by a consecrated sacrificer (*dīkṣita*); this feature of the initiation is so distinctive that in later times the ritual was often referred to as “the binding with *muñja*” (*muñjī-bandhana*). (A bowstring is prescribed for a Kṣatriya; for a Vaiśya various fibers are suggested.) Students should wear an animal skin: the codes are unanimous that the Brahmin (again, like a consecrated sacrificer) should wear the skin of a black antelope, an animal specially associated with the fire sacrifice. Four codes in fact prescribe the antelope skin to all classes (at least as an option), but otherwise the Kṣatriya is assigned the skin of a *ruru* deer or a tiger, and the Vaiśya the hide of a goat or cow (in most texts). Like the deerskin and belt, a lower garment is part of the equipment of the *dīkṣā* as well. The Black Yajurveda schools make no distinctions, but *Pāraskara* 2.5.16 (belonging to the White Yajurveda) would use hemp for the Brahmin, flax for a Kṣatriya, and wool for a Vaiśya; *Jaiminīya* suggests linen or hemp (without distinction), while *Gobhila* limits those to Brahmins, assigning cotton and wool to the other groups, respectively. The Rigvedic codes prescribe different colors instead of fabrics. Further distinctions are in certain codes made for the wood or height of the staff, the season of initiation, and the order of the words used in the student’s request for alms.

A careful review of these variations shows plainly that the initiation ritual, modeled on the consecration (*dīkṣā*) for sponsoring offerings, originally had only a single form, and was understood to confer or at least to confirm Brahmin status. In the domestic ritual codes, we find the priestly authorities extrapolating the elements of the ritual as a way of asserting the idea that Veda study is naturally incumbent upon all members of the Ārya classes, while maintaining a vivid (if contrived) system for marking hierarchical differences among these classes in the initiation. Half of the distinctions are simply impositions of a set of ranked items. The age-to-meter correlations (eight = gāyatrī; eleven = triṣṭubh; twelve = jagatī) reflect the long-established

<sup>10</sup> Olivelle 2000: 478 (note on *ĀpDh* 1.6.18), and 2012: 119, 128–9.

associations of these meters with Agni and the priestly class, Indra and the warrior-chieftain class, and the Viśve Devāḥ (All-Gods) and the common Ārya people, respectively.<sup>11</sup> Likewise, the correlations of class with season mirror old associations between the “foremost class” and the “first season” of the year, the warriors with the hot season, and the Vaiśyas with the season of ripening and harvesting.<sup>12</sup> Finally, the ordering of words in the request for alms, and the height of the staff are bare sequence-patterns arbitrarily applied (in the latter case, suggesting both directions without rationale). The irregular deviations from the programmatic pattern that one would expect in a code based on customary practice occur mainly in the matter of the age of the Brahmin initiate, for this was probably the most common type in practice. If seven was widely accepted as the proper age, it could be reconciled with a theoretical figure of eight by calculating from conception rather than birth; but as we saw, this peculiar “fix” (if such it was) was not applied systematically at all.

The factors cited here suggest that the initiation into Vedic study was at first simply the ritual basis of Brahmin status. If at one time Brahminhood was not considered a birth status, initiation and study would then have constituted someone as a Brahmin. In any case, there is a clear sense that initiation and study makes one a “true” Brahmin (as opposed to a *brahmabandhu*, a “Brahmin by relation only”). During the period when the domestic ritual codes were being composed, the initiation into Vedic studentship was extended as a religious duty to all who laid claim to Ārya social status as Kṣatriyas or Vaiśyas, such status being signaled in the ritual by the use of different indices for each *varṇa*. The widespread inconsistencies on this point in the ritual codes exhibit the new doctrine in a formative phase, given (a) that not all schools recognize them; (b) that even when they do recognize them, the generic option tends to be identical with the mode otherwise used for a Brahmin; and finally (c) that, having spelled out the various options, the texts often tend to proceed as if the prospective initiate were a Brahmin.

Certainly Vedic initiation (and its marker, the sacred thread) have even in the classical literature been treated as a mark of Brahminhood. Second, it seems that such differentiations were devised as part of a concerted program of inculcating Brahmanical forms of religious life more broadly in Indian society, while maintaining symbolically the preeminence of the Brahmin. The priestly authorities’ purpose in doing so was show that Vedic recitation and the priestly theorists’ particular brand of fire ritual should be practiced by

<sup>11</sup> These associations go back to the *Rgveda* itself (10.130.4–10.130.5, cf. 10.124.9), being extended in the later mantra collections and Brāhmaṇas (*TS* 1.7.5.4, 2.2.5.5; *AitB* 3.13.1; and as several points in *ŚB* 1 [2.5.6, 3.2.16, 4.1.34, 7.2.13ff.]). See Smith 1994: 293–303.

<sup>12</sup> Smith 1994: 178–9.

all of the Ārya segments of society, while providing signals of the social hierarchy. A little later, the Dharmasūtras regularized many of these patterns of differentiation.

## THE REQUIREMENTS OF BRAHMACARYA

The entire purpose of the regimen (*vrata*) that commences with the *upanayana* is to maintain the sanctified state into which the newly “reborn” disciple has been drawn. This is accomplished through a discipline combining ascetical restrictions and deferential service of master and ritual fire (the earthly form of the deity Agni): “The student’s constant obligations are daily to put fuel on the fire (*samidādhāna*), to go around for alms (*bhikṣācaraṇa*), to sleep on the ground (*adhaḥśayyā*), and to obey the preceptor (*guruśuśrūṣā*)” (*ŚāṅkhGr* 2.6.8). Beyond the requirement that food be got by begging, and presented to the teacher before eating, the student is also supposed to avoid condiments and salt (*kṣāra-lavaṇa*); many authorities also ban honey (as is stated in *ŚB* 11.5.4, along with Uddālaka’s dissent) and meat. The aim here is to subsist on unappealing, meager food as a rejection of luxury.

Food was a central symbol of growth, vitality, and power in the Vedic religion. Worldly success was framed in terms of winning food. Yet the student’s relationship to food was regimented. To beg for alms was to surrender autonomy over one’s sustenance, to renounce the ready gratification of desires. It also signified a redirection of all effort from worldly production to divine toil, the service of the teacher and his fire. To sleep on the ground was likewise to renounce luxury and self-indulgence, as was the injunction never to sleep while the sun was up. Although the student’s avoidance of sexual gratification is rarely mentioned in the ritual codes, it is tacitly understood; even the preceptor, though he may be married, is sometimes required to practice chastity.<sup>13</sup> Later, in the *dharma* codes, failing to beg or to offer fuel for the teacher’s fire is equivalent to sexual incontinence, and equal consequences result from either violation (*BDh* 1.2.54).

This aspect of the practice was so important that the term *brahmacarya* came to refer primarily to sexual chastity in other contexts as well. For example, after a wedding, for three nights following their wedding, newlyweds must “observe *brahmacarya*” by sleeping before the fire without having sex, and by avoiding condiments and salt. The clerical celibacy of the alms-collecting Buddhist monk (*bhikṣu*) was from the start called *brahmacarya*.

<sup>13</sup> “He should not have sex when he has inducted a *brāhmaṇa* into *brahmacarya*” (*ŚB* 11.5.4.16); similarly, when a teacher gives initiation into a *veda-vrata*, he must abstain from sex and meat for a day and a night before the rite (*ŚāṅkhGr* 2.11.6).



## THE RULES FOR STUDY OF SPECIAL PARTS OF THE VEDA: VEDA-VRATAS

Beyond the general rules of *brahmacarya*, Vedic training also included special, more intense rules that were to be observed when one was studying certain esoteric chapters of the canon.<sup>14</sup> *Baudhāyana Gr̥hyasūtra* (3.2.3) states this principle clearly: “There is a regimen to be observed (*vrata*caryā) for each section (of the Veda).” The lists of such higher-level *vratas* (or *dīkṣās*, often referred to collectively as *veda-vratas*) vary from Veda to Veda, and to some extent even by subtradition. Here, only an overview is possible. Most of the special regimens relate to the study of “secret” texts: chapters of the sort that tend to be called *āranyaka* (“forest lesson”) and *upaniṣad* or *rahasya* (“secret, mystery”).<sup>15</sup> Many of these consist of groups of mantras and exegetical passages connected with the symbol-laden Vedic rites called Pravargya, Mahāvratā, and Agnicayana. The study of these passages was often said to convey particular benefits.

The *śākvara-vrata* is the name applied in the Ṛgveda and Sāmaveda to the special rule for learning the Mahānāmni verses, which are touted as an effective rain charm.<sup>16</sup> The procedure is as follows (*ŚāṅkhGr̥* 2.12.1–2.12.14): The preceptor asks the student to affirm that he has fulfilled his duties of *brahmacarya* to the gods, and then wraps his face tightly in a new cloth before commanding him: “For three nights, leave off fueling the fire, begging, sleeping on the ground, and waiting on your teacher, and fast in the wild, in a ‘house of the gods’ (*devakula*), or in an *agnihotra* fire-shed, undistracted and restraining your speech.” The lesson itself must take place outside the village, in the forest. The teacher as well is under several taboos during this period: he must abstain from meat and sex, and avoid gazing on inauspicious objects (including raw meat, blood, or a menstrual or postpartum woman).

A similar regimen is imposed when the student takes up the study of the *vrātika-vrata* (for the liturgy of the Mahāvratā ritual in the Ṛgveda, or “forest” chapters of the Sāmaveda), and the *aupaniṣada-vrata* (for the chapters classed as upaniṣads in each Vedic tradition),<sup>17</sup> with the difference that in the latter two the student only listens while the teacher recites (*ŚāṅkhGr̥* 2.12.14).

<sup>14</sup> We find passages on the *veda-vratas* in all the Gr̥hyasūtras of the Sāmaveda tradition, viz. *Gobhila* (3.1–3.2), *Jaiminiya* (1.16–1.17), and *Khādīra* (2.5); in the Ṛgveda’s *Śāṅkhāyana* (2.11–2.12) and *Kauṣītaki* (2.7), as well as *Āśvalāyana Śrautasūtra* (8.14); and in several codes of the Black Yajurveda, viz. *KGṛ* 42–4, *MGṛ* 1.7.1–1.7.3, 1.21.13–1.21.14, and 1.23, *VārGṛ* 7, *BGṛ* 3.1–3.4, *BhGṛ* 1.10 and 3.4–3.7, and *VaikhGṛ* 2.9–2.11.

<sup>15</sup> *MDh* 2.165 states that an Ārya should study the Veda, including the mysteries (*rahasya*), while observing the appropriate forms of *tapas* and *vrata*.

<sup>16</sup> These occur in an appendix (*khila*) to the Ṛgveda and in *AitĀ* 4.

<sup>17</sup> The relevant text passages for the *śākvaraluddīkṣanikā*, *vrātika*, and *aupaniṣada* regimens are, respectively, *AitĀ* 4, 1.1–2.3, and 2.4–3.2, and for the latter two *vratas*, *ŚāṅkhĀ* 1–2 and 3–15 (the Mahānāmni mantras are transmitted separately in that tradition).

The Sāmaveda tradition also teaches the *jyaiṣṭhasāmika-vrata* (for study of the *ājyadoha* verses, which yields benefits such as wealth in cattle).

The list of *veda-vratas* in the Yajurveda traditions is quite different:<sup>18</sup> they prescribe the *śukriya-vrata* or *avāntara-dikṣā* (an intensification of *brahmacarya* for the study of the Pravargya ritual),<sup>19</sup> the *cāturhotṛkī* (for the Caturhotṛ mantras, which establish correlations between deities and various phenomena with priestly functions), the (*agni-*)*godāna* or *āgnikī dikṣā* (for study of the Agnicayana liturgy), the *āśvamedhikī dikṣā* (for study of the royal horse sacrifice), and the *traividyaka* (for study of the opening sections of the three Vedas).

A special case is the *aṣṭācatvāriṃśat-sammita*, a one-year *vrata* “equivalent to forty-eight (years’ study)” (*KGr* 4; *BGr* 3.3), which can serve as a substitute for the normal *brahmacarya*, or to compensate when the normal period *brahmacarya* has been cut short. This short but rigorous observance purifies the “student” (along with ten generations of ancestors and descendants) of impurities and sins (*KGr* 4.21–4.23). In the *Kāṭhaka-Gṛhyasūtra*, this topic is followed immediately (*KGr* 5–6) by the rules for the *kṛcchra* (“painful”), *atikṛcchra* (“extremely painful”), *taptakṛcchra* (“hot and painful”), and *sāntapana* (“agonizing”), four expiatory regimens that become standard forms of penance in classical Dharmaśāstra. Although not involving actual study, they require a mode of discipline otherwise very similar to that of the *aṣṭācatvāriṃśat-sammita*. As with the *veda-vratas* themselves, an observance requiring unusually severe restrictions counts as equivalent to a much longer but less stringent *vrata*. In cases like this, performing the ascetic activities themselves become the essential basis of the regimen’s success, rather than the actual learning of texts (earlier the ostensible purpose of such regimens).

## THE DUTY OF PRIVATE RECITATION

In pragmatic terms, ritualized recitation served to reinforce the memory, but for the student (and later for the hermit or wandering ascetic), to recite the liturgy was a substitute for actually performing the corresponding rites. This notion was expressed in *Āśvalāyana Gṛhyasūtra* 1.1.2–1.1.4, which cites three *Ṛgveda* stanzas to show that verses recited are like offerings, but it was also formalized in the doctrine of the “Five Great Sacrifices” (*mahāyajña*, first

<sup>18</sup> *KGr* 42–44; *MGr* 1.7.1–1.7.3, 1.21.13–1.21.14, and 1.23, *VārGr* 7; *BGr* 3.1–3.4; *BhGr* 1.10 and 3.4–3.7; and *VaikhGr* 2.9–2.11. *Mānava* and *Vārāha* call these observances *dikṣās*.

<sup>19</sup> *Mānava* and *Vārāha*, call the regimen itself “*pravargya*.” *Vārāha*’s more ample description (*VārGr* 7.17–7.22) makes it clear that a *vrata* (and not the full ritual itself) is meant. The Sāmaveda codes have an *āditya-vrata* for this purpose.

attested in ŚB 11.5.6.1).<sup>20</sup> These were simple, daily ritual gestures to satisfy spirits (with food), men (with hospitality), ancestors (with a libation), gods (with fuel placed on the sacred fire), and *Brahman* (with Veda recitation). The fifth great sacrifice, the *brahma-yajña*, was thus fulfilled through daily private recitation (*svādhyāya*). It is better to say that this is a universalized sacrifice, for it is not entirely interior. In this sacrifice, the reciter's mental and sensual faculties serve as the ritual implements. The wind, lightning, and thunder replace the ritual calls that announce the offerings. Instead of physical substances, the *ṛc*-verses are the milk libations; *yajus*-formulas are the ghee libations; *sāman*-songs are the Soma libations; the texts of Atharvans are the fat libations; and other ancient lore constitutes the honey libations. Accordingly, just as the sacrificial rites could only proceed in pure places and proper times, suspension of recitation (*anadhyāya*) was required under a long list of inauspicious circumstances.

The idea that all Āryas have a duty to learn and recite the Veda was also promoted in the *dharma* codes by the "theology of congenital debts":<sup>21</sup> of Veda study to the sages, of offspring to one's ancestors, and of sacrificial offerings to the gods. In its earliest form, this set of debts applied only to the Brahmin (as in *TS* 6.3.10.5, cited above). But the *dharma* codes generalized the obligation to apply to all those eligible to be initiated (*MDh* 6.35–6.37). So while only Brahmins were eligible to teach the Veda, all Āryas were in theory duty-bound to learn it, at least nominally (by undergoing initiation and token instruction). In fact, this is just one of the ways in which Dharmaśāstra extended certain Brahmin norms (albeit in scaled forms) to the middle *varṇas* as the template for a life of *dharma*. The "*āśrama* system," the canonization of a set of four ideal modes of life, or religious professions, open to observant Āryas, did so more comprehensively.

## STUDENTSHIP AS THE FIRST PROFESSION (ĀŚRAMA) OF AN ĀRYA

The first steps in the formation of this system can be traced in the *Gṛhyasūtras*. As observed earlier, most of the *Gṛhyasūtras* begin the series of the family sacraments with the marriage—fittingly, since that rite marks the commencement of family life, the basis of the household—and introduce the *upanayana* in the sequence of rites for the couple's offspring. A few *sūtras*, though, do begin with the *upanayana* (*Bharadvāja* and *Hiranyakeśin*, as well as the very

<sup>20</sup> See Chapter 12 on "Daily Duties."

<sup>21</sup> This formulation is from Davis 2010: 82, who was adapting that of Malamoud 1996a: 92–108; see also Olivelle's discussion (1993: 46–55, 176–82).

late *Āgñiveśya*, and *Vaikhānasa*). Two others (*Mānava* and *Kāṭhaka*) place the rules of *brahmacarya* near the beginning, although they deal with the *upanayana* separately, at the end of the childhood sacraments. Such discrepant arrangements in the domestic ritual codes of the Black Yajurveda suggest that in that sphere, observance of the rites of Veda study was moving into its role as the essential prerequisite to an Ārya householder life, with the corollary that mantra-recitation would provide a prestigious marker of orthodox Brahmanical piety.

The trend, and its direction, is confirmed by a comparison with the later tradition, which is nearly unanimous. The Dharmasūtras agree in presenting *upanayana* and studentship before discussing the duties of the married householder.<sup>22</sup> This reordering shifted primacy from the marriage to initiation as the rite of passage that was fundamental to the virtuous life and to confirming one's social status. As Olivelle has shown,<sup>23</sup> the Dharmasūtras, the first works devoted to expounding Brahmanical religion in terms of *dharma*, were also the first works to describe religious occupations as *āśramas* (a term otherwise denoting residences set aside for spiritual endeavor), although they also reflect controversy over the validity of lifestyles that reject the domestic ideals of Vedic ritual.<sup>24</sup> They used this term, it seems, as a rhetorical device to elevate the householder's life to a par with the careers of otherworldly religious professionals such as hermits and mendicants—modes of life that had gained wide acceptance in the Mauryan and post-Mauryan Era (fourth to first centuries BCE).

In the Dharmasūtras, these *āśramas* were alternative professions. After completing Vedic studies, the graduate was expected to choose whether to live out the rest of his life in the home of his preceptor as a “permanent student” (*naiṣṭhika-brahmacārin*), or to marry and adopt the virtuous life of the pious householder—a *gṛhastha*, the religious professional “who stays at home”—as opposed to those “who live in the forest” (*vānaprastha*) or “wander forth” as ascetics (*pravrajita*, *yati*). In this schema, the studentship of youth was not an *āśrama* per se, but merely the proper preparation for choosing one: “A common prerequisite for all [the *āśramas*] is to live at the teacher's house following one's initiation, and all are required not to abandon Vedic learning.

<sup>22</sup> *Vāsiṣṭha Dharmasūtra* does insert a few definitions relating to marriage in the general remarks in the first part of the work, but still describes the student's life before describing the householder's.

<sup>23</sup> See Olivelle 1993, 2000 (introduction), 2005a (introduction), and 2012a for a full discussion of the doctrinal and conceptual shifts reflected by the early *dharma* literature.

<sup>24</sup> *Āpastamba Dharmasūtra* (23.3–24.14), the oldest Dharmasūtra, defends the value of the householder life as no less worthy than the other, unworldly professions; *Gautama* (3.1–3.36) and the older core of *Baudhāyana* (2.11.9–2.11.34) present the list of four *āśramas*, only to conclude that the householder state alone is in fact valid.

After he has learnt the rites, he may undertake the profession that he prefers” (*ĀpDh* 2.21.3–2.21.5).<sup>25</sup>

The claim that being a perpetual student is a mode of life dedicated to *dharma* appears for the first time, perhaps early in this period, when *Chāndogya Upaniṣad* 2.23.1 identifies such a student as the third of the types of people who embody *dharma* (*dharma-skandhas*): “a celibate student of the Veda living at his teacher’s house—that is, a student who settles himself permanently at his teacher’s house.”<sup>26</sup> Of the other two—one who embraces “worship, study, and giving,” and one who devotes himself solely to *tapas* (ascetical fervor)—the first may correspond to the later *gr̥hastha* as a life of discipline and piety in the world.

The tension between the worldly and otherworldly ideals was a matter of controversy in early post-Vedic Brahmanism. The major innovation of the *Mānava Dharmaśāstra* was to resolve this tension by introducing the sequential model of the *āśramas*.<sup>27</sup> Thus, each had its place and was valid at its proper time. The ascetical phases complemented and in fact underlined the importance of the householder status on which the others depended for support. In this new arrangement, studentship in youth became in fact the first *āśrama* in the sequence, and permanent studentship (along with the status of the *snātaka*)<sup>28</sup> faded into the background. The *brahmacārin*, an ascetic living as an apprentice to a householder, learning the skills both of performing sacrificial offerings and of engaging in the interiorized piety of private recitation and austere self-discipline, came to represent the ideal of Brahmin piety. Brahmin settlements, as the locus of such virtuosic training, accordingly came to figure as intentional communities on a par with the monasteries of the Buddhist and Jain mendicants, and won patronage from kings and other elites on similar criteria, as is attested in inscriptions from the edicts of Aśoka Maurya onward.<sup>29</sup>

<sup>25</sup> Olivelle’s translation (2000: 105), with *profession* (for *āśrama*) in place of the Olivelle’s *order*.

<sup>26</sup> Translation by Olivelle (1998: 197). On the precise sense of the difficult term *dharma-skandha*, see Olivelle 1996.

<sup>27</sup> The first glimmer of a sequential ordering appears already in *Āpastamba Dharmasūtra* 2.22.6–2.22.11, where it is noted that some authorities taught an “orderly sequence” (*ānupūrvya*) only in the case of the forest-dwelling hermit, whereby one first marries and fulfills one’s Vedic duties and then withdraws to the forest. The early sources also recognize a certain progression from less to more rigorous within the hermit’s practice.

<sup>28</sup> See the next chapter of this volume.

<sup>29</sup> I discuss these last points in more detail in Lubin 2005, 2013, forthcoming.

## The Vedic Graduate

*snātaka*

*Timothy Lubin*

The discipline of Veda-study (*brahmacarya*) into which Brahmins—and, in theory if not in practice, all male members of the three highly ranked classes (*varṇas*)—were supposed to be initiated in youth was intended not just as a system of education but also of ethical formation and social solidarity. The initiate was thereby transformed into a proper Ārya, “twice-born” (*dvija*) through the initiation rite, imbued with the *habitus* of *dharma*.<sup>1</sup> In the epics and other literature, the *brahmacārī* became one of the exemplary figures of the holy Brahmin: the chaste, dutiful apprentice of a pious householder Brahmin master, firewood in hand, with staff and deerskin. The period of studentship was meant to last until one had memorized the core texts of the Veda transmitted within one’s lineage. Because the regimen of studentship concluded with a ritual bath (*snāna*), the graduate was called a *snātaka* (“one who has bathed”).

The graduate is an object of particular adulation in the ritual and *dharma* codes. Subject to an array of restrictions and taboos, kitted out with turban, bamboo staff, and water pot, the graduate is put forward as one of the appropriate recipients the guest-reception rite (*argha*), in which a worthy person is offered scented water, a “honey mixture” (*madhuparka*), and (preferably) beef or goat-meat.<sup>2</sup> In fact, after bathing and taking leave of his teacher (and giving the requisite parting gifts), he should stop to receive his first *argha* on the way back to return home (*ŚāṅkhGr* 3.1.14). Even a king is supposed to show deference to a *snātaka*.

<sup>1</sup> On this topic, see the previous chapter. This chapter updates the treatment of this subject in Lubin 2011.

<sup>2</sup> See *ŚāṅkhGr* 2.15.1–2.15.2: “Let the *argha* not be without meat.” The *snātaka*’s role in the *argha* is mentioned already in the śrautasūtras (codes of Vedic “high cult”), e.g., *ŚāṅkhŚr* 4.21.1.

Beginning with certain domestic ritual codes (Gr̥hyasūtras) and repeated by many later *dharma* authorities,<sup>3</sup> three grades of graduate are distinguished: the “graduate of the Veda” (*vidyā-snātaka* or *veda-snātaka*), the “graduate of the rule” (*vrata-snātaka*), and the “graduate of the Veda and the rule” (*vidyā-vrata-snātaka* or *veda-vrata-snātaka*; e.g., *BGr̥Pariś* 1.15.1 and also *ĀpDh* 1.30.1–1.30.5). *GobhGr* 3.5.23 adds that, “of these, the last is best, while the former two are equal.” These categories reflect the fact that *brahmacarya* involves two independent criteria: ritual injunctions and the learning of texts. A student may succeed or fail by either measure, but can still be deemed a *snātaka* of a sort once he has taken the final bath. The third sort represents the ideal: full adherence to the student’s rule, culminating in a full command of at least one Vedic corpus. The *Āpastamba Dharmasūtra* argues that any of the three types qualifies to receive the honor of a guest-reception or to receive the remnants of offerings, even if the merit earned by the donor may vary according to the degree of learning (*śruti*) and discipline (*samādhi*) of the recipient (*ĀpDh* 1.30.4–1.30.5). On the other hand, Manu includes only “graduates of the Veda and the rule” (*vedavidyā-vrata-snātān*) as deserving the guest-reception (*MDh* 4.31).

Although the graduate receives extensive attention in the domestic ritual codes, there is some ambiguity about where this status fits in relation to the new system of “religious professions” or “modes of life” (the *āśramas*) introduced in the Dharmasūtras. Those works were the earliest Brahmanical texts to speak of religious life as the pursuit of *dharma*, and to broaden the priestly perspective from ritual to personal conduct, social relations, and royal policy. According to the Dharmasūtras, the graduate was supposed to choose an *āśrama* as his way of life: pious householder, permanent student, hermit, or mendicant ascetic (although having listed all four, the *Gautama* and the older core of the *Baudhāyana Dharmasūtra* affirm the householder profession as the only valid one). Later Dharmaśāstras, beginning with the *Mānava*, rearrange these as a sequence of life-stages. Either way, it is not clear where the *snātaka* was supposed to fit. Was “graduate” merely a temporary state that naturally gave way at some point to an *āśrama* status? No fixed duration of *snātaka* status is ever mentioned, and the special features of it are striking and distinctive enough that it seems to stand apart from the *āśramas*. Since the householder path was the norm in most cases, studentship would normally be followed by marriage, which is the prerequisite for fulfilling the ritual obligations of the adult Ārya male.<sup>4</sup> Later Dharmaśāstra authors would warn that

<sup>3</sup> E.g., *BGr̥* 1.15; *PārGr̥* 2.5.32–2.5.35; *GobhGr* 3.5.21–3.5.23; and *JaiGr̥* 1.19. In the *Mitākṣarā* commentary on *YDh* 1.51 and 1.110, Vijnāneśvara attributes the view to Kātyāyana.

<sup>4</sup> On the extension of the requirement of initiation and at least nominal Vedic study to all three of the upper *varṇas* as the justification of Ārya householder status, see also Lubin (2005, 2016).

one should avoid remaining *anāśramin* (i.e., in a state of not adhering to one of the four *āśramas*), and it might seem that the *snātaka* was at risk in this regard.<sup>5</sup> Yet in fact, the classical authors of the *Mānava* and *Yājñavalkya* Dharmaśāstras seem in fact to have regarded the *snātaka* as a special type of Brahmin householder, although this seems never to be stated explicitly. The *snātaka* retains his separate character and his title, which points back to the bath signifying graduation from studies. This circumstance ensures that his position relative to the *āśramas* would remain an unsettled matter.

### THE *SNĀTAKA*'S DISTINCTIVE *DHARMA*

The term *snātaka* refers to the ritual bath (*snāna*) that marks the completion of studies (or of the rule of *brahmacarya*). After fully immersing himself in the water, the graduating student takes up water in his cupped hands and pours it out as *tarpaṇa* offerings to a sequence of deities, elements of Veda and Vedic ritual, and a variety of spirits and other beings. Switching his upper garment (or thread) from the left shoulder to the right, he makes a further series of *tarpaṇa* offerings to the ancient sages of his Vedic lineage, and to his agnatic ancestors (*ŚāṅkhGr* 4.9–4.10). Before taking leave of his teacher, he should seek his permission, offering various gifts.

Henceforth he will be bound by a special set of rules: the *snātaka-vratāni* or *snātaka-dharmāḥ*. The *snātaka*'s equipment includes a turban, a water pot, sandals, and parasol; he should wear a double sacred thread, and his staff should be of bamboo. The turban however is also a distinctive attribute of the *dikṣita* (consecrated sacrificer), who like the student undergoes an initiation (*dikṣā-upāyana*) similar in many ways to the *upanayana/upāyana* rite, and who adheres to a strict regimen.<sup>6</sup> Unlike the *brahmacārin*, the *snātaka* is allowed to anoint and adorn himself, except in public. He should not wear black clothing, or any cloth that has been dyed.

He should not extend his feet toward, or urinate or defecate in the presence of, any auspicious things (fire, sun, water, a Brahmin, a cow, or a divine image). When answering the call of nature, he should cover his head, and spread something on the ground as well. He may not clean himself with stones, clods of earth, or green leaves (*ĀpDh* 1.30.15–1.30.21). He should avoid using sacred grass or wood for profane purposes such as covering his feces or picking his teeth. He should eat silently and neatly while facing east (*VaDh* 12.18–12.20).

<sup>5</sup> Olivelle (1993: 220–2) makes this suggestion, citing Mādhava's *Parāśara Mādhaviya* 1.533, where it is suggested that rather than remain *anāśramin*, a *snātaka* may become a renouncer.

<sup>6</sup> *PārGr* 2.8.9 says that a *soma-dikṣita* observes the same *vrata* as a *snātaka*.



He should perform the domestic version of the Vedic rites in his single ritual fire (*aupāsana agni*). It is better for him not to attend someone else's offering rites unless he has been invited to perform them (*VaDh* 12.42).

The graduate's words and actions are strictly circumscribed to avoid anything that might pose a threat to his bodily integrity, his ritual purity, or his social status. To ensure his safety, he must not climb onto a cart or into a tree, climb up to or down from precarious spots, cross a river by swimming or in an unsafe boat, submerge his head in water, climb down into wells, use dangerous roads, or even crack his knuckles.<sup>7</sup>

The restrictions also encompass rules of social decorum: he should not boast in his teacher's presence, make noise with his mouth while eating, or appear in public garlanded or anointed. He must avoid impure, vulgar, or disreputable people, gambling houses, fairs, markets, and cities. He must always behave like an Ārya, pure, self-controlled, and harming no creature.

Elaborate restrictions apply to the *snātaka*'s speech. He should not mention a divine name while impure; even speaking of "Indra's bow" (the common name of the rainbow) is to be avoided. He should not speak ill of gods, the king, or cows—even to report a cow causing damage (*ĀpDh* 1.31.4–1.31.10). He should not spread gossip (*GDh* 9.53; *VaDh* 12.8). He must not even settle a dispute,<sup>8</sup> since if he resolves it wrongly (*durvivaktr*), it may bring trouble on his own family or property (*ĀpDh* 1.32.22–1.32.24). This detail shows that the author expected that learned Brahmins were likely to be called upon to provide legal services.

The *snātaka* is assigned a list of preferred synonyms, mostly for reasons of euphemism (e.g., *dhenubhavyā*, "cow that will soon produce milk," instead of *adhenu*, "non-milk-producing cow"), though many seem to be examples of higher-register words (e.g., *punya*, "auspicious," or *praśāsta* "propitious," instead of *bhadra*, "lucky"; *sraj*, "garland, chaplet," instead of *mālā*, "necklace"). He should avoid calling someone his rival (*sapatna*) lest he thereby create real enmity (*ĀpDh* 1.31.11–1.31.17).

Another way in which the *snātaka* is set apart is the fact that almost all the ritual and *dharma* codes include the *snātaka* as a worthy recipient of the *madhuparka* (a mixture of honey with milk, curd, or water) and *arghya* (scented water), to be offered to worthy guests, e.g., "There are six individuals worthy of the *arghya*: a teacher, a priest, a king, a father-in-law, a friend, a *snātaka*" (*KGr* 24.1).<sup>9</sup> The *argha* ritual is the paradigmatic way of fulfilling the

<sup>7</sup> *ĀpDh* 1.32.25–1.32.27; *VaDh* 12.25–12.26; *GDh* 9.51.

<sup>8</sup> *praśnaṃ ca na vibhūyāt*; Olivelle (2000: 73) renders this as "Neither should he elucidate a question," but the following stanza (alluding to a story explained in Haradatta's commentary) makes it clear that *praśnaṃ vi-brū/vi-vac-* has the technical sense "to settle a dispute or pass judgment." In Dharmasāstra, a common word for "judge" is *praḍvivāka* (a compound of *prās*, "dispute," and *vivāka*, "judge" [< *vi-vac-*])

<sup>9</sup> Cf. (with different sequences): *MGr* 1.9.1; *PārGr* 1.1.3; *VaDh* 11.1. Some lists omit the *snātaka*: e.g., *GDh* 5.27.

daily duty of making an “offering to men.” Similarly, after *śrāddha* rites, which are performed for one’s ancestors, one should feed the remnants to learned and virtuous Brahmins, preferably unrelated to the offeror;<sup>10</sup> such guests are said to purify those beside whom they eat during the rite. The codes identify the *snātaka* as a candidate for this honor, along with other religious virtuosos such as those who maintain five fires, who recite the various sets of mystical verses, who perform a “head regimen” (*śiro-vrata*),<sup>11</sup> who have studied the six subjects ancillary to the Veda, or in the absence of those, who have studied the “secret texts.” All such persons, including the *snātaka*, have the distinction of having undertaken higher-level study regimens or other supererogatory ritual obligations. The principle is that “the verses, formulas, and songs [i.e., the texts of the three Vedas] are what makes the *śrāddha* great; therefore, one should feed a man who knows these, even if he is a relative.”

#### THE GRADUATE *SNĀTAKA* AS INTERMEDIATE BETWEEN VEDA-STUDENT AND THE HOUSEHOLDER

In the earliest references, *snātaka* status was simply intermediate between those of student and married man. This is stated explicitly in *BGrPariś* 1.15.10–1.15.11, a text probably contemporary with the Dharmasūtras: “Until being united with a wife, they are ‘graduates’ (*snātakas*); after that, ‘householders’ (*grhasthas*).” The distinctions between them, and the notion that the *snātaka* is an intermediate or even liminal status between student and householder, is suggested by the different modes of worship in the three states:

The fire in which the initiation rite is performed is the fire in which the student’s regimen-duties, the going-home rite, the wedding, and all the householder rites are performed . . . It is this in which, beginning with the initiation, offerings are made with the Utterances (viz., *om bhūr bhuvaḥ svaḥ*) and with kindling sticks, up until the rite of returning home from studies (*samāvartana*). Beginning with the *samāvartana*, offerings are made with ghee and with the Utterances, up until the wedding. Beginning with the wedding, [offerings are made] with rice or barley. (*BGrPariś* 1.16.4–1.16.7)

<sup>10</sup> *ĀpDh* 2.17.4–2.17.15, 2.18.9–2.18.16, 2.20.2; *GDh* 15.6–15.20; *BDh* 2.14.6; *VaDh* 11.17–11.35.

<sup>11</sup> The nature of this *vrata* is not known, but Śaṅkara associates it with the Atharvans. Unless they are interpolations, the Dharmasūtra references and the occurrence in *Muṇḍaka Upaniṣad* 3.2.10 are probably too early to refer to the *Atharvaśīras*, which teaches the *pāśupata-vrata*, and early Śaiva practice. The “head” here, though, probably denotes some quintessence of the *Atharvaveda*.

In other words, while the Veda-student's fire-offerings consist of nothing but firewood laid on the fire with mantras, the *snātaka* makes offerings of ghee, while the householder is responsible for offering grain, the full form of the domestic offering material. *Vaikhānasa Smārtasūtra* 5.9 includes "a *snātaka* who makes offerings for himself, not yet having reached the householder state" (*ātmayāji snātako 'prāptagr̥havṛttaḥ*) among those ineligible for normal cremation but worthy of a "cremation in distress" (*āpad-dāhya*).

*Āpastamba Dharmasūtra*, the oldest work on Brahmanical dharma and probably first to mention the *āśramas*,<sup>12</sup> presents the rules on the *snātaka* (1.30–1.32) after the rules of Vedic studentship and immediately preceding the marriage rules. The close connection with the student's state is reflected in the fact that "even after he has returned home, the accepted practice is that [the graduate] should behave toward these individuals [viz., the teacher, the teacher's family, and senior students] in exactly the same manner as a student" (*ĀpDh* 1.7.31–1.8.1). The mention of sandals and turban make it clear that the subject here is a *snātaka* (1.8.2). The main rules prescribed for the *snātaka* though close the first half of that work, coming just before the rules on marriage and family life.

*Baudhāyana* (1.5–1.7) likewise describes the basic attributes of the *snātaka* right after the section on the Vedic student (giving particular attention to his water pot), followed by general purity rules. In *Vasiṣṭha*, too, the Vedic graduate is described (12–13) right after the passage on the student.

## THE MARRIED HOUSEHOLDER *SNĀTAKA*

However, whatever idea one may harbor that the *snātaka* state can exist only until marriage and the assuming of *gr̥hastha* duties must be abandoned. Even in the Dharmasūtras, that picture goes blurry. The *Baudhāyana*, after first describing the *snātaka* in the context of the graduation from studentship, gives a fuller treatment in a section headed "*snātaka-vratāni*" in the midst of section on householder duties (2.5.10–2.6.42). The passage comes just after a few lines on libations offered while bathing—lines that begin by asserting: "immersion in water promotes austerity" (*tapasyam apovagāhanam*, 2.5.1). We may surmise that this seemed the right occasion to return to the theme of the *snātaka*'s special discipline. But we see now the *snātaka* performing householder duties such as performing the five daily sacrifices, including the reception of guests.

<sup>12</sup> On the relative chronology of the Dharmasūtras, see Olivelle 2000: 4–10.

*Gautama Dharmasūtra* explicitly treats the *snātaka*-rules as subsidiary to those of the householder:

Such a man, after he has completed his studies, should bathe according to the rules, marry a wife, and, as he continues to observe the Laws proper to a householder (*grhastha-dharmān*) described above, subject himself to the following vows: a *snātaka*,<sup>13</sup> constantly pure, sweet-smelling, regularly bathed (*snāna-śīlah*) . . . (GDh 9.1–9.2, Olivelle’s translation)

The usual rules for the *snātaka* follow. The fact that these rules are introduced after the rules of the householder was, perhaps, perceived as potentially confusing. The intention in so ordering them may indeed be reflected in the transition sentence, which situated the *snātaka* rules in relation to the marriage and householder rules.

The commentators differ on the implications of this passage. Maskarin explains that “the householder who should perform the observances that are about to be discussed is called ‘*snātaka*,’” but Haradatta inserts the word “and” and explains that the following rules apply to two distinct classes of individual. Olivelle judges Maskarin correct, and observes that “a *Snātaka* is not always different from a householder but is a very specific type of householder” (2000: 543 n. 9.2).

In any case, the rules applying to *snātakas* take it for granted not only that they may have licit sexual relations (implicit in the specific prohibition of sex with particular types of women), but that he will be married and begetting children:<sup>14</sup>

He should engage in sexual intercourse with his wife during her season, avoiding the days of the moon’s change. Let him not have intercourse in a place other than the vagina. Now, they also quote:

“If a man performs the sex act in the mouth of a woman he has married, during that month his ancestors will feed on his semen. Intercourse performed without going beyond (the vagina) is in conformity with Dharma.”

It is, moreover, stated in the *Kāṭhaka*: “May we lie with our husbands even when we are going to give birth the following day.” This is the wish granted to women by Indra. (*VaDh* 12.21–12.24, Olivelle’s translation)

In the context of describing the graduate’s return from studies, *Āpastamba Dharmasūtra* (1.13.18–1.13.20) quotes Śvetaketu, famed student of the Upaniṣads, recommending that even after marriage, one may continue to spend two

<sup>13</sup> This word, omitted by Stenzler, appears in the commentaries of both Maskarin and Haradatta (the latter in fact reading *snātakaś ca*), in quotations in the *Mitākṣarā* and *Kṛtyakalpataru* digest, and in the *Ānandāśrama* edition. Olivelle considers it original, though regarded by the commentators as problematic.

<sup>14</sup> The *Kāśikāvṛtti* ad *Aṣṭādhyāyī* 6.2.1 offers *snātaka-putra* (“son of a *snātaka*”) as an example of a *tatpuruṣa* compound.

months of the year the teacher's home for further study. "For by that means I managed to study more of the Veda than during the time I was a student." "But," the Sūtra goes on to point out, "that is forbidden by authoritative texts." For the *Āpastamba*, the duties of the householder, even though he be a *snātaka*, are restricted to offering fire sacrifices and hospitality. Elsewhere, however, *Āpastamba* (2.3.13–2.3.14) does provide for a married man to learn the mantras needed to perform domestic offerings (*homa* and *bali*) as a *grhamedhin*, "one performing sacrifices at home," albeit while remaining in the marital home: "While the householder is learning the ritual formulas to be used in them, he should sleep on the floor, abstain from sex, and avoid spices and salt for twelve days. While he is learning the ritual formula to be used in the final offering, he should fast for one day." *Gautama Dharmasūtra* (18.17) even envisages the situation in which a man leaves his wife behind to study the Veda; she must wait up to twelve years before she is allowed to remarry.

The *Mānava Dharmaśāstra* completes the absorption of the *snātaka* into the householder sphere by embedding the *snātaka* rules within a chapter dealing specifically with the ideal conduct of a Brahmin householder (*MDh* 4), following both Chapter 2 on the student (from v. 36 onward) and Chapter 3 on marriage and the general rules of householder life. Chapter 3 begins by describing the transition from the graduation bath to selection of a bride and the marriage, emphasizing the importance of the "twice-born" having completed his studies without violating the rule of *brahmacarya*, and having returned home with the teacher's permission (3.1–3.4). The rest of Chapter 3 deals with the parameters and duties of the householder profession (*grhastha-āśrama*), framed in terms of the five "great offerings" (*mahāyajña*), with special attention to the feeding of learned Brahmins as part of ancestor worship (the latter topic in fact filling 106 stanzas, more than a third of the chapter),<sup>15</sup> and concludes with the author's transitional verse (3.286): "I have explained to you all the rules relating to the five sacrifices. Listen now to the rules relating to the livelihood of Brahmins."<sup>16</sup>

Chapter 4, ostensibly about *snātaka-dharma*, actually begins by announcing the duty for a "twice-born," after finishing Vedic studies, to "marry a wife and spend the second quarter of his life at home" (4.1), and the transitional verse that concludes that chapter makes explicit how the author has cast the topic of *snātaka-dharma* as part and parcel of the Brahmin householder *āśrama*: "I have explained above the invariable means of livelihood for a Brahmin householder, as also the splendid set of observances for a bath-graduate (*snātaka-vrata-kalpa*), which enhances his spirit. When a Brahmin, knowing the vedic

<sup>15</sup> Stanzas 3.124–191, 208–13, 224–46, and 249–57 are devoted to the feeding of Brahmins in the *śrāddha* ceremony.

<sup>16</sup> On the redactor's use of these transitional verses, see Olivelle 2005a: 50–62.

teachings,<sup>17</sup> follows this mode of life, he frees himself always from sins and is exalted in heaven” (4.259–4.260).<sup>18</sup>

The outcome of this shift is reflected in the commentators’ remarks on the *snātaka-dharma* sections. The Yājñavalkya begins this section by observing (*Mitākṣarā* on *YDh* 1.129):

After thus setting forth the *śrauta* and *śmārta* rites, [Yājñavalkya] now presents the observances (*vratas*) of the *snātaka*, which consist of injunctions and prohibitions and are the outward form of a mental intention, and are indispensable duties of a Brahmin, beginning with the bath of a householder.

Harihara (before 1250), explaining the special three-night *vrata* to follow the graduation bath (on *PGS* 2.8.1), says of the preceding general rules governing the *snātaka*: “Thus, beginning with the returning-home of the *snātaka*, such things as dancing and singing are indicated by prescriptions and prohibitions, as long as householdership continues.” Some later authorities generalize the *snātaka*’s virtues even more broadly. Gopīnātha Dīkṣita, in discussing the rules for the clothing and accoutrements of the *snātaka*, remarks, “where there is no impediment, these should be considered the general duties of students, householders, etc.”<sup>19</sup>

## SNĀTAKA AS A BRAHMIN UNDER SPECIAL VOWS

Looking beyond the ritual and *dharma* rulebooks, it becomes still clearer that the term *snātaka* designates something other than merely the graduate immediately after the conclusion of studies. Rather, it denotes a special variety of Brahmin householder who observes supererogatory *vratas*.

The *snātaka* appears always to be a Brahmin. Traditional lexicons include the word *snātaka* in the grouping of terms for Brahmins (*brahmavarga*), glossing it as “one who has performed an ablution and follows a regimen” (*āpluta vratin*).<sup>20</sup> The *Mahābhārata* gives us an idea of what non-scholastic authors meant by the label *snātaka*. *Snātakas* in the epic are often said to be *grhastha* (“home-dwelling”) and *grhamedhin* (“performing the domestic offerings”).<sup>21</sup> The Śāntiparvan begins with many Brahmin sages (*ṛṣi*) coming to see king Yudhiṣṭhira, along with “other Veda-knowing, wise twice-born who are home-dwelling *snātakas*” (*MBh* 12.1.5). When Drupada arrives at the

<sup>17</sup> Or: “knowing Veda and [Dharma]śāstra” (*vedaśāstravit*).

<sup>18</sup> As translated by Olivelle 2005a: 137. All translations from *Mānava Dharmaśāstra* of Olivelle’s unless otherwise noted.

<sup>19</sup> *Samśkāraratnamālā* (Bhaṭṭagopīnāthadīkṣita 1899: 388).

<sup>20</sup> Thus e.g. *Amarakośa* 2.6.900b, *Agni Purāṇa* 364.10b.

<sup>21</sup> *MBh* 12.1.5; 2.45.17 = 2.48.39 = 3.222.41.

hermitage of the Brahmins Yaja and Upayaja, the narrator observes (*MBh* 1.155.6): “In that place, there was no one who had not performed ablution (*asnātaka*) and no Brahmin who did not observe a regimen (*avratin*), and who was not greatly blessed. He saw those two who strictly followed their regimen (*saṃśītavrata*).”

The fullest illustration of *snātaka* status occurs in the episode of the “killing of Jarāsandha” in *Mahābhārata* 2.18–2.22.<sup>22</sup> The heroes Arjuna and Bhīma, along with Kṛṣṇa, disguise themselves as “resplendent *snātaka* Brahmins” (2.18.22), and in this form come before King Jarāsandha, who duly welcomes them with foot-washing water and *madhuparka* (2.19.29). In stanzas that follow in the southern recension, it is noted that Arjuna and Bhīma are observing a *vrata* of not speaking before midnight, perhaps reflecting the rule of not giving instruction until that time.<sup>23</sup>

Alf Hiltebeitel hypothesizes that Aśvaghoṣa may have consciously modeled *Buddhacarita* 10–11 on the Jarāsandhavadha episode.<sup>24</sup> In each case, Kṣatriyas impersonate Brahmin holy men, enter the capital of Magadha, and approach the king. In Aśvaghoṣa’s poem, it is the Bodhisattva, in the attire of a monk, who is confronted by King Śreṇya-Bimbisāra. Aśvaghoṣa seems to have made a “close and critical reading” of the Jarāsandha passage, and evidently regards the *snātaka* as a Brahmanical analogue of the Buddhist monk. Both of these figures embody an ideal of *dharma* and for this reason are fitting recipients of deference and offering.

The Jarāsandhavadha episode provides vivid evidence that *snātakas* were generally presumed to be Brahmins, even in Sanskrit narrative. This assumption is reflected in the many places where *snātakas* are called Brahmins.<sup>25</sup> It is true that the ritual and dharma codes envision Kṣatriyas and Vaiśyas becoming *brahmacārins* and thus, by implication, *snātakas* by performing the bath-rite at the time of graduation and returning home. But Jarāsandha certainly assumes that *snātakas* must be Brahmins, and is perplexed (*MBh* 2.19.37–2.19.40) by the appearance of these. Displaying his own familiarity with the prescriptions found in the ritual codes, he points out that they have deviated from the norms in that they are wearing colorful clothes, are adorned

<sup>22</sup> Ten of the twenty-three instances of the term *snātaka* in the *Mahābhārata* occur in Book 2.

<sup>23</sup> E.g., *ĀpDh* 1.32.14. Van Buitenen’s rendering of (“donning the garb of vigorous young brahmins returning home from their studies,” 1993: 68) is more paraphrase than translation, and shows how the conventional notion of *snātaka* as recent graduate is often misleading. There is no indication from the context that Kṛṣṇa and his companions were explicitly presented as returning from studies.

<sup>24</sup> Hiltebeitel 2006: 254–81.

<sup>25</sup> *Brāhmaṇa*: *MBh* 1.11.8; 2.18.22; 2.19.31; 3.47.6; 12.45.5; *vipra*: 2.19.38; 13.98.20; *dvija* or *dvijāti*: 12.1.5; 13.98.20; see 1.155.6 (though technically *dvija* may refer to any of the upper *varṇas*, it is typically treated as a synonym for “Brahmin”; see Lubin 2005: 87–8 and Olivelle 2012a).

with sandal paste and garlands,<sup>26</sup> and entered the city through the wrong gate.<sup>27</sup> He reproaches them for adopting this disguise (*veṣagrahaṇa*), saying:

I know that everywhere in this world of men Brahmins (*vipra*) observing the *snātaka*-regimen do not wear garlands and ointment outside.

And here you are, beflowered, your arms marked by the bow-string, and though you display the vigor of Kṣatriyas, you pretend to Brahminhood (*bibhrataḥ kṣātram ojaś ca brāhmaṇyaṃ pratijānatha*). (MBh 2.19.38–2.19.39)

Kṛṣṇa replies with his own display of erudition in ritual protocol. Admitting that they are indeed Kṣatriyas, he affirms that Kṣatriyas are eligible to follow the *snātaka* regimen, suggests in quasi-scholastic terms that “special rules” (*viśeṣanīyamāḥ*) apply for each class, and he proceeds to taunt the king with threats posing as the special requirements of their “perpetual vow” (*śāśvataṃ vrataṃ*)—such as entering an enemy’s city by an improper access point (2.19.45–2.19.50). We come away with the impression that the Kṣatriya *snātaka* was even to the episode’s author a purely theoretical status—an obscure rule “on the books,” but susceptible to ad hoc elaboration.

There are even hints that *snātaka* status straddled the *āśramas* of householder and forest-dwelling hermit. *Brāhma Purāṇa* 65.10 mentions four types of worshippers who may bathe a Kṛṣṇa-image: householders, *snātakas*, ascetics (*yati*), and Veda-students (*brahmacārin*). This classification seems to echo the list of four holy modes of life (*āśrama*) in early Dharmaśāstra: *grhastha*, *brahmacārin*, *vānaprastha* (forest dweller), and *yati*. Is the *Brāhma-purāṇa* treating “*snātaka*” to be synonymous with “*vānaprastha*”? The *Mānava Dharmaśāstra* (6.1) introduces the topic of the *vānaprastha* as follows: “After remaining thus in the domestic profession (*grhāśrame*) according to the rules, a *snātaka* twice-born should live with restraint in the forest, his senses under control.” The implication seems to be that the *vānaprastha* status is the natural further development of the *snātaka* discipline.<sup>28</sup>

## CONCLUSION

Van Buitenen actually considers the possibility that “the meaning of *snātaka* might be extended to anyone under a studious vow of life, and to include the

<sup>26</sup> This reasoning is supported, with strikingly similar wording, by *ĀpDh* 1.30.10 and 1.32.5: “As regards clothes, he should avoid any that are colored . . . He should not appear in public garlanded or anointed.” There is no explicit indication that this applies only to Brahmins, but we have here again the assumption that *snātakas* are, in practice, Brahmins.

<sup>27</sup> Perhaps an allusion to the rule that *snātakas* should enter a settlement by the east or north (e.g., *ĀpDh* 1.30.7).

<sup>28</sup> Perhaps this is the idea “some” authorities, quoted in *ĀpDh* 2.22.6–2.22.11, had in mind when they allow an “orderly sequence” (*ānupūrvya*) by which a pious householder withdraws to the forest.



new mendicants who followed the Buddha or Jina, but that cannot be made out” (1975: 17). Looking beyond the *Mahābhārata*, though, we find *snātakas* in such a range of contexts that we must conclude that the status was not limited to a temporary period immediately following graduation from Veda-study in youth. Rather, the term applied to any Brahmin adhering to a vow of special discipline commencing with a ritual bath.

The Dharmasūtras canonized the model of four *āśramas*, religious professions chosen at the conclusion the childhood period of Vedic study, and the *Mānava Dharmaśāstra* turned these into a sequence that could be followed in a single lifetime. The *snātaka* had no clear position in this structure, but the Dharmaśāstra authors saw *snātaka* status as something that began when the graduate returned home from the teacher’s house, and could continue in the married state, even into the hermit’s state. For this reason, it can be misleading to translate the term routinely as “Vedic graduate.” Certainly all *snātakas* must be graduates of Vedic study, but the title applies to those who persist in observing the strict rules and taboos of that status as a long-term special vow.

Furthermore, unlike householders in general, *snātakas* are usually assumed to be Brahmins. In the *Mahābhārata*, the Purāṇas, and literary sources, this is true also of those called “twice-born” (*dvija*) or Vedic student (*brahmacārin*), but in the case of the *snātaka*, even the ritual and law codes say as much. *Snātakas* were thus considered to be learned and disciplined Brahmins worthy of the highest respect and wielding the highest authority in matters of ritual. For this reason, in prescribing the time for consecrating a king (the *ghṛta-kambala*), *Atharvaveda Pariśiṣṭa* 33.4.2 suggests, “a discerning man should perform it at the conclusion of a *taptakṛcchra* regimen, or at the end of any *kṛcchra* regimen, or at whenever *snātakas* specify.”

Perhaps we should even understand *MDh* 6.1 to say that the householders who may be expected to become *vānaprasthas* are those who are already *snātakas*. The *snātakas* of literature populate the world of the hermitage: disciplined, austere, ever reciting the Veda and making offerings.<sup>29</sup> *Snātaka-dharma* may even look beyond the worldly fruits of householder piety: the knowledge of the *ātman* and the way to seek it is sometimes described as “this doctrine of the *snātakas*” (*snātakānām idaṃ śāstram*, *MBh* 12.238.15a, *Brāhma Purāṇa* 237.36a).

<sup>29</sup> The word *nahātaka* (= Skt. *snātaka*) appears in the Pali literature twice describing a *tapassin* (*Dīghanikāya* 3); the repeated formula *nahātakasatāni* in *Dīghanikāya* 2 recalls *sahas-rāṇi snātakānām* (vel sim.) in *MBh* 3.47.6, 3.222.41, 4.65.16, 7.87.60, 12.45.5, 12.124.11, etc.

## Marriage and the Householder

*vivāha, gr̥hastha*

Stephanie W. Jamison

### HOUSEHOLDER

As has often been pointed out (see, e.g., Olivelle's introduction to *MDh*, pp. 11–12 and cf. *MDh* 3.77–3.79, 6.89–6.90), the (Brahmin) householder (*gr̥hastha*) is the lynchpin of the *dharma* system, the unmarked subject of most of the multiple provisions in the Dharma-sūtras and -śāstras, and the economic support of the society envisioned there. In the codified *āśrama* system, the householder occupies the second stage—after studentship (*brahmacarya*), but before the retiring to the forest (*vānaprastha*) and ultimate adoption of renunciant asceticism (*saṃnyāsa*). In order to enter the householder's state, a man must marry, allowing him to establish a household and produce the progeny so necessary for the extension of his family line, both economically and ritually. Consequently, *who* to marry and *how* to marry are major preoccupations of the Dharma-sūtras and -śāstras, as well as of the manuals of domestic practice (Gṛhyasūtras).

The ritual necessity for marriage long predates the *dharma* texts proper. Starting in the late R̥g Veda, in order to perform the solemn (*śrauta*) rituals prescribed (or allowed) for the twice-born elite, the performer must not only be married, but his wife (*patnī*) must be present at the rituals and undertake certain actions either in concert with him or independent of him.<sup>1</sup> The married couple establishes their ritual fire jointly, and this ritual partnership gives the man his status as a sacrificer. Their domestic partnership is also emphasized in these early Vedic texts (esp. the wedding hymns, *ṚV* 10.85,

<sup>1</sup> See Jamison 1996a for a detailed discussion of the ritual roles of the *patnī*.

AV 14.1–2), though it is a partnership always mediated by their jointly established fire, the fire that defines their ritual life.

Curiously enough, however, the word *gr̥hastha*, the standard term for the householder in the *dharma* texts and later, is entirely absent from the earlier texts, where, when the role is named at all, the word is *gr̥hapati*- “houselord.” The term *gr̥hastha* only begins to appear in the *dharma* texts and from then on is the standard term of art, while *gr̥hapati* never appears in the *dharma* texts. This terminological demarcation hints at a conceptual discontinuity as well, and the linguistic history of the term *gr̥hastha* illuminates the conceptual renewal.<sup>2</sup> Forms of this word are found beginning in the Aśokan inscriptions of the third c. BCE in various Middle Indo-Aryan forms (*gahatha*-, etc.); the Sanskrit word *gr̥hastha*- significantly postdates these occurrences. In the Middle Indic texts the “householder” word is regularly paired with a word whose Sanskrit form would be *pravrajita* “gone forth,” a technical term for a wandering ascetic of a heterodox (Buddhist, Jain, etc.) sect. The *gr̥hastha* word appears three times in the Aśokan inscriptions, twice (RE 12A, 7th Pillar Edict) paired with *pravrajita*, once (RE 13G) beside the pair *brāhmaṇa/śramaṇa* and itself explicitly paired with *pāṣanda* “member of a heterodox sect.” Such contrastive pairings are found in the other early Middle Indic languages: in Gāndhārī Prākṛit the Niya document 489 contains two occurrences of the word, one contrasting with *bhikkhu* “monk,” the other with \**śramaṇa*. Pāli and Buddhist Hybrid Sanskrit also attest the pairing with *pravrajita*-.

The *gr̥ha-stha*, literally “stay-at-home,” is thus defined against a contrastive role, that of an ascetic of no fixed abode and no domestic entanglements, a role well recognized in heterodox circles, but not available in Brahmanical orthodoxy save as a later, post-retirement life stage. This contrastive pairing implies that the householder of the *dharma* texts was not simply a married man and *pater familias* in what we might, anachronistically, consider an essentially secular role, but a man with a religious life equivalent to that of a wandering ascetic, but a religious life pursued and fulfilled within the context of a sedentary family existence. To infuse the householder’s busy and distracting daily life with the same religious gravity as that of an ascetic focused entirely on his own spiritual practice, some conceptual adjustments had to be made. In addition to the institutionalization of the “five great sacrifices” (*mahāyajñas*) required of the householder every day, the *dharma* texts exhibit what I have elsewhere termed “the sacralization of the everyday,” the extraordinary nimbus of ritualized behavior that envelops every petty act of daily life—eating, excreting, dressing, sleeping, having sex, and so on—by consciously employing the verbal and physical behaviors characteristic of ritual. By infusing the

<sup>2</sup> On the history of this word and the implications of this history, see Jamison, forthcoming.

ordinary actions necessary to daily life and generally undertaken without thought with the glamor and meaningful deliberateness of ritual activity, the new conceptual system ennobles the life of a householder and makes him a worthy counterweight to the wandering ascetic.

Thus the implication of this linguistic evidence is that the householder of the *dharma* texts was not simply the continuator of the Vedic married ritualist but also had been re-defined in the context of a pluralistic religious environment where marriage and family were not the only choices for a young man in his prime. This dialectic may have caused special emphasis to be laid on the centrality of the householder in Brahmanical circles.

## MARRIAGE

### Whom to Marry

Although some attention is paid to desirable qualities in a bridegroom (see Kane II: 430–1), since the texts are written from the male point of view, much more space is given to what should be sought in a bride. In addition to qualities such as good family, good character, beauty, and a body without physical defects, even such characteristics as her given name are subject to scrutiny—e.g., according to some texts, no name whose next to last letter is *r* or *l*. (If this was a widespread criterion, one might think that parents would learn to avoid such naming practices.) For a collection of many of the qualities mentioned in various texts, see Kane II: 431–5. Needless to say, there are also rules about class and degree of relationship between bride and groom. Though the ideal (first) marriage should be between people of the same varṇa, in addition, a man may marry women from lower varṇas than his own (cf., e.g., *MDh* 3.12–3.13, 43–4; 9.85–9.87; *PārGr* 1.4.8–1.4.11), the so-called *anuloma* (“with the hair,” that is, in a natural direction) marriage. There are also severe (and ever-increasing) restrictions on intermarriage between members of smaller circles within these larger groups: marriages with *sagotra*, *sapṛavara*, and *sapiṇḍa* females are forbidden up to a certain degree. The fantastic complications of these calculations, especially as time went on, can be tasted in Kane’s treatment (II: 452–501, complete with charts).

### How Many to Marry

Sanskrit literature of course contains one exceptionally famous example of polyandry: Draupadī’s marriage to the five Pāṇḍava brothers in the *Mahābhārata*. But there is no evidence in the normative texts that this was anything but a

stunning narrative device, whatever its source, not a reflection of practice. There is better evidence for polygamy, starting with the two charms against cowives in the *R̥g Veda* (10.145, 159) spoken in the first person by an exultant woman, as well as incidental references to cowives in that and other early Vedic texts. We encounter the two wives of the sage Yājñavalkya in the narratives of the *Bṛhadāranyaka Upaniṣad*, and the *Kāma Sūtra* (4.2) has characteristically cunning suggestions for how a cowife should treat her fellow wives to achieve maximum advantage over them. The *dharma* texts themselves are somewhat reticent on the subject in their treatments of marriage, however, except with regard to supersession of a wife for cause, on which see below. See also the permissibility of *anuloma* marriages mentioned above.

One figure who is expected to have multiple wives is the king, to whose wives different ritual roles are allotted in the great royal ritual, the Horse Sacrifice (*aśvamedha*), with the chief queen (*mahiṣī*) copulating with the dead horse, while two or three other wives (the *vāvātā* “favorite” and the *parivṛktī* “avoided wife,” sometimes along with the lower-class *pālāgalī*) perform less crucial tasks on the sidelines. Only the *mahiṣī* counts as the king’s ritual partner (unluckily for her, at least in the Horse Sacrifice).

### When to Marry: Age at Marriage

The normative texts generally assume that a man will marry on finishing his studentship and taking the final bath. Though there was no fixed age for this “graduation,” it seems likely that he would usually be in his late teens or early twenties, allowing for *upanayana* around eight and a decade or more of Vedic study. The age of marriage for the bride is a more fraught question: in popular and semi-popular (Western) literature, India is notorious for very young child brides (prepuberty). (See the Internet for numerous sites relating to this issue.) Without entering into whether this perception is accurate for medieval or early modern India, or is accurate today, we can say that at the time of the *Dharma-sūtras* and *-śāstras*, it seems not to have been the case, though the circumstances that might lead to it are already in place.

According to the *Dharmasūtras* and the *MDh*, a father should arrange a marriage for his daughter very close to menarche (first menstruation), generally within three months to three years after it, depending on the text.<sup>3</sup> For every subsequent menstrual period after the deadline, the father is guilty of

<sup>3</sup> For the ages found in various texts, see Jamison 1996a: 237–40 with n. 66. In one place *Manu* (9.93) states that a man who marries a girl after menarche does not owe the father a brideprice—a provision that would put the marriage *before* the onset of puberty (see also *VaDh* 17.70 quoted below). It is difficult to know how to interpret this provision, however, because elsewhere *Manu* strongly disapproves of brideprice (3.51 and nearby this passage, 9.98, 100). See the discussion of *Āsura* marriage below.

*bhrūṇahatya* (embryo-murder = abortion). Although this timetable puts the girl safely past puberty (though not necessarily by much), one can imagine the anxiety that the anticipation might cause the father (/parents) as puberty neared, esp. since the exact age of menarche cannot be predicted. Therefore, prudent parents might be forgiven for trying to make arrangements well in advance, by identifying a suitable bridegroom and contracting for a marriage before the need arose. This could, and ultimately did, lead to enacting a formal marriage even of very young girls, while postponing the consummation, in order to “lock in” the deal before the groom got snatched up by some other anxious father. Nonetheless, there is no evidence in the earlier texts that marriages were held significantly before puberty. Though already in *VaDh* (17.70) it is suggested that “because of fear of the onset of menstruation” (*ṛtukālabhayāt*), the father should give his daughter in marriage while still “naked” (*nagnikā*), this much-discussed term, found also elsewhere in the *Grhya*- and *Dharma-sūtras*, has been convincingly explained by Thieme (1963: 170–80 [= 1984: 435–45]) as referring *not* to a girl too young to wear clothes (as it has sometimes been interpreted), but rather to one still naked of pubic hair, a situation that obtains until just before puberty. As Kane also points out (II: 441), the usual treatments of the marriage ceremony prescribe that first intercourse take place soon after the arrival at the groom’s home, a journey undertaken immediately after the ceremony proper. The event can be postponed for a few days, or at most a year, but if the bride were truly a child, this speedy consummation “would have been uncalled for and extremely inappropriate,” in Kane’s words.

Based on these assumptions, the age gap between bride and groom would not have been substantial, though *MDh* in one place (9.94) suggests a larger one: a groom of thirty and a girl of twelve, or a groom of eighteen and a bride of eight.

### How to Marry: Types of Marriage

As is well known, the normative texts, particularly *dharma* texts, but also some *Grhyasūtras*, classify marriage into eight different types, hierarchically arranged:<sup>4</sup>

Brāhma  
Daiva  
Ārṣa  
Prājapatya  
Āsura

<sup>4</sup> For discussion see Jamison 1996a: 210–21 and passim, as well as Kane II: 516–26.

Gāndharva  
Rākṣasa  
Paiśāca

The last three types are, to our modern sensibilities, the most interesting and the least “marriage”-like. The Gāndharva marriage is marriage by mutual agreement, driven by lust, with no parental involvement. Probably the most famous Gāndharva marriage in Sanskrit literature is that of Śakuntalā to King Duṣyanta, recounted in both the *Mahābhārata* and Kalidāsa’s eponymous play, and one might take it as a cautionary tale about the pitfalls of Gāndharva marriage, since the marriage is later denied by the king, and it takes much effort on the part of Śakuntalā (and various divine helpers) to ensure the legitimacy of her son by Duṣyanta.

Rākṣasa marriage is marriage by abduction and requires, legally, that the abductor fight off the protectors of the abductee with maximum violence, while at the same time mimicking the ceremonial steps in a more tranquil wedding.<sup>5</sup> Bhīṣma’s abduction of three maidens on behalf of his brother Vicitravīrya in the *Mahābhārata* is a text-book example of Rākṣasa abduction; again it does not turn out entirely well, since one of the girls, Ambā, deprived of her expected fiancée by this maneuver, has her life ruined, curses Bhīṣma, and is ultimately reborn as Śikhandin to cause Bhīṣma’s death.

Paiśāca marriage is defined as secret congress with a girl who is “asleep, intoxicated, or deranged” (*suptāṃ mattāṃ pramattāṃ*; *MDh* 3.34), finding a peculiar resonance with the current ongoing bitter battles about what constitutes sexual consent and how to prove it. Tantamount to rape, this type of marriage is universally condemned (or ignored). Insofar as it was a marriage type at all, it presumably cast a legitimizing veil over any child produced through such an act. Its presence on the list of marriage types should not be taken as evidence that such brutality met with moral and legal approval.

Gāndharva and Rākṣasa marriages, by contrast, do receive at least qualified approval—for a particular social group. A number of texts state that they are legal for Kṣatriyas (for details, see Jamison 1996a: 296 n. 10). There is a clear reason for this. The first four<sup>6</sup> marriage types involve gift—the “gift of a maiden” (*kanyādāna*)—and Kṣatriyas are not supposed to accept gifts. As a bridegroom, accepting this gift from his father-in-law, a Kṣatriya would find himself in an awkward and potentially humiliating position. Better to either just snatch the girl (Rākṣasa) or come to an agreement with her without external interference (Gāndharva). The case is very different for a Brahmin,

<sup>5</sup> These requirements are not always met. For the ceremonial requirements for Rākṣasa marriages and examples of illegal abduction in both Sanskrit and Greek literature, see Jamison 1994 and 1996a: 218–37.

<sup>6</sup> Or five, according to Manu, who describes Āsura marriage as *kanyāpradānam*. See Jamison 1996a: 297 n. 12 and 213–15.

one of whose duties is in fact to accept gifts (see Chapter 15 in this volume). It is no surprise then that at least the first four marriage types are generally pronounced legal for Brahmins.

The gift-marriages are more difficult to distinguish from each other than are those lower down on the list, esp. the first four. The fifth, Āsura marriage, is defined by Manu (3.31) as the giving of a girl to a man who has in turn provided wealth to her relatives and to her. Although for Manu (though not most other *dharma* texts) it falls in the larger category of gift-marriages, it seems equivalent to a sale, and this must account for the disapproval of it in a number of texts, including *MDh* (3.24–25), and the general discomfort expressed about bride-price—even though narrative literature gives us numerous instances of bride-price in practice (Jamison 1996a: 213–15).

This leaves the first four types, the gift-marriages, which differ from each other in degree and emphasis. Attempting to distinguish them more narrowly here would take us too far afield; for some discussion see Jamison 1996a: 215–18 and Kane II: 516–20.

One type of marriage that has great prominence in Sanskrit literature is omitted from the lists in the *dharma* and *grhya* literature, namely the *svayamvara* or “self-choice,” whereby the prospective bride herself makes the choice of husband. Many people first encounter this form of marriage in the *Mahābhārata* story of Nala and Damayanti,<sup>7</sup> and Draupadi’s marriage in the same text is also set up as a self-choice (though with a number of extra complications, including a pitched battle and four more bridegrooms than she expected). The standard *narrative* form of the *svayamvara* seems limited to the daughters of kings. The father of the girl, the king, invites a crowd of appropriate suitors, entertains them and their retinues expensively, and then brings his daughter to display her to the host and allow her to make the choice. The difference between Damayanti’s and Draupadi’s *svayamvaras* illustrates the two major types, identified and illuminatingly discussed by Schmidt (1987: Chapter 3). In one the girl is given a truly free choice among the assembled men—thus Damayanti’s and the *svayamvara* of Indumati in Kalidāsa’s *Raghuvamśa*. In the other the suitors compete with each other to perform a set feat; this is known as the *vīrya-śulka* type (“having a manly deed as bride-price”). The girl duly “chooses” the man who succeeds in accomplishing it; there is no actual choice involved. Draupadi’s *svayamvara* was of this type, and Rāma wins Sītā in a displaced version of this type.

There is good evidence for the *svayamvara* already in the Rig Veda (see Jamison 2001, 2003), and indeed it seems to have been an inherited Indo-European institution, judging from the striking similarity between

<sup>7</sup> In fact, Damayanti has two *Svayamvaras*, or rather, she has a second one announced to lure Nala, who abandoned her long since, to come and reclaim her as wife.



*svayamvaras* depicted in Sanskrit literature and the interaction of Penelope and the suitors in the *Odyssey* (see Jamison 1999).

This type of elaborate royal self-choice is not found in the normative literature, but a different type of self-choice is envisioned there. As noted above, a girl's father has a responsibility to find her a husband within a limited time after menarche. A certain period after that, generally set as three years, the girl can, as it were, emancipate herself from her family, returning all ornaments she has received from them, and seek her own husband. This sounds like a fraught affair, far from the pomp and protection of a father-arranged self-choice held at the girl's own home. The most famous literary example of this is Sāvitrī in the *Mahābhārata*, who embarks on a journey to find herself a mate (and then chooses one fated to die in a year). (For a discussion of this type of self-choice see Jamison 1996a: 237–47 and Kane II: 523).

### How to Marry: Ceremony

The standard Sanskrit term for marriage is *vivāha*, literally “carrying off.” Although this might sound like a relic from a period in which the *Rākṣasa* or “abduction” marriage was the standard form (a period that I am *not* suggesting ever existed), in fact it refers to one of the most important steps in the standard wedding ceremony, namely the journey, after the wedding proper, to the bridegroom's home, a journey that receives outsize treatment in all descriptions of the wedding. Marriage was patrilocal, and the separation of the bride from her natal place and family was symbolically very important and ritually enacted.

The various treatments of the marriage ceremony differ widely from each other in detail, in the number, content, and order of the many subrites, and this is not the place to provide a full survey (see a fairly detailed account in Kane II: 531–41). The most crucial and generally shared features will instead be touched on. The proceedings are inaugurated by the “wooing,” when relatives and/or supporters of the bridegroom visit the bride's father/family to ask for the girl's hand and arrange the details. The wedding ceremony proper contains a number of ritual procedures, but the most important are probably the giving of the maiden (*kanyādāna*) to the groom by her father (or in his absence another close relative<sup>8</sup>), the groom's grasping the bride's hand (*pāṇigrahaṇa*), his leading his bride around the fire (*agniparināyana*)—one of the words for wife is *pariṇītā* “led around”—and the seven steps (*saptapadī*), whereby the bride and groom walk seven steps northeast of the fire. It is only

<sup>8</sup> Some texts even allow her mother to give her away, if no one on the approved list of male relatives is available. See Jamison 2002: 74 and nn. 12–13.

after the seven steps that the marriage becomes irrevocable (cf. *MDh* 8.27 and Kane II: 539).

The ceremony at the home of the bride's family is followed by the journey to the groom's home, the *vivāha* proper. As mentioned above, this journey is elaborately treated in most texts that deal with the wedding, and it is depicted as exceptionally perilous. As I have argued (Jamison 1996a: 224–6), the journey is accorded such importance because it represents the first time the groom really has charge of the bride: as soon as she mounts his chariot, even while still at her own home, she has entered a small piece of his property and into the zone of his control. It is striking that the wedding hymn in the *Ṛg Veda* (10.85), as well as the version of it found in the *Atharva Veda* (14.1, 2, extended with many additional verses), lacks many of the elements of the ceremony as described in the *Gṛhyasūtras*<sup>9</sup> but has multiple verses devoted to the wedding vehicle and the wedding journey.

After the arrival at their new home, the groom points out the pole star and the star Arundhatī to the bride. After three nights of lying chastely together, they are supposed to consummate the marriage on the fourth.

## LEGAL RELATIONSHIP OF HUSBAND AND WIFE: OWNERSHIP?

Since the most approved forms of marriage involve the *gift* of the girl by her father to her husband and since one of the most pervasive doctrines about women is their *asvātantryam* ("lack of independence"; see *strīdharmā* chapter in this volume), taking these facts to their logical extreme would lead to the assumption that the husband not only had control over his wife but "owned" her. This is an uncomfortable conclusion to reach, and in fact, in the place where it arises most dramatically, it is definitively sidestepped. This is in the *Mahābhārata* dicing match where Yudhiṣṭhira gambles away his brothers, himself, and Draupadī. The question might arise: did he have the right to stake her like property? But, as it turns out, this question is short-circuited, because Draupadī herself recognizes that he had staked and lost himself before he staked her and, therefore, as one who had lost his own independence, he had no property rights over her. The question keeps arising however, until

<sup>9</sup> There is no mention of the seven steps in either version (at least as far as I can see); both contain a mention of "grasping the hand" (*RV* 10.85.36; *AV* 14.1.48, 50) though much displaced in the *RV*, where it seems to occur in their new home. Among the additional verses in the *Atharva Veda* version are apparent allusions to the circling of the fire (14.1.50) and to the bride's stepping onto a millstone (*aśmarohaṇa*) (14.1.47). This may represent an evolution of the ceremony or the *Atharva Veda*'s greater interest in domestic and homely ritual.

Dhṛtarāṣṭra simply annuls the results of the first match. (For discussion, see Jamison 1996a: 236–7, and see Kane II: 508 on later *dharma* writers who discuss this question.)

## RESPONSIBILITIES OF HUSBAND AND WIFE

The two most important duties of the married couple are to perform sacrifices jointly (see Section 9.1) and to procreate, producing the sons that will carry on the family line and provide the necessary ritual service to the ancestors (*pitars*). This second duty requires that the husband regularly have sex with his wife during her fertile period. The husband is also tasked with “guarding” his wife (for which see the chapter on *strīdharma*), in great part, to ensure he is the father of her children. Her major duty is strict obedience to her husband; in the meantime, she is also charged with running the household expeditiously and with economy.

## DISSOLUTION OF MARRIAGE

### Annulment of Marriage Agreement

Before treating how established marriages can end, it is worth noting that an agreement to marry can be rescinded if the goods are not as advertised, as it were. That is, if the father attempts to marry off a girl with physical or mental defects without disclosing the defects, the potential husband can annul the agreement, “even if he has accepted her according to law” (*vidhivat pratigrahyāpi*), and the father can be fined (*MDh* 9.72–9.73, 8.224), but if he did disclose her flaws, the father is not liable to punishment (*MDh* 8.205). The text does not make clear whether the husband can repudiate such a wife after the seven steps, but it seems unlikely. The *Rg Veda* contains the first instance of this provision, in a characteristically enigmatic verse (*RV* 10.27.11; see Jamison 1996b). On the other hand, a suitor who repudiates an unflawed maiden or who falsely claims she is flawed is likewise to be punished, according to some texts (e.g., *YDh* 1.66).

### Divorce and Supersession

Divorce per se does not appear to exist; the marital bond is supposed to continue until the death of one of the spouses (see, e.g., *MDh* 9.101). However,

various makeshifts accommodate less than ideal marital situations,<sup>10</sup> and the *Arthaśāstra*, in particular is more pragmatic about how to handle such situations than the *dharma* texts. According to Manu, a man has the right to supersede his wife on various grounds—on the one hand, because of vicious character and habits (e.g., drunkenness, verbal abuse), which allow almost immediate supersession, and, on the other, because she produces no children or unsatisfactory ones, for which a period of years must elapse before supersession (cf., e.g., *MDh* 9.77–9.84). At least a woman in the latter category still deserve material support, though her husband has married a new wife. For further on supersession and compensation for it, see *Āś* 3.2.38–3.2.42.

As for women who have been left behind by their husbands, there do exist legal remedies. After a waiting period of some years (whose length is determined by various factors such as the reason for the journey and the social class of the husband), the woman is released and some texts imply or require that she can take another husband. (For details, see Jamison 1999: 232–8.) All of these provisions for women assume that the husband is on a journey from which he fails to return; what a woman should do with a *present* but unsatisfactory husband is less clear. *MDh* 9.78–9.79 is somewhat incoherent on the subject; in the first provision a woman who “transgresses against” (*atīkrāmet*) a husband with various nasty habits or conditions is nonetheless the one to be cast out (though for a short period), while according to the second if she hates (*dviṣāna-*) one whose qualities do not seem that much worse she is still entitled to support. *MDh* 5.154 is blunter on this matter: even a thoroughly worthless husband (“devoid of good qualities” *guṇaiḥ . . . parivarjitah*) is to be worshiped like a god by a good wife. It seems that the best she can hope for is that he will go on a journey and not come back. Kauṭilya, on the other hand, does allow a wife to abandon such a husband (*Āś* 3.2.48) and it recognizes divorce because of mutual hatred, though only for marriages not contracted by the first four forms (*Āś* 3.3.15–3.3.19).

### Widows (and Widowers)

The popular imagination about premodern India has it that all widows immolated themselves on their husbands’ funeral pyres, committing *suttee* (in the Anglo-Indian spelling, i.e., *satī*).<sup>11</sup> Although this is presented as an option already in the epic (where, e.g., in the *Mahābhārata* Mādrī, the second wife of Pāṇḍu, joined him on his funeral pyre), there is no Vedic evidence for it, though the practice may in part have arisen from misunderstanding of the

<sup>10</sup> On the general topic of dissolution of marriage see Rocher 1968 (2012: 286–93).

<sup>11</sup> Memorably depicted, for some of us, in the 1956 film, *Around the World in Eighty Days*, in which Shirley MacLaine was rescued from this fate.

Ṛg-Vedic funeral verses 10.18.7–10.18.9, where the widow is first shown lying down beside her dead husband and then being summoned back to life. (For discussion of *satī*, especially in the later *dharma* literature, see Brick 2010).

Judging both from narrative literature and the normative texts, most widows remained alive but were subject to severe constraints on behavior, including restrictions on food and anything that remotely resembled frivolity (see Kane II: 583–7 for some details). Nonetheless, narrative models like Kuntī, Pāṇḍu's other wife, show widows respected by their families and taking an active part in the family's affairs.

The most controversial issue about widowhood is the practice of *niyoga* or levirate. When a man dies without a son, some texts allow the widow to have a son by her husband's brother. But even texts that allow this practice display great ambivalence about it and attempt to constrain it as much as possible, by limiting the number of times intercourse can occur and by attempting to strip it of any potential sexual pleasure (see Kane II: 598–603). The institution of *niyoga* is already clearly present in the *Ṛg Veda*, in a verse (10.40.2) in a simile that describes a widow taking to bed her brother-in-law (*vidhāveva devāram*). (For further discussion of *niyoga* in comparative perspective, see Schmidt 1987: 64–75.)

Remarriage of widows is also generally disapproved of, but the fairly frequent mentions of remarried women suggest that the practice was more widespread than the normative texts would like. As was noted above, wives whose husbands fail to return from a journey are allowed or expected to marry again. Kauṭilya also treats remarriage after the husband's death under the topic of women's property (AŚ 3.2.19–3.2.32) and long absence from home (AŚ 3.4.37–3.4.42).

While much attention (however negative) is paid to widows, widowers are almost invisible. What is clear is that the ritual partnership created by the marriage is dissolved on the death of the wife. The widower cremates his dead wife along with the sacrificial equipment, but he is then urged to remarry and to establish a new ritual partnership. He cannot simply continue to sacrifice on his own. (See *MDh* 5.167–5.168 and Jamison 1996a: 35, 37.)

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## Women

### *strīdharmā*

Stephanie W. Jamison

#### (LACK OF) INDEPENDENCE AND LEGAL STATUS

##### Guarding and Misogyny

No statement about the status of ancient Indian women is more famous than the one found in various versions<sup>1</sup> in the normative texts, here cited from Manu:

*pitā rakṣati kaumāre bhartā rakṣati yauvane  
rakṣanti sthavire putrā na strī svātantryam arhati (MDh 9.3)*

Her father guards her in girlhood; her husband guards her in youth;  
Her sons guard her in old age. A woman does not deserve independence.

Yet to anyone with even a passing acquaintance with ancient Indian literature, this meek and severely circumscribed female figure seems very distant from the vivid and assertive women characters one meets in narrative, such as the *Mahābhārata*'s Draupadī, Damayantī, Sāvitrī, and Śakuntalā<sup>2</sup> or, earlier, Rgvedic Urvaśī, Yamī, and Lopāmudrā. This is not simply the result of a disconnection between narrative and normative texts, for the *Mahābhārata* women, especially, seem to know the law, often better than their male counterparts, and use it to their advantage. Consider, for example, Draupadī's incisive question about Yudhiṣṭhira's ownership status when she is being dragged from her chamber after the dicing match (*MBh* 2.60; discussed further in Chapter 9 in this volume).

<sup>1</sup> Cf. also *BDh* 2.3.44, III.45; *VaDh* 5.1, 3; *MDh* 5.147–5.149.

<sup>2</sup> Though not the subdued, indeed near-catatonic Śakuntalā of Kālidāsa's play.

We must therefore evaluate both extremes with some skepticism. The powerful narrative figures are of course not portraits of real everyday women; we can no more consider Draupadī the housewife next door than we can take Antigone as a typical representative of Classical Greek womanhood. But we must also read the apparently objective provisions of the *dharma* texts with an eye both to their decided lack of neutrality in attitude in many instances and to their aspiration to appear to exert a control that may have eluded them. As has been (and remains) true in most places and most periods, the ways women are configured conceptually and treated in sociolegal systems can reflect deep-seated biases and fears in the males who create and administer these systems. The same is far less true of less emotionally charged areas of the law.

The just-mentioned emotional charge is clearly in evidence in the text of the *Mānava Dharmaśāstra* from which the verse above was quoted. Manu not only constantly harps on the necessity of “guarding” women in the section containing that verse (*MDh* 9.1–9.7)—forms of the root  $\sqrt{\text{rakṣ}}$  “guard” occur seventeen times in those verses—but gives ample reasons why, detailing with misogynistic zeal the vicious qualities and habits of women that make them need stringent control. The root  $\sqrt{\text{rakṣ}}$  is itself ambiguous, and ambiguous in the same way that English “guard” is: it can mean both positive “protect, keep safe” and negative “keep under control, restrict, confine.” It is the latter, negative sense that seems most to animate Manu. A few samples of his vitriol and especially of his fear of untrammelled female sexuality will suffice:

*asvatantrāḥ striyaḥ kāryāḥ puruṣaiḥ svair divānīśam  
viśaye sajjamānās ca samsthāpyā hātmano vaśe* (*MDh* 9.2)

Day and night women should be kept without independence by their men.  
Clinging to sensuality as they do, they should be brought to heel under his will.

*naitā rūpaṃ parīkṣante nāsam vayasī samsthitaḥ  
surūpaṃ vā virūpaṃ vā pumān ity eva bhuñjate* (*MDh* 9.14)

They do not look for beauty, nor are they stuck on youth.  
Handsome, not handsome—they enjoy him, (just thinking,) “He’s a *man*!”

*paumścalyāc cālacittyāc ca naiḥśnehāc ca svabhāvataḥ  
rakṣitā yatnato ‘piha bhartṛṣv etā vikurvate* (*MDh* 9.15)

Because of their whorish ways, their flighty minds, their lack of affection by nature,  
even when guarded with great effort, they still thwart their husbands.

It is of course her unrestrained sexuality that is the principal threat, for, if she has sex with a man not her husband, the legitimacy of the latter’s offspring is in doubt. In this same section, Manu makes this clear: *MDh* 9.9cd *tasmāt prajāviśuddhyartham striyaṃ rakṣet prayatnataḥ* / “Therefore for the sake of the purity of his offspring (a husband) should guard a woman with great effort.” This fear is already given voice in the earlier *Dharmasūtras*, without the emotional punch found in Manu though with a more straightforward

description of the danger. See, e.g., *ĀpDh* 2.13.6 *tasmād bhāryām rakṣanti bibhyantaḥ pararetaṣaḥ* / “Therefore (men) guard their wives, fearing the seed of strangers.”<sup>3</sup>

## Legal Status

“Lack of independence” might be taken to imply that women had no legal status and were therefore not responsible for their actions if their guardian failed in his guarding, but this is not entirely the case. And in fact their status in the eyes of the law seems to have changed over time—with their visibility to the law paradoxically increasing even as the assertions of their non-independence becomes more strident.<sup>4</sup>

Interestingly some of the best evidence for this growing visibility comes from the treatment of women who have committed adultery. In the earliest *Dharmasūtra* (by Olivelle’s dating), *Āpastamba*, in the section concerning adultery, the woman is the object, not the subject of provisions about adultery (here cross-*varṇa* adultery), and though she receives some punishment, it is far less than the man receives and it is apparently administered by her husband.

*vadhyah śūdra āryāyām / dāram cāsyā karṣayet* (*ĀpDh* 2.27.9–2.27.10)

A *śūdra* (who has sex) with an *Ārya* lady should be killed, and he [= her husband, presumably] should emaciate his wife (that is, impose the *kṛcchra* penance, which involves abstention from food).

This fits the “guarding” model. The wife is invisible to the legal system (though it seems that the male adulterer is not). The matter is dealt with internally, domestically; her “guardian” imposes the penalty.<sup>5</sup> But in a slightly later text, *Gautama Dharmasūtra*, the cross-class adultery brings down a far more serious punishment for the woman, and it is administered by the king in public. This now must be seen as an offense against the social order, and the woman has gained (however unfortunately for the particular woman in question) some measure of legal status.

*śvabhir ādayed rājā nihīnavarṇagāmane striyam prakāśam* (*GDh* 23.14)

In the case of a (sexual) encounter with (a man) of lower *varṇa* the king should have the woman eaten by dogs in public.<sup>6</sup>

<sup>3</sup> Cf. *BDh* 2.3.34 (2.4.2); *VaDh* 17.9.

<sup>4</sup> Much of this material was discussed in more detail in Jamison 2006.

<sup>5</sup> In *Manu* also the husband imposes a penance on his adulterous wife within the house (*MDh* 11.177), but there are also publicly administered punishments for adulterous women in that text. See the next note.

<sup>6</sup> Sim. *MDh* 8.371.



By the time of Manu it is not only the adulterous *actions* of the woman but also her state of mind in undertaking them that is open to the law.<sup>7</sup> The notion of “mutual consent” (*parasparasyānumate MDh 8.358*) arises, and sexual crimes involving a “willing” (*sakāmā*) female bring less severe punishment to the male than those with one “unwilling” (*akāmā*) (8.364, 8.368).<sup>8</sup> Given Manu’s dark views of woman’s inherent sensuality, he no doubt assumed that she would be far more likely to be *sakāmā* than not, and it is no surprise that his treatment of sexual transgression essentially takes “guarded” as the opposite pole rather than “unwilling,” and “unguarded” as tantamount to “willing.” The collapse of the two categories can be seen in the following verse:

*sahasram brāhmaṇo daṇḍyo guptām<sup>9</sup> viprām balād vrajan  
śatāni pañca daṇḍyaḥ syād icchantyā saha saṃgataḥ (MDh 8.378)*

A Brahmin should be fined a thousand if he “approaches” a **guarded** Brahmin woman by force,  
but he should be fined five hundred if he “came together” with a woman **who wanted to**.

Thus in these cases the transgressing woman has become endowed with the possibility of *intent*, which at least in many modern legal systems is a crucial measure of culpability in criminal law. This notion of intent and the varieties of undesirable intent that Manu attributes to women should make us re-evaluate what *asvātantryam* actually means in the normative texts. In Manu women’s “lack of independence” has to be created and constantly kept current (see *MDh 9.2* quoted above: *asvatantrāḥ striyaḥ kār्याḥ*, lit. “women have to be *made* non-independent” [my italics]); it is not that women are non-independent by nature, but that they continually want to assert their independence and must be kept from doing so. Thus the paradox that women show more agency in the texts in which guarding and lack of independence are most prominent is no paradox at all, but a predictable reaction to the growing recognition of women’s subversive will and intent.

What about other circumstances in which women might interact with or come to the attention of the law? Does she have legal standing in other matters? The clearest general statement I know about this is found in the *Arthaśāstra* (AŚ 3.3.1), where it is said that a twelve-year-old woman (*dvādaśavarṣā strī*) is of an age for legal transactions (as opposed to a sixteen-year-old man: the difference presumably has to do with their average ages at marriage or the end of studentship). With regard to particular circumstances, there is not much

<sup>7</sup> Adultery and other sexual crimes are covered in *MDh 8.352–8.385*.

<sup>8</sup> Cf. also, “with a woman who wants it” (*icchantyā*, *MDh 8.378*, cited in the text). The *Arthaśāstra* further develops the categories of “willing/unwilling”; see disc. Jamison 2006: 199–200.

<sup>9</sup> The root  $\sqrt{gup}$  is used in suppletion with  $\sqrt{rakṣ}$  in these contexts; see Jamison 2006 p. 202 n. 27.

evidence for or against. The provisions about witnesses in legal proceedings provides some evidence. Women can serve as witnesses in court procedures, but only for other women (*MDh* 8.68) and in the case of the absence of more qualified witnesses (8.70).<sup>10</sup> Note that the first provision also assumes that women can be party to lawsuits, since they could need witnesses to give evidence for them. On women's relationship to property, see the discussion below. It is worth noting that females can be fined for infractions (e.g., *MDh* 8.369, where the offender is a *kanyā* "maiden," and *Aś* 3.3.20–3.3.31); this would indicate that they can themselves disburse funds and that legal penalties can be imposed on them directly, not on their guardians.

### Life Stages

The verse with which we began divides a woman's life into three parts, with each presided over by a different male figure: her father in childhood (*kaumāre*), her husband in the prime of youth (*yauvane*), and her son(s) in old age (*sthavire*). It is tempting to equate these stages with the life stages of males as codified in the *āśrama* system, although in that system there are four successive roles: student (*brahmacārin*), householder (*gṛhastha*), forest-dweller (*vānaprastha*), and renouncer (*saṃnyāsin*). The superimposition of the two systems does not entirely work, but the ways they fit, and do not fit, each other can be illuminating.

For males the first stage, after unregulated childhood, is studentship, which is inaugurated by the initiation ritual of *upanayana*, sometime around the ages of six to eight (usually; texts differ, and the age is different for different *varṇas*). For females there is no studentship and no *upanayana*, at least in any full sense; their unregulated childhood lasts until marriage. However, the system makes a special effort to identify and configure an event in the young woman's life as an equivalent, if greatly telescoped, experience of the male's first *āśrama*. Manu calls the wedding ceremony the *upanayana* for women and finds in her subsequent married life duties equivalent to the student's service to his teacher during *brahmacarya*:

*vaivāhiko vidhiḥ strīṇāṃ saṃskāro vaidikaḥ smṛtaḥ  
patisevā gurau vāso gṛhārtho 'gniparikriyā* (*MDh* 2.67)

The marriage ceremony is traditionally held to be the Vedic rite of passage for women.<sup>11</sup>

Serving her husband is (like) living in the guru's (house), and household business is (like) (the student's) attending to the (guru's) fires.

<sup>10</sup> A few verses later (8.77), Manu seems to contradict these provisions, stating that women cannot be appointed as witnesses because they have unsteady minds.

<sup>11</sup> Although the word *upanayana* is not used here, the verse is found at the close of the extensive treatment of the *upanayana* in the *MDh* (2.36–2.64).

Indeed the marriage ceremony contains echoes of the boy's *upanayana*. The bride is yoked with a cord at the beginning of the ceremony, a cord that recalls the *upavīta* that the student receives at his initiation and wears henceforth, and both the bride and the initiate are made to stand on a stone and recite the same mantras about firmness.<sup>12</sup> The transition between the first two stages of the woman's life, presided over by two different guardians, father and husband, is also marked in the terminology describing the most orthodox forms of marriage (for which, see Chapter 9 in this volume) by the word *kanyādāna* "gift of a maiden." The father "gives" her to the husband, and the control over her thus passes from one to the other, as Manu makes clear: *pradānaṃ svāmyakāraṇaṃ* "the act of (the father's) giving produces (the husband's) lordship/ownership over her" (5.152d).

Despite the second half of the verse quoted above (*MDh* 2.67), which equates women's experience in marriage with the student's studentship, I think her "studentship" is fleeting, lasting only through the marriage ceremony itself: there is simply too much emphasis on the shared nature of the house-holding stage by husband and wife, in essentially all the texts, to assume a system that is out of synch, with the wife still mired in the first stage while the husband has moved on to the second.<sup>13</sup> Her second stage, *yauvana*, guarded by her husband, is equivalent to his fulfilling the householder role. And her third stage, *sthavira*, guarded by her sons, is roughly equivalent to the *vāna-prastha/saṃnyāsin* phases. In one place Manu says specifically that her sons take over the guarding when her husband is dead (*MDh* 5.148 *bhartari prete*<sup>14</sup>), but since at the man's retirement to the forest he may either take his wife along or "entrust her to his sons" (*putreṣu bhāryāṃ niṣpiya*, *MDh* 6.3), she is not necessarily a widow in this stage. (For widowhood, see the discussion in Chapter 9.)

## RITUAL STATUS

### Ritual Partnership

As discussed in the chapter on marriage, one of the most important reasons for a man to marry is to enable him to perform rituals in partnership with his

<sup>12</sup> There is a similar mock *upanayana* for the *patnī* in śrauta ritual. See Jamison 1996a: 44–50, also on the marriage/*upanayana* connection.

<sup>13</sup> Moreover, since among the most important requirements in the boy's *brahmacarya* are chastity and sexual abstinence, the regular sexual intercourse required in the householder stage would ill fit a woman still supposedly in "studentship."

<sup>14</sup> Although *preta*-literally means "gone forth," it could, in theory, refer also to a man who has left home and gone to the forest, but the lexeme is generally a euphemism for "dead, died."

wife (*patnī*). This ritual partnership has deep Vedic roots (see the extensive treatment in Jamison 1996a, and for this topic in particular 1996a: 30–8, 2006: 192–5). It is important to keep in mind that a man does not have the charter to perform solemn rituals independently any more than a woman does, and both ritual and Dharma texts emphasize that within this ritual partnership established between husband and wife there is no distinction of persons (e.g., *BŚr* 19.9 [381: 2] *aviśeṣāj jāyāpatyor āhitāgnyoh* “because of the non-differentiation of wife and husband who have established the [ritual] fires”; *ĀpDh* 2.14.17 *pāṇigrahaṇād dhi sahatvaṃ karmasu* / “for after their marriage there is togetherness in ritual acts”). Even those married couples who do not take the trouble and expense to become śrauta ritualists with the three “established fires” perform daily service to the fire kindled on the day of their wedding (often called the *vaivāhika* or “nuptial” fire and distinct from the fire for ordinary household tasks like cooking; cf. Kane II: 678–84 and, e.g., *ŚāṅkhGr* 1.17.8 *sāyaṃ prātar vaivāhyam agniṃ paricareyātām* / “Let the two of them serve the nuptial fire in the evening and the morning.”).

There is also evidence that under certain circumstances a woman could perform some rituals independently or at least act on behalf of her husband. For example, some of the *Gr̥hyasūtras* allow the wife to offer the oblations into the domestic fire (cf. Kane II: 683 and, e.g., *KhGr* 1.5.17 *patnī juhuyād ity eke gr̥hāḥ patnī gr̥hyo 'gnir eṣa iti* / “Some say that the wife may/should do the offering, for the wife is the house and that fire is the household one”; cf. *GobhGr* 1.3.14–1.3.15), and when the householder goes on a journey, he entrusts the fire to his wife, though also appointing a priest to offer the actual oblation (see Kane II: 683). When her husband dies, the widow of an *āhitāgni* is allowed by some texts to undertake *gr̥hya* versions of the principal śrauta rites (see Jamison 1996a: 36–7).

Another way to look at a woman’s ritual status is to consider the *saṃskāras* (life-cycle rites) that involve or affect her. The major one is, of course, marriage, which has been amply treated in a separate chapter. But there is a whole series of rites associated with conception, pregnancy, and childbirth that, needless to say, require at least her presence. The details of the rites and the prescribed times for performance differ from text to text, but the order is the same.<sup>15</sup> This series starts with the ceremonial intercourse that occurs some days after her menstrual period with the intent of “setting an embryo” (*garbhādhāna*). When she gets pregnant, in the early part of the pregnancy, there is the *pumsavana*, the rite meant to ensure that the child will be male; some time later the *garbharaḥṣaṇa* “protection of the embryo,” followed by the *sīmantonmayana* “parting of the hair.” The purpose of this last is not entirely clear (at least to me) and it involves the husband parting his wife’s hair using a

<sup>15</sup> For a detailed treatment of the *saṃskāras*, see Kane II: Chapter. 6; for those esp. concerned with pregnancy and childbirth, pp. 201–40. See also the treatments in the individual *Gr̥hyasūtras*.

porcupine quill, an even number of unripe fruits, and some kuśa grass. Right before birth is the *soṣyantīkarman* (the rite for a woman about to give birth). With the actual birth, the attention shifts to the child, beginning with the *jātakarman* (rite for the newborn), with, significantly later, the first feeding of solid food (*annaprāsana*) and the first cutting of its hair (*caula* or *cūdākarman*). However, there is one further rite focused on the mother, occurring (acdg. to most texts) ten to twelve days after birth, namely *utthāna* (“getting up”), when the new mother arises from childbed—quite reminiscent of the (archaic?) Christian rite, the “churcing of women.” The *utthāna* brings to the end the period of impurity following childbirth.

Although the earlier texts do not seem to attest to such an organized system of successive pregnancy and birth rites, the late *Ṛg Veda* and the *Atharva Veda* already contain a number of charms for safe pregnancy and birth; the *Atharva Veda* in particular envisages menaces to the unborn child and its mother everywhere.

### Menstrual and Childbirth Taboos

As was just mentioned, a period of impurity follows the birth of a child. It lasts for ten days, the same length as that for a death, but there is some difference of opinion about whether it affects both parents or the mother only (cf., e.g., *GDh* 14.14–14.16; *VaDh* 4.20–4.23; *MDh* 5.61). Relatives may observe a period of three days (*MDh* 5.71). A period of impurity also follows a miscarriage, generally held to be as many days as the number of months her pregnancy lasted (*GDh* 14.17–14.18; *MDh* 5.66).

Not surprisingly, a menstruating woman is also impure; she reestablishes her purity by taking a ritual bath after her period is over (e.g., *MDh* 5.66). While menstruating, she is excluded from participation in ritual because she is too polluting, and various solutions were devised to deal with this eventuality (see Jamison 1996a: 32–4). Other menstrual taboos include males not eating food touched by a menstruating woman, and Brahmins should not touch or even converse with one (Jamison 1996a: 14).

## PROPERTY AND INHERITANCE

### Vedic Model: Joint Control over Household Goods

Above we noted the old, Vedic model of the ritual partnership established between husband and wife at marriage, and the lack of distinction between the two people in this partnership. This model entails that the married couple

has joint ownership of their property (cf., e.g., *ĀpDh* 2.29.3 *kuṭumbhināu dhanasyeṣāte* / “the household couple has dominion over the property”). Also in this model, the wife has the right to dispose of property independently in the absence of her husband (cf. Jamison 2006: 192–3). The wife is also the usual dispenser of alms to *bhikṣus*. This last role presumably developed partly from the “joint-control” model and partly from the fact that the wife was more likely to be occupied with kitchen and pantry than the husband, and would be there to answer the begging request (cf. Jamison 2002: 78–9).

### Strīdhana

Though the old ritual-partnership model endures in somewhat altered form in post-Vedic texts, the joint control of property associated with it is not continued. Instead, women’s property rights become very circumscribed, and there is some confusion and contradiction in the various texts about what she really owns and how (and to whom) she can dispose of it.<sup>16</sup> We cannot enter into the thicket of details, but simply sketch some of the major points and some of the disagreements about them.

In one uncompromising statement, Manu declares that women, or at least wives, have no property rights at all:

*bhāryā putraś ca dāsaś ca traya evādahnaḥ smṛtāḥ*  
*yat te samadhiḡacchanti yasya te tasya tad dhanam* (MDh 8.416)

The wife, the son, and the slave are three (categories of persons) traditionally considered to be without property.

What they acquire, that is the property of him to whom they belong.

Yet in that same chapter (8.28–8.29) the king is required to protect several classes of women (including widows and women devoted to their husbands [*pativrata*]) from having their property taken by unscrupulous relatives; such a provision presupposes that these women had property in the first place.

Elsewhere Manu provides a listing of the types of *strīdhana*, which more or less accords with other such accounts in other texts:

*adhyagnyadhyāvāhanikaṃ dattaṃ ca prītikarmaṇi*  
*bhrātrmātrpitṛprāptaṃ ṣaḍvidhaṃ strīdhanam smṛtam* (MDh 9.194)

What is given at the (wedding) fire, on the wedding (journey), in token of affection,

what was acquired from brother, mother, father: such are traditionally the six types of women’s property.

<sup>16</sup> On the topic in general, see Kane III: 770–802.

In other words, the major source of women's property is wedding presents and possessions acquired from her immediate natal family either at the wedding or at another time.<sup>17</sup> When a bride sets out for her new home she is taking the major part of what she will ever own,<sup>18</sup> though Manu adds in the next verse two additional sources of postmarriage property: *MDh* 9.195 *anvādheyaṃ ca yad dattaṃ patyā prītena caiva yat* / "what is received subsequently and what is given by an affectionate husband." *AŚ* 3.2.40–3.2.41 also states that if her husband seeks to supersede her, he must compensate her, as well as giving (/returning?) the bride price and the *strīdhana* (see also *AŚ* 3.3.3).

What can she do with this property? Precious little, it seems. *AŚ* 3.2.34 says that "women's property is meant for adversity" (*āpadarthaṃ hi strīdhanam*), and the uses it can be put to, at least according to that text, mostly fall into that category: supporting a son and daughter-in-law or supporting herself if her husband goes away leaving her in the lurch (*AŚ* 3.2.16), or for a chaste sonless widow to support herself after her husband's death (*AŚ* 3.2.33). Her husband can also use it in dire circumstances (*AŚ* 3.2.16), presumably to support the whole family. Manu firmly states (9.199) that a woman cannot dispose even of her own property without the permission of her husband.

Since its uses while the woman is alive are so circumscribed, *strīdhana* seems to exist to be inherited. Who inherits it depends on the text, and multiple scenarios are envisioned. The simplest solution (and, if we may be partial, the fairest) is found in *Gautama Dharmasūtra* (*GDh* 28.24), where it goes to her daughters who are unmarried and/or without establishment (*duhiṛṇām aprattānām apratiṣṭhitānām ca*), but this straightforward solution ramifies in both Manu (9.192–9.200) and the *Arthaśāstra* (3.2.35–3.2.37). However, in another provision in Manu (9.131), the "separate property" (*yautakam*) of the mother goes to the unmarried daughter(s) (here called *kumārī*).

Although the dharmic regulations concerning *strīdhana* seem to set severe limitations on women's access to property, a somewhat different picture emerges in the more freewheeling world of the *Arthaśāstra*. First, in the larger section on *strīdhana*, extensively cited above, a number of provisions concern a woman's life-choice options and financial situation after her husband's death (*AŚ* 3.2.19–3.2.34), and the sources of her support and her choices (including remarriage) seem wider than those offered by the *dharma* texts. Moreover, the text several times mentions rich widows, ripe to be fleeced by the unscrupulous or ready to fleece others (1.18.9, 11.1.42, and 13.2.42), though poorer widows must take lowly employment (e.g., 2.23.2).

<sup>17</sup> E.g., what she receives from her mother could be inheritance. See further below.

<sup>18</sup> A striking reflection of this is the word *pārīṇāhya*, a word that comes to mean "household goods" (e.g., *MDh* 9.11), but which derives from an idiom referring to a traveling box "tied around" (or "down") that the bride brought on her wedding journey. See Jamison 1997.

On the complicated question of the widow's rights to inheritance from her husband's estate, see Kane III: 701–13.

## (ALTERNATIVE) ROLES FOR WOMEN

The emphatic and indisputable message about women in the normative texts is that there is no other role for women than marriage. There are simply no alternative paths laid out. However, it is also clear, not only from narrative literature and belles lettres, but also nudged into corners of the normative literature, that other female figures existed, often as cautionary examples. Before turning to those, we will examine what is certainly not an “alternative” role but one instead central to women's identity—but which has curiously little representation in the legal materials.

### Mother

As has been emphasized elsewhere, one of the major reasons for marriage is the procreation of sons to carry on the family line and provide ritual service to the ancestors (*pitars*); we have also noted the *saṃskāras* having to do with pregnancy and birth. However, rather little is said about the rights and duties of the mother, perhaps because her involvement in her sons' lives would be most intense in their early childhood before they achieve ritual and legal status. Substituting for detailed treatment of her role and conduct as mother are occasional offhand encomia to the role of the mother, e.g.:

*utpādanam apatyasya jātasya paripālanam  
pratyaham lokayātrāyāḥ pratyakṣam strī nibandhanam (MDh 9.27)*

Production of offspring and caring for those born,  
the daily (conduct) of mundane affairs—the woman is clearly what holds it together.

as well as advice to sons not to abandon their mothers (cf. Kane II: 580–1 and Jamison 2006: 203). Thus the successful mother is essentially invisible to the normative texts; not so, however, when things go wrong. As discussed in the Chapter 9 in this volume, a woman who fails to have children or has only daughters can be superseded after some years, with her husband marrying a second wife—though he must compensate her or at least maintain her. On the other hand, Manu promises that a widow who lacks sons will go to heaven if she remains celibate (*MDh* 5.159–5.160)—presumably to forestall *niyoga* (on which, see Chapter 9) or remarriage, both of which he expressly disapproves of.



## Spinster

Although the goal for all women was marriage, it stands to reason that not all achieved that goal, and the anxiety created by the approach (and passing) of menarche in unmarried girls and their parents is not only a staple of narrative literature but produces a host of ritual remedies (see Jamison 1996a: 236–47 and disc. in Chapter 9 in this volume). Already in the *R̥g Veda*, there is mention of a female “growing old at home” (*amājūr-*), as well as to a female giving birth in secret and abandoning the child (II.29.1), presumably a reference to an unwed mother. In the legal literature, the son born to such a girl is called a *kānīna-* (derivationally related to *kanyā* “maiden”). According to Manu (9.160) he does not inherit (at least from his birth father); he technically belongs to the man who later marries her (9.172), indicating that the disgrace was not sufficient to render her unmarriageable.

Nonetheless, there must have been spinsters who remained in their natal home for their whole life or, with the breakup of that home, were left to their own devices. Indeed Manu (9.89) states that a girl should remain at home until she dies rather than being given to a man lacking in good qualities. We already noted that in Gautama, a woman’s *strīdhana* was inherited by her unmarried and unestablished daughters;<sup>19</sup> there is also provision in Manu that after the father’s death, brothers should allot a quarter portion of their shares to their unmarried sisters (9.118), though it is not made clear whether these girls (denominated *kanyā*) are marriageable or past marriageable age. Otherwise, spinsters do not merit much clear mention. In the *Arthaśāstra* (2.23.2, 11) spinsters, along with other women in financial straits, are employed in the manufacture of yarn (spinsters quite literally).

## Putrikā

The normative texts strongly counsel against marrying a brotherless maiden; indeed already in the *R̥g Veda*, such a girl has a problematic reputation. This is not simply a matter of not having brothers to keep her behavior in line. The danger is that she will be made a *putrikā* or “appointed daughter” to carry on her father’s line (succinctly stated in *MDh* 3.11). The sons of any man she marries will technically “belong” to her father’s family not the bridegroom’s and will owe their ancestral service to his maternal grandfather and his ancestors not to his father—though *MDh* 9.132 allows the possibility of dual

<sup>19</sup> The provision in Manu also mentioned above whereby the “separate property” of a woman goes to her unmarried daughter(s) probably does not refer to such daughters of any age, but just to prepubescent ones, since the term used is *kumārī*, and *kanyā* has a wider semantic range.

responsibility. On the *putrikā* in comparative perspective, see Schmidt 1987: Chapter 2; the issue is treated in Manu 9.127–9.140, etc.

### Gaṇikā, etc.

The *dharma* texts barely mention what some would now call “female sex workers,” save, glancingly, as women to be avoided. For example, food given by *gaṇikās* should never be eaten (*MDh* 4.209.219). However, the *Arthaśāstra* devotes a whole section (2.27) to courtesans, who are under the supervision of the Superintendent of Courtesans (*gaṇikādhyakṣa*) and who are not only subject to regulation but also provided with certain protections. Also lumped in are women associated with the performing arts: dancers, actors, etc. (*AŚ* 2.27.25). Thus there seems to have existed a demimonde whose inhabitants lived on the fringes of respectable society but who inhabited recognizable social roles. Such people become more visible in texts like the *Kāmasūtra* and in literature proper, for example, the self-abnegating courtesan heroine of Śūdraka’s famous play, *Mṛcchakaṭikā* (Little Clay Cart).

### Nun/Renunciate

Given the religious landscape of ancient India in the centuries just before and just after the turn of the (Christian) era, the most surprising absence among roles for women is the option of renunciation, the choice to live a celibate religious life in a community of other such, as a nun—as Buddhist and Jain women could do. An orthodox Hindu woman could fulfill her religious duties only by devotion to her husband (*pativratā*). No separate path of religious devotion, renunciation, asceticism, or good works was available. See Manu’s explicit statement:

*nāsti strīṇāṃ pṛthag yajño na vratam nāpyoṣaṇam  
patim śuśrūṣate yena tena svarge mahīyate* (*MDh* 5.155)

There is no separate sacrifice, vow, or fast for women.

Because she is obedient to her husband, for that reason she is magnified in heaven.

It is true that there were some limited options for ascetic behavior. She could optionally accompany her husband when he went to the forest as a *vānaprastha* (*ĀpDh* 2.22.8–2.22.9, *MDh* 6.3), and as a widow, the restrictions on her behavior amounted to an ascetic regimen (see, e.g., *MDh* 5.156–5.166 and Jamison 2006: 204–5). Still, both of these paths were thrust on her by circumstances, not chosen, and came at the end of her life or at least after a period of marriage.

The ascetic option for heterodox women must have been well known, however, and may have exerted its attractions on even orthodox Brahmin women. This may well account for the tendency in the normative texts to classify such ascetics with the women of dubious morals just treated under the *gaṇikā* heading (for some details, see Jamison 2006: 206–9); it may also help explain the particular virulence of Manu’s insistence on “guarding,” to keep impressionable wives from getting ideas about living independently of men.

## Children

*putra, duhitṛ*

Donald R. Davis, Jr.

A son saves you from hell—so goes the frequently cited folk etymology of the word *putra*.<sup>1</sup> A son provides a man with an heir and with someone to perform the ancestral rites known as *śrāddha*. Without a son, the family line and the soul after death both perish. With a son, a father gains immortality and everlasting worlds.<sup>2</sup> The emphasis on the power and value of a son to a father reflects a religious culture in which the family and household are central. The destiny of this one is tied to the destiny of many.<sup>3</sup>

As with so many concepts, Sanskrit contains an extraordinary number of words—many synonymous—for *child*, *son*, and *daughter*.<sup>4</sup> In this chapter, I focus narrowly on the terms used in the Hindu legal texts to create the generalized categories pertaining to children that were recognized in law. The goal is to sketch the legal roles of children as presented in Dharmaśāstra, in order to see their social and religious significance through one important institutional lens. A legal perspective on children by no means exhausts their relevance to the history of Hinduism,<sup>5</sup> but it does provide one intellectually

<sup>1</sup> *MDh* 9.138: “The Self-existent One himself has called him “son” (*putra*) because he rescues (*trā*) his father from the hell named Put.

<sup>2</sup> *VaDh* 17.1–17.5.

<sup>3</sup> *VaDh* 15.8: “By means of one he saves a multitude” (*vijñāyate hy ekena bahūṃs trāyata iti*).

<sup>4</sup> Sanskrit words mark an array of ideas associated with childhood and maturation. For example, we have both a clinical (*garbha*) and sociolegal (*bhrūṇa*) word for *embryo* or *fetus*. We have words showing affection (*vatsa*, *ḍimbha*, and *kakutsala*) and generic words for a *child* (*apatya*, *jantu*, *toka*, *tanaya*, *suta*, and *sūnu*), each with variant shades of connotation. In spite of this huge vocabulary, to date, no broad scale study of the idea and history of childhood has been undertaken for ancient or medieval India. The broadest we have is Kakar 1981. In recent years, several studies have explored the topic in focused areas, especially Buddhist studies. See Sasson 2012; Clarke 2014b; Hüskén 2009; Verpooten 1980; Feller 2012; Lefèvre 2001.

<sup>5</sup> Patton 2009 provides the best overview I have seen of the representations of children and childhood in Hinduism.

and socially powerful formulation of children's roles that shaped and contested with other perspectives. Moreover, the systematic nature of the discussions of children in the legal texts gives them a rhetorical cogency and coherence greater than less pointed or systematic views.

Studies of childhood begin with the larger question of whether childhood is primarily a social or a biological fact. Since Phillipe Ariès's seminal work (1962) asserting the absence of childhood in medieval Europe, the idea that socially constructed childhoods of varying kinds could be invented, changed, or eliminated altogether through social processes over time has provoked much debate. Among many who have tried to unsettle Ariès's thesis, Barbara Hanawalt's studies of children in medieval England led her to assert that child development is fundamentally a biological reality as seen through common elements of child care, clothing, feeding, and games (1986: 171). Still, the debate continues, as shown by the popularity of Neil Postman's argument (1982) that contemporary social trends are pushing maturity assumptions and adult expectations down the age scale to the point of childhood's disappearance.

In law, however, classifications of children are obvious social constructions—arbitrary, but culturally and historically determined. This fact does not undermine Hanawalt's important corrective, but rather it asks us to differentiate the social and intellectual constructions of ideal legal, political, or religious childhood from the practical commonalities across cultures in the care and raising of actual children. The former is historically important for the pressure it places on the latter. The question to ask may then be how did ideal legal constructions and rules related to childhood affect real children in Indian history and whose interests were thereby served? Given the nature of Dharmaśāstra, we cannot approach "real children" directly in these texts. However, with some against-the-grain reading and use of historical sources outside of Dharmaśāstra, we can develop a basic understanding of the legal lives of children from one Hindu perspective and some instructive hints about its wider influence.

## MINORITY AND MAJORITY

Hindu legal texts characterize the period of life prior to the age of eight as one of both freedom and insignificance. In his commentary on *Laws of Yājñavalkya* 1.1, Vijñāneśvara writes, "Before the vedic initiation, children may do, say, and eat as they please" (*prāg upanayanāt kāmācāra kāmavāda kāmabhakṣaḥ*). From similar statements in several other texts,<sup>6</sup> we see the association of early

<sup>6</sup> See parallel statements at Kane II: 188–9.

childhood with unfettered freedom. Such freedom implies a tolerance of all kinds of childish behavior and a near complete lack of discipline. Conversely, very young children are also trapped by their instincts, stuck in desire. On the one hand, any behavior is tolerated. On the other, their lack of discipline means that they have neither the right nor obligation to do anything of consequence. They are the “same as an embryo” (*garbhasama*), as several *dharma* texts describe them.<sup>7</sup> The description does not impugn the potential of an embryo or a child, only its present status. The inability of children to handle the discipline required of Hindu religious law makes them trivial and ineligible for the full protections, benefits, and obligations of either ritual or law.

Dharmaśāstra generally recognizes two important moments in the further development of a child.<sup>8</sup> The first relates to ritual capacity and the second to legal capacity. The most frequently cited statement about minority is found at *Laws of Nārada* 1.31–1.32: “Until his eighth year a child (*śiṣu*) is considered the same as an embryo (*garbha*), and until the sixteenth year he is a youth (*bāla*), also called an adolescent (*pogaṇḍa*). After that, he is competent in commerce and independent, provided his parents are dead. If they are alive, however, he is dependent, no matter how old he is.” The change at eight years of age transforms the child from the legal status of an unborn child to one ready for the rite of initiation (*upanayana*) and formal entry into the life of a student (*brahmacārin*). Through initiation, the child becomes subject to a host of ritual laws associated with service to his teacher. In this period, the child obtains a specified ritual capacity and responsibility appropriate to his legal role as a student. Following *Laws of Manu* 2.171, “one does not become competent to perform any rite until the tying of the Muñja-grass girdle (i.e., Vedic initiation).”<sup>9</sup> Thus, while the rite itself creates the ritual capacity, it is also closely associated with the ideal age of eight for Brahmins.<sup>10</sup> Nevertheless, whether at eight, eleven, twelve, or later (*MDh* 2.36), Vedic initiation is the first transformative moment of childhood that both brings a child under the

<sup>7</sup> For example, *Laws of Dakṣa* 1.3 confirms that a child less than eight is “the same as an embryo, though he may appear to be a full person” (*sa hi garbhasamo jñeyo vyaktimātrapradarśakah*).

<sup>8</sup> Rocher 2012: 235–48 remains the most thorough discussion of the status of minors in classical Hindu law.

<sup>9</sup> Compare *ĀpDh* 2.15.22–3. The ritual disability derives from the child’s inability and ineligibility to recite Vedic texts, a skill learned as a formal student. The next verse of the *Laws of Manu* 2.172, however, makes an exception that proves the rule: “One [who is uninitiated] should not pronounce any vedic text, except when he offers a funerary oblation, for he is equal to a Śūdra until he is born from the Veda.” Compare the *LDhP* 8.2.3: “By the mere act of birth, they [Brahmins] are Śūdras; their status as Brahmins is constructed through rites” (*janmamātreṇa śūdrās te dvijatvaṃ karmanirmitaṃ*). See also Kane IV: 365, for limited exceptions in relation to both funerary (*antyeṣṭi*) and ancestral offerings (*śrāddha*).

<sup>10</sup> It is worth noting that most authors calculate the relevant age from conception (or the performance of the impregnation consecratory rite) rather than from birth. See the discussion in VirMit and Vij on *YDh* 1.14.

rigorous discipline associated with being a student and enables him to engage in a host of rites from which he was previously excluded.

The association of age eight with ritual capacity has parallels in both Buddhist and Jain traditions, in which age eight is the minimum age required for formal initiation into the monastic order.<sup>11</sup> The cultural connection between the eighth year from birth or conception and ritual capacity thus transcended religious affiliation. The influence of the early *gṛhya* and *dharma* texts established the normative age for ritual capacity throughout India for centuries to come.

In law, however, the *bāla* or *pogaṇḍa*, a person between eight and sixteen, may not enter into contracts, including making loans, acting as a surety, buying, or selling (Rocher 2012: 239). At the same time, the minor is afforded some protections under the law. These include reduced guilt and liability for both religious and legal offenses, the prohibition against the sale of a child, and the protection of a child's property in trust until legal majority (Rocher 2012: 240–6).

After the initiated student turns sixteen, he obtains legal majority and becomes capable to enter into legal transactions of all kinds. The technical term for this status is *vyavahārajña*, “competent for legal transactions.” As we saw in the guiding statement of Nārada above, however, a son who turns sixteen does not acquire full legal independence until his parents are deceased. Nevertheless, there is a strong sense in Hindu law that a sixteen year old may engage in normal legal transactions pertaining to himself (as opposed to his family). In the *Rāmāyaṇa*, we see this sentiment at work in King Daśaratha's response to the sage Viśvāmitra's plea to allow Rāma to accompany him to the forest in order to vanquish the demons disrupting his sacrifices. The king says, “My Rāma is not yet sixteen years of age . . . He is but a boy (*bāla*) and not yet finished with his studies.”<sup>12</sup> His adviser Vasiṣṭha convinces the king that he must keep his word to grant the sage's request, but more personally reassures him that Viśvāmitra will teach the young Rāma how to bring out his natural abilities.

For girls, however, majority occurs at age twelve and relates not to legal capacity but eligibility and fitness for marriage and childbearing (Rocher 2012: 237). The comparable categories *prāptavyavahārā* or *prāptaphalā* both seem to imply the onset of menstruation and thereby, a legal fitness for the “business” (*vyavahāra*) or “fruit” (*phala*) appropriate to and obtained by women.

The basic rules of minority and majority should also be understood in connection to the pejorative connotations of childhood often met with in Dharmaśāstra. The *Laws of Manu* 2.153 says that a man ignorant of the Veda and *dharma* is to be called “child” (*bāla*). Among other surprising sources,

<sup>11</sup> Langenberg 2013: 56–7; Jaini 1991: 104n.44; Granoff 2006.

<sup>12</sup> Rām 1.19.2, 7: *ūnaśodaśavarṣo me rāmo . . . bālo hy akṛtavidyaś ca* (Goldman's translation).

“even a child” may give good advice (*MDh* 2.239), implying that normally they do not. Except as a last resort, children are disqualified as witnesses.<sup>13</sup> Finally, both in legal texts and elsewhere in Sanskrit, *bāla* as an adjective, “childish,” and *bālya* or *bālīya* as an abstract noun, “childishness,” are very often used to mean “foolish” and “foolishness,” respectively (as at *MDh* 11.21, e.g.).

The *dharma* texts thus mark two broad periods of childhood. From conception to age eight, a child is a kind of nonentity, present but unfettered by social rules.<sup>14</sup> From eight to sixteen, the child enters training to become an adult and to purge themselves of their childish and foolish ways. Ritual training, service to one’s teacher, and education in the scriptures all form parts of the long process of initiation<sup>15</sup> that culminates in the end of formal study and in marriage.

## THE TWELVE SONS

Twelve kinds of sons are canonically named in the *Dharmaśāstras*.<sup>16</sup> The twelve are always mentioned in ranked order in the context of inheritance. In contexts other than inheritance, the differentiation of types of sons has less importance because any legal son will often do. In determining the legal heirs of a deceased man, however, one requires a gradation of priority and legitimacy with a legal son heading the list. Among several gradations relevant for the family’s property, the ranked list of sons figured prominently. In some texts, the first six are classed as both relatives and heirs, while the second six are

<sup>13</sup> Compare *MDh* 8.70 “When there is no one else, even . . . a child . . . may give testimony” and *MDh* 8.118 “Testimony given . . . by one who is a minor is considered false.” Olivelle’s “through immaturity” for the latter may mislead, as “immaturity” has no technical use in law. Two commentators, Sarvajñanārāyaṇa and Nandana, take *bālabhāvāt* literally as “by one who is not of legal age.”

<sup>14</sup> Gutschow and Michaels suggest that the scant attention paid to uninitiated children in *Dharmaśāstra* “is because Indian children in their early years are predominantly in the care of mothers and sisters, and not in the world of the men who wrote the Sanskrit texts” (2008: 127).

<sup>15</sup> Many of the standard consecratory rites (*saṃskāras*) focus on the ritual refinement of the child. See the chapter on these rites in this volume for details.

<sup>16</sup> Kane III: 645 gives a complete chart of the thirteen types listed (usually in a group of twelve) in major *Dharmaśāstra* texts. The thirteen sons are: (i) the legitimate or natural son (*aurasa*); (ii) the son of the appointed daughter (*putrikāputra*); (iii) the son born to one’s wife through a leviratic union (*kṣetrajā*); (iv) the adopted son, given by a natural parent to another (*datta*); (v) the contrived son, a parentless adult who offers himself voluntarily in adoption (*kr̥trima*); (vi) the secret son, born in one’s house and treated as a son without certain paternity (*gūḍhotpanna*); (vii) the abandoned son (*apaviddha*); (viii) the son of an unmarried virgin, later married (*kānina*); (ix) the son of a woman who was pregnant when married (*sahodha*); (x) the purchased son (*kr̥ita*); (xi) the son of a remarried woman (*paunarbhava*); (xii) the self-given son, a minor who freely offers himself in adoption (*svayamdatta*); and (xiii) the son of a Śūdra woman and a twice-born man (*śaudra*). The last is the most commonly omitted.



relatives only, and not heirs.<sup>17</sup> The legal application of that distinction, however, was highly contested, even in the texts. In fact, of the twelve, only four appear in a meaningful way.

By far the most important and most desirable is the natural son (*aurasa*), the legitimate biological son of a man and his lawful wife.<sup>18</sup> It is hard to overstate the praise and importance given to a natural son, especially the first-born, in Hindu texts from the earliest Vedas right through to the modern period. Some early Dharmasūtra texts (*ĀpDh* 2.13; the view of Aupajāṅhani at *BDh* 2.3.33) suggest that the natural son was the only son entitled to inherit, while most enumerate a list of other sons who are legal heirs. The *Laws of Manu* declares the natural son to be paradigmatic (*prathamakalpita*), while all the others are substitutes (*pratinidhi*), necessitated by the fact that someone must perform the family rites.<sup>19</sup> The natural son is “fully qualified in all circumstances, as the rule (*utsarga*) [not the exception],” according to the commentator Rāghavānanda.<sup>20</sup> Thus, he is the standard against which all other sons are measured. And, the degree of deviation from that standard determines the rank of the other sons relative to this topmost type.

Most often mentioned next in the list of twelve sons is the *putrikā* or *putrikāputra*, literally the “female-son” or “son of the female-son,” respectively.<sup>21</sup> This unique institution of Hindu law<sup>22</sup> refers either to a daughter appointed by her father to act herself in the role of his son or to her son as appointed by her father to be his own. Biologically, the appointed daughter has the same parents as the natural son, a fact that likely explains the prominent position of this “son” (*MDh* 9.133, 9.139). A *putrikā* in the first sense is a good example of a legal fiction, in this case, a fictive legal persona through which a daughter may engage in rites and legal transactions normally reserved for a natural son. She is treated as if she were a natural son for purposes of law and ritual. Similarly, the *putrikāputra* assumes a relationship to his maternal grandfather that is created by the law. Both take responsibility for the important ancestral rites (*śrāddha*) and inheritance (*dāya*) of their sonless father or grandfather. As early as the *Laws of Gautama* (28.18–29.20), however, *dharma* authors saw a serious problem in this institution. If one were to marry the

<sup>17</sup> *GDh* 28.30–29.31; *BDh* 2.2.36–2.2.37; *MDh* 9.158. See Kane III: 650–2, who concludes reasonably that the long legal categorization of sons was intended for “matters of maintenance and guardianship” in cases where a child’s parentage is dubious or problematic.

<sup>18</sup> Rocher 2012: 613–22 describes the variant definitions of the *aurasa* son, concluding that what seems to be a simple biological relation assumed complex forms in law. The discussion below relies heavily on this article.

<sup>19</sup> *MDh* 9.166, 9.180. <sup>20</sup> At *MDh* 9.166.

<sup>21</sup> This nomenclature is not consistent in the texts, which sometimes use *putrikā* to refer also to the son of the appointed daughter and *putrikāputra* to mean the daughter treated as a son. See the discussions in Jolly 1885: 147–9 and Sontheimer 1977: 53–5. For early echoes in the Vedas, see Kane III: 657–8.

<sup>22</sup> See Schmidt 1987 and Olivelle 2005a: 328 for possible comparative parallels.

daughter of a sonless man who appointed her or her son as his son, then her husband would be left with no heir or officiant for the ancestral rites for himself. Warnings against marrying a “brotherless girl” thus abound in the Dharmaśāstra, and one may infer that desperation motivated both the appointment of a “female-son” and the agreement to become her husband. Though we know both of classical narrative instances of the *putrikā* and of legal instances similar to the *putrikā* into the twentieth century,<sup>23</sup> some medieval authors omitted it from their digests on inheritance on the grounds that it, along with most of the twelve types of sons, was no longer observed in practice (*sampraty ananuṣṭheyaṭayā* at *SmṛC* 3.670). The fact that the *putrikā* had the same biological parents as would an *aurasa* son ran up against the inevitable reality that any man who would marry such a woman would assume a socially degraded position. In communities where younger brothers received little to no stake in joint family property, the *putrikā* (or similar institution) developed advantageously as a way for these left out brothers to acquire some wealth for themselves, even if it meant severing ties with their natal families. In practice, however, the women themselves as often acquired dominant control over the family’s property.

The third important son is the *kṣetraja*, the son “born of the [husband’s] field,” that is a son born to the wife of one man though fathered by another. This son results from *niyoga*, a formalized sexual union (not a marriage) between a woman and the brother of her husband (who may be impotent, terminally ill, or dead). Obviously, this institution invites comparison with other practices of levirate marriage, most notably biblical.<sup>24</sup> Early authors of the Dharmasūtras debated whether a son born through *niyoga* belonged to the biological father or the husband, and they thereby were divided about whether *niyoga* was legal at all (Kane II: 599–607). One solution found first in the *Laws of Baudhāyana* (2.3.17–2.3.19) and the *Arthaśāstra* (3.7.6–3.7.7) labeled the *kṣetraja* son a “son of two fathers” (*dvyāmusyāyana*), one who would inherit the estates of two families and perform the ancestral rites for the patriline in both. This solution finds considerable acceptance in medieval *dharma* texts as well. The same legal category was extended in the early modern period to refer also to a particular form of adoption in which an only son (normally

<sup>23</sup> For example, see the story of Citrāṅgadā, the third wife of Arjuna, in the *Mahābhārata* (Brodbeck 2012, who adduces other similar instances). Legal parallels exist to the similar, but not same, institutions called *sarvasvadānaṃ* marriage in Kerala (Moore 1905: 49–55), *binna* marriage in Sri Lanka (Tambiah 1973a: 84, 130–5; Yalman 1967: 122–30; Jayasekera 1982), and the *ghar jamāi* (or *jawāi*) in several parts of North India (Chopra 2014). In these marriages, a sonless man marries his daughter to another (usually indigent) man who takes his wife’s family name but may also inherit the property of her father. In spite of regular comparisons being made between *putrikā* sons and the arrangements found in these marriages, the emphasis is different and thus the conceptualization differs, too. Further research is needed to differentiate the historical and cultural practice of these institutions.

<sup>24</sup> On levirate marriage, see Belkin 1970, among many possible sources.

prohibited) is given in adoption to a sonless man on the condition that adopted son perform the legal and religious duties in both families (Kane II: 685–7). The extension of the category suggests that it was working as a satisfactory legal arrangement in practice.

Stories of *niyoga* and *kṣetraja* sons are common in Hindu texts. A close variation of it is so common in the *Mahābhārata* that it drives several significant narrative events. The Ādiparvan of the *Mahābhārata* contains several famous stories of what the text calls *niyoga*. The celibate Bhīṣma refuses his co-mother Satyawatī's plea to sire sons for his younger half-brother Vicitravīrya, who died childless (*MBh* 1.97), but Satyawatī on Bhīṣma's advice then persuades her first-born son Vyāsa to impregnate the dead hero's two widows (*MBh* 1.99). Two of the children of this *niyoga* union, Pāṇḍu and Dhṛtarāṣṭra, are the patriarchs whose own miraculous children enact the central plot of the great epic. Invoking the twelve-sons model, Pāṇḍu himself, cursed to be impotent, implores his two wives to accept suitable substitutes in *niyoga* to ensure that he has sons (*MBh* 1.111–1.113). In this way, several of the central characters of the *Mahābhārata* are born as *kṣetraja* sons. The problem, however, is that the usual substitute in the *Mahābhārata* for the deceased or impotent husband is a Brahmin, not a brother-in-law (*devara*). As Winternitz (1897: 716–32) showed long ago, the strictures of the levirate in the *dharma* texts are changed fundamentally in the epic's preference for Brahmin surrogates and in the open-endedness of the possible surrogates.<sup>25</sup> One common theme in both legal and literary representations of these unions and the sons that are born from them is a connection with Kṣatriyas and kings.

The final type of son often discussed in the social and legal history of India is the adopted son (*datta*, *dattaka*). After the natural son, the adopted son is far and away the most prominent in both theory and practice. In spite of the intriguing legal issues raised by the category of "female-son" and the melodramatic appeal of levirate unions in Hindu scriptural and narrative literature, adoption was the standard practical solution to not having a son. The sheer size of the corpus of *dharma* texts devoted in part or in whole to the subject suggests that the legal and religious issues raised were critical for Hindu communities from a very early date.

Adoption includes both religious and legal processes and ends. A special rite called the *dattahoma*<sup>26</sup> formalizes the act of legally categorizing a male, usually but not always a boy, as the son in a new family. As with all substitutes for the natural son, the twin motives of having both a legal heir and a person to perform the ancestral rites prompted the practice of adoption. Several standard restrictions applied to Hindu adoption. While living, only a father may

<sup>25</sup> Rather closer are two examples from the *Rg-Veda* (10.40.2 and 10.85.44), discussed at length in Emeneau and van Nooten 1991.

<sup>26</sup> As in other religious gifts, pouring water serves as the critical element in the rite.

give or receive a child in adoption, though the mother may after the father's death. Some Dharmaśāstra texts argued that Śūdras could not adopt on the grounds that they were not permitted to recite the necessary ritual formulas required in the rite of adoption. Others permitted adoption to all through the proxy of Brahmin officiant. The case of widows adopting a child caused considerable controversy and legal disagreement in both classical and modern Hindu law, with some texts or courts fully allowing it, others permitting it with restrictions, and still others proscribing it completely (Kane III: 668–74). The giving and taking of an only son was normally prohibited (*VaDh* 15.3), as was the giving of an eldest son. These legal norms, however, are constantly challenged, extended, and modified in ways that both confirm the widespread practical use of adoption and give evidence to the local adaptation of Dharmaśāstra rules (Derrett 1977). In one telling case, a regional Dharmaśāstra text, known in Kerala as the *Laws of Śaṅkara*, expressly sanctions the adoption of females in matrilineal communities for purposes of inheritance and males for purposes of the ancestral rites. However, the kinship system in those communities requires that a man adopt a niece and nephew as needed to perform the same religious and legal functions found in all *dharma* texts (Davis 2011). Here, what was happening all the time in practice also finds a place in a Dharmaśāstra text itself, albeit an unusual one. The need to find legal and religious means to accomplish legal and religious goals made adoption one of the most fertile areas of legal thought in Hindu jurisprudence.

Although *dharma* texts ideally prefer sons with a biological connection, the truth is that social legitimacy trumped biological paternity when it really mattered. The case of the natural son is obvious in that it fulfills both. Neither the *putrikā* nor the *kṣetraja*, however, found widespread social acceptance as legal institutions. Institutions similar to the *putrikā* are less the appointment of the natural daughter as a special agreement with the son-in-law as part of her marriage. The social legitimacy of these institutions, therefore, was less than the widely accepted practice of adoption, the rules of which generally involved seeking out a son from a reputable family and an effort to match the adoptee's physical and personal background to his adoptive father. The importance of legally sanctioned social facts to cultural history can hardly be clearer.

## DAUGHTERS AND KINSHIP

If a person today has heard anything at all about Hindu law, it is likely to be the pervasive idea that women lack independence of any kind.<sup>27</sup> In spite of this

<sup>27</sup> See Olivelle 2005a: 287 and his note on *MDh* 5.147, for a long list of *dharma* texts expressing this idea.

principle and the obsessive focus on sons in the rhetoric of Dharmaśāstra, daughters play a big role in several areas of the law. The legal role of daughters comes into play in relation to kinship and its legal formulations, both by marriage and by blood.

Unable to overcome a basic misogyny endemic to ancient legal systems, Hindu law presents daughters first in the context of giving them away in marriage. The practice of *kanyādāna*, or “gift of the girl,” is part of several accepted forms of marriage. The ideal rite implies an uncoerced ceremony of giving of a virginal and prepubescent girl to a groom who has completed his period of studentship. There is no fixed lower limit for the age of either bride or groom. Most commentators on *Laws of Manu* 9.88 understand eight to be the minimum age for girl’s marriage, though the context and many other passages rather suggest that the unpredictable time just prior to a girl’s first period is the ideal time for marriage. The obvious difficulties in determining that time created a pervasive anxiety in the legal texts about marrying a daughter before the onset of puberty but after the age of eight.<sup>28</sup> A distinct but variously defined category, *nagnikā*, described young girls who were appropriate for marriage. A prime obligation of a father in this context, however, was to arrange a marriage for his daughter in this legally and socially accepted period between about eight and twelve (the expected age of menstruation in several *dharma* texts).<sup>29</sup>

As part of her natal family, a daughter had a legal right to the “woman’s property” (*strīdhana*) given to her at her own marriage and she stood to inherit the same belonging to her mother. As with all property matters, the law of “women’s property” was contested and complex. Married women maintained proprietary rights over the wealth classified under this heading, typically household items and wedding gifts (jewelry, clothing, etc.) Whether they also had the capacity to sell, give, or otherwise alienate that property by themselves was debated vigorously. At their own mother’s death, the basic rule, upheld in nearly all texts, was that daughters had a privileged, sometimes exclusive, right to inherit the *strīdhana* of their mother, as it was technically defined. Many texts permitted the encroaching claims of sons to some portion of the “women’s property,” but usually an inferior portion.<sup>30</sup> In this context,

<sup>28</sup> *GDh* 18.21–18.23; *VaDh* 17.67–17.74; *YDh* 1.64, each of which expresses the idea that the one responsible to give a girl in marriage becomes liable for the killing of an embryo again and again until she is married. Many of these rules were intended for Brahmins, not all classes (Kane II: 446).

<sup>29</sup> Erstwhile embryology contributed to the depressing recommendations about the extreme youth of the bride and the ideal age differences between bride and groom—anywhere from just a couple of years to grotesque differences of more than fifty years (Kane II: 438–46). A potential life was thought to be lost for every month that a girl had her period outside of marriage. Compare *Dāyabhāga* 11.2.6.

<sup>30</sup> Kane III: 789ff.

the important point is the stable legal role of the daughter within this parallel line of succession and inheritance.

In the area of general inheritance to the overall family property, daughters are third in the standard line of succession set forth in the *Laws of Yājñavalkya* 2.135–2.136: “Lawful wife, daughters, parents, brothers, their sons, agnate, cognate, pupil, and fellow student—in the absence of an earlier one on this list, each succeeding one inherits the wealth of a man who has died without a son; this is the rule for all the classes.” In order to even get to this list, however, each of secondary (*gauṇa*) sons listed above must have also legally failed. In theory then, even a repugnant son is preferable to anyone on this list as an heir. In practice, the flexibility and openness of adoption<sup>31</sup> meant that resort to this extended list of alternative heirs needed to be invoked only rarely. Nevertheless, the presence of the daughter as a legitimate heir signals that many authors considered the daughter in a position of privilege relative to other relations.<sup>32</sup> The seventeenth-century author Mitramiśra made it clear that the daughter is preferred to all these others “because she is so much more closely related” (*pratyāsattyatīśayamātrapradaśakatayā*) to the father.<sup>33</sup>

The two contexts of marriage and heritage met in several notable epigraphical instances of self-identification with one’s maternal lineage. For a man to use a metronymic was to claim kinship with a prominent, politically powerful family on his mother’s side. In this way, being the son of someone’s daughter could have important political consequences. The most famous of these cases is the fourth-century Allahabad pillar inscription of Samudragupta in which the king is identified as “son of the prosperous Emperor Chandragupta, born of the Chief Queen Kumārādēvī, *daughter’s son of the Licchavi*.”<sup>34</sup> As Trautmann has shown, the specification of Samudragupta’s mother’s name and the description of him as “Licchavidauhitra” show that “Indo-Aryan . . . kinship is broadly cognatic while descent is patrilineal . . . the mother’s patrilineage is of vital if subordinate importance in complement to the father’s in determining descent.”<sup>35</sup> For our purposes, we see one of many instances adduced by Trautmann in which being the son of someone’s daughter mattered a great deal. We have to admit that the patrilineal drive is still present in the much-discussed category of *dauhitra*, son of the daughter.<sup>36</sup> Nonetheless, when we

<sup>31</sup> As always in Dharmaśāstra texts, ideal preferences for an adopted son who was very young, from a similar and reputable family and caste, and of strong physical form gave way as needed to adoptees of many ages, from dissimilar kinship groups, from other castes, etc. A sonless father should ideally adopt prior to his death, but his wife and other kin may adopt a son to him even after his death.

<sup>32</sup> Kane III: 713–19 discusses the debates over inheritance by a daughter.

<sup>33</sup> *VyPra* p. 658 (archive.org edition). This section contains several passages placing sons and daughters on equal footing in terms of continuing the family line.

<sup>34</sup> CII 3, p. 6 (1888).

<sup>35</sup> Trautmann 1972: 11, his emphasis.

<sup>36</sup> In addition to Trautmann, who nicely clarifies the confusion and easy equation between *dauhitra* and *putrikāputra*, see also Scharfe 1965.

recall that metonymics such as Kaunteya and Pārtha fill the *Mahābhārata* and others such as Sāriputta and Vedehiputta mark important figures in the Pāli literature of Buddhism, the legal and political valence of daughters grows.

In each of these roles, the daughter occupies a legal position that carries weight in the efforts to secure a family's reputation, wellbeing, and property. Apart from some statements equating the value of daughter to that of a son motivated by particular urgencies, we find almost no praise of daughters or sense of parental joy of the sort found for sons. Their role is derivative in relation to the real legal and religious work of the son. At the same time, little is to be found about the legal protections of children in general. Much like sons, therefore, daughters became ciphers in the calculus of kinship, marriage, and inheritance.

## CONCLUSIONS

Attitudinally, the legal texts associate early childhood with carefree, unregulated behavior and with unpleasant foolishness. The law categorizes children in line with other persons who have legal disabilities: women, the mentally challenged, the infirm, and the very old. Religiously, these legal attitudes and categorizations mean that children serve a functional, pragmatic role as full-legal-persons-in-training but lack a strong sense of purpose apart from their ritual and legal uses. And *uses* is the right word because the religious refinements that come with each consecratory rite benefit the father as much as the child. Children are by nature incapable of the seriousness necessary to enter the paradigmatic and highly rule-bound life of the householder. Hints of the insignificance of infants are seen in the fact that their death does not cause any ritual impurity of the kind that so many Dharmaśāstras obsess about.<sup>37</sup> Nor are they subject to such impurification as bluntly stated in the *Laws of Āpastamba* 2.15.19–2.15.24:

Children do not become impure until the first feeding with solid food...until they have completed one year; until they are able to distinguish the cardinal points; or until they have undergone initiation, which is the superior position, for it is through this that they come under the jurisdiction of the scriptures.<sup>38</sup>

In short, early childhood is a separate world that barely connects to the normal world represented in the texts. And, it is precisely the period of adolescence, especially as a celibate student, that focuses on extirpating the frivolity and

<sup>37</sup> Kane IV: 227–8 and IV: 298–9. See Chapter 17 in this volume on *āśauca*.

<sup>38</sup> Olivelle's translation.

careless freedom of early childhood, training a child for the never-ending duties of married life.

In Dharmaśāstra, therefore, Hindu religious life rejects the metaphors of childlike devotion, child–parent intimacy, and childhood liberty that are so powerful in other Hindu traditions.<sup>39</sup> There is very little parental affection or exploration of the emotional side of childhood, either as a parent or child, and certainly no treatment of the divine in childlike terms, as we find in the *vātsalya-bhāva* of the Vaiṣṇavas or the *pillaitamiḷ* tradition in medieval Tamil literature, for example.<sup>40</sup> Children have nothing to teach us. Rather, they are essential tools in the difficult, but necessary life of productive adults. The metaphors of *dharma* texts present children as unrefined potential, half-persons whom one can and must train to do good in the form of *dharma*. We have responsibilities and obligations to children because they will provide benefits for us in their adulthood. Ironically, those responsibilities mean that sons are everything and nothing.<sup>41</sup> The failure of Hindu epics to depict childhood in a deep way corroborates this all-and-nothing attitude toward children even beyond Dharmaśāstra (Feller 2012).

By way of conclusion, it should be emphasized that to isolate the legal views of childhood is artificial and misleading unless we interpret these legal views as part of the coherent vision of Hindu religious life in Dharmaśāstra that becomes somewhat clearer by isolating representations of children. The combination of the highest praise and hope for a son and the notion that children in general are foolish and not full persons makes sense in a religious system that privileges the legal categories sanctioned by legalistic scriptures. None of this should suggest that parents lacked affection or that real children were neglected or mistreated because of the Dharmaśāstra. Nor should it discount the fundamental aspects of socialization achieved through practiced childhood rites in Hindu communities (Gutschow and Michaels 2008; Huesken 2008). Rather, we learn that this form of Hinduism sought to restrict the power and influence of emotion in religious life.<sup>42</sup> Framing an intrinsically emotional relationship between parent and child in legal terms, therefore, allowed Dharmaśāstra authors to maintain the functional power of children in religion and law, while silencing their inner experience. The formulation of legal roles of many kinds typifies the approach of Hindu jurisprudence to describing religious life in ideal types rather than in personal terms.

<sup>39</sup> Haberman in Krishna Sourcebook; Srivaiṣṇavas and Vallabhites on *vātsalyabhāva*.

<sup>40</sup> See Hawley 1983 and Richman 1997, respectively.

<sup>41</sup> The veneration of the natural son is tempered by the expectation that mothers are responsible for raising sons into maturity because “invariably distant” fathers cannot be bothered with foolish, insignificant children (Kakar 1981: 131).

<sup>42</sup> See the chapter on Emotion in this volume, for the strategic use and restriction of emotion and affect.



## Inheritance

*dāyabhāga*

*Ludo Rocher*

As an introduction to this brief survey of the law of inheritance, the part of Hindu law “of most frequent use and extensive application,” and, in comparison with other parts of Hindu law, “the most peculiar and distinct” (Colebrooke 1810: i), a few general points may usefully be made.

First, Hindu inheritance law is linked to “religious” aspects of Hindu life (Rocher 1972b), particularly to the heir’s duty and capacity to perform the *śrāddhas*, the ritual acts required for the welfare of the deceased.<sup>1</sup> Second, Hindu inheritance is comprehensive. Since the purpose of “inheriting” is to insure comfort in afterlife for the person from whom one inherits, acquiring his assets entails the “pious obligation” to pay his debts (Rocher 1992). On this principle, most *smṛtis* agree,<sup>2</sup> at least as far as sons and grandsons are concerned. Beyond that, the texts present a wide variety of options.<sup>3</sup> Third, Hindu inheritance law is intestate. Even though modern scholars have occasionally tried to stretch the meaning of some *smṛti* texts to prove the contrary, wills were unknown in Dharmaśāstra texts (Kane III: 816). While, at a later stage, Hindus occasionally did make wills (Mukherjee and Wright 1979)—as Indian Muslims did—it was not until about 1800 CE that Hindu wills were recognized in Anglo-Indian courts.<sup>4</sup> Official regulation of wills followed in the Hindu Wills Act (Act XXI of 1870).<sup>5</sup>

<sup>1</sup> We will return to the important role *śrāddhas* played in determining the order of succession at a later stage of Hindu law.

<sup>2</sup> *GDh* 12.40; *YDh* 2.50–2.51, 117; *NSm* 1.2; *BrSm* 10.113–10.114; *KātSm* 558; *ViDh* 15.40; *AŚ* 3.11.14.

<sup>3</sup> For a survey of these solutions, see Kane III: 443–6.

<sup>4</sup> On the development of Hindu wills, see Aiyar 1950: 873–909.

<sup>5</sup> The Preamble of the Act lays out as its purpose: “to provide rules for the execution, attestation, revocation, revival, interpretation and probate of the Wills of Hindus, Jains, Sikhs, and Buddhists” (Majumdar 1904: 8).

This essay cannot provide a complete survey of the Hindu law of inheritance, which, right from the earliest documents and throughout its history, is extremely complex and divergent. It can only identify some of the peculiar and distinctive features of Hindu inheritance in three periods of Indian history: first, the period of the *smṛtis*, that is, the Sanskrit Dharmasūtras and Dharmaśāstras;<sup>6</sup> second, the time of the commentaries on singular *smṛtis* and of encyclopedic works (*nibandhas*) on specific topics of Hindu law across all *smṛtis*;<sup>7</sup> and third, the period when disputes on inheritance among Hindus were settled by British—and, gradually by a larger number of British-educated Indian—judges, in the courts in India and, in highest appeal, in the Judicial Committee of the Privy Council in London.<sup>8</sup> This will be followed by a brief appendix on the abrogation, in independent India, of the traditional Sanskrit Hindu law of inheritance by a modern *Hindu Succession Act*, written in English.

## HINDU INHERITANCE IN THE SMṚTIS

The Dharmasūtras contain many rules on inheritance, which are dispersed, however, rather than presented coherently under a single rubric.<sup>9</sup> Only in the Dharmaśāstras, from the *Manusmṛti* onward, is inheritance dealt with in a distinct section, *dāya(vi)bhāga* “division of *dāya*,”<sup>10</sup> one of eighteen *vivādapadas* “areas of litigation.”<sup>11</sup> With only minor variants, this eighteen-fold division is preserved in the later *smṛtis* and the commentarial literature.

### Descendants

A Hindu offers *śrāddhas* to three generations of direct ascendants, and three generations of direct descendants offer *śrāddhas* to him; from the fourth

<sup>6</sup> In addition to the *smṛtis*, I occasionally refer to Kauṭilya’s *Arthaśāstra*.

<sup>7</sup> Inheritance is the sole subject of several *nibandhas*, some of which became the object of one or more subcommentaries.

<sup>8</sup> For Hindu reactions to these foreign judgments, see Rocher 1972a.

<sup>9</sup> See the “contents” preceding the edition/translation of each *dharmasūtra* in Olivelle 2000.

<sup>10</sup> The term *dāya* presents a problem. The common interpretation as “gift” does not fit in well in the case of inheritance, since the giver is most often deceased. According to Indian grammatical theory, *dāya* cannot mean something “given,” because the absence of an agent (*kartr*), i.e., the sole indispensable element (*kāraka*), makes the action of giving impossible. Hence, it is theoretically preferable to derive *dāya*, not from the verbal root *dā* (present *dadāti*) “to give,” but from the root *do* (present *dāti*) “to cut, divide,” *dāya* then meaning “part, share.”

<sup>11</sup> The *Manusmṛti* lists eighteen *vivādapadas* (8.4–8.7), and then proceeds to discuss them in order; *dāyabhāga*, the penultimate *vivādapada*, is introduced at 9.103 and ends at 9.219.

generation on, this *sapiṇḍa* (“having common *piṇḍas*”) relationship ends.<sup>12</sup> The *smṛtis* agree that a man’s estate devolves on his descendants, first on his sons, then on his grandsons, and, failing both, on his great-grandsons. The *smṛtis* lavish praise on the three descending generations<sup>13</sup> and on sons in particular: according to a popular etymology, a son is called *putra*, because he saves (*-tra*, from *trāyate* “he protects, saves”) his father from the hell called *put*.<sup>14</sup>

Sons being the primary heirs, the *smṛtis* go into great detail on the parts of the estate to which each individual son is entitled. Various solutions are proposed, not only in different *smṛtis*, but even within the same texts. The *Manusmṛti* records three different ways of dividing a father’s estate: (i) it is divided into equal parts;<sup>15</sup> (ii) by right of primogeniture, the eldest son gets everything, and the others continue to live with him as they did with their father;<sup>16</sup> (iii) shares are unequal, that of the eldest son being larger (or consisting of more valuable parts) than that of the middle ones, and the latter’s is larger than that of the youngest.<sup>17</sup> It is understood that sons of a deceased son are entitled, among them, to the share their father would have received.

The *smṛtis* allow for two different times at which a father’s property may be divided among his sons. After their father’s and mother’s death, sons may divide the property according to one of the rules mentioned above. However, provided the mother is past menopause, a father can take the initiative of partitioning his estate during his lifetime. In that case, he can divide the estate more or less as he wishes (*icchayā vibhajet*).<sup>18</sup> The question whether sons can initiate a partition while their father is alive is not clearly answered in the *smṛtis*, but is much discussed in the commentaries.

Once the paternal estate has been partitioned, any or all sons are free either to continue living together as a joint family or to establish separate households of their own, an alternative which some texts prefer, given the increase of ritual performances it entails.<sup>19</sup> Nothing prevents sons from reuniting after they have separated, but, should reunited brothers (*saṁsṛṣṭin* or *saṁsṛṣṭa*) decide to separate again, different rules apply. In that event, according to some sources, the property should be divided into equal parts.<sup>20</sup>

<sup>12</sup> MDh 5.60. We will return to the effect of two different interpretations of the term *piṇḍa* on the order of succession in later Hindu law.

<sup>13</sup> VaDh 17.5; MDh 9.137; YDh 1.78; ViDh 15.46.

<sup>14</sup> MDh 9.138; ViDh 15.44.

<sup>15</sup> MDh 9.104. Cf. GDh 28.1; BDh 2.3.3; YDh 2.117.

<sup>16</sup> MDh 9.105. Cf. GDh 28.3.

<sup>17</sup> MDh 9.112, 114. Cf. GDh 28.5–28.7, 9, 11–17; BDh 2.3.4, 6; NSm 13.13; ViDh 18.37. The additional and preferred shares, such as bulls, oxen, carts, and produce of the soil, reveal the agricultural nature of society in the time of the *smṛtis*.

<sup>18</sup> YDh 2.114. Although the latter part of this verse can be read as restricting the father’s freedom to two alternatives: he shall give either the best share to his eldest son or equal shares to all. Nārada (NDh 13.4) clearly states that he either gives the best share to his eldest son or divides the entire property as he pleases (*yathā vāsyā matir bhavet*).

<sup>19</sup> GDh 28.4; MDh 9.111; NSm 13.37; BrSm 26.5.

<sup>20</sup> MDh 9.210; ViDh 18.41.

The importance of having at least one son is underscored by the various means the *smṛtis* provide a sonless man to acquire a substitute (*pratinidhi*) for a natural son. One such means, adoption (Sarkar 1891; Derrett 1957b), is mentioned in most *smṛtis*, but the texts vary widely on the status of an adopted son (*dattaka* or *datṭrima*) vis-à-vis other kinds of sons. Of the *smṛtis* that divide sons into two groups, six being “relatives who inherit” (*dāyādabāndhavas*) and six “relatives who do not inherit” (*adāyādabāndhavas*), only four rank an adopted son in the first, against eight in the second category.<sup>21</sup> Yet, it is also said that all types of sons may inherit, if no one ranked higher is available.<sup>22</sup> By being “given away,” the adopted son severs all ties, including the offering of *śrāddhas* and the right to inherit, with his natural family, and becomes an integral part of his adopting family (*MDh* 9.142); hence, the warning to fathers not to cede a single son for adoption, lest, by doing so, they themselves become sonless (*VaDh* 15.3–15.4). The *dattaka*’s right to inherit in his adoptive family is restricted only if, subsequent to his adoption, a higher ranking son is born; if that son happens to be an *aurasa* son, that is, the son of a man and his duly wedded wife, the adoptee cannot claim more than one quarter (*VaDh* 15.9). Given the paucity of details on adoption in the *smṛtis*, save for the *Vāsiṣṭhadharmasūtra*, it looks as if adoption was practiced, be it with restrictions on who can adopt, who can be adopted, the time of adoption, and the like; but some *smṛtis* did little to encourage it. By contrast, in the period of the commentaries, and, even more so, when the British administered Hindu law, adoption became a major issue in the law of inheritance.<sup>23</sup>

Another way for a sonless man to acquire a son is by a levirate process, in Sanskrit called *niyoga*, generally translated as “appointment.”<sup>24</sup> A man who is unable to father a son may assign his wife (*niyuktā*) to be impregnated by a younger brother or other close relative of his.<sup>25</sup> A *kṣetraja* son,<sup>26</sup> as he is called, invariably ranks high among the twelve kinds of sons.<sup>27</sup> Yet, his right to inherit is subject to many restrictions, and his share varies in different texts. Two successive passages in the *Manusmṛti*<sup>28</sup> show that, in classical India, the

<sup>21</sup> See Kane’s comparative table (III: 645).

<sup>22</sup> *VaDh* 17.39; *MDh* 9.184; *YDh* 2.132; *NSm* 13.45–13.46; *ViDh* 15.28.

<sup>23</sup> Several *nibandhas* were written on the single topic of adoption (Kane I: 1039–40), two of which Colebrooke’s nephew, J. C. C. Sutherland, translated for the use of the courts (1821 and 1834).

<sup>24</sup> More than just “appointment,” *niyoga* and other legal terms derived from the verbal root *ni-yuj* imply assigning a substitute to act in one’s stead (Rocher 1981).

<sup>25</sup> *MDh* 9.59: *devarād vā sapinḍād vā*. Etymologically, Sanskrit *devara* corresponds to Greek *daér* and Latin *levir*.

<sup>26</sup> In accordance with the common Indian conception that the birth of a child results from a male sowing his “seed” (*bija*) in a “field” (*kṣetra*), i.e., a woman.

<sup>27</sup> The *kṣetraja* son ranks second or third in all *smṛtis* compared by Kane (III: 645).

<sup>28</sup> *MDh* 9.59–9.60 and 9.64, respectively. *BrSm* 25.16 cites Manu’s alternative, and relates it to the general decline during the four world ages (*yugas*): from being the general rule in the

custom of *niyoga* was highly regarded and practiced in some communities, but strictly forbidden in others.

Alternatively, a sonless man may appoint one of his daughters, called *putrikā*, to have a son for him. Either he gives the daughter in marriage, addressing her husband with the explicit formula “I give you this daughter; her son will be my son.”<sup>29</sup> Or he may use the legal fiction that his daughter is his son.<sup>30</sup> Even more than a *kṣetraja*, a *putrikāputra* is highly regarded, to the point of being considered equal to an *aurasa* son.<sup>31</sup> Since he performs the funeral rites for his mother, mother’s father, and mother’s grandfather,<sup>32</sup> the *smṛtis* warn a man against marrying a woman who has no brothers, lest his son be alienated from his family.<sup>33</sup> A *putrikāputra* becomes the single heir of his mother’s father, unless, after his birth, her father also has a natural son, in which case both sons share the inheritance equally (*MDh* 9.134).

Substitute sons are generally considered members of only one family. Yet, some *smṛtis* treat them as members of two families and as heirs of two fathers (*dvipitr* or *dvyāmusyāyaṇa*).<sup>34</sup>

### Ascendants and Other Close Relatives

If the *smṛtis* unanimously recognize that *sapiṇḍas* of three descending generations are entitled to inherit, they are far less consistent on the rights of ascending *sapiṇḍas*. By extending the meaning of the term *sapiṇḍa* to include other closely related family members of equal or lower generations (*BDh* 1.11.9.), they greatly restrict the right of direct ascendants. This is true even for a father’s right to inherit from his sons, especially when there are brothers. According to one source (*MDh* 9.185), the estate of a man who leaves no male issue goes to his father *or* to his brothers.<sup>35</sup> But the same *smṛti* (*MDh* 9.217) also says that his estate goes to his mother if she is alive, and otherwise to his paternal grandmother. Elsewhere the father is mentioned as an heir, but after his deceased son’s wife and daughters, and before his mother, brothers, and brothers’ sons.<sup>36</sup> Inheritance among brothers is very complicated, since the

*kr̥tayuga*, the practice of *niyoga* was looked upon less favorably in the *tretā*- and *dvāparayugas*, to become forbidden in the present *kaliyuga*.

<sup>29</sup> *GDh* 28.18; *VaDh* 17.17; *MDh* 9.127; *ViDh* 15.5.

<sup>30</sup> *GDh* 28.19 says that, “according to some,” a father can make a daughter a *putrikā* “by mere intent” (*abhisamdhimātrāt*).

<sup>31</sup> *MDh* 9.134; *YDh* 2.128; *AŚ* 3.7.5.

<sup>32</sup> *BDh* 2.3.16; *MDh* 9.140.

<sup>33</sup> *GDh* 18.20; *MDh* 3.11; *YDh* 1.53.

<sup>34</sup> *BDh* 2.3.17–2.3.18; *NSm* 13.22; *AŚ* 3.7.7.

<sup>35</sup> Although *MDh* 9.185 seems to suggest that brothers inherit first, the prevailing opinion is that parents inherit before brothers (*YDh* 2.135).

<sup>36</sup> *ViDh* 17.4–17.9. For other such rankings, see *YDh* 2.135.

*smṛtis* make brothers' shares depend on whether they are full or half-brothers and, for each, whether they are united or not (Rocher 2007b).

### Distant Relatives

Even as the *smṛtis* consider the *sapinda*s as a distinct class of close relatives who inherit to the exclusion of others, they also deal with the right to inherit of less close relatives, dividing them into groups with separate names but ranking the groups in different order, thereby indicating that the identities and boundaries of these groups were ill defined. According to one view, in the absence of *sapinda*s, the inheritance devolves on *sakulyas*, in order of their proximity to the last *sapinda* (*MDh* 9.187). But elsewhere *sakulyas* inherit only after another class of heirs, the *bandhus* (*ViDh* 17.10–17.11). In the context of ritual purity, it is said that the *sapinda* relationship spans seven generations, whereas “a *samānodaka* relationship ends when it can no longer be determined whether a person is related to another by birth or name” (*MDh* 5.60).

### Heirs Unrelated to the Owner

In the absence of anyone related to the owner by blood, the inheritance goes to individuals who are related to him in spirit, such as his *ācārya* (teacher), a *sabrahmacārin* (fellow student), or a student of his own.<sup>37</sup> Failing these, the property passes on to any deserving Brahmin learned in the Vedas.<sup>38</sup>

The long line of possible heirs ends with the king, that is, the state treasury, with a significant exception: the king may not claim the property of Brahmins. A Brahmin's property goes to pure and disciplined Brahmins who are learned in the three Vedas.<sup>39</sup>

### Female Inheritance

In nearly all cases of inheritance discussed thus far, the participants were male. The impression that only males can inherit property, own property, and leave

<sup>37</sup> *ĀpDh* 2.14.3; *VaDh* 17.82; *BDh* 1.11.13; *MDh* 9.187; *ViDh* 17.12.

<sup>38</sup> *MDh* 9.188 (*brāhmaṇās traividyāḥ śucayo dāntāḥ*). Cf. *GDh* 28.41 (*śrotṛiṇas*); *BDh* 1.11.13 (*ṛtvijāḥ*).

<sup>39</sup> *GDh* 28.41–28.42; *ĀpDh* 2.14.5; *VaDh* 17.83–86; *BDh* 1.13–1.15; *MDh* 9.188–9.189; *ViDh* 17.13–17.14; *AŚ* 3.5.28–3.5.29.

that property to heirs, is underscored by sweeping statements in the *smṛtis* such as “wives shall not own property; whatever they acquire becomes the property of the man to whom they belong” (*MDh* 8.416). Such statements, however, were not meant to be taken literally.<sup>40</sup> The *smṛtis* themselves contain ample evidence that Hindu women acquired and owned property, which, at their death, became the object of inheritance.<sup>41</sup>

Women’s property (*strīdhana*) is an important part of the Hindu law of inheritance. From the *smṛtis* onward, it features so many different views that it is impossible in this survey to follow all its intricacies.<sup>42</sup> A brief overview of how women acquire property, what it consists of, and what happens to it after their death must suffice here.

The *smṛtis* list gifts that come to constitute a woman’s property (*strīdhana*): what is given to her at the nuptial fire (*adhyagni*), what she receives on the way from her father’s to her husband’s home (*adhyāvāhanika*), and what is given to her as a token of love by her husband and by her brothers, mother, or father.<sup>43</sup> To this basic list, some *smṛtis* add other kinds of gifts, so that *strīdhana* ultimately comes to encompass any kind of gift a woman receives—before, during, and after her wedding—from members of her own family and from her husband and members of his family.

Notwithstanding a statement to the contrary,<sup>44</sup> women do acquire property by inheritance. Some texts emphasize the right of widows to inherit by saying one half of the body of a deceased husband remains alive in the person of his wife, so that, in the absence of male issue, no one has a higher claim to the inheritance than she (*BrSm* 26.92–26.94). Elsewhere, in the order of succession to a sonless man, the three women who are closest to him rank high on the list of heirs: first, his wife; next, his daughters; and, after his father, his mother (*ViDh* 17.4–17.7). It is said that, while sons divide their father’s property, daughters divide their mother’s possessions (*YDh* 2.117). Some *smṛtis* go as far as to make daughters inherit even their father’s property in the absence of sons (*NSm* 13.47).

As for the inheritance of women’s property, there are two contrary approaches: to keep it within the female line and to make male ownership primary. Although an early text states that a mother’s property goes to her

<sup>40</sup> Distinguishing “injunctions” (*vidhi*), which have to be taken literally, and broad statements that hyperbolically underscore general principles (*anuvāda*), in this case, the primacy of the male members of the family, is one of the principles of textual interpretation (*mīmāṃsā*) to which we will return.

<sup>41</sup> Some Indian scholars proudly point to the early existence of female property: “nowhere were proprietary rights of women recognized so early as in India” (Banerjee 1879: 321).

<sup>42</sup> *Strīdhana* was the subject of the Tagore Law Lectures in 1878 (Banerjee 1879). See also Jolly (1885: 226–70).

<sup>43</sup> *MDh* 9.194; *KātSm* 894; *ViDh* 17.18.

<sup>44</sup> *BDh* 2.3.46, quoting *TaitS* 6.5.8.2: women are *adāyādāh*.

unmarried or indigent daughters (*GDh* 28.24), elsewhere male heirs intervene; daughters, for example, share their mother's property equally with their brothers (*MDh* 9.192). Or, while accepting that a woman's property goes to her daughters, it is said that, failing daughters, it does not go to another female heir, but to her husband if her marriage was one of the higher types, and to her father, if her marriage was one of the lower types.<sup>45</sup>

### Persons Excluded from Inheritance

The *smṛtis* go into great detail about individuals who are barred from inheriting.<sup>46</sup> The common grounds are defects—physical (blindness, incurable diseases), mental (lunacy, madness), or social (excommunication from one's caste)—defects that prevent a prospective heir from performing the required *śrāddhas*. There is, however, general agreement that excluded persons should be provided with food and clothing.

### Property Excluded from Partition

The *smṛtis* also list objects that are not subject to partition.<sup>47</sup> These include items that are indivisible by nature, such as a well, a house, objects needed to perform sacrifices, clothes, ornaments, vehicles, a female slave, and the like; only occasionally do the *smṛtis* specify how undivided items are to be used by the heirs.<sup>48</sup> Also exempt from partition is any property that a family member acquires by his own exertions, without using paternal property.<sup>49</sup> This principle applies to personal gifts, lost ancestral property a father recovers after having effected a partition,<sup>50</sup> rewards for courageous acts (*śauryadhana*), and, especially, property a brother acquires by his personal expertise (*vidyādhana*).<sup>51</sup>

<sup>45</sup> *Ydh* 2.145; *ViDh* 17.19–17.20. Similarly, but with variants, *MDh* 9.195–9.196. Hindu law distinguishes four higher and four lower types of marriage (see Chapter 9).

<sup>46</sup> *ApDh* 2.14.1; *GDh* 28.23, 40, 43; *VaDh* 17.52–17.53; *BDh* 2.3.37–2.3.40; *MDh* 9.201–9.202; *YDh* 2.140–2.141; *NSm* 13.21; *ViDh* 15.32–15.37; *AS* 3.5.30.

<sup>47</sup> *GDh* 28.46–28.47; *MDh* 9.219; *KātSm* 882–3 (cf. 841–2); *ViDh* 18.44.

<sup>48</sup> *KātSm* 883 suggests that each relative who took part in the partition use the undivided items when he needs them most.

<sup>49</sup> *MDh* 9.208; *YDh* 2.118; *ViDh* 18.42.

<sup>50</sup> *MDh* 9.209; *YDh* 2.119; *ViDh* 18.43.

<sup>51</sup> *GDh* 28.30; *MDh* 9.206; *YDh* 2.119; *NSm* 13.6. Disputes on the extent of *vidyādhana* were frequent in the British period; they were regulated by the *Hindu Gains of Learning Act* (Act XXX of 1930).



## Impact of Caste on Partition

In some cases,<sup>52</sup> the *smṛtis* explicitly say that a rule “applies to all castes.”<sup>53</sup> But there are other rules where caste does affect inheritance. As mentioned above, the property of a Brahmin is the only one that never reverts to the state treasury. Often inheritance depends on the rank several heirs occupy in the order of *varṇas*. For example, when a man was married to wives of his own and of lower castes, the shares of his sons by wives of a superior caste are larger than those of the other sons are.<sup>54</sup>

If belonging to a lower *varṇa* entails restrictions on the right to inherit, being excommunicated from one’s caste (*patita*) is far worse: *patitas* are excluded from any share of an inheritance. According to some *smṛtis*, this exclusion extends to a *patita*’s sons; according to others, the sons of a *patita* inherit if they were born prior to the offense that caused their father’s loss of caste.<sup>55</sup>

## HINDU INHERITANCE IN THE SANSKRIT COMMENTARIES

Just like other branches of classical Sanskrit literature, the *smṛtis* were commented on, either in verse-by-verse explanations of single texts or in encyclopedic *nibandhas*. Some texts of this genre date back to ca. 700 CE.<sup>56</sup>

Whereas the *smṛtis* were held to be revealed texts that proclaimed a single and coherent system of eternal truths, the commentaries are texts with exegetical purpose and pedagogical intent. The commentators view it as their task to show that, properly understood, the *smṛtis* are not at variance with each other, as they may appear to be. Unlike the *smṛtis*’ inspired sages, the commentators are humans who try to improve on earlier efforts and are entitled to disagree with, and occasionally even sharply controvert, interpretations

<sup>52</sup> The term *caste* is used here to translate Sanskrit *varṇa*, the only form of social ranking relevant in this context.

<sup>53</sup> *sarvavarṇeṣv ayam vidhiḥ* (YDh 2.136).

<sup>54</sup> VaDh 17.47–17.50; BDh 2.3.10–2.3.12; MDh 9.149–9.157; YDh 2.125; ViDh 18.1–19.33, 38–40; AŚ 3.6.17–3.6.18.

<sup>55</sup> ĀpDh 2.14.1; VaDh 17.53; BDh 2.3.40; MDh 9.201; YDh 2.140; ViDh 15.32.

<sup>56</sup> Even though the earliest preserved commentaries date back to about 700 CE, this does not imply that commenting on *smṛti* texts began at that time. Given the traditional Indian system of education, it is hard to imagine that teachers ever taught the basic texts without paraphrasing the contents and explaining problematic passages in an oral commentary. Here I differ from Lingat, who distinguished three periods: that of the *smṛtis*, followed by a long period of silence (perhaps from the sixth to the ninth centuries), and a period of revival with the commentaries (1973: 107).

proposed by their predecessors.<sup>57</sup> What the vast commentarial literature, even on single topics such as inheritance, presents us with is a multitude of internally coherent, but widely different, interpretations of the revealed texts.

To achieve their goal of interpreting *smṛti* texts on inheritance, commentators call on an array of respected extra-legal disciplines, such as grammar (*vyākaraṇa*), logic (*nyāya*), and, especially, rules of textual exegesis (*mīmāṃsā*) that, in turn, rely heavily on ritual texts. Jīmūtavāhana, for example, says that in a passage from the Śaṅkha-Likhita *dharmaśūtra*<sup>58</sup> the compound *eka-putra* means “the son of one (father),” namely, that the compound should be interpreted as a genitive *tatpuruṣa* rather than as a *bahuvrīhi* (a father “having one son”). To obtain this meaning, Jīmūtavāhana relies on the grammatical rule that interpreting a compound as a *tatpuruṣa*, which indicates one of the parts of the compound (the son), is preferable to a *bahuvrīhi*, in which case the compound indicates something not explicitly mentioned in it (the father).<sup>59</sup> Commentators did not need to explain the background underlying their conclusions; Jīmūtavāhana could assume that the grammatical rule he had in mind<sup>60</sup> was known to his fellow pandits who read his text.<sup>61</sup>

The commentaries and *nibandhas*, rather than the *smṛtis*, were to play an important role in the following period.

## HINDU INHERITANCE IN BRITISH HANDS

After the British East India Company acquired territories and undertook to administer justice in India,<sup>62</sup> the first governor-general, Warren Hastings, operating according to a policy of minimal interference and disruption in the personal lives of native subjects, set up a system of civil justice that would apply Hindu law to Hindus, as also Islamic law to Muslims. Local “court pandits” were appointed to assist British judges in determining applicable Hindu laws in each case. Hastings also commissioned a group of pandits to

<sup>57</sup> In the *Dāyabhāga*, for instance, three successive quotations from an earlier *nibandha* by Śrīkara are followed, respectively, by *iti mandam*, ... *iti mandataram*, ... *iti mandatamam*, “... this is absurd, ... this is even more absurd, ... this is the most absurd of all” (6.1.41–6.1.45).

<sup>58</sup> *ŚLDh* 266 (Kane 1927–8: 105).

<sup>59</sup> *Dbhā* 2.59 (Rocher 2002b: 84). Jīmūtavāhana and other commentators do not hesitate to overlook rules of interpretation that would invalidate their interpretations. In the present case, Śabara’s commentary on *Mīmāṃsāsūtra* 6.1.51 lays down the rule that the analysis of a compound as a genitive *tatpuruṣa* is inferior to interpreting it as a *karmadhāraya*. Thus, *ekaputra* would then mean “a single son.”

<sup>60</sup> Pāṇini’s *Aṣṭādhyāyī* 2.2.23–2.2.24 (*bahuvrīhiḥ ... anyapadārthe*).

<sup>61</sup> We will return in the next section to the problems the extra-legal arguments created, both for the translators of commentaries and for their readers.

<sup>62</sup> On this period, see Rocher, Rosane 2010.

redact a code of Hindu law. The Sanskrit text, translated into English from a truncated Persian version, became famous in the West as *A Code of Gentoo laws*,<sup>63</sup> but proved too flawed and unwieldy to be of use to British judges. In addition to translating the *Manusmṛti* (Jones 1794), Sir William Jones persuaded Governor-General Cornwallis to fund a new project, a digest of Hindu—and one of Islamic—law on contracts and successions, in the mode of Justinian’s Pandects, the Hindu part to be entrusted to two pandits, one for Bengal—to whom more were added—the other for Bihar, working under Jones’s supervision. Jones having died before the work was completed, the task of translating the Sanskrit text into English, in four hefty volumes, nearly half of which deal with inheritance, fell to Henry Thomas Colebrooke (1797–8).<sup>64</sup> Colebrooke, however, was promptly disappointed with this digest, which consisted essentially of a series of *smṛti* quotations arranged topically, each followed by lengthy extracts from differing commentaries and *nibandhas*, juxtaposed without a conclusion, which he felt would be of little use in the courts. As a remedy, Colebrooke (1810) translated in a single volume Jīmūta-vāhana’s *Dāyabhāga*, a *nibandha*, and the chapter on inheritance of the *Mitākṣarā*, Vijñāneśvara’s commentary on the *Yājñavalkyasmṛti*. The fact that he chose these two texts stemmed from his view that there were two distinct forms, “schools” as he called them,<sup>65</sup> of Hindu inheritance law. Throughout the British period—and beyond—Colebrooke’s *Two Treatises* became the uncontested guide in decisions on Hindu inheritance: the law reports often start with words to the effect that “This is a case of *Dāyabhāga* law” or “This is a case of *Mitākṣarā* law.”<sup>66</sup> The *Dāyabhāga* School, with Jīmūtavāhana’s digest as the highest authority,<sup>67</sup> was held to be applicable in Bengal. The *Mitākṣarā* School became the law in the rest of India, divided, however, into four geographically defined sub-Schools, each with their own supplementary digest or digests, which agree with the *Mitākṣarā* on the main issues but deviate from it and from one another on minor points.<sup>68</sup>

<sup>63</sup> Halhed 1776. The Sanskrit text of the *Vivādārṇavaśetu* remains unpublished. See Rosane Rocher 1983: 48–72.

<sup>64</sup> The Sanskrit text of the *Vivādabhaṅgārṇava* remains unpublished.

<sup>65</sup> On the two “schools,” see Rocher 1972c.

<sup>66</sup> The dates of the *Dāyabhāga* and the *Mitākṣarā* have been the subject of much discussion. It is now established that they are contemporary texts of the early twelfth century, whose authors, far from intending to criticize one another, may not have known each other’s work (Derrett 1952; Rocher 1971; Rocher 2012: 18–24).

<sup>67</sup> The law courts did, however, take into account commentaries on the *Dāyabhāga*, eight of which have been published thus far (Rocher 2002b: 15–17), as well as some summary versions, the most important ones of which are Raghunandana’s *Dāyatattva* (Sermā 1828; Sarkar 1874) and Śrīkṣṇatarkālaṅkāra’s *Dāyādhikāraḥsamgraha* (Wynch 1818).

<sup>68</sup> In the influential case *Collector of Madura v. Moottoo Ramalinga*, the Privy Council ruled that, rather than investigating again and again the meaning of the *smṛti* texts, the courts should follow the meaning adopted by the locally approved commentaries (12 *Moore’s Indian Appeals*, 1868, 436).

A fundamental difference between *Dāyabhāga* law and *Mitākṣarā* law concerns the time at which heirs acquire ownership in the family estate. Apropos of the definition of *inheritance*, both texts quote a verse from the *Nārada-smṛti*: “the wise call one of the eighteen grounds of litigation *dāyabhāga*, when sons proceed to the partition *arthasya pitryasya*” (NSm 13.1). The *Mitākṣarā* confines itself to adding that the words “father” and “son” in this text are synecdochic (*upalakṣaṇa*) for any owner of the property and for any heir, respectively; it does not comment on the word *pitryasya*, indicating thereby that it takes the word in the ordinary sense of “paternal property.” The *Dāyabhāga*, however, invokes a grammatical rule<sup>69</sup> to argue that *pitrya* means “coming from the father” (*pitṛta āgataṁ pitryam*), and concludes that, in this case, *pitrya* implies that the sons can claim their shares only after their father’s death.<sup>70</sup> Thus, according to the *Dāyabhāga*, that is, “the Bengal School of Hindu law,” ownership of sons, and, by extension, of all heirs, originates at the time of the prior owner’s death or his being incapacitated in his lifetime.

The *Mitākṣarā* comes to a different conclusion. In a long and tightly argued passage at the beginning of the chapter on inheritance,<sup>71</sup> Vijñāneśvara argues that, ownership not being a “śāstric,” but a “wordly” (*laukika*) concept, an individual’s right to acquire property is not limited to the ways enumerated in the *śāstras*, such as: “Ownership is established by inheritance, purchase, partition, possession, and discovery,”<sup>72</sup> and concludes that family members acquire ownership in the family property by birth.

The two Schools of Hindu Law, therefore, differ in that, in the *Dāyabhāga* School, the head of the family remains the sole owner of, and the single person who has the power to make decisions for, the entire family property as long as he lives, whereas in the *Mitākṣarā* School the role of the head of the family is limited to that of a manager, his power being restricted by other family members who, just by virtue of being born into a family, acquire the right of ownership in the family estate.

The view of the *Mitākṣarā* entails a distinction between two kinds of heirs: the right of ownership of sons and grandsons is “unobstructed” (*apratibandha*), whereas that of brothers, nephews, and so forth is “obstructed” (*sapratibandha*) by the existence of direct descendants. As long as a direct descendant is alive, other family members have no right whatsoever. The distinction between *sapratibandha* and *apratibandha* is absent in the *Dāyabhāga*, where all heirs are “obstructed” by the head of the family as long as he lives.

<sup>69</sup> Pāṇini’s *Aṣṭādhyāyī* 4.3.74: *tata āgataḥ*.

<sup>70</sup> *tac ca pitṛmarāṇopajātasvatvam ucyate* (*Dbhā* 1.3).

<sup>71</sup> Preceding *YDh* 2.114. See Rocher and Rocher 2001.

<sup>72</sup> *GDh* 10.39 (as translated Olivelle 2000: 145).

A second point on which the *Dāyabhāga* and *Mitākṣarā* Schools disagree results in a significant difference in the order of succession. Both Schools abide by the *smṛti* rule that *sapinḍas* inherit first, but they interpret the term *pinḍa* differently. In the texts of the *Mitākṣarā* School, *pinḍas* are some kind of “bodily particles,” that is, elements indicative of the biological propinquity of the owner and a prospective heir. In the *Dāyabhāga* School, on the other hand, *pinḍas* are the material “rice balls” a survivor is supposed to offer in the *śrāddha* rituals. The rule in the *Mitākṣarā* School is that the inheritance goes to family members in the order of biological closeness to the owner, whereas in the *Dāyabhāga* School it goes to those who offer more *śrāddhas*, not only to the deceased but also to those to whom the deceased would have had to offer them.<sup>73</sup> Although the resulting differences in the order of succession are relatively easy to establish between close relatives, they become intricate and less certain between less closely related relatives of the deceased.<sup>74</sup>

Even though the Sanskrit commentaries and digests—and, through them, the *smṛtis*—remained the fundamental sources of the Hindu law of inheritance during the British period, the picture became more complex as time progressed.

First, the British decided that it was their obligation to administer law to the Hindus, not religion. Hence, ignoring what had been an integral part of traditional Hindu law, they recognized adoptions that were not accompanied by the traditional *dattahoma* ritual.

Second, there were aspects of the Hindu law of inheritance which the British found objectionable, and which they did not hesitate to overrule, first in occasional decisions in the courts and later in parliamentary Acts. Thus, they vacated the rule that heirs had to pay the deceased’s debts even when they exceeded the value of the estate.<sup>75</sup> Nor did they feel bound by the traditional Hindu list of people barred from inheriting: when a murderer sued to be recognized as his victim’s heir so that the inheritance would devolve on his heirs, the Privy Council rejected his plea on the basis of justice, equity, and good conscience (Rocher 1987).

Third, the extra-legal arguments, especially those drawn from Indian logic and *mīmāṃsā*, which the commentators used or alluded to in order to justify their conclusions, caused significant problems for the translators of those texts. Even when a rare Western translator had familiarized himself with

<sup>73</sup> Hence the prominence of *śrāddhas* in studies of Hindu inheritance written in Bengal. Sarvadhikari, e.g., even before describing the sources of Hindu law, devotes his entire third Tagore lecture to the nature and twelve kinds of *śrāddha*, and to those who are competent to perform them (1922: 61–104).

<sup>74</sup> See, e.g., the tables on the order of inheritance in Aiyar 1950: 616A and 688A.

<sup>75</sup> That rule was still practiced in the nineteenth century, but the Bombay *Hindu Heirs’ Relief Act* of 1866 limited the heir’s liability to pay the debts to the extent of the assets, a practice that was adopted in other parts of India as well.

Indian panditic learning and was able to interpret the extra-legal arguments correctly, his translations proved to be of little use in the courts of law.<sup>76</sup>

It is not surprising, then, that in their deliberations on questions of inheritance among Hindus the Anglo-Indian courts more and more avoided going back to Sanskrit texts and based their decisions on Western principles, such as *stare decisis* and *communis error facit ius*. The Hindu law of inheritance became a law of precedent, a British-style case law.

### A Note on Hindu Law in Practice

Some Englishmen concerned with legal administration in India became dissatisfied with the Sanskrit commentaries as sources of law. Judges and lawyers, especially in South India, where the rules by which people lived were different from the law of inheritance Calcutta ordered them to apply, raised questions about some basic issues: first, were Sanskrit books such as the *Mitākṣarā* truly law books, and, second, were *single* law books adequate to settle the disputes of *all* the people in large parts of India? They asked, “Has there ever been a *Mitākṣarā* law of inheritance,” and, more generally, “Has such a thing as ‘Hindu law’ at any time existed in India, or was it a mere phantom of the brain, imagined by Sanskritists without law and lawyers without Sanskrit?”<sup>77</sup>

Although we know little about legal practice among Hindus in earlier days (Michaels 2010b), it appears that at the time when the *smṛtis* were composed various rules on inheritance were practiced in—that is, were part of the *dharma* of—various localities and different segments of society, such as castes, professions, and so forth.<sup>78</sup> The *smṛtis* are repertories of different legal practices, but they were not used as law books in tribunals (Rocher 1993); even without having written *smṛtis* in hand, judges knew—and only needed to know—which rules were traditionally applied in the courts over which they presided.

Commentaries such as the *Mitākṣarā* and *nibandhas* such as the *Dāyabhāga* were different. Their authors were interpreting “texts” on *dharma*; motivated, as Hindus, by the belief that all *smṛti* rules were parts of a single, encompassing revelation, they drew upon their vast panditic learning to prove it. The commentators on ancient *smṛtis* and authors of *nibandhas* were not jurists writing books to be used in courts of law; they were engaged in a scholastic

<sup>76</sup> A typical example of a correct but obscure translation involving *mīmāṃsā* terminology: “Here also, to show, that the sons’ property in their father’s wealth arises from such causes as the extinction of his worldly affections, this one period of partition, known to be at their pleasure, is recited explanatorily: for the recital is conformable to the previous knowledge; and the right of ownership suggests that knowledge” (Colebrooke 1810; *Dbh* 1.34. Cf. Rocher 2002b: 63).

<sup>77</sup> Nelson 1877: 5. On Nelson, see Derrett 1961.

<sup>78</sup> *MDh* 8.41 and other *smṛtis* refer to the specific laws (*svadharmas*) of castes, regions, guilds, and families, and ordain that lawsuits be settled in accordance with them.

exercise they applied equally to legal and non-legal chapters of the *smṛtis* and to all sections of the *nibandhas*.<sup>79</sup>

When the British turned to the commentaries and *nibandhas* to settle disputes on inheritance, they did not continue—as they hoped—to give Indians their own laws. These were to be found in the numerous unwritten rules applied in a variety of differently organized local judicial councils. In Derrett's words, by assigning commentaries and *nibandhas* the role of law books, "Hastings and his contemporaries, in particular Colebrooke, Jones and their successors, were gravely misled."<sup>80</sup>

## THE DEATH OF THE HINDU LAW OF INHERITANCE

After 1947, Hindu law of inheritance continued to be practiced as it had been before Independence.<sup>81</sup> In 1950, one of the "Directive Principles of State Policy" of the Indian Constitution had a direct bearing on the law of inheritance: "The State shall endeavour to secure a uniform civil code throughout the territory of India" (Art. 44). Owing to inevitable objections to such an endeavor, and since the "Directive Principles" were "not enforceable by any court" (Art. 37), India did not get a uniform civil code. Yet, shortly thereafter India witnessed "the death of a marriage law" (Derrett 1978), traditional Hindu law of inheritance, too, ended. On June 17, 1956, *The Hindu Succession Act* received the assent of the President of India, Rajendra Prasad. Article 4 of the Act firmly establishes its overriding effect:

Save as otherwise expressly provided in this Act,—

- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
- (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

For the first time in history, all Hindus were governed by a single, uniform system of inheritance law, a system, however, that, from every point of view, broke away from traditional Hindu law, and whose implementation required much adaptation.

<sup>79</sup> For example, Lakṣmīdhara's *Kṛtyakalpataru* (fourteen *kāṇḍas*) and Raghunandana's *Smṛti-tattva* (twenty-eight *tattvas*).

<sup>80</sup> Derrett 1961–2; also Rocher 2007a.

<sup>81</sup> For a survey of Hindu law between Independence and the events of 1956, see Aiyar 1950.

## Daily Duties

*āhnika*

*Timothy Lubin*

### DAILY DUTIES AS A MODEL FOR “EVERYDAY VEDA”

Brahmanical *dharma* as a holistic vision of society, and the life well lived therein, was assembled gradually out of disparate elements roughly during the centuries between the two Candraguptas (the founders of the Maurya and Gupta dynasties). It began with Brahmin priestly theorists expanding their professional offerings by formalizing ceremonial practices well beyond the Vedic “high cult” (the ritual described as *śrauta*, i.e., ordained in the Veda itself, or *vaitānika*, i.e., “extended” in its use of multiple fires). The new codes of household ritual (Gṛhyasūtras) proposed simple analogues to (and substitutes for) the elaborate *śrauta* ritual, analogues that could be performed by a householder-ritualist unaided or with the assistance of a single priest. This formalized domestic cult also systematized the life-cycle rites and other household observances, and used this standardized ritualism as a template for an ideal society, a society of the Āryas, the “noble ones.” Every Ārya should, according to this emerging model, exhibit the marks of a properly trained ritual agent, markers that were hierarchically modulated to signal one’s position in the hierarchy of three Ārya social classes (*varṇas*).<sup>1</sup>

Study of Vedic mantras with a Brahmin preceptor—for non-Brahmins, probably rarely more than token study—and the badges of initiation into such study were presented in the domestic ritual texts as prerequisites of Ārya status. Observance of a common purity code and a set of basic ritual observances, under the advice or with the assistance of a Brahmin expert, constituted further public demonstration of such status, and served as a discipline for ethical formation.

<sup>1</sup> On this point, see the chapters on the Vedic student and the Vedic graduate in this volume.



Certain doctrinal formulations were put forward to exemplify the basic ideals of this religion, both for the purpose of catechism, and likely also for use in apologetics in the face of Buddhist, Jainist, and other rival religious doctrines. The most famous of these formulations are the Four *Varṇas* (with their respective functions), the Three Debts (to the gods, sages, and ancestors), and the Five Great Acts of Worship (*mahāyajñas*), all of which appear already in Brāhmaṇa passages. The first works composed to expound this *dharma* introduce the notion of distinct *āśramas* (modes of life), considered at first as alternatives and then, beginning with the *Mānava* code, as a sequence of four, appropriate (in theory) to all males of the three Ārya classes.

The notion that all Āryas have basic obligations according to a common framework left a defining imprint on prescribed practice, such that nearly every aspect of daily life was regulated under the emergent model of *varṇāśramadharma* (duties in accordance with birth class and mode of life).

## A CATEGORY IN DEVELOPMENT

Such were the ideals taught in the older *dharma* treatises. But after the composition of the *Mānava Dharmaśāstra*, one begins to hear about another set of observances fundamental to Ārya “best practices” (*ācāra*). These practices came to be referred to as “*āhnikāni*,” or simply in the singular as “*āhnikam*,” daily observance (from *ahan*, “day”).<sup>2</sup> The particular activities discussed under this heading were mainly the following:

- śauca* (morning ablutions)
- ācamana* (sipping water)
- dantadhāvana* (tooth cleaning)
- snāna* (bathing)
- tarpaṇa* (satiating the ancestors with libations of water)
- saṃdhyā* or *saṃdhyopāsana* (worship at the twilights)
- homa* (fire offering)
- japa* (soft recitation)

The first thing to note is that the first half of this list contains acts of self-purification, while the latter half comprises acts of worship.<sup>3</sup> The link between them may be the fact that *tarpaṇa* is performed as an adjunct (an *aṅga*) to bathing: after plunging under the water, one stands still half submerged, scoops up water in the cupped hands, and pours it out thrice over the

<sup>2</sup> Kane (II: 640–704) surveys this topic, providing detailed examples of the rules for each daily duty as laid out in the sūtras and śāstras.

<sup>3</sup> Or, in the case of *japa*, the soft recitation of mantras otherwise used in worship.

fingertips (the *tīrtha*, the “passage point” of the hand dedicated to the ancestors) with a dedicatory mantra.

Although all of these observances are well attested in the Veda, this particular grouping, under this particular heading, did not appear in the Dharmaśāstras, nor in the *Mānava Dharmaśāstra*, nor in the *Yājñavalkya*. However, one can find some of these topics partially grouped together in some late appendices to the domestic codes. Consider, for instance, two appendices of the *Pāraskara-Gr̥hyasūtra*: the *Kātyāyana-Parīṣiṣṭa-Śauca-Vidhi* (“Kātyāyana’s Supplementary Rule of Purification”), with chapters on bodily purification (*śauca*) and the rite of sipping water (*ācamana*); and the *Kātyāyana-Trikaṇḍikā-Sūtra* (“Kātyāyana’s Sūtra of Three Short Parts”), consisting of rules for daily bathing, recitation of the Veda at twilight (*saṁdhyā-brahmayajña*), and offerings to satisfy (*tarpaṇa*) one’s ancestors.<sup>4</sup> These two short works may be roughly contemporary with the later Dharmaśāstras, and anyway probably prior to *Mānava Dharmaśāstra*, based on the way in which the four *āśramas* are presented, with the householder listed first preceding the *brahmacārīn* (student), which is implicitly a perpetual status grouped with the *vanastha* (hermit) and the *yati* (ascetic).

## THE PURIFICATIONS

Purification rites are ubiquitous in the Vedic ritual, but the *āhnika* purifications get into matters that were never addressed elsewhere: defecation, urination, and tooth brushing. Now presumably people knew how to clean their bottoms without a Brahmin telling them how to do it. But it had become an axiom of this new expansion of Brahmanical ritualism that there was a *right* way of doing everything: the *dharma* way—material functionality overlain with ritual refinement. The rules later collected under the heading “*āhnika*,” though, are scattered in various places in the early rulebooks, and it is the commentators who connect the dots for us.

Medhātithi regards *MDh* 2.69 as a precedent for taking *śauca* as a starting point of good practice:

After initiating a pupil, the teacher should at the outset train him in purification (*śauca*), proper conduct (*ācāra*), fire rituals (*agnikārya*), and twilight worship (*saṁdhyopāsana*). (*MDh* 2.69)

<sup>4</sup> As printed in Bākre (1917: 409–22). Bākre provides no information about the manuscripts used for this edition, and the groupings I describe reflect nothing more than the separate numbering he gives to these *kaṇḍikās*, and the fact that each ends with its own colophon: *iti kātyāyanakṛtaṁ parīṣiṣṭaśaucasūtram samāptam* and *iti śrīkātyāyanoktaṁ trikaṇḍikāsūtram samāptam* (respectively). The latter is accompanied by a commentary attributed to Harihara (before 1250).

But the *Mānava* itself treats these various topics in many different places, rather than as a group. For example, we find a few stanzas on *śauca* in its chapter on the Vedic graduate (*snātaka*), inserted right into the middle of the long list of special restrictions applying only to that austere figure:<sup>5</sup>

4.47 He must never eat food while wearing just a single garment; bathe naked; or urinate on a road, on ashes, in a cow pen, on plowed land, into water, onto a mound or a hill, in a dilapidated temple, onto an anthill, into occupied animal holes, while walking or standing, by a river bank, or at the top of hill.

4.48 He must never void urine or excrement facing the wind, a fire, a Brahmin, the sun, water, or cows.

4.49 Restraining his voice, remaining steadfastly attentive, covering his body, and wrapping his head, he should ease himself after strewing the ground with sticks, clods, leaves, or grass.

4.50 During the day, he should void urine or excrement facing the north, at night facing the south, and at the two twilights in the same way as during the day.

4.51 Under a shadow or in a place that is pitch-dark, a Brahmin may do so during the day or at night facing any direction he pleases, as also when he fears for his life.

4.52 When someone urinates towards a fire, the sun, the moon, water, a twice-born man, a cow, or the wind, his wisdom perishes.

From here, the list of special taboos continues, followed by a list of people from whom the graduate must not accept gifts. Then comes another series of stanzas, which the later scholiasts will include among the daily duties:

4.92 He should wake at the time sacred to Brahman and reflect on matters relating to Law and Wealth [i.e. *dharma* and *artha*], on the bodily discomforts they cause, and on the true meaning of the Veda.

4.93 After getting up and answering the call of nature, he should perform the purifications and, with a collected mind, stand for a long time engaged in soft recitation during the morning twilight and, at its proper time, also during the evening twilight.

4.94 Because they performed their twilight devotions for a long time, the seers obtained long life, wisdom, fame, renown, and eminence in vedic knowledge. (Olivelle trans.)

In fact, later digests such as Devaṇṇa Bhaṭṭa's *Smṛticandrikā* (twelfth or thirteenth century) begins their presentation of daily duties by quoting *MDh* 4.92 and similar stanzas from the *Kūrma Purāṇa* (2.18.3), and the *Yājñavalkya Dharmaśāstra* (1.115), which includes pleasure (*kāma*) alongside virtue and gain (*dharma* and *artha*) to complete the "set of three" aims of life (*trivarga*). This sets the lavatory matters that will follow in the context of more

<sup>5</sup> See Chapter 8 in this volume, on the Vedic graduate.

high-minded concerns: the central aims of life and the demands imposed by bodily existence. Here, the *Mānava* is speaking of the graduate, but the *snātaka* would eventually come to be taken as the model of the especially pious householder.<sup>6</sup> As part of that process, the *snātaka*'s special toilet rules are transferred to householders in general.

The *Mānava* also includes a long list of *śauca* precepts in its chapter on householders, not in connection with the daily routine but within a long section on the purification of persons and articles entailed by contaminating incidents and circumstances, such as death and physical contact with impurity:

5.134 To purify oneself after voiding urine or excrement and to clean any of the twelve bodily impurities, one should use a sufficient amount of earth and water.

5.135 Body oil, semen, blood, marrow, urine, feces, ear-wax, nails, phlegm, tears, discharge of the eyes, and sweat—these are the twelve impurities of man.

5.136 A man intent on purifying himself should apply one lump of earth on the penis, three on the anus, ten on one hand, and seven on both.

5.137 This is the purification for householders. It is twice that much for students, three times for forest hermits, and four times for ascetics.

5.138 After he voids urine or excrement, he must sip water and touch the orifices with water; he must do so every time he prepares to recite the Veda or to eat his food.

5.139 A man who desires bodily purification should first sip water three times and then wipe the mouth with water twice; but a woman or a Śūdra<sup>7</sup> sips and wipes just once. (Olivelle trans.)

The subject then shifts to the purifications required under a wide variety of other circumstances, such a spittle flying from the mouth, beard hairs getting in the mouth, etc. There is no hint in Manu of purification as a daily routine associated with regular morning devotions.

By contrast, in the *Yājñavalkya Dharmaśāstra*, the precepts for the morning necessities open the section on studentship; as in *MDh* 4.92–4.94, the morning ablutions do culminate in some acts of recitation and worship to be performed, in this case, by the purified student:

1.15 After the preceptor has initiated the pupil, he should first teach him the Great Calls and then the Veda, and instruct him in the practices of purification.

1.16 At the junctures of the day, with his sacred thread resting on his ear, he should urinate and defecate facing north, and if at night, facing south.

<sup>6</sup> See the Chapter 8 in this volume for a fuller account of this development.

<sup>7</sup> *MDh* 5.140 further specifies, “Śūdras who behave properly (*nyāya-vartin*) should shave their heads once a month, follow the rules of purification laid down for Vaiśyas, and eat the leftover food of twice-born persons.”

1.17 Taking hold of his penis and getting up, he should diligently purify it with earth and drawn water so as to remove whatever stinks or whatever sticks to him.

1.18 Sitting down in a clean place, facing north or east, with hands between the knees, a twice-born should always “touch water”<sup>8</sup> with the “crossing point of Brahman” (at the base of the thumb).

1.19 The roots of the little finger, the index finger, and the thumb, and the tip of the hand are the ‘crossing points’ sacred to Prajāpati, the ancestors, Brahman, and the gods, respectively.

1.20 Drinking water thrice, wiping (the mouth) twice, he should touch the openings (of his sense organs) with water, but only with water in its natural state, devoid of foam or bubbles.

1.21 Those of the twice-born classes will be purified by water that reaches the heart, the throat, and the palate, respectively, while a woman or a Śūdra (is cleansed by water) that has once touched the edges (of the lips).

1.22 Bathing with mantras dedicated to the divine Waters, wiping off, control of the breath, worship of the sun, and daily murmuring of the Gāyatrī mantra—

1.23 He should murmur the Gāyatrī along with the ‘Head-Mantra’ (*āpo jyotī raso ’mṛtaṃ brahma*) and preceded by the ‘Great Calls’ (*bhūr bhuvaḥ svaḥ*), each combined with the syllable *om*—done thrice, this constitutes control of the breath.

1.24 Controlling the breaths, sprinkling, reciting three Ṛg-stanzas dedicated to the divine Waters, he should sit facing west, murmuring the Sāvitrī-stanza until the stars rise.

1.25 He should stand thus facing east at the morning twilight until he sees the sun; then he should perform fire-service at both the twilights. (*YDh* 1.15–1.25)

Again, we must note that there is yet no suggestion that these particular purity rules are meant to apply on a daily basis to the householder. But we do see here how the bathing is made the prelude to soft recitation (*japa*) and twilight worship.

It is worth mentioning, by way of comparison, that the defecatory protocols in the Buddhist Vinaya code (e.g., *Cullavagga* V.35, VIII.8–10) similarly are concerned with ordaining standards of cleanliness, but they assume the use of latrines with seats, which monks must take turns in using, something rarely encountered in a Brahmanical text, with the notable exception of Kauṭilya’s *Arthaśāstra* (2.5.6; 3.8.6, 21). This difference might reflect the urban social context of Buddhist cenobitic institutions, as well as the milieu that produced the *Arthaśāstra*, in contrast with the persistently rural assumptions in most works of Dharmaśāstra.<sup>9</sup>

<sup>8</sup> The authorities understand this rule variously, taking it rather to mean that he sips water from the base of the thumb (i.e., *ācamana*) or that he washes his feet and legs up to the knee. The *Kātyāyana Śauca Vidhi* specifies “water brought by someone other than a Śūdra.”

<sup>9</sup> An exception is *Bṛhaspati Smṛti* 1.19.49 (19.26 in Jolly’s translation), which advises that latrines should not impinge on a neighbor’s property.

## THE ACTS OF WORSHIP

The second, devotional group of daily observances also exhibits a partial parallel with standardized lists of duties found in older sources, the Three Debts and the Five Great Acts of Worship:

The parallel between the *āhnika* duties and the Five Great Acts of Worship is heightened by the fact that the *Śatapatha* introduces the rule for each of those offerings with the words *ahar ahaḥ*, “daily”:

Five indeed are the Great Acts or Worship—which are in fact sustained sacrificial sessions (*sattra*): the Worship of Spirits (*bhūta-yajña*), the Worship of Men (*manuṣya-yajña*), the Worship of the Fathers (*pitṛ-yajña*), the Worship of the Gods (*deva-yajña*), and the Worship of Veda (*brahma-yajña*). Daily one should present scraps of food as tribute (*bali*) to spirits; in that way he accomplishes the Worship of Spirits. Daily one should provide at least a pot of water; in that way he accomplishes the Worship of Men. Daily one should pronounce that blessing *svadhā* [for the ancestors while offering] at least a pot of water; in that way he accomplishes the Worship of the Fathers. Daily one should pronounce that blessing *svāhā* [for the god while offering] at least a stick of firewood; in that way he accomplishes the Worship of the Gods. Now the Worship of the Veda: the Worship of the Veda is private recitation (*svādhyāya*). Daily one recites the private recitation. That is why he should recite the private recitation.

(ŚB 11.5.6.1–11.5.6.3)

This model reappears in various configurations throughout in the domestic ritual literature.<sup>10</sup> The medieval nibandhas (digests) simply fold the Great Acts of Worship into the treatment of *āhnika* (e.g., the thirteenth-century *Smṛtyarthasāra*) (see Table 13.1).

The fit with the Three Debts would seem less close, until we consider, as Patrick Olivelle has done, that the point of paying a debt to the ancestors by having a son is precisely to ensure that the *tarpaṇa* waters continue to flow,

Table 13.1

Five Great Acts of Worship	Three or Four Debts	Corresponding Daily Duties
<i>bali</i> > spirits		
water-pot/food > men	[shelter, food > men: ŚBM, MBh]	
water-pot with <i>svadhā</i> > ancestors	sons > ancestors	<i>tarpaṇa</i>
<i>homa</i> with <i>svāhā</i> > gods	<i>homa</i> > gods	<i>homa</i>
<i>svādhyāya</i> > <i>brahman</i>	<i>brahmacarya</i> > sages	<i>japa</i> + <i>saṃdhyā</i>
[ŚBM 11.5.6.1–11.5.6.3; MDh 3.70]	[TS 6.3.10.5; ŚBM 1.7.2.1–1.7.2.5; MBh 1.111.12–1.111.16; MDh 6.35–6.36]	

<sup>10</sup> BGṛ 2.9.7; BGṛParīś 2.4.8; BhGṛ 3.15; PGṛ 2.9; ĀgGṛ 3.12.2; VaikhGṛ 6.17; ĀśGṛ 3.1.1–4.

and the *śrāddhas* continue to be performed. This connection becomes explicit only in the *Mahābhārata* (1.111.14).<sup>11</sup>

## BRINGING THE ELEMENTS TOGETHER

The first work explicitly to prescribe the entire sequence of *āhnikā* duties for the householder—though still without using this label for them and without spelling out the purity rules—is *YDh* 1.97–1.102:

1.97 A householder should daily perform Smṛti-based rites in the wedding-fire, or even in the fire brought at the time of inheritance, and Śruti-based rites in the extended fires.

1.98 After attending to the ‘bodily concerns’ and following the rules of purity, a twice-born should perform the morning twilight worship, having first cleaned the teeth.

1.99 He should make the fire offerings and murmur the mantras dedicated to the sun with a focused mind; [then] he should study [works expressing] the meaning of the Veda and various treatises.

1.100 Then he should beseech the Lord for success in getting and protecting wealth, and having bathed he should gratify the ancestors and venerate the gods.

1.101 He should repeat the [three] Vedas, the Atharvan mantras, the *purāṇas* and *itihāsas*, as he is able, and the wisdom concerning the self, so that he will have success from recitation and worship.

1.102 The Great Offerings (*mahāmakhāḥ*) are the rites of *bali* to spirits, *svadhā* to the ancestors, *homa* to the gods, private recitation to Brahman, and guest-reception to men.

Here all the basic elements are in place, along with the recommendation to contemplate *dharma* and *artha* at the start of the day, which was mentioned also by Manu (*MDh* 4.92). Yājñavalkya has even inserted the motif of the Five Great Acts of Worship into the list.

The *śauca* purity rules (which Yājñavalkya delicately alludes to as *śarīra-cintā*, “bodily concerns”) are not spelled out, except for the tooth brushing, but Mitramiśra, commenting on *YDh* 1.98 several centuries later, takes it for granted that the Vedic student’s purity regimen should apply also to the householder. In fact, he tries to make a virtue out the awkward fact that pertinent injunctions are introduced in different chapters by Yājñavalkya and other sages:<sup>12</sup>

<sup>11</sup> Olivelle 1993: 54.

<sup>12</sup> *iha brahmacaryādiprakaraṇoktānām gr̥hasthāder api gr̥hasthādiprakaraṇoktānām ca brahmacaryāder api dharmatvena smṛtyantare ’bhyanuñjātānām aviśeṣaṇobhayaatrānvayaṁ vivakṣann api maharṣir yat kvacit prakaraṇe kāmścid eva, kāmścit tu prakaraṇāntara eva*

Given that here [in this passage] things that are prescribed as *dharma* in the chapter on studentship, etc., are approved also for the householdership, while things that are prescribed in the chapter on householdership, etc., in another *smṛti* are approved also for studentship, the great sage, likewise intending to affirm the connection in both contexts without distinction, explains only some matters in one chapter, and some only in another. Such, they say, is the concision of the ancient teachers, who attain also a certain elegance in the brevity of their books.

The care of the body discussed earlier applies here as well. Whereas Gautama, when he is prescribing the rules (*dharma*s) of the student for others as well, with the words ‘And this applies also to other [*āśrama* statuses] when there is no conflict of rules,’ prefers to invoke the principle of lack-of-conflict itself, which is the basis of this [rule-extension], nevertheless, the Great Sage (Yājñavalkya) in this context prefers an easier mode of instruction by recourse to a prescription, and instructs [that the householder should perform care of the body, etc.], although the topic had already been addressed [in the rules for the student, *YDh* 1.16–1.17]. The understanding here is that discerning readers will figure out on their own that these two authors, who have shown such brevity in their works, base their choices between equally viable alternatives on their preferences for certain things in certain cases.<sup>13</sup>

But some [say that] the repetition of the rules for the care of the body here prescribes only that tooth-cleaning should precede the morning twilight worship, since that [act] is not applicable in the case of a celibate student: tooth-cleaning is forbidden to him by the rule, “He should avoid sitting on a cot, lying down, and tooth-cleaning.” Rather, they say, the reason for repeating the rule is simply to restrict tooth-cleaning to the particular status [of householder].

Mitramiśra thus proposes that the rule for care of the body given at *YDh* 1.98 (in the householder section) is meant to signal that the rules of purity for the student (given earlier) apply also to the householder (with the added rule of tooth cleaning for the householder), something which other early authorities, like Gautama, preferred to indicate instead by means of a general rule. In other words, Mitramiśra must “discover” the unified *āhnikā* purity protocol to be implied in the indirect presentation of the older authorities.

*darśayati | seyaṃ purāṇacāryānām granthalāghavādilakṣaṇam kimcit sauṣṭhavam api saṃdad-hatām śailīti | śārīracintādikam prāguktam ihāpi prāpyata eva | brahmacāridharmān itara-trādiśan gautama “itaresāṃ caitad avirodhīti” [GDh 3.10] tadbijam avirodham eva puraskaroti yadyapi, tathāpy ādeśāpekṣayopadeśasya laghūpāyatvam eva prakṛte puraskṛtya uktam apy upadiśati | pradarśitalāghavayos tu kvacit kasyacid eva puraskāre vinigamanābijaṃ svayam utprekṣaṇīyaṃ suksmekṣibhir iti | kecit tu śārīracintādyanuvādena dantadhāvanapūrvakatva-mātram iha prātāḥsandhyāyām vidhiyate brahmacāriṇy aprāptatvāt | khatvāsanaṃ ca śaya-naṃ varjayet dantadhāvanam | iti tasya dantadhāvanniśedhāt | anuvādaprayojanan tu dantadhāvanasya sthānaviśeṣaniyamanam evety āhuḥ |.*

<sup>13</sup> Thanks are due to David Brick and Don Davis for thinking though the meaning of this paragraph with me. The rendering of this last sentence is Brick’s.



## CONCLUSION

We find that the *Yājñavalkya Dharmaśāstra* seems to have been the first treatise to bring together the full set of daily duties for Ārya householders, and only the commentators coin the rubric *āhnikā* and explicitly combine rules earlier prescribed only for the student and graduate. This is in keeping with the fact that the defining characteristic of the Ārya householder in Brahmanical *dharma* was his embrace of an *innerweltliche Askese*, a worldly asceticism. Some authorities even distinguish grades of more ascetic householder.<sup>14</sup> But even to be the standard sort of Ārya householder required disciplined adherence to a version of what were originally the ascetic strictures placed on the celibate student—whether a *yauvana* (juvenile, temporary) or a *naiṣṭhika* (perpetual, professional) student—as well as the graduate (*snātaka*).

The latter two statuses entailed elaborate restrictions on personal conduct intended to hedge, secure, and preserve a special degree of supernormal purity that was deemed necessary to their sacred functions. Just as initiation and training in Veda were being promoted as prerequisites for a life of Ārya piety according to *varṇāśrama-dharma*—even for those in a non-renunciate *āśrama*—the student's or *snātaka*'s elaborate standards of bodily purification were transferred (assumed to apply) to the ordinary householder as well, constituting that status as an *āśrama*, that is, as a formal “religious profession.” Those purity rules, together with the basic duties to recite and make offerings (even notional, semi-interiorized offerings), thus became the “minimum daily requirements” of any Ārya householder.<sup>15</sup>

<sup>14</sup> The *yāyāvara* (peripatetic) and *cakracara* (round-goer) undergo a rite of consecration similar to that of a student or *dīkṣita* (consecrated sacrificer) and do not accumulate wealth, but subsist by means such as gleanings or gathering wild foods, and are thus superior to the ordinary *śālina* (house-dweller). Thus “*Deutero-Baudhāyana*” (*BDh*) 3.1.1; *MDh* 4.7 and others divide householders into four such categories, based on how much or how little grain they store, among other criteria.

<sup>15</sup> In later centuries, the list of daily duties was expanded and adapted according to the doctrinal or sectarian preferences of the authors of digests on *Dharmaśāstra*. Examples include the *Sadācārasmṛti* by Ānandatīrtha, the founder of the Mādhva School (thirteenth century) and the *Chandogāhnikā* on the daily duties of the Sāmavedin Brahmins by Śrīdatta of Mithila (also thirteenth century).

## Food and Dietary Rules

*abhakṣya, abhojya*

*Patrick Olivelle*

It has long been noted that food—whether vegetable or animal—apart from being a biological necessity, has deep social, cultural, and religious meanings. Anthropologists have long noted that among the wide variety of edible animals available to a given social group, only a small fraction is actually consumed. Prohibited foods, whether by injunction or by custom, far outnumber permitted ones in most societies. The French anthropologist Claude Lévi-Strauss (1963: 89) famously said that animals are “good to think.” The pioneering studies of the British anthropologists, Edmund Leach (1964) and Mary Douglas (1966, 200) have illuminated the ways in which food prohibitions in various societies and religions are related to their social organizations and cosmological categories. The Sri Lankan anthropologist Stanley Tambiah (1969: 423–4) recapitulates their conclusions:

Lévi-Strauss (1966: 104) has formulated a view...that “there is an empirical connection between marriage rules and eating prohibitions.”...The theory [of Mary Douglas] argues that dietary prohibitions make sense in relation to a systematic ordering of ideas (a classification system) as exemplified for example by the abominations of Leviticus. Leach, partly building on Douglas,...demonstrates for the English and the Kachin the correspondence between three scales of social distance from Ego, pertaining respectively to marriage and sex relationships, spatial categories, and edibility of animals.

Thus, the dietary rules of the Dharmaśāstras discussed in this chapter are significant for the study of many aspects of ancient Indian society, including caste and marriage. Within the confines of this chapter, however, I will outline the Dharmaśāstric discussions of food and dietary rules, referring the reader to my earlier studies for analyses of their sociological significance.<sup>1</sup>

<sup>1</sup> See Olivelle 2002a, 2002b [reprinted in Olivelle 2005b].

Although rules about what can and cannot be eaten pertain to both vegetables and animals, it is to animals that dietary rules mostly refer. Therefore, I will take up rules on eating animals first. These rules often follow animal classifications based on where they live, what they eat, and how their teeth and feet are structured.

Following the division of space into land, water, and air, we have already in the Vedic texts a threefold classification of land animals, fish, and birds. Within the first and the third of these, there is a further distinction between village or domestic animals (*grāmya* and *paśu*) and the wild (*āranyaka*) often with the generic designation of *mṛga*. There is a twofold classification of land animals and birds based on their diet: the herbivores and the carnivores. The most significant classification with regard to animal prohibitions pertains to the structure of their teeth and feet. In terms of teeth, there is a twofold classification of land animals into those with incisor teeth in both jaws (*ubhayotodat*) and those with incisors only in a single (lower) jaw (*anyatodat* or *ekatodat*). We find this classification already in the Puruṣa hymn of the *Rg Veda* (10.90.10): “From it [the sacrifice] were born horses, as also whatsoever have incisor teeth in both jaws. Cows were born from it. From it were born goats and sheep.”<sup>2</sup> Even though the text does not mention the class with incisors in the both jaws, the *anyatodat*, it is clearly implicit; we have here a division of animals into two classes—those with two rows of incisor teeth headed by the horse and those with a single row of incisors, whose major representatives are cows, goats, and sheep, the most common farm animals. Again, although left unstated, the vast numbers of carnivorous animals with paws rather than hooves also belong to the category of animals with two rows of incisors. In terms of their feet, animals have either paws with five nails (*pañcanakha*) or hooves (*śapha*, *khura*). The latter is further subdivided into those with two (cloven) hooves (*dviśapha*, *dviikhura*) and those with a single unparted hoof (*ekaśapha*, *ekakhura*). Some of these categories overlap. For example, animals with incisors in both jaws fall under the categories of those with five nails (*pañcanakha*) and those with single hooves (*ekaśapha*). According to their foot structure, birds are divided into those with webbed feet (*jālapāda*) and those without, the latter being further divided into those that eat by scratching the earth with their feet (*viṣkira* or ground feeders) and those that eat by pecking (*pratuda*).<sup>3</sup>

These classifications, especially in the case of land animals, play a central role in dietary prescriptions. Among land animals, three classes are prohibited:

<sup>2</sup> The translations of Rigvedic passages are from Jamison and Brereton’s (2014) translation of the *Rig Veda*. See *MDh* 1.39–1.42 for a similar but more elaborate classification of fauna and flora within the context of a creation account. The ruminant animals, such as bovines and antelopes, have only a thick dental layer called “the dental pad” in the upper jaw.

<sup>3</sup> For an extensive analysis of animal classification, see Zimmermann 1987.

animals with five nails (*pañcanakha*),<sup>4</sup> those with single or uncloven hooves (*ekaśapha*), and those with incisor teeth on both jaws (*ubhayatodat*). Among birds, those with webbed feet are generally prohibited, while those of the scratching and pecking varieties are generally permitted. Among both animals and birds, those that are carnivorous (*kravyād*) are forbidden. In terms of animals falling within these categories, the single-hooved are few: horse, donkey, and mule. The ideal meat comes from the cloven-footed group: cattle, goats, and sheep, among the domesticated animals, and deer and the antelope family among the wild.

There is another category of animal and bird that is forbidden, and that is the “village” (*grāmya*). This category is distinct from the “domesticated” because farm animals called *paśu*, namely, cattle, goats, and sheep, constitute the three paradigmatic permitted animals. The category *grāmya* appear to include animals and birds whose habitat is the village, such as the village fowl and pig, which are forbidden, even though the former falling under the “scratching” (*viṣkira*) category and the latter under both the cloven hoof (*dviśapha*) and the single row of incisor teeth (*ekatodat*) should have been permitted. In fact, their wild (*aranya*) counterparts, the jungle fowl and wild hog, are indeed permitted. The *grāmya* animals and birds are those that have chosen to live in the village, whereas *paśu* are domesticated animals that people rear in farms.

Other broad categories of land animals and birds prohibited are the solitary (*ekacara*), the unknown (*ajñāta*), and those that are not specified (*anirdiṣṭa*), probably referring to animals and birds not listed specifically as permitted. At least in the case of birds, we have in addition the prohibition of nocturnal birds and in some sources birds with red feet or beaks.

Even though, as we saw, some categories of birds are prohibited, it is more common for sources simply to list the birds that are forbidden. Thus, we have the following given by Vasiṣṭha (*VaDh* 14.48):

Among birds, the following are forbidden: birds that agitate, scratch with their feet or are web-footed; Kalaviṅka sparrow, Plava heron, Haṃsa goose, Cakravāka goose, Bhāsa vulture, crow, Pārāvata dove, Kurara osprey, and Sāraṅga cuckoo; white dove, Krauñca crane, Krakara partridge, Kaṅka heron, vulture, falcon, Baka egret, and Balāka ibis; Madgu cormorant, Ṭiṭṭibha sandpiper, Māndhāla flying fox, and nocturnal birds; woodpecker, sparrow, Railātakā bird, Hārīta pigeon, Khañjariṭa wagtail, village cock, parrot, and Śārīka starling; Kokila cuckoo and carnivorous birds; and those living in villages.

<sup>4</sup> There is an exception made with regard to a group of five five-nailed animals (*pañca pañcanakhāḥ*). The five animals are porcupine, hedgehog, hare, tortoise, and monitor lizard (*śvāvidh, śalyaka, śaśa, kacchapa, godhā*), although there are some variants of the list. For a study of this category, see Jamison 1998.

The problems inherent in bird classifications, however, are exemplified in the way later authorities, such as Vasiṣṭha, Manu, and Yājñavalkya, handle the two major categories of birds: those that scatter (*viṣkīra*) and those that peck (*pratuda*). All of the more ancient sources declare that these birds are permitted, whereas these later authors state just the opposite.<sup>5</sup> The reason for this reversal is unclear, but it may well have to do with a misunderstanding or a fresh interpretation of these classes. At least some commentators, for example, take the “peckers” to be carnivores, such as hawks and woodpeckers.

When it comes to fish, our sources, unlike the Hebrew authors of the Deuteronomy and Leviticus, totally give up on broad classifications, resorting instead to listing individual fish. Here also we detect an interesting change from the older to the younger sources. The older sources appear to assume that all fish, except those explicitly forbidden, may be eaten. The only broad category of forbidden fish in them is the rather vague one of misshapen or grotesque fish (*vikṛta*). Manu and later writers, on the other hand, do not appear to favor the eating of fish. Indeed, in them, the process is reversed; all fish except those listed are forbidden. Indeed, Manu (5.15) says, “A man who eats the meat of some animal is called ‘eater of that animal’s meat’, whereas a fish-eater is an ‘eater of every animal’s meat’. Therefore, he should avoid fish.”<sup>6</sup> Yet, possibly bowing to tradition, even Manu (5.16) permits certain kinds of fish, especially in ancestral rituals: “The Pāṭhina and the Rohita fish may be eaten when they are used in an offering to gods or ancestors; Rājīva, Simhatuṇḍa, and Saśalka fish may be eaten at any time.” One possible reason, besides the geographical locations of these authors, for this shift in attitude with regard to fish may have been the view that fish are by nature carnivores, as exemplified in well-known maxim of the fish, the bigger fish eating the smaller fish.

Milk is the most restrictive of all food items. The milk of most animals—women and other five-nailed animals, single-hooved animals such as mares, and even most animals with parted hooves, such as sheep and deer—is explicitly forbidden. The only permitted milk is that of cows, buffaloes, and goats. Even in their case, milk during the first ten days after giving birth, or of one whose calf has died is forbidden.

Prohibitions with regard to vegetables also involve individual plants rather than categories, and the lists of such prohibited plants differ from source to source. In general, mushrooms, onions, garlic, and leeks are forbidden, as are growths on tree stumps, red sap of trees, and anything that grows on filth or excrement.<sup>7</sup> Food prohibitions, however, are much more focused on animals than on vegetables.

<sup>5</sup> See *VaDh* 14.48; *MDh* 5.13; *YDh* 1.172–1.173.

<sup>6</sup> *yo yasya māṃsam aśnāti sa tanmāṃsāda ucyate | matsyādaḥ sarvamāṃśādas tasmān matsyān vivarjayet ||*

<sup>7</sup> See *MDh* 5.19; *YDh* 1.170, 175.

The rules we have encountered thus far deal with what kinds of animals, birds, fish, milk, and vegetables a person may or may not eat. These refer to sources of food rather than to prepared food, about which there are also rules as to their suitability. Dharmaśāstras use two pairs of terms for these two kinds of rules regulating food: *bhaksya/abhaksya* (permitted and forbidden food) and *bojya/abhojya* (fit and unfit food).<sup>8</sup> The first pair refers to food sources that we have described above. *Abhaksya* (“forbidden food”) refers to items of food, both animals and vegetables that are completely forbidden; they cannot be eaten except under the direst circumstances, such as when someone is dying of hunger. Generally, lists of forbidden food contain food sources rather than cooked food served at a meal. Thus, carnivorous animals, village pigs and fowls, web-footed birds, garlic, and the red resins of trees are all *abhaksya*. Foods other than the *abhaksya* would constitute permitted food (*bhaksya*). The term *abhojya* (“unfit food”), on the other hand, refers to food that is normally permitted but owing to some supervening circumstances, has become unfit to be eaten. Lists of unfit food items contain not food sources but food that is actually served at a meal. Thus, food contaminated by hair or insects, food touched by an impure man or woman, and food that has turned sour or stale are all *abhojya*. This term takes on a secondary meaning referring not directly to food but to “a person whose food is unfit to be eaten”;<sup>9</sup> for example, a person during the period of impurity following a death (*āśauca*), a physician, or a hunter. Conversely, *bhojya* in the compound *bhojyānna* is a person from whom one may accept food. The *Gautama Dharmasūtra* (17.6–17.7), for example, states: “A man who looks after his animals or plows his fields, a friend of the family, his barber, and his personal servant—these are people whose food he may eat (*bhojyānnāh*), as also a merchant who is not an artisan.”

When anthropologists working in the field describe food prohibitions and how they relate to caste divisions—that is, from whom can you receive food or water—they are dealing with *abhojya*. Given the importance of food transactions in modern Indian society, the *abhojya* kind of food regulation becomes significant. I will not address here issues relating to *abhojya*, however, because in the world of the *dharma* literature, there was little by way of restriction on food transactions between various social groups. Indeed, it was taken as a matter of course that a Brahman could eat at the house of even a Śūdra, entertain people of all classes, and have Śūdra cooks in his household.

The category of *abhojya* relates to the deeply transactional nature of food: food is a social good that is intended to be shared within and across various social boundaries. The sociologist R. S. Khare (1976a) has focused on the

<sup>8</sup> For a detailed discussion of these two terms in the Dharmaśāstras, see Olivelle 2002a.

<sup>9</sup> Grammatically, *abhojya* as “unfit food” is a Karmadhāraya compound, whereas *abhojya* as “a person whose food is unfit” is a Bahuvrīhi compound.

transactional nature of food and identified several “food cycles” in Indian culture, the most important of which are the socio-ritual and the cosmological (Olivelle 1995b). Food, in the form of meat, vegetable products, and milk and milk products, such as ghee, constitute the major ritual offerings both in the Vedic sacrifices and in the later domestic rituals and temple offerings. The cosmology where gods provide rain for grain and plants to grow and humans provide food for the gods is the basic principle of *do ut des* at a cosmic level. This is extended in the *śrāddha* ancestral offerings, where the deceased ancestors are dependent on food and drink offered by their living relatives. At the social level, there are the food transactions among individuals exemplified in the rituals of hospitality toward guests and the offering of food to beggars and religious mendicants.

These food transactions are codified in the five great sacrifices (*mahāyajña*) that are closely associated with the householder.<sup>10</sup> Except for the sacrifice to the Vedic seers consisting of reciting the Veda, all these involve the offering of food: to gods, to ancestors, to human beings, and to all beings (*bali* offerings to *bhūtas*). The householder thus stands at the center of these cycles of food transactions. Vasiṣṭha (8.14–8.16) calls the householder the best of the four *āśramas*, because “as all living beings live dependent on their mothers, so all mendicants live dependent on the householder.”

Some interesting information regarding the prestige of various foods comes from the kinds of dishes offered to ancestors during a *śrāddha* ceremony. Different foods provide nourishment for the ancestors for varying lengths of time, the more prestigious (or nutritious?), the longer they can survive on it. The earliest record comes from Āpastamba (2.16.23–2.17.3):

The materials used in this rite are sesame and beans, rice and barley, water, roots, and fruits. When the food is made greasy, however, the gratification it gives the ancestors is more ample and lasts longer, as also when one gives righteously (*dharma*) acquired wealth to a worthy person. With cow’s meat their gratification lasts for a year, and even longer than that with buffalo meat. This rule makes clear that the meat of domestic and wild animals is fit to be offered. With the meat of a rhinoceros offered on a rhinoceros skin, their gratification lasts an unlimited time, as also with the flesh of the Śatabali fish and the Vārḍhrāṇasa crane.

The list of food at a *śrāddha* becomes longer and more complex in later texts. The long list with corresponding lengths of time of Manu exemplifies this trend:

I will explain exhaustively the types of sacrificial food that are efficacious for a long time and those that are efficacious in perpetuity, when they are offered to the ancestors according to rule. By offering sesame seeds, rice, barley, beans, water,

<sup>10</sup> See MDh 3.67–3.121. The grammarian Patañjali also refers to the offering of the five great sacrifices as a central feature of a householder (*grhastha*): on Pāṇini 4.1.33.

roots, and fruits according to rule, ancestors of men rejoice for one month; by offering fish, for two months; by offering the meat of the common deer, for three months; by offering sheep meat, for four months; by offering here the meat of birds, for five months; by offering goat meat, for six months; by offering the meat of the spotted deer, for seven months; by offering the meat of the Eṇa antelope, for eight months; by offering the meat of the Ruru deer, for nine months; by offering boar or buffalo meat, they are satisfied for ten months; by offering rabbit or turtle meat, for eleven months; and by offering beef, milk, or milk-rice, for one year. The satisfaction from the meat of a Vārdhrīṇasa hornbill lasts for twelve years. The Kālaśāka herb, Mahāśalka crustacean, the meat of the rhinoceros and the red goat, and honey, as well as every type of sage's food<sup>11</sup> are efficacious in perpetuity.

The lists of food at a *śrāddha*, as well as the lists of permitted and forbidden animals discussed earlier, brings up the topic of meat eating in ancient India, a topic that has drawn attention and controversy in contemporary India. The history of vegetarianism and noninjury to living beings (*ahiṃsā*) is complex, and I do not have the space to discuss it here.<sup>12</sup> The repugnance toward the killing of animals for food is clearly old as already noted in Aśoka's inscriptions from the middle of the third century BCE. The early Dharmasūtras present the eating of meat as a common and noncontroversial practice, even though *ahiṃsā* or not killing living beings is given among the virtues that individuals should cultivate. Yet this virtue is not linked to refraining from killing animals for food or to vegetarianism. The first hints that a new ethic was emerging come from the latest of the Dharmasūtras, that of Vasiṣṭha (*VaDh* 4.5–4.8), who argues that killing for certain purposes is not only permitted but is really not killing at all:

The treatise of Manu states: "An animal may be killed only on the occasion of paying homage to ancestors, gods, or guests."

When offering the honey mixture, at a sacrifice, and during rites for ancestors and gods—only on these occasions, Manu has declared, should an animal be killed.

Without killing a living creature you can never obtain meat; and killing living creatures does not get you to heaven. Killing an animal at a sacrifice, therefore, is not a killing.

He should, moreover, cook a big ox or a big male goat for a Brahman, for a Kṣatriya, or for a visitor. In this way they show him hospitality (cf. *ŚB* 3.4.1.2).

It appears likely that this is an argument against an unstated opponent of killing animals even for sacrifices or hospitality. That killing an animal, even a cow, for an important guest is evident in the term *goghna* (cow-killer) used as

<sup>11</sup> Sage's food (*munyanna*) refers to uncultivated food, especially *nivāra*, a kind of uncultivated rice. See *MDh* 6.12–6.21.

<sup>12</sup> For studies of this topic, see Alsdorf 1962; Schmidt 1968; Bodewitz 1999.



an epithet for a guest. The only time abstention from meat is mentioned in these early texts is within the context of certain vows and sacred times: Vedic students, wandering ascetics, people getting ready for an ancestral rite, teachers preparing themselves for the annual course of study, and widows.<sup>13</sup>

It is in *Manu* that we get for the first time a debate on the ethics of eating meat. *Manu* is torn between the traditional Dharmaśāstric position on not just the permission to eat meat of certain animals but also the injunction to do so in certain ritual settings, especially in ancestral offerings. The *angst* of *Manu* as he tries to thread this needle is palpable. After the section on forbidden food, he proceeds to discuss the issues relating to eating meat, a discussion that almost feels like a debate with a traditional opponent (*pūrvapakṣa*). At the outset, *Manu* proposes his thesis regarding occasions when eating meat is permitted: “He may eat meat when it is sacrificially consecrated, at the behest of Brahmins, when he is ritually commissioned according to rule, and when his life is at risk” (*MDh* 5.27). A putative opponent gives a more liberal view that eating meat is natural and perfectly all right:

Prajāpati created this whole world as food for lifebreath; all beings, the mobile and the immobile, are nourishment for lifebreath. The immobile are food for the mobile; the fangless for the fanged; the handleless for the handed; and the timid for the brave. The eater is not defiled by eating living beings suitable for eating, even if he eats them day after day; for the creator himself fashioned both the eaters and the living beings suitable for eating. (*MDh* 5.28–5.30)

*Manu* retorts (*MDh* 5.31–5.44) that it is legitimate to eat meat only on ritual occasions, especially a Vedic sacrifice. Killing (*hiṃsā*) on such occasions is truly non-killing (*ahimsā*), an argument that is repeated in later literature.

Then he returns, like a man pulled in several directions at the same time, to waxing eloquent on the evils of killing animals for food (*MDh* 5.45–5.55). One can never obtain meat without causing *hiṃsā* to living beings. There is nothing worse than wanting to fatten his own flesh at the expense of someone else’s flesh; there is, indeed, no greater sin than this. “The man who authorizes, the man who butchers, the man who slaughters, the man who buys or sells, the man who cooks, the man who serves, and the man who eats—these are all killers” (*MDh* 5.51). *Manu* closes with this interesting etymology of the term *māṃsa* (flesh or meat): “Me he (*mām + sa*) will eat in the next world, whose meat (*māṃsa*) I eat in this world—this, the wise declare, is what gave the name to and discloses the true nature of *māṃsa*” (*MDh* 5.55). *Manu* concludes this thorny topic with a somewhat conciliatory statement, acknowledging the legitimacy of eating meat but showing the moral superiority of abstaining from it: “There is no fault in eating meat, in drinking liquor, or in having sex; that is the natural activity of creatures. Abstaining from such activity, however, brings great rewards” (*MDh* 5.56).

<sup>13</sup> See *ĀpDh* 2.5.16, 2.18.1; *GDh* 2.13, 14.39, 16.3; *BDh* 1.21.18, 2.4.7, 3.7.7; *VaDh* 10.24.

## Gifting

*dāna*

*David Brick*

In his seminal law code, Manu (1.88–1.91) gives a standard account of the basic duties and lawful occupations of the four classical Indian social classes:

For Brahmins the Lord ordained teaching and learning the Veda, performing and officiating at sacrifices, and *giving and receiving gifts*. To the Kṣatriya he assigned protecting his subjects, *giving gifts*, performing sacrifices, learning the Veda, and non-attachment to the sense-objects. To the Vaiśya he assigned guarding livestock, *giving gifts*, performing sacrifices, learning the Veda, trade, moneylending, and agriculture. And to the Śūdra the Lord assigned a single activity: service to the three previous social classes without resentment.

Passages expressing ideas virtually identical to those conveyed here by Manu are found in all of the surviving Dharmaśāstra works that precede his influential treatise,<sup>1</sup> as well in several subsequent ones.<sup>2</sup> Therefore, Manu's formulation of the basic duties and lawful occupations of the social classes can safely be regarded as a foundational and enduring theme of the entire Dharmaśāstra tradition. For the purpose of the present chapter, attentive reading of this formulation reveals two fundamental details of the theory of the gift expounded in Dharmaśāstra literature. The first of these is that gifts should be given only to Brahmins, for they alone have a right to receive them. The second is that gifting should be a unilateral or non-reciprocal practice, for, while members of all three twice-born social classes have an obligation to give, only Brahmins have a right to receive. These two basic features of the Dharmaśāstra theory—Brahmins' unique privilege to receive gifts and the absence of reciprocity through return gifts—constitute convenient starting

<sup>1</sup> *ĀpDh* 2.10.4–2.10.7; *GDh* 10.1–10.2; *BDh* 1.18.1–1.18.6; *VaDh* 6.13–6.20.

<sup>2</sup> *YDh* 1.118–1.120; *ViDh* 2.4–2.14.

points from which we can proceed to understand the salient characteristics of the tradition's overall treatment of gifts. Therefore, this chapter will treat these two features as underlying themes that will conveniently organize its broader discussion of Dharmaśāstric ideas pertaining to gifting.

## PROPER RECIPIENTS

When assessing the assertion, frequently encountered in Dharmaśāstra texts, that Brahmins have the unique right to receive gifts, the most obvious and crucial thing to bear in mind is that these texts are all essentially the products of Brahmin authors.<sup>3</sup> Hence, one would expect the Dharmaśāstra theory of the gift to be one that casts the role of recipient in a decidedly favorable light. And, as we will see, abundant textual evidence from all historical periods confirms this expectation. Beyond this, one might reasonably suspect that the Dharmaśāstra theory of the gift is a simple matter of economic self-interest and perhaps even wishful thinking on the part of Brahmin intellectuals. And one should certainly keep this suspicion ever in mind when attempting to understand Dharmaśāstric prescriptions on gifting, for whatever ideological constructions our Brahmin authors might build up around the practice of gifting, they ultimately advocate, in no uncertain terms, the transfer of valuable material goods to people like themselves. Despite the considerable value of this viewpoint, however, one must also simultaneously recognize that the Dharmaśāstra theory of gifting cannot be purely the product of the fertile Brahmanical imagination, since innumerable inscriptions, written more or less contemporaneously with works of Dharmaśāstra, record pious donations made to Brahmins—usually, but not always, donations made by non-Brahmins. Moreover, some of these inscriptions even record specific types of gifting rites prescribed in Dharmaśāstra literature.<sup>4</sup> Thus, even if the Dharmaśāstra theory of the gift amounts to a distinctively Brahmanical ideology of gift exchange, it is clear that many non-Brahmins in ancient and medieval India also subscribed to this ideology, at least insofar as they gave wealth unilaterally to Brahmins and believed in the significant merit of doing so.

<sup>3</sup> Although admittedly a small number of medieval Dharmaśāstra works, such as Ballālasena's *Dānasāgara*, claim to have been written by kings, these works consist overwhelmingly of citations of earlier *smṛtis*, almost certainly written by Brahmins, and espouse ideas fundamentally concordant with these texts.

<sup>4</sup> For instance, Annette Schmiedchen (2006) has compiled a long and useful list of inscriptions recording historical performances of the elaborate and lavish "balance-gift" (*tulāpuruṣa-dāna*), wherein a wealthy donor would ritually weigh himself and give his weight in gold or another precious substance to Brahmins. Works of medieval Dharmaśāstra invariably treat this as the archetypal gifting rite.

Contrary to what has been implied so far, however, Dharmaśāstra literature is not generally content in its treatment of recipients simply to prescribe that one should give gifts to Brahmins. Instead, it also often ranks recipients on a scale from least to most meritorious. A very early instance of this, for example, occurs in the *Gautama Dharmasūtra* (5.20):

The rewards for giving to a non-Brahmin,<sup>5</sup> a Brahmin, a learned Brahmin, and one who has mastered the Vedas are equal, twice as much, a thousand times as much, and infinite, respectively.

Here, as one can see, Gautama establishes the crucial notion that one should strive to give gifts to the most virtuous people possible, which from the classical Brahmanical perspective are not only Brahmins, but especially wise and learned ones. The reason for this is apparently the underlying principle, essential to the Dharmaśāstric theory of gifting, that the merit accrued from a gift is directly proportional to the virtuousness of its recipient.

Furthermore, certain texts make clear that it is not only birth in a Brahmin family, male gender, and Vedic learning that are prized in recipients but also a host of other typical Brahmanical virtues, such as self-restraint, austerity, and the zealous performance of religious rites. Note, for instance, the following verse of Vasiṣṭha (6.30):

When a man is a frequent reciter of the Veda, of proper birth, peaceful, a practitioner of Vedic rites, fearful of sin, possessed of vast knowledge, composed among women, righteous, a refuge for cows, and wearied by the practice of religious observances, they say such an individual is a proper recipient.

Statements such as this that lay down the various qualities of a proper recipient (*pātra*) are a common feature of Dharmaśāstric works.<sup>6</sup> Authors of medieval works on gifting even take the step of compiling such statements to create sizable and prominently placed chapters on proper and improper recipients in their treatises.<sup>7</sup>

As has been said, the basic principle underlying these statements is clearly that the more virtuous the recipient the more efficacious and meritorious the gift to him will be. This principle, which for ease will be referred to as the “*pātra* principle,” is of such fundamental importance to the Dharmaśāstra theory of the gift that it can justifiably be thought of as its very essence. That it

<sup>5</sup> Although in this passage Gautama seemingly approves of giving to non-Brahmins, it is doubtful that this is his intent, for he clearly regards such gifts as comparatively inefficacious and, thus, something of a waste. Moreover, like other authors, he elsewhere (*GDh* 10.2) presents Brahmins as uniquely entitled to accept gifts.

<sup>6</sup> See, e.g., *VaDh* 6.25–6.26; *YDh* 1.200.

<sup>7</sup> See, e.g., *Dānakāṇḍa* 3.1–3.128; *Dānasāgara* pp. 15–28; *Dānakhaṇḍa* pp. 21–40; *Dānavivekodyota* vol. 1, pp. 31–49. As an aside, it is also worth noting the stark contrast between the extensive treatment of proper recipients and the scant treatment of proper donors in medieval Dharmaśāstra works (see Brick 2015: 49–50).

serves Brahmanical interests by casting recipients in an extremely favorable light should be obvious. Significantly, it is the *pātra* principle that constitutes the single most important difference between the Dharmaśāstra theory of the gift and Mauss's (1990) influential early theory of gifting based on reciprocity between donor and recipient, which will be discussed in more detail later on. Instead, the Dharmaśāstra theory focuses on a specific cultural form of a more general cross-cultural phenomenon, namely, the giving of gifts to religious professionals or to the religious institutions of which they are in charge. As a result, it is most naturally grouped alongside such overtly religious practices as tithing in Christianity and giving alms to monks and nuns in Buddhism and Jainism—practices that Mauss essentially ignores in his seminal work. And it is less naturally comparable to practices such as the Native American potlatch of the Pacific Northwest, on which Mauss's theory fundamentally focuses.

However, although Dharmaśāstra literature of all periods clearly regards Brahmins as the ideal and standard recipients, it would be inaccurate to hold that this literature does not also look favorably upon gifts to people other than Brahmins, for numerous passages from both this literature and particularly the related Purāṇa literature prescribe what are essentially gifts to non-Brahmins. For example, several Dharmaśāstras enjoin people to give gifts to their own male and female relatives without any explicit or implicit requirement that they must be Brahmins.<sup>8</sup> Moreover, the Purāṇa literature, which is heavily cited in medieval Dharmaśāstra works on gifting, lays down elaborate ritual procedures for the creation and donation of a wide array of public works, such as water tanks, dams, rest houses, and hospitals.<sup>9</sup> And given that the beneficiaries of such public works are the local citizens in general and not exclusively Brahmins, one can reasonably regard the donation of such works as a form of giving to non-Brahmins and as a variety of gifting based upon recipients' needs rather than their virtues.<sup>10</sup> In addition, a few similar but much briefer injunctions to establish and donate public works can be found in the earlier Dharmaśāstras themselves (e.g., *ViDh* 91.1–91.9), as well as the Purāṇas. Nevertheless, despite these notable exceptions, the

<sup>8</sup> See, e.g., *ViDh* 93.5–93.6 and the verses ascribed to Dāna-Vyāsa cited at *Dānakāṇḍa* 3.78–3.79 and *Dānakhaṇḍa* p. 33.

<sup>9</sup> See, e.g., *Matsya Purāṇa* 58.4–58.56 on the consecration of a water-tank, which is cited at *Dānakāṇḍa* 20.22–20.72 and *Dānakhaṇḍa* pp. 1014–25, and the passage of the lost *Nandi Purāṇa* on the creation of a public hospital, cited at *Dānakāṇḍa* 17.1–17.11 and *Dānakhaṇḍa* pp. 893–4.

<sup>10</sup> The Dharmaśāstra literature makes an interesting technical distinction between the donation of public works, which it calls *utsarga*, and the proper giving of gifts, which it calls *dāna*: An *utsarga* or public work, unlike a *dāna* or proper gift, has no true recipient, because no one becomes its owner. In other words, the donor relinquishes ownership, but no new ownership is created. For a more detailed discussion of this issue and gifts to the needy in Dharmaśāstra, see Brick (2015: 47–9).

Dharmaśāstra tradition consistently and unambiguously views Brahmins as the archetypal recipients of gifts. They will be treated, therefore, as such in what follows.

## NON-RECIPROCITY

As was previously noted, the Dharmaśāstra theory of the gift consistently holds that all male members of the three twice-born social classes have an obligation to give gifts, while only Brahmins have a right to receive them. It is clear, therefore, from these basis facts, as well as from other features of Dharmaśāstra literature, that the Dharmaśāstra tradition understands gifting to be a fundamentally non-reciprocal practice in the sense that a recipient is in no way obligated to offer a return gift. And other works of Brahmanical literature and donative inscriptions from premodern India support this conclusion in that they appear to contain no evidence of such reciprocity. It is noteworthy, nevertheless, that in the opinion of the Dharmaśāstra tradition, gifting is certainly reciprocated in the general way that every act is reciprocated according to the basic karmic worldview shared by all classical Indian religions. Thus, if performed as scripture enjoins, a gift, according to various Dharmaśāstra works, is said to yield both generic merit (*MDh* 7.86; *YDh* 1.201) and specific worldly and especially otherworldly rewards (*MDh* 4.229–4.232; *ViDh* 92.15–92.30). And, indeed, Dharmaśāstra literature presents the acquisition of such merit and rewards as the fundamental motive for gifting.<sup>11</sup> Hence, although the Dharmaśāstra tradition considers properly executed gifts to be reciprocated through otherworldly rewards, its theory of the gift does not involve reciprocity in the same sense as Mauss's celebrated theory. Thus, as several scholars have pointed out (Mauss 1990; Michaels 1997; Heim 2004), the Dharmaśāstra theory of the gift differs markedly from the corresponding theory of Mauss, which Trautmann (1981: 279) aptly describes as a "sociology of reciprocity." Nonetheless, it will be useful to analyze Dharmaśāstric ideas concerning gifting in the light of those ideas proposed by Mauss in his acclaimed *Essai sur le don*, for despite the considerable difference between these two sets of ideas, Mauss's work constitutes the starting point for most subsequent studies of gifting, including those focused on various South Asian contexts. It, furthermore, illuminates Dharmaśāstra materials in interesting ways.

Mauss starts his seminal essay on the gift by noting that the supposedly free or voluntary character of gifting is largely illusory. Instead, he argues that

<sup>11</sup> For a more detailed discussion of this, see Brick (2015: 36–8).

gifting usually involves a set of three basic obligations. The first of these obligations is the obligation to give in order to legitimate or even elevate one's social status. The second obligation is the obligation to receive, which is necessary in order to avoid open hostility with the person or persons offering the gift. And the third and most important obligation, according to Mauss, is the obligation to reciprocate gifts through suitable return gifts. In fact, it is this third obligation to reciprocate that Mauss identifies as the crux of his theory. He explains it as the result of a certain immaterial connection between a property and its owner that gifting does not sever. Thus, by accepting another person's property, a person is put in a compromised and degraded position and must reciprocate in order to restore his or her status.

Since Dharmaśāstra literature views gifting as a basic duty of all twice-born men, it unquestionably recognizes the first of Mauss's three obligations, that is, the obligation to give. Moreover, certain works of medieval Dharmaśāstra go so far as to regard Śūdras as fully entitled—and perhaps even required—to offer gifts to Brahmins.<sup>12</sup> And it can be argued that, within Dharmaśāstra, gifting even takes on something of the free or voluntary aura that Mauss regards as a common yet ultimately illusory feature of the practice, for although offering gifts is undoubtedly viewed as a fundamental obligation within the tradition, the precise extent of this obligation remains uncharacteristically vague. Hence, it is generally uncertain at what point gifting moves from an obligatory practice to a supererogatory one.<sup>13</sup> Despite its voluminous size, Dharmaśāstra literature simply does not address this issue, but instead enjoins prospective donors simply to give “to the best of their ability” (*śaktiḥ*) and with a “spirit of generosity” (*śraddhā*).<sup>14</sup> In other words, it presents gifting as a practice that one should engage eagerly and ungrudgingly in, without consideration of when one has given enough. Thus, regarding the obligation to give, Dharmaśāstra literature fully agrees with Mauss's theory.

Concerning the obligation to receive, however, the Dharmaśāstra tradition appears deeply ambivalent. On the one hand, a few passages from Dharmaśāstra works clearly consider it wrong to refuse at least certain types of gifts regardless of who offers them. Note, for instance, the following passage of Gautama (17.3–17.4), which prohibits refusing a wide variety of gifts:

Kindling, water, fodder, roots, fruits, honey, protection, anything offered unasked, beds, seats, lodgings, vehicles, milk, curds, roasted grain, Śaphari fish, millet,

<sup>12</sup> See, e.g., *Dānasāgara* p. 32 and the discussion at Brick (2015: 50–1).

<sup>13</sup> For more discussion of this issue, see Brick (2015: 57–8).

<sup>14</sup> See, e.g., *MDh* 4.226–4.227 and *YDh* 1.203. For an excellent analysis of the historical development of the culturally important term *śraddhā*, see Köhler (1973). For a discussion of this term as it applies specifically to Dharmaśāstra literature, see Brick (2015: 54–8).

garlands, venison, and vegetables—these items may not be refused from anyone; and also anything else necessary for supporting one’s ancestors, gods, elders, or dependents.

On the other hand, however, certain other passages of Dharmaśāstra works portray it as especially meritorious to refrain from receiving gifts, such as the following verse of Yājñavalkya (1.213): “If a man does not accept gifts, although capable of doing so, he attains the bountiful worlds of those who practice gifting.” Beyond this, Dharmaśāstra works also contain numerous prohibitions against receiving gifts from improper or disreputable people (*BDh* 2.8.3; *ViDh* 37.12, 40.1, 54.24), which, according to various sources, appear to include such individuals as illegitimate kings, prostitutes, butchers, and bartenders (*MDh* 4.84; *YDh* 1.140–1.141). Finally, to complicate matters further, these prohibitions against accepting gifts from disreputable people are, in turn, seriously undercut by both claims that times of calamity render them null (*GDh* 7.4–7.5, 17.5; *MDh* 10.102) and claims that owing to their innate purity, Brahmins can never be sullied (*VaDh* 27.9; *MDh* 10.102–10.103). Thus, the Dharmaśāstra tradition, as reflected in its early foundational texts, seems to regard refusing gifts as paradoxically both wrong and supererogatory and to deem receiving gifts as a source of at least potential degradation to the recipient. Hence, regarding the obligation to receive, the Dharmaśāstra theory of the gift bears some notable similarities to but also some marked differences from Mauss’s well-known theory. Consequently, in order to arrive at a satisfactory understanding of this confusing situation, it is necessary to look more closely at the lack of reciprocity in the Dharmaśāstra theory of the gift.

As already mentioned, the Dharmaśāstra theory of the gift in no way involves reciprocity through return gifts. In other words, it simply does not recognize the third and most important obligation in Mauss’s theory of the gift, which is the obligation to reciprocate. Indeed, the *pātra* principle—that is, the fundamental principle of the Dharmaśāstra theory that the merit of a gift is directly proportional to the virtue of its recipient—by itself would seem to rule out widespread reciprocity. Nevertheless, early Dharmaśāstra literature apparently agrees with Mauss’s theory that gifts were at least potentially degrading to their recipients; and it is this fact that would appear to account for Dharmaśāstra’s generally ambivalent attitude toward receiving gifts.

Within the context of Dharmaśāstra, the degradation of recipients seems to result from two slightly different things. The first of these is a belief that the giver of a gift might harmfully contaminate the recipient of his or her gift. Important evidence of such a belief comprises the previously discussed prohibitions against receiving gifts from certain persons of especially lowly status or occupation, such as butchers and prostitutes. And fear of contamination from donors may also explain why, according to Āpastamba (2.9.8), water—a purifying substance—must be poured out before one offers any gift. Hence, the Dharmaśāstra tradition and Mauss appear to be in basic agreement



regarding the first source of potential degradation for recipients, namely, donors. The second source of degradation, however, seems to be entirely absent from Mauss's theory and it is, thus, perhaps more unique to classical Indian society. This source is simply the excessive acquisition of material possessions, regardless of the specific source of these possessions. It would seem most reasonable to interpret this source of degradation as a reflection of the classical Brahmanical emphasis on detachment from sensual pleasures and, therefore, to distinguish it from fear of contamination from donors as such. Evidence that an excess of material possessions was deemed potentially harmful to recipients includes the following verse of Manu (4.186): "Even if he is able to accept gifts, he should avoid becoming attached to doing so, for by accepting gifts, his Vedic splendor quickly diminishes."

As further evidence of this, one might also note the numerous passages from Dharmaśāstra works (e.g., *ĀpDh* 2.22.11; *VaDh* 9.8; *MDh* 6.8) that prohibit twice-born men who have taken up the forest-hermits' mode of life from accepting gifts, although they are specifically enjoined to give. Baudhāyana (2.5.8) nicely alludes to the two basic sources of degradation associated with receiving gifts that have been identified here, when he prescribes the recitation of the expiatory Taratsamandī verses (= *RV* 9.58) for "accepting much from a person whose gifts one may accept or accepting anything from a person whose gifts one may not accept."

To summarize then, in agreement with Mauss, the Dharmaśāstra theory of the gift accepts the obligation to give and, to some extent, also the obligation to receive, although our sources are undoubtedly quite ambivalent on this point. In disagreement with Mauss, however, the Dharmaśāstra theory denies that recipients are obligated to reciprocate gifts directly through return gifts or, in fact, through any other means.<sup>15</sup> The main reason for this lack of reciprocity is that, according to the *pātra* principle, which is a cornerstone of classical Brahmanical thinking on the gift, wealth is supposed to be gifted upward to more and more virtuous recipients. It should never be gifted downward to those from whom one has received. Nevertheless, the Dharmaśāstra tradition and Mauss agree that receiving a gift without offering a return gift degrades the gift's recipient at least potentially—a fact that fundamentally accounts for the tradition's contradictory statements about receiving gifts. Therefore, there is a salient and ultimately unresolved tension within the Dharmaśāstra theory of gifting between the value of generous giving and the danger of receiving. It is for this reason that Trautmann (1981: 288), in his insightful analysis of the gift in classical Brahmanical thought, astutely notes that "[t]he theory of the gift tends towards its own destruction," for "[p]ushed to its logical extreme,

<sup>15</sup> For instance, unlike in many Western societies, recipients in Dharmaśāstra literature are not expected to respond to a gift with the feeling or expression of gratitude, as noted by both Heim (2004: 68) and Brick (2015: 40).

the gift finds no recipient.” It would seem likely that the real-world desire and need for material wealth played a decisive role in avoiding this outcome. Instead, Dharmaśāstric ideas regarding the gift continue to evolve and develop in later times along two distinct lines.

## LATER DEVELOPMENTS

What has been stated up to this point strictly applies only to the early Dharmaśāstra literature, specifically to the four ancient Dharmasūtras and the surviving Dharmaśāstras of Manu, Yājñavalkya, and Viṣṇu. Following these early works, Brahmanical ideas pertaining to the gift continue to develop in novel ways. And two significant and discernible innovations, both of which can be viewed as refinements of earlier conceptions, find their way into works of medieval Dharmaśāstra.

The first such innovation is a belief that a gift object can act as a receptacle of a donor’s sins. Consequently, according to this belief, when a person gives a gift, he benefits soteriologically by ridding himself of sin, but he does so only at the recipient’s expense, because the recipient must take on his sin. Thus, a theory of the gift that incorporates such a belief in sin transference not only accepts but also logically connects three significant earlier Brahmanical ideas concerning the gift. The first of these ideas is that a gift yields soteriological rewards for the person who gives it. The second is that gifting should be a non-reciprocal practice. And the third is the belief that the giver of a gift has the potential to contaminate harmfully the recipient of his gift. However, although the sin-transference theory of gifting elegantly incorporates these earlier Dharmaśāstric ideas, it seems to relegate to the margins the *pātra* principle so central to the tradition’s earliest theorizing on the gift. For if, as the sin-transference theory holds, gifts work because they are a means of transferring sins from donor to recipient, it is not immediately clear why it would benefit a donor to seek out especially virtuous recipients. It is possible that pious Brahmins might have been deemed uniquely qualified to receive gifts in medieval India owing to their great purity, which gave them the unique ability to handle the considerable sin that came with gifts. The anthropologist Jonathan Parry (1994: 123), for instance, identifies such a belief at work among the funerary priests of modern Benares; and Aiyangar (1941d: 88) suggests that this belief also underlies important features of the Dharmaśāstric treatment of the gift. Clear expressions of a belief to this effect, however, seem to be conspicuously absent from all of the vast Dharmaśāstra literature. Consequently, the existence of such a belief within the Dharmaśāstra tradition is dubious. Even more importantly, in stark contrast with the *pātra* principle and the early Dharmaśāstra theory of the gift, the sin-transference theory

implies that in the process of gift exchange, the recipient is in some crucial sense inferior to the donor, since he willingly accepts the donor's sins.

In their outstanding ethnographic studies, Gloria Raheja (1988) and Jonathan Parry (1994) have both brought to light the details and fascinating social ramifications of such a belief in sin transference in certain modern Indian contexts.<sup>16</sup> Furthermore, there is good, if rather limited, textual evidence for the existence of such a belief centuries earlier in medieval India.<sup>17</sup> Nevertheless, it is significant that despite the recognition of such a theory of sin transference, the Dharmaśāstra tradition invariably treats the giving of sins as a prohibited practice, that is, as a theory of gifting held by certain unspecified others that it strongly opposes. For instance, the *Mitākṣarā* (on *YDh* 1.211), Vijnāneśvara's celebrated commentary on the *Yājñavalkya Dharmaśāstra*, asserts, "When a man gives away his sin, that very thing increases for him, as well as for the man who received his gift, impelled by greed or the like." Such universal rejection of the sin-transference theory of the gift should of course come as no surprise given that Dharmaśāstra literature is fundamentally the product of Brahmin intellectuals and, thus, would naturally seek to expound a theory of gifting that flattered rather than degraded the role of recipient. It would seem likely, therefore, that the unspecified proponents of the sin-transference theory of the gift in early India belonged to what can broadly be thought of as the donor class.

It is also distinctly possible that belief in sin transference through gifting is historically an outgrowth of the practice of giving gifts as a form of penance for certain sins. At least, it is easy to imagine such a development occurring. Gautama (19.11) seems to be the earliest author within the Dharmaśāstra tradition to prescribe gifting explicitly as a means of ritually expiating one's transgressions and several later authors prescribe penances of this same basic type.<sup>18</sup> Such penances by themselves, of course, may only indicate that gifting was regarded in early Brahmanical thought as a meritorious act capable of destroying one's sins, not that it was viewed as a means of transferring sins from donors to recipients per se. Intriguingly, however, a verse of the relatively late *Yājñavalkya Dharmaśāstra* (3.250) explicitly requires the recipient of a gift used to expiate Brahmin murder to purify himself by performing a sacrifice to the deity Vaiśvānara. The need for such special ritual purification here may well be the result of an understood transference of sin by means of the gift, although one cannot rule out the possibility that simple

<sup>16</sup> Raheja's (1988) ethnography focuses on life in the North Indian village of Pahansu, while Parry's (1994) deals with the Brahmin funerary priests of Benares.

<sup>17</sup> Geslani (2011: 172) discusses a few instances of sin transference in early Brahmanical texts. For a more detailed discussion of sin transference specifically in Dharmaśāstra, see Brick (2015: 27–32).

<sup>18</sup> See, e.g., *VaDh* 20.47, 22.8, 29.16; *MDh* 11.128, 11.134–11.140, 11.228.

contamination from contact with a grievous sinner is instead the cause of the recipient's expiatory rite.

The second significant development in the Dharmaśāstra theory of the gift during the medieval period is encapsulated in the following verse of Devala, which is cited near the outset of essentially all Dharmaśāstra digests on gifting:<sup>19</sup>

When a person gives as a matter of routine obligation to worthy recipients independently of any specific motive, but simply with the thought of relinquishing his possessions, it is called a gift based on *dharma*.

This oft-cited verse gives the canonical definition of a “gift based on *dharma*,” which is the only kind of gift with which Dharmaśāstra—the Brahmanical science of *dharma*—seriously concerns itself. As one can see, it explains that a gift based on *dharma* is one that is given without any apparent motive, but simply with the thought of carrying out one's *dharma* or sacred duty. As Trautmann (1981: 280–1) correctly observes, this undoubtedly alludes to a key concept in the classical Brahmanical system of hermeneutics known as *Mīmāṃsā*, whose influence on Dharmaśāstra literature is pervasive. This key concept is that in order to qualify as *dharma* and, thus, yield otherworldly rewards, an act must lack a visible or mundane purpose. In the above verse, Devala uses this important element in the *Mīmāṃsā* definition of *dharma* to explain why a gift based on *dharma* must be non-reciprocal: only purely non-reciprocal gifts may be free from a visible purpose. By contrast, gifts that are given with the expectation of some mundane reward or out of a desire to return a favor are obviously based on a visible motive. Hence, by adopting Devala's definition of a true *dharmic* gift as a gift without such a visible motive, the medieval Dharmaśāstra tradition is able to link together elegantly and inextricably the unilateral and soteriological nature of gifting. Moreover, it is able to do this in a way that does not involve the transference of sin and that downplays the possibility of donors' harmfully contaminating recipients. Therefore, by employing the notion that a *dharmic* gift by definition must lack a worldly purpose, works of medieval Dharmaśāstra create a theory of the gift that portrays recipients in a notably positive light. And it is for this reason it is plausible to interpret the medieval Dharmaśāstra theory of gifting as implicitly designed in important respects to refute the competing sin-transference theory of gifting, which the tradition universally rejects. In the medieval Dharmaśāstra theory, however, the *pātra* principle remains both a necessity to explain why one must give specifically to Brahmins, and a rather extraneous element, logically disconnected from a gift's unseen purpose.

<sup>19</sup> See *Dānakāṇḍa* 1.5; *Dānakhaṇḍa* p. 13; *Dānasāgara* p. 28; *Dānavivekodyota* vol. 1, p. 14. Devala's work survives only in the form of citations.

## Funeral and Ancestral Offerings

*antyeṣṭi, śrāddha*

*Matthew R. Sayers*

In the popular imagination, reincarnation is part and parcel of Hinduism, but the strong association between the idea of rebirth and Hinduism belies an ancient tradition of ancestor worship with deep Vedic roots. This chapter outlines the Vedic antecedents for ancestor worship, briefly describes the ancestral rites, and it highlights the construction of the enduring model of ritual ancestral offerings, the *śrāddha*.

### VEDIC MODEL OF FUNERAL AND ANCESTRAL OFFERINGS

Since the primary focus of the *Rgveda* is the sacrificial offering of Soma, it is unsurprising that it says little about the fate of the dead—most often the destination is a dark underworld and the performance of sacrifice most often brings the reward of long life not an afterlife (Bodewitz 1994). However, the funeral hymns—which belong to the youngest layer of the *Rgveda* (Witzel 1987; 1989)—mention the oldest ritual offerings to the *pitṛs*, the ancestors (literally fathers). The funeral is conceived of as a sacrifice, in which Agni, the Fire God, is asked to “cook” the deceased and, thereby, transport him to the next world. “Don’t burn him through, Agni; don’t scorch him; don’t singe his skin, nor his body. When you make him cooked to readiness, Jātavedas, then impel him forth to the forefathers” (*RV* 10.16.1, Jamison and Brereton 2014). The subsequent verses accompany the transformation of the deceased into an ancestor by the ritual fire through cremation. Then Agni is praised, and the funeral climaxes in the performance of the *pitṛyajña*, the sacrifice to the ancestors. It is the first offering to the recently deceased as a *pitṛ*, that is, as

an ancestor (see Sayers 2013 and compare Caland 1893: 152 and Kane IV: 201). While there is no evidence for ancestral worship in the *Rgveda* outside the funeral hymns, the later tradition is quite robust.

Later Vedic ritual literature—the Brāhmaṇas, commentarial compendia of Vedic ritual, and the later Śrautasūtras, ritual manuals describing the solemn rites—describe three ancestral rites: the *pitryajña*, the sacrifice to the ancestors; the *piṇḍapitryajña*, the rice-ball sacrifice to the ancestors; and the *piṇḍadāna*, the giving of rice balls. All three rituals are performed as a part of the regular Vedic ritual calendar, not merely as a part of the funeral as in the *Rgveda*. The *pitryajña* is a part of the Sākamedha and belongs to the *cāturmāsya*, the Four-Monthly Sacrifices, seasonal rites performed in the fall. The *piṇḍapitryajña* is performed monthly in the afternoon of the new moon during the New Moon Sacrifice. The *piṇḍadāna* is performed as a part of the third pressing of Soma in the Agniṣṭoma ritual and is an abbreviated version of the *piṇḍapitryajña*. So I will not address it here (see Caland and Henry 1906–7: 350–2).

Each of these rites follow the paradigmatic Vedic ritual described in the *darśapūrṇamāseṣṭi*, the New and Full Moon Sacrifices, and each is understood by reference to these rituals. To contextualize the ancestral rites, I briefly describe these rituals here. While the *yajamāna*, the sacrificer, accompanied by his wife, sponsors the rite and reaps the benefits therefrom, the sacrifice is performed by the four Vedic priests. Participants sit facing the east on an antelope skin laid out to the west of the main fire. The priest grinds the grains for flour to be used in the offerings. From that flour are made the *puroḍāśa*, the flour cakes; they are cooked and the sacred space is demarcated. The priest makes several preliminary offerings, the fore offering, and two offerings of butter to Agni and Soma, each accompanied by a *mantra*. The principal offerings are a cake to Agni and to Soma and Agni on the full moon and a cake to Agni and to Agni and Indra on the new moon. These offerings are consumed by the priests and the sacrificer, followed by several after offerings.

While the ancestral rites follow this ritual pattern, specific changes are introduced that orient the ritual toward the ancestors rather than toward the gods. These are often simple reversals. Whereas in the divine rites the sacrificer sits facing the east, toward the gods, and wears his sacrificial thread over his left shoulder and under his right arm, in the rituals oriented toward the ancestors he sits facing the south, the direction associated with the ancestors, and wears his sacrificial thread over his right shoulder and under his left arm. Additionally, circumambulations and stirring of oblations, performed in a clockwise direction in divine rites, are done counterclockwise in the ancestral rites. Finally, rice used in the offerings to gods is threshed three times, but in ancestral rites, it is threshed only once.

The monthly offerings made in the *piṇḍapitryajña* are the model for Vedic ancestral rites and they strongly influenced the *pitryajña*, as well as later

ancestor rituals. The primary offering made in the *piṇḍapitryajña* is the *piṇḍas*, balls of rice. Priests also make offerings of collyrium, ointment, and a tuft of wool, each of which is a gesture of hospitality, the hallmark of Vedic ritual. Once the guests of the rite, the ancestors, have consumed the offerings, the priests and sacrificer smell the rice balls, symbolically partaking in them as well. At the conclusion of the ritual, the rice balls are disposed of in water or, as is more common later, are eaten by Brahmins, and the priest disposes of the ritual implements.

The seasonal ancestral rite, the *pitryajña*, follows the pattern established in the *piṇḍapitryajña*, focusing on the offering of rice balls, but it differs in other ways. The sacrificer's wife does not participate in this rite, nor are offerings of collyrium, ointment, and cloth made. When offerings to the gods are made as a part of this ritual, those present switch their sacred threads to the divine mode and then switch them back. These adjustments to the paradigmatic Vedic ancestral rite function to integrate further the ancestral offerings into the divine model of religious ritual (Shastri 1963: 99, 103–4). I argue that a comparison of these two rites illustrates the gradual incorporation of the originally domestic religious obligation to feed the dead into the solemn Vedic ritual tradition, first as the *piṇḍapitryajña* and later, more fully, as the *pitryajña* (Sayers 2013; compare Caland 1893: 153). There is evidence of older domestic rituals within the solemn ritual tradition, but domestic ritual activity are not explicitly addressed in the textual tradition until the composition of the *Gr̥hyasūtras*, domestic ritual manuals, composed over the last few centuries before the Common Era (Oldenberg 1886–92: xv–xxii; Gonda 1977: 547).

## DOMESTIC MODEL OF FUNERAL AND ANCESTRAL OFFERINGS

The authors of the *Gr̥hyasūtras* synthesize the previously untextualized domestic ritual practices and the Vedic ritual tradition in describing the domestic rites—including many *samskāras*, rites of passage, (see Chapter 6)—in order to define, codify, and legitimate the domestic ritual tradition (Sayers 2013). There are two primary differences between the solemn rites and the domestic rites: participants and purposes. The primary ritual actors in the solemn rites are professional priests, but in the domestic rites, the householder performs most of the rites. The solemn rites are often large-scale rituals aimed at attaining heaven and they serve broad social functions. The domestic rites are smaller in scale, primarily rites of passage, which serve to demarcate the life of the religiously active householder (see Chapter 9). Solemn rites require all three ritual fires, considerable expense, and at least four priests, whereas

domestic rites require only the domestic fire, less material expense, and often involve only the husband and his wife.

Domestic ritual manuals describe two forms of ancestor worship, the *anvaṣṭakya*, the ninth-day ancestral offering, and the *śrāddha*. The *anvaṣṭakya* follows both the celebration of the *aṣṭakā*, the eighth-day offerings, seasonal rites occurring on the eighth day following the new moon in the winter and cold seasons (Gonda 1980: 450–1) and the paradigm of the *piṇḍapitryajña* of the Vedic ritual cycle. The *śrāddha* is a product of the construction of domestic ritual evident in the *Gṛhyasūtras*.

The ritual tradition surrounding the *anvaṣṭakya* is quite conservative in that it follows the *piṇḍapitryajña*. In fact, the authors of the domestic ritual manuals often simply refer to the older rite to explain the *anvaṣṭakya* (e.g., *ŚāṅkhGr* 2.13.7). While this reveals a conservative trend in the ritual tradition, we also see innovation in the texts.

The domestic ritual does not merely follow the *piṇḍapitryajña*; it shows the influence of the *pitryajña* as well. Whereas the solemn *piṇḍapitryajña* is a monthly rite, the domestic version of it is a seasonal rite, like the *pitryajña* in the *Śrautasūtras*. Additionally, the *anvaṣṭakya* requires participants to switch their sacred cord when making offerings to the gods in the domestic ancestral rite, as they do in the solemn *pitryajña*.

In addition to drawing upon the solemn ritual tradition, the authors integrated elements that must come from untextualized traditions of domestic ritual. There are minor procedural additions, such as offerings of sesame and perfume, and, in a significant departure from older ancestral rites, the introduction of meat offerings. Though absent in the solemn ancestral ritual, they become central to the ancestral offerings throughout the *dharma* literature. The inclusion of meat and fish among the offerings seems to correlate to the conception of ritual as a rite of hospitality and it is intended to make the meal complete. This is suggested at least by the longstanding tradition within Brahmanical texts to connect *śrāddha* to *śraddhā*, confidence in the efficacy of the sacrifice (See Jamison 1996a: 176–84).

Another significant innovation is the representation of the ancestor at the ritual. In the domestic ritual feeding of a Brahmin becomes a part of the basic ritual paradigm for domestic rites (e.g., *ŚāṅkhGr* 1.2.1). However, in the ancestral rites, these Brahmins represent the ancestors. “He should invite an uneven number of Brahmins, at least three, conversant in the Vedas, as the ancestors” (*ŚāṅkhGr* 4.1.2). The authors of the *Gṛhyasūtras* have created a new ritual role for the Brahmin. Whereas in the solemn rites Agni mediated the exchange between the ritualist and the ancestors, in the domestic rite it is the Brahmin. The later tradition is more explicit. Manu says that the ancestors stand by the Brahmins and follow them like a wind (*MDh* 3.189). The *Vāyu Purāṇa* goes so far as to say that the ancestor enter the Brahmins as a “wind-being” to accept the offerings (*VāPu* 75.13).



In addition to accepting the offerings of water and food intended for the ancestors (*ĀśGr* 4.7.7–4.7.9; 4.7.20–4.7.21), the Brahmins who take on this role grant permission to the householder to make the offerings (*ĀśGr* 4.2.38–4.2.39; *ĀśGr* 4.7.18–4.7.19) and, at the conclusion of the ritual, pronounce it a success (*HirGr* 2.7.17.13). Whereas in the solemn tradition priests conducted the ritual, in the domestic tradition the Brahmin guest legitimates the householder's ritual actions.

However, this new role raised new concerns. While no one can question Agni's authority to convey offerings to the gods or ancestors worshiped in ritual, the character of the human intermediary is not beyond question. The *Gr̥hyasūtras* insist upon inviting only learned Brahmins, and Manu says, "One who knows *dharma* would not investigate (the qualities of) a Brahmin at a divine ritual, but when he completes an ancestral ritual he should investigate diligently" (*MDh* 3.149). Since an improper guest is unable to transfer the offerings to the ancestors (*ĀpDh* 2.17.8) or, worse, turns the offerings into excrement (*MDh* 3.180), householders must be diligent in inviting only learned Brahmins, otherwise they will fail, or pervert their obligation to their ancestors. As early as the *Law Codes of Manu*, the lists of who is qualified, and disqualified, to act as guest at a *śrāddha* are quite extensive (*MDh* 3.150–3.182) and this trend continues in the *Māhabhārata* and the *Purāṇas*.

The other domestic ancestral rite, the *śrāddha*, shows these changes and more. The *śrāddha* takes four forms, specialized for different ritual needs. The *pārvaṇa śrāddha* is the paradigm for all other types of *śrāddha*. It is the monthly offering of rice balls, through the Brahmin guests, to the three immediate ancestors of the householder—his father, grandfather, and great-grandfather. The ancestors beyond the three honored in the *śrāddha*, the *Viśvadevas*, are fed with the rice that is wiped off one's hands after making the rice balls (see *MatsPu* 18.29). The perpetual performance of this rite by each generation honors and sustains all of one's ancestors in heaven.

Like the solemn rites, these domestic rites reverse associations made in the god-oriented domestic rites to mark them as being aimed at the ancestors. For example, in the ancestral rites the left hand is used in making offerings, uneven numbers of Brahmins are invited, circumambulation is done in a counter-clockwise direction, and the time of day, the afternoon, is associated specifically with the ancestors.

The *ekoddiṣṭa śrāddha*, that is, the *śrāddha* directed toward one person, is performed monthly for one year after a person's death, usually by the eldest son, and it sustains the deceased from his death to his integration into *pitṛloka*, the world of the ancestors. Later literature explains that the ritual offerings feed the *preta*, literally "departed," for that year and in doing so, builds him a body for the next world.

The *sapiṇḍikaraṇa śrāddha*, that is, the *śrāddha* that builds the bond of kinship, is performed at the end of the first year after death. As the central act

of this rite, the son makes four rice balls, three representing his father's three immediate ancestors and one representing his father. He ritually merges the fourth, his father's, into the other three, thereby integrating his father into the ancestors. The son then honors his three immediate ancestors—his father, grandfather, and great-grandfather—for the first time. The eldest, his great-great-grandfather, is advanced to the realm of the Viśvadevas (see Knipe 1977).

The *ābhyudayika śrāddha*, that is, the prosperity *śrāddha*—also called the *vr̥ddhi śrāddha*, the *śrāddha* of increase—is performed prior to auspicious occasions like weddings and births. In this rite, the householder invokes his ancestors as benefactors of his lineage. In order to emphasize the benevolent aspects of the ancestors, to call upon them to contribute to the success of their descendants, and to minimize their association with death, the ritual procedure reverses several elements that distinguish ancestral rites from the divine. For example, in this rite, one is to invite an even number of Brahmins, move in clockwise directions, and make offerings at times not normally associated with the ancestors.

## SHIFTING RITUAL PARADIGMS

These four types of *śrāddha* are a product of the construction of a domestic ritual tradition over time, and different texts capture different phases of this development. That is, most dimensions of the domestic ancestral rites—for example, terminology, form, and recognition of types—are either contested or under construction during the composition of the Gṛhyasūtras. The word *śrāddha* itself is a product of the development of ancestral rites seen in the Gṛhyasūtras. We know this because two early Gṛhyasūtras, those of Śāṅkhāyana and Āśvalāyana, do not use the term *śrāddha* in their primary description of the rite, though they do so elsewhere. Some authors describe four types; others do not. *Āśvalāyana* describes two types of the rite in one place (2.5) and three in another place (4.7). These authors are in the process of creating this ritual tradition. Each of the Gṛhyasūtras is a snapshot of one moment in the discursive construction of the tradition of ancestral rites (Sayers 2013: 78–85). Among the changes seen in this development is a redefinition of ritual priorities.

Several Gṛhyasūtras describe the *anvaṣṭakya* by referring to the solemn *piṇḍapitṛyajña*; it was the paradigmatic ancestral rite for them. However, *Āpastamba* conceives of the *śrāddha* as the paradigmatic rite and uses it, instead of the *piṇḍapitṛyajña*, to describe the *anvaṣṭakya*, “Some prescribe the offering of the rice-balls on the day after the Eighth-day Offerings . . . The procedure for this is explained in detail by the (section on) the monthly

*śrāddha*” (*ĀpGr* 8.22.9, 12). The authors of the *Grhyasūtras* drew on both solemn and domestic ritual traditions to define the domestic ritual obligations of a Brahmin, but the *śrāddha* becomes the paradigm for all future forms of ancestor worship (Sayers 2013: 77f).

## REFLECTIONS ON ANCESTRAL RITES IN THE LEGAL TRADITION

The *dharma* tradition laid a heavier emphasis on the ancestral rites, though they have less concern about the procedures, about which authors largely agree. Discussions of the ancestral rites reveal other concerns. I have organized three major concerns of theirs under a rubric of resolution. The first is resolution both in the sense of detail and in the sense of resolving differences. The second two are primarily about resolving differences not details. First, the legal tradition’s treatment of the ancestral offerings is characterized by an increasingly zealous concern about both attaining as fine a resolution as possible on every detail of the ancestral rites and resolving differences of opinion on those details. Second, the legal tradition’s treatment of the ancestral rites is the primary ground for the resolution of a tension between a heaven-oriented soteriology central to the ritual tradition and a liberation-oriented soteriology of the renunciate tradition. Third, the legal tradition becomes the site for the resolution of the ritual traditions expressed in the textual productions of the ritual experts and the previously untextualized practices that come to be central to the self-conception of the Hindu tradition: for example, pilgrimage (see Chapter 26), temple worship, creation of divine imagery (see Chapter 27), and the composition of mythical narratives about the gods, as we see in the *Purāṇas*. Primary among these, for our discussion of ancestral rites, is pilgrimage. I address each of these attempts at resolution in turn.

## RESOLVING THE DETAILS

The *dharma* literature largely agrees on the procedure of the *śrāddha*, since well before Manu, whose work becomes the model for later treatments of the *śrāddha*. Less than half of the verses Manu employs speak to the procedural detail; the majority address meta-issues of ritual performance: number and quality of invitees (*MDh* 3.125–3.182), procedure for invitation (*MDh* 3.187–3.191), descriptions of the food used as an offering and the duration

of its benefit for the ancestors (*MDh* 3.266–3.272), and the appropriate times for *śrāddhas* (*MDh* 3.273–3.284). The later tradition exhibits more interest in the location of the ritual performance and the benefit to be derived by those performing the rite, although the order, priority, and space dedicated to each topic vary greatly from author to author.

Later Smṛtis in general seem content with discussions that are brief in comparison to Manu's, but the *Māhabhārata* devotes six chapters of the *Anuśāsanaparvan* to the *śrāddha*, the benefits won by performing the rite on different days (*MBh* 13.87), the food offered and its duration for the ancestors (13.88), the benefit for performing the *śrāddha* under different constellations (13.89), the benefits of offering to the right Brahmins and the dangers of offering to the wrong people (13.90), and the mythical origins of the *śrāddha* (13.91–13.92; see also *VidhPu* 1.139.6–1.139.16). Most Purāṇas include similar discourses on the *śrāddha*, sometimes borrowed directly from the epic (e.g., see Vaidya 1941).

The material available to us on *śrāddha* increases exponentially as we move forward in time: from treatments proportionate to other ritual concerns in the *Gṛhyasūtras* and *Dharmasūtras* to varying degrees of inflation in the *Dharmaśāstras* to chapter after chapter found in the *Māhabhārata* and the Purāṇas. The discussion of *śrāddha* in the legal digests (*Nibandhas*) increase exponentially; Kane says the “digests on *śrāddha* are legion,” then lists eighteen to which he restricts his investigation, each of which vastly outweigh earlier texts, largely because they quote multiple sources at length (Kane IV: 363). The primary intent of these later reflections, accomplished through vast stores of quotations, is to resolve the disagreements with the tradition of one detail or another.

## THE RITUALIST AND THE RENOUNCER

Additionally, while the ritual literature successfully ignored the renunciation tradition and its liberation-oriented soteriology (Bronkhorst 2007: 137–59), the *dharma* tradition gradually works to resolve the two soteriologies developed within the Vedic tradition, the heaven-oriented soteriology of the Vedic ritual tradition and the *mokṣa*-oriented soteriology developed in the Upaniṣads.

In the *Dharmasūtras* we find only passing comments that recognize the soteriology of the renunciate tradition (e.g., *BDh* 2.2.26). The authors, accepting the doctrine of the triple debt (the debts to the gods, the seers, and the ancestors, see *TS* 6.3.10.5, *ŚB* 1.7.2.1–1.7.2.6, and Olivelle 1993: 46–53) instead prescribe the ancestral rites and, through them, the attainment of an eternal stay in heaven (e.g., *VaDh* 17.1–17.5; *BDh* 2.16.3–2.16.9). However, in this

period, the ascetic becomes a symbol of religious power that rivals that of traditional ritual performance (Thapar 1982: 294). Additionally, the Brahmins clearly felt displaced from their privileged place in society by heterodox religious groups like Buddhists (Olivelle 2005a: 37–41; Bronkhorst 2007: 97). The concern about who was invited to a *śrāddha*, described above, is an expression of this pressure from both the renunciate tradition within Brahmanical circles and heterodox traditions. At stake is not only the defense of the soteriological worldview of the ritual tradition but also their livelihood, that is, their role as ritual experts.

The defense of the ritualist soteriology and the gradual integration of both soteriologies can also be seen in the development of the descriptions of the rewards of performing a *śrāddha*. I argue (Sayers 2013: 100f) that ancestral rites are the primary ground for the synthesis of the renunciate and ritualist soteriologies. The older Dharmasūtras, those of Āpastamba and Gautama, delineate lists of foods that feed the ancestors for various periods of time, from one month, up to food that will feed the ancestors without end (*anantya*). This strategy is, in part, a response to the renunciate claims that there is no unending stay in heaven (Sayers 2013: 108). The younger Dharmasūtras, those of Baudhāyana and Vasiṣṭha, simply draw on the older Vedic conception of heaven and assert the undecaying (*akṣaya*) nature of heaven; that is, they ignore the critique of the ritualist soteriology made within the renunciate tradition. The term *akṣaya* and its cognates become a common part of the descriptions of the *śrāddha* and its benefits throughout the later tradition.

Manu, as he does with other aspects of the Brahmanical ideology (Smith 1989: 196–9), draws on both of these strategies in his efforts to synthesize the older literature into a cohesive statement about the ancestral rites. Manu not only includes the most extensive list of meats to be offered and their benefits in the earlier literature and describe those offerings using the word *anantya* (*MDh* 3.266–3.272), but also asserts the eternity of heaven using the word *akṣaya* (*MDh* 3.122, 3.202, 3.273, 3.275). He joins these strategies explicitly in at least one verse, “Whatever a man endowed with faith gives according to the rules, that becomes eternal (*anantya*) and undecaying (*akṣaya*) for the ancestors in the next world” (*MDh* 3.273–3.275).

Manu not only synthesizes these two ritualist strategies, but also addresses reincarnation, including eighty verses on actions conducive to a good rebirth (*MDh* 12.1–12.80). He accepts the notion of reincarnation, but holds onto the soteriology associated with ancestor worship. In fact, he dedicates more than twice the space to ancestral rites than to reincarnation (*MDh* 3.122–3.286). Yājñavalkya similarly expends more energy talking about *śrāddha* than about rebirth. Both authors legitimate the renunciate soteriology by including it, but they expend greater effort in endorsing the ritualist soteriology and describing how to fulfill the ritual obligation of a Brahmin.

An explicit resolution of the soteriological tension appears first in the *Yājñavalkya Smṛti*. The author tells us that when the ancestors are gratified by the ancestral rites they grant long life, descendants, wealth, knowledge, heaven (*svarga*), liberation (*mokṣa*), comforts, and sovereignty (YDh 1.270). As the Purāṇas often do later, Yājñavalkya combines the material rewards of Vedic ritual and heaven associated with the ritualist ideology with the goal of liberation associated with the renunciate ideology.

The contestation of these two soteriologies can also be seen in the *Māhabhārata*. In some narratives, young ascetics who fail to marry and have children see their ancestors hanging in a tree or a cave about to drop into hell because they have no descendants to perform *śrāddhas* for them (MBh 3.94–3.97). In others, an ascetic dies after a life of successful asceticism, only to find the worlds won through ascetic practice closed to him because he had no children (MBh 1.220.5–11.220.7, 1.224.1–1.224.32; see also O’Flaherty 1973: 53–54, 69). The authors of these narratives deny that asceticism allows a person to avoid their ritual obligations, that is, while the heaven of the ritualist soteriology has been integrated into the renunciate soteriology, the ritual obligations to one’s ancestors endure. These narratives—like the *saṃnyāsin* within the *āśrama* system (see Chapters 5 and 18)—are a part of the broader effort to synthesize the conflicting soteriologies and add to the burgeoning interest in the ancestral rites seen in the *dharma* literature.

## THE EDUCATED RITUAL DISCOURSE AND THE UNTEXTUALIZED TRADITIONS

The older ritual and *dharma* literature is an educated discourse among religious experts steeped in an intellectual tradition, but the *dharma* literature of the Common Era incorporates ritual practices outside the solemn and domestic models of Vedic heritage. The texts become appropriative and synthetic; they seek to resolve the tension between the two traditions, just as the Gr̥hyasūtras synthesized the solemn and domestic ritual traditions. The legal literature of the Common Era gradually become encyclopedic in nature and address such things as pilgrimage, temples, religious art, and myth. Most relevant to our discussion of ancestral rites is pilgrimage.

Pilgrimage is integral to the conception of religious practice in the *Māhabhārata* and the Purāṇas, but in the early *dharma* literature, it is nearly absent. Ritual performance at *tīrthas* is very infrequent prior to the *Māhabhārata*, and those few references focus on two rituals: bathing for purification and the *śrāddha*. Bathing as a part of a penance or a means purify oneself has Vedic precedents and is mentioned in several early *dharma* texts. The first ritual practice prescribed at a *tīrtha* aside from bathing is *śrāddha*.

In a collection of verses addressing different elements of the ancestral rites, Vasiṣṭha includes this verse. “The ancestors rejoice in a son, as farmers do in fields that have received abundant rain, for fathers only truly have a son when one gives food standing at Gayā” (*VaDh* 11.42). From the context, we can infer that giving food here refers to the *śrāddha*; this form of reference goes back at least to the *Gr̥hyasūtras* (e.g., *ŚāṅkhGr̥* 4.1.1). Additionally, the brevity of the reference suggests that Gayā was already a place known for the performance of *śrāddhas*. Other texts composed early in the first millennium CE—the *Rāmāyaṇa* (2.99.13), and the *Yājñavalkya Smṛti* (1.261)—also refer to performing the *śrāddha* at Gayā. I suggest that these passages are the earliest references to performing the *śrāddha* at a *tīrtha*; they predate, or are contemporaneous with, the tradition of *tīrthaśrāddha*, and *tīrthayātra* more generally seen in the *Māhabhārata*.

The association between *śrāddha* and *tīrtha* can be found throughout the epic. While Vaidya (1941) argues that the *Tīrthayātrāparvan* belongs to the latest layers of the text and that much of that material is “purāṇic” (533), difficulties in dating any one part of the text prevent us from uncovering the development of the tradition of *tīrthaśrāddha* in greater detail. We do know that by the fourth century at the latest (van Buitenen 1973–8, xxv; Fitzgerald 2004a, xvi n2) there existed a version of the *Māhabhārata* that praises the performance of *śrāddha* at any and all the *tīrthas*. Lists of *tīrthas* conducive to a successful *śrāddha* become commonplace in the later *dharma* literature (e.g., *ViDh* 85; *VāPu* 77; *MatsPu* 22).

The rising importance of *śrāddha* can be seen in two other features of the later tradition. For want of space, I mention them only briefly. In the *Purāṇas* we find that a *tīrthaśrāddha* can relieve you of your debt to the ancestors permanently, “The man who bathes and performs the *śrāddha* shines in all the worlds of the gods, indulging his pleasures . . . His duty is done and he is free from debt to his ancestors; therefore the *śrāddha* need not be performed for his ancestors” (*Viṣṇudharmottara Purāṇa* 1.144.7–1.144.10; see also *GPu* 1.83.5–1.83.6). The performance of a *śrāddha* aimed at benefiting those beyond the immediate ancestors is common in the Epic and *Purāṇas*, as well, including long passages for any number of people for whom no *śrāddha* was or could be done (e.g., *GM* 6.25–6.52). Finally, in the *Purāṇas* we also find a synthesis of *śrāddha* and devotional theism. The *piṇḍas* given in the *śrāddha* are given to a god, who gives them to the deceased. The *Gayā Māhātmya* includes this *mantra*, “O Janārdana, I have given this *piṇḍa* in your hand. O god, please give it for him at Gayāśirṣa” (*GM* 4.43).

The ancestral rites are the site of multiple contestations throughout the history of Indian religions. The centrality of ancestor worship to the conception of a householder’s ritual obligations certainly plays some role in this, and

the authors of multiple genres of religious text have accepted the ancestral rites as central to accomplishing the goals of a religious life, even after the eternal stay in heaven is decentered theologically and displaced by liberation from rebirth. Despite this fact, *śrāddha* remains a central part of religious practice for many people in India today.



## Impurity and Purification

*āśauca, śauca*

*Mikael Aktor*

### PURIFICATION AS A PRIESTLY COMPETENCE

The term *impurity* appears so simple and unproblematic. Something or someone has become dirty and needs cleaning. But even in modern Western languages *impurity* is a loaded term with a multiplicity of meanings, ranging from the purely (note the word) material to the social, ritual, moral, and mental. The bodily experience of becoming dirty, and getting clean is one of those basic sources of metaphor, without which we have no language.

Nevertheless, it must be admitted that the multiplicity, refinement, and significance of this particular metaphor is extraordinary in the Hindu legal texts, the Dharmaśāstra. The object of this chapter is therefore to draw out some general structures from this multiplicity and outline the specific practical contexts that generated this kind of language.

The Sanskrit vocabulary of the impurity–purification–purity complex is vast. Different words are applied in different contexts, but they are not always limited to one. These are just three examples of words often simply translated as “impure”: *ucchiṣṭa* (“with leftovers”) typically occurs in the contexts of leftovers from a meal and the need to wash hands and mouth after eating; *amedhya* (“unfit for sacrifice”) often occurs in connection with bodily impurities or decomposition, such as corpses, feces, and urine; and *malina* (“stained”) refers to physical dirt (*mala*), especially to exudations from the body, in which case it overlaps with *amedhya*.<sup>1</sup> The systematization of the vocabulary was a gradual process, just as it was within other central subjects of this literature. Early texts contain a number of rules targeted at different contexts and

<sup>1</sup> For a thorough analysis of these and other words belonging to the impurity–purification–purity complex, see Olivelle 2005e: 220–39.

gradually through the centuries these different sets of rules became systematized, each with its own theoretical metalanguage.

As occasions for impurity differ, so do the methods of purification. Impure substances can be washed or rubbed away depending on the material, but often ritual means are also needed for certain types of pollution that cannot be removed by physical methods alone. Impurity in the Dharmaśāstra is clearly not only a matter of physical dirt. In a very general sense, purity in this context must be understood as *ritual* purity, that is, as a prerequisite for performing successful ritual acts. This is spelled out in a definition of *purification* (*śuddhi*) from a late text, that of Govindānanda's sixteenth-century treatise on the subject, *Śuddhikaumudī*. It goes: "To be purified is to be worthy of performing the rituals known in the Vedas."<sup>2</sup>

We may use a parallel from speech act theory. Certain verbal phrases such as a *marriage oath* or the passing of a sentence in a court of law can have the character of binding actions, but only on the condition that the person who utters the phrase has the acknowledged authority to do so. John L. Austin formulated the rule that "the particular persons and circumstances in a given case must be appropriate for the invocation of the particular procedure invoked" as one of several *felicity conditions* of the successful speech act (Austin 1975: 15). Likewise, "purity" (in its many forms) can be understood as a felicity condition of the successful ritual action.

However, if purity must be understood as ritual purity, we also need to know more precisely what is meant by ritual in the context of Dharmaśāstra, and especially how far the notion of ritual was applicable and relevant in the social life of Brahmins. Here, it is important to be aware of the historical contexts that motivated the priestly class (Brāhmaṇas) to produce this literature when it emerged in the post-Vedic period.

It has been argued that the earliest Dharmaśāstra texts, the Dharmasūtras, were composed during the Mauryan rule (322–185 BCE) as an attempt by the priestly class to reconsolidate its close economic and political ties with rulers (Olivelle 2004a; 2005b). In the pre-Buddhist Vedic corpus, the word *dharma* is not very frequent, but it does occur, mostly in relation to royal rituals, such as the royal consecration (*rājasūya*) and the horse sacrifice (*aśvamedha*). Early Buddhism appropriated the term, together with its associations to kingship, and in the process added new connotations to the word that became a shorthand term for the Buddhist teachings (Olivelle 2004a: 150–1). These connotations were centered on the moral and religious authority that had its roots in the monastic, celibate life of the monks. Through the charisma emanating from the extraordinary lifestyle of asceticism and celibacy, these

<sup>2</sup> *vedabodhitakarmārhatā śuddhiḥ/Śuddhikaumudī* in *Smṛtibhūṣaṇa* 1905: 1.

religious leaders were seen as powerful means of religious merit, blessings, and safe advice by its new influential adherents among merchants and rulers.

Particularly as a result of King Aśoka's use of Buddhist ethics for his imperial ideology (see Olivelle 2005f: 127–9), Brahmins felt challenged but were unable to compete with the celibate and ascetic lifestyle, since family life was crucial to the priestly kinship-based ethos.<sup>3</sup> The idea of the Buddhist *pabbajjā*—leaving the home to become homeless—was basically against these values. Here I will propose the hypothesis that the Brahmin authors of the Dharmasūtras stressed the preoccupation with ritual purity as an essential priestly competence, in an attempt to counter the ascetic charisma of celibate Buddhist monks. In order to make this relevant for their own lifestyle, which was rooted in the family, they gradually extended the notion of ritual to include all the activities in the normal life of a family. In addition to lifecycle rituals (*saṃskāras*), like the initiation of boys, marriage, and cremation and ancestral rites known from the domestic ritual manuals (Grhyasūtras), daily activities like eating, bathing, and sex, became ritualized and thereby also subject to purity rules,<sup>4</sup> allegedly on the basis of existing “customs” (*ācāra*) among an elite of learned Brahmins who had mastered the Vedic knowledge (Olivelle 2005f: 133–4).

Under the influence of the Vedic theology of the *mīmāṃsā* school of thought, these rules of daily behavior were seen by their Brahmin authors as a continuation of Vedic injunctions (*vidhi*). The nature of these injunctions was such that to follow them would ensure salvific or beneficial results, while to transgress against them would be demeritorious. The Brahmin authors of Dharmaśāstra texts accordingly reformulated the notion of *dharma* to include the extended rules for family life. To follow these rules would be an act of *dharma*, and as such, meritorious like Vedic *vidhis*, whereas to go against or neglect them would be *adharma* (unrighteousness) and would therefore produce bad karmic results.<sup>5</sup> In short, this re-appropriation and reformulation

<sup>3</sup> *ĀpDh* acknowledges the four stages of life (the four *āśramas*) including the ascetic life of a wandering mendicant, but like the three other Dharmasūtras, it stresses the superiority of the householder's life. To compare all four on this topic, see Olivelle 2005f: 50–3.

<sup>4</sup> “Ritualized” in the sense of Catherine Bell (1992: 220): “Ritualization is fundamentally a way of doing things to trigger the perception that these practices are distinct and the associations that they engender are special.” Also more formally in terms of Roy Rappaport's definition of ritual: “The performance of more or less invariant sequences of formal acts and utterances not entirely encoded by the performers” (1999: 24). Finally, also in the sense that the regulation of these daily activities typically is in the form of taboos; taboo, Durkheim has emphasized, is only the negative side of rituals, it is part of what he called “the negative cult,” whose function it is to protect the sacred, which according to Durkheim is rooted in the community's awareness of itself (Durkheim 1995: 303–4).

<sup>5</sup> The word *vihitam* (“prescribed”) in *MDh* 11.44a: *akurvan vihitam karma . . . prāyaścittīyate narah* (“when a man fails to carry out prescribed acts . . . he is subject to a penance”) (Olivelle 2005a: 217 and 845) may be a deliberate reference to the derivative *vidhi*. For the significance of the law of karma and retribution in the Dharmaśāstra, see Rocher 1980; Yelle 2010: 187–90.

of *dharma* achieved both the inclusion of Brahmin family values in an inclusive, but compartmentalized social ideology and also the maintenance of the semantic associations with kingship, the latter emphasized by making the duties of kings (*rājadharmā*) a standard subject of Dharmaśāstra.<sup>6</sup>

## TYPES OF IMPURITY

From early on, purification was divided into two broad types, external and internal. According to Baudhāyana:

The Veda points out two types of purification which are practised by cultured people: external purification is the elimination of stains and smell, whereas internal purification is the abstention from injuring living beings. The body is purified by water, and the intellect by knowledge; the inner self is purified by abstaining from injuring living beings, and the mind by truth.

(*BDh* 3.1.26–3.1.27 in Olivelle 2000: 305).

Here dirt and ill-smelling bodily products like sweat, urine, and feces are considered outer impurities, and the impulse to violence is considered an inner impurity.

Outer purification was further divided into three: purification related to one's *family* (purifications after birth and death), purification of one's *property* (tools, cloths, and articles of various materials), and purification of one's *body* (the "elimination of stains and smell"). Inner purification was likewise divided, but into five categories: purification of mind and speech, as well as purification of eyes (vision), nose (smell), and tongue (taste).<sup>7</sup>

It may be helpful to correlate these different categories of impurity with specific purification practices. Impurities of one's body (*śarīra*) and property (*artha*) are removed according to rules of cleanliness (*śauca*); the personal purifications necessary after a birth or death in the family (*kula*) are regulated according to the rules of death impurity (*āśauca*); and the inner (*āntara*) impurities related to mind, speech, and eyes are purified by various (mostly minor) penances (*prāyaścitta*) like mantra recitation, speaking to a Brahmin and looking on the sun for a moment respectively. I analyze below each of these occasions for impurity and purification.

<sup>6</sup> To compare the sections on kingship in the four extant Dharmasūtras (*ĀpDh*, *GDh*, *BDh*, and *VaDh*), see Olivelle 2005f: 206–10.

<sup>7</sup> *Harīta* summarized together with other similar divisions in Kane 1962–75, vol. 2: 651. *Harīta* is probably a lost Dharmasūtra according to Olivelle 2010b: 38, but single statements, like his further division of purification mentioned here, may also be later memorable verses ascribed to him.

## IMPURITIES AND PURIFICATION OF THE BODY AND PROPERTY

Apart from the considerations of personal comfort and social interaction, a dirty and unclean body could never be accepted as a proper agent of ritual acts. Based on a large selection of texts from various periods of the development of Dharmaśāstra, Kane (1962–75, vol. 2: 648–68) offers a general description of the various elements of bodily cleanliness that form part of the daily routine (*āhnika*) of a Brahmin. Having got up from sleep before sunrise, he has to go through a schedule of four items in preparation of his daily morning worship: washing after answering the call of nature, sipping water (*ācamana*), brushing the teeth, and bathing (*snāna*).

However, early texts do not waste words on repeating the same procedures performed at different times of the day, but collect them together as one. Āpastamba summarizes:

When he has washed away the stains of urine or excrement after going to the toilet, the stains of food, the stains from eating, the stains of semen, and then washed his feet and sipped water, he becomes pure.

(*ĀpDh* 1.15.23 in Olivelle 2000: 51).

Baudhāyana is a bit more detailed:

After voiding urine, he should first wash the organ with earth and water and then the left hand three times. He should do the same after voiding excrement, but three times in turn for the anus and the left hand. After a seminal discharge, he should do the same as after voiding urine. (*BDh* 1.10.11–1.10.15 in Olivelle 2000: 217).

Sipping water, which is done regularly in the morning, but which is also required during the day after having food, is prepared for by washing the hands (and feet according to some texts):

Seated on a clean spot, placing his right arm between his knees, and wearing his upper garment over his left shoulder and under his right arm, he should wash both his hands up to the wrists. Then he should silently sip three or four times an amount of water sufficient to reach his heart, wipe his lips twice, sprinkle water on his feet, rub water on the cavities of his head [eyes, ears, and nostrils], and place his hand on the crown of his head. After sleeping, eating, and sneezing, he should sip water over again. (*GDh* 1.36–1.37 in Olivelle 2000: 123).

The instructions for the obligatory daily bath became increasingly complex, particularly in adding a large repertoire of mantra recitations that should accompany the bath, which is taken as repeated dips in cold water, preferably in a river, having first smeared the body with loose earth for the first dip and with cow dung for a second dip (Kane 1962–75, vol. 2: 660–3; Glucklich 1994: 71–5).

Manu (5.135) lists twelve bodily impurities, the stains of which should be removed: “Body oil, semen, blood, marrow [or perhaps ‘oily residue on the

skin after sweating’], urine, faeces, ear-wax, nails, phlegm, tears, discharge of the eyes, and sweat” (Olivelle 2005a: 145 and 287). Note that saliva is missing from this list. This may seem surprising seen from the perspective of social anthropological studies of South Asian food culture. Ravindra Khare talks of the “exclusivity of the saliva” as the central principle regulating Indian commensal systems (Khare 1976b: 8). The idea is that food left over from someone’s meal cannot be shared with others, except in specific circumstances governed by particular rules. In general, such food can only be shared with socially inferior persons (Malamoud 1972: 9). But outside the food context, saliva does not cause impurity. On the contrary, Parāśara declared, “drops of saliva which pass between one person and another, as well as leavings of oil which remain after the meal, these are not impure.” The commentator, Mādhavācārya, explains the drops of saliva as “drops which come from the mouths of people during conversation and which fall on the body” (*Par/PāM* 7.32 in Tarkālaṅkāra 1883–99, vol. 2: 142).<sup>8</sup>

That such drops of saliva are not seen as demanding purification is part of a larger set of rules that limit the occasions for impurity in contexts where such limits are too impractical. Some specific rules:

The hand of the artisan is always clean, as also goods displayed for sale.

(*BDh* 1.9.1 in Olivelle 2000: 215)

No taint is created by the hair of the beard getting into the mouth. Bits of food sticking between the teeth are like the teeth themselves, as also whatever is in the mouth and what remains after sipping. One becomes purified by simply swallowing them. Even when someone pours water for others to sip and drops splash on his feet, they do not make him unclean; they are said to be the same as the ground (*VaDh* 3.40–3.42 in Olivelle 2000: 367).

A woman’s mouth is always pure;<sup>9</sup> so is a bird when it makes a fruit to fall, a calf when it makes the milk to flow, and a dog when it catches a deer.

(*MDh* 5.130 in Olivelle 2005a: 145).

These exemptions seem rooted in pragmatic considerations, but the fact that they need to be mentioned explicitly also emphasizes the general preoccupation with bodily purification.

The mentioning of “the hand of the artisan” and “goods displayed for sale” is part of a larger theme on purification of “things” (*dravya*) and “property” (*artha*). This theme involves general cleaning methods for various types of

<sup>8</sup> ... yāś cāpy anyonayavipruṣaḥ/bhuktocchiṣṭam tathā sneham nocchiṣṭam manur abravīt// *Par* 7.32; *ye cānyonyamukhodgatā bindavaḥ saṁbhāṣaṇe śarīre patanti*/ *PāM*. Olivelle (2010b: 48) dates *Par* to the seventh or eighth CE. Mādhavācārya’s commentary, the *Parāśaramādhaviya*, was probably composed between 1357 and 1360 CE (Aktor 2008: 13–14). Translations of text from *Par* and *PāM* in this chapter are my own.

<sup>9</sup> That is to say, during sexual intercourse (*ratisaṁsarge*) (*PāM* 7.35 in Tarkālaṅkāra 1883–99, vol. 2: 145–6).

material, but more specifically, it addresses things that have become impure by being handled by persons whose touch generally should be avoided. The general cleaning methods are rather straightforward. Various metal objects made of gold or silver, as well as jewels, are washed with water, but combined with ash and earth if they are stained; objects made of copper and cheaper metals may need water with acid or alkali (*MDh* 5.111–5.114 in Olivelle 2005a: 144). Similar practical methods are applied for other materials, like bone, ivory, clothes, silk, wool, skin, grain, vegetables, fruit, and plots of land.

The rules regarding objects that have been in physical contact with people whose touch is generally avoided are more complex. The prototype of such people in early texts is the *Caṇḍāla*, an untouchable caste whose living places were segregated in the outskirts of villages and cities.<sup>10</sup> In the *Dharmasūtras* it is taken for granted that public spaces, such as roads, boats, grass, seats, and couches, are polluted by the physical presence of *Caṇḍālas*, but again pragmatic considerations exempt these occasions of causing impurity by the idea that these spaces are naturally and constantly purified by the wind (*BDh* 1.9.7 in Olivelle 2000: 215).

Things get more complicated in later texts. *Parāśara* seems to add time as a parameter. If people stay at these spaces at the same time as a *Caṇḍāla*, they will need some sort of purification: a fast for three days if they have slept on the same couch, and muttering the *gāyatrī* prayer if they have walked on the same road (*Par* 6.23 in Tarkālaṅkāra 1883–99, vol. 2: 82). The same text also makes a distinction between, on the one hand, public spaces and goods that are for sale, and on the other, personal belongings, including goods that have already been purchased. The latter is much more serious than the former, and *Par* addresses that situation in a long section on the purification of a house, its inmates, and articles, in the event that a *Caṇḍāla* has stayed there. I shall return to that case later in this chapter.

However, everything related to the *Caṇḍāla* is a special case. The purifications after contact with such a person, whether through direct touch or indirectly through spaces or things, do not really belong to the class that has been dealt with in this section, that is, purification (*śauca*) of stains on the body and on things. This is implied by the fact that rules about purification after direct contact with a *Caṇḍāla* are placed together with rules about death impurity. This, I think, is not accidental.

## DEATH IMPURITY

Death impurity (*āśauca*), as we saw, belongs to the category of outer impurity related to the family (*kula*) in *Harīta*'s typology. Death in the family renders

<sup>10</sup> For more on this and similar castes, see Chapter 4 on Social Classes.

the relatives impure for a certain amount of time, according to all four Dharmasūtras. However, the length of the period depends on the age (less for small children), marriage status (less for unmarried women), and family remoteness of the deceased relative (less for remote relatives), as well as on the social class (*varṇa*) of the family in which the death has occurred (compare the four Dharmasūtras in Olivelle 2005f: 142–5). The general rule that was preserved in later texts is: if the deceased belonged to the common ancestry (*sapinda*), the period is ten days for a Brāhmaṇa, twelve days for a Kṣatriya, fifteen days for a Vaiśya, and one month for a Śūdra (*MDh* 5.83).

During this period, the surviving relatives were subject to a series of taboos. The Dharmasūtras mention remaining passive, fasting, extra bathing, visible marks of mourning like shaving or throwing dust on the hair, as well as the inability to distribute food to others. Later, the commentator on *GDh*, Haradatta (twelfth–fourteenth century), defined *āśauca* according to four specific taboos: people who are subject to death impurity cannot participate in rituals (other than those related to the dead person) or serve food to others or distribute gifts, and they are untouchable to others (*Har-G* 14.1 in Pandeya 1969b 141 as 2.5.1). Clearly, these taboos are meant to isolate the mourners and protect their social surroundings from contact with them, and ultimately with death impurity.

The unequal duration of *āśauca* for the four classes is not necessarily an expression of any inherent degree of impurity, presumably lower for Brāhmaṇas and higher for Śūdras. Most often it is explained in terms of the vital necessity of the sacrifice and, with that, the need for Brahmins as the priestly class to be able to get back to business as soon as possible. The sacrifices performed by the Brahmins are for the good of the other three classes, indeed for the good of the whole world. Therefore, the Brahmins' greater duties and entitlement (*adhikāra*) in relation to the sacrifice and the gradually lesser degrees of the same for the three lower classes are likely the reason why the Brahmin authors of this literature settled on durations of death impurity that would release themselves from this impurity relatively faster than the other classes would be.

In principle, the same rules apply when a child is born, but here the texts express divergent views. The main rule is that *āśauca* should be observed after birth as it is after death, that is, for the same period as prescribed when someone has died. The alternative rule is that only the parents need to observe *āśauca* after birth, not the rest of the close family. And the second alternative is that only the mother must observe the full period of birth impurity, while the father is purified merely by bathing (*GDh* 14.14–14.15; *MDh* 5.61–5.62).

The impurity caused by birth is most obviously explained by the rule, mentioned earlier, that makes blood an impure substance (*MDh* 5.135). This would also explain the second alternative rule, whereby only the mother needs to observe the full duration of *āśauca*. But it may also be an expression of the perils of childbirth for the mother.



Another alternative rule, found in some later texts, specifically reduces the duration of the taboo of untouchability, which, as we saw, was regarded as one of four taboos connected with death impurity, to the number of days after which the bones could be collected from the cremation ground. This again depends on the class of the family, four days for Brāhmaṇas, six days for Kṣatriyas, and eight days for Vaiśyas and Śūdras (e.g. SS 38–40b in Āpte 1905: 413; *Medh* 5.60 in Jhā 1920–39, reprint 1999, vol. 1: 449).<sup>11</sup> The principle here seems almost universal: The strongest degree of pollution coincides with the time it takes for the corpse to reach a state where there can be no more decay. The same principle seems to be behind the rule that a bath is needed for purification after having touched a human bone that was “greasy,” but only “sipping water, touching a cow, or gazing at the sun, if the bone was dry” (*MDh* 5.87 in Olivelle 2005a: 142).

Grouped together with the rules of *āśauca*, we find rules for purification in case one has been in physical contact with persons whose mere touch is polluting. This context is not surprising, since a corpse, someone who has touched a corpse (and has not yet undergone purification), and a woman who has just given birth are all counted among these persons. In addition to these three, the older lists include a woman during menstruation,<sup>12</sup> a person who has committed a grievous sin (like murder or theft), and a *Caṇḍāla*, the untouchable caste (*GDh* 14:30; *MDh* 5.85).

It should be noted that the latter, the *Caṇḍāla*, is the only person in these older lists who is permanently untouchable and, therefore, permanently impure.<sup>13</sup> Impurity is rarely a static state (Olivelle 2005e: 240). Occasions for impurity are normally occasions for purification. The exception is with regard to persons who are impure because of their prescribed caste-bound occupations, such as for the *Caṇḍāla*: carrying away corpses of persons without relatives, executing persons sentenced to death, and hunting (*MDh* 10.49, 10.55–10.56; *VaikhDh* 16.11). The connection with death impurity is obvious.

With growing social complexity and interaction, later texts added other occupational groups to these lists, such as washermen (handling cloths stained with menstruation blood) and leather workers (handling skin of dead

<sup>11</sup> The rule, however, is regarded as a *kalivarjya*, a rule that has become obsolete or controversial, literally one that should not be followed in the “present *kali* age.” See Kane 1962–75, vol. 3: 929–30, 951.

<sup>12</sup> For details about the duties of menstruating women and the view on menstruation, see Leslie 1989: 283–8 and *passim*. Julia Leslie’s book is partly a translation, partly an exposition of Tryambakayajvan’s treatise on the duties of women (*strīdharmapaddhati*), composed in the first part of eighteenth century.

<sup>13</sup> The *Caṇḍāla*, including the temporarily untouchable persons like menstruating women, etc., are described as “impure” (*aśuci*) by Vij 3.30 in Pāndey 1967: 426.

animals).<sup>14</sup> Also, cripples, fools, temple priests, as well as village animals like fowl and pigs, are included (*PāM* 6.24).

A parallel proliferation of the occasions for impurity can be witnessed. Just to give one example: *Parāśara* (*Par* 7.11–7.15) deals with purifications for menstruating women of different class (*varṇa*) who happen to touch each other. The commentator, Mādhavācārya, quotes other texts that account for the following situations: a menstruating woman who is touched by a dog while she is eating (eating always aggravates an occasion for impurity); mutual touch between two menstruating Brāhmaṇa and Śūdra women who are at the same time impure after their meal (i.e., who have not yet sipped water for purification); a menstruating woman who touches a Brāhmaṇa man who is still impure after his meal; a menstruating woman who touches a corpse or a woman who has just given birth; and, finally, the latter case aggravated by the fact that the menstruating woman was having a meal while the incident happened (*PāM* 7.11–7.15 in *Tarkālaṅkāra* 1883–99, vol. 2: 124–5). Such details may seem absurd. But I think they should be seen not only as a natural accumulation within a scholastic literary tradition through the centuries (remember that Mādhavācārya's commentary was written in the middle of the fourteenth century), but also as a response to growing social complexity. This is also indicated by the following example.

### AN EXAMPLE: PURIFICATION OF A HOUSE

In the eighth century, when the *Par* might have been composed (Olivelle 2010b: 48), untouchable castes had become a necessary labor force within village and city life, and along with this increased interaction, boundary markings had become narrower and more detailed. It is, therefore, not a far-fetched situation that is envisaged by the text when it gives detailed rules about how to purify a home in the event that a *Caṇḍāla* has stayed there unnoticed. The purifications include three days of fasting on barley grain cooked in cow urine (*gomūtrayāvaka*) with milk, curd, and ghee for the inhabitants of the house, and the cleaning of the utensils of the house using the specific method: rubbing with ashes for metal and washing for cloths. Earthenware has to be thrown away. Foodstuff and other inflammable goods must be set aside at the door, while a fire is lit on the floor in order to purify walls, floor, and ceiling. Added to this, the floor needs to be dug anew, the walls need to be plastered, and a *homa* (offerings in the household fire) should be performed with sacred mantras. Finally, Brahmins should be invited to stay in the purified house and

<sup>14</sup> For details, see the Chapter 4 on Social Classes.

receive food and a donation of cows and a bull (*Par* 6.34–6.42 in *Tarkālaṅkāra* 1883–99, vol. 2: 88–91).

The pollution of the soil that is implied in this example is further discussed by Mādhavācārya with a quote from Devala:

The soil where a woman has given birth or a man has died or been cremated, which is inhabited by *caṇḍālas* or where faeces and urine have been passed—that soil which is full of foul things like these is declared to be ‘impure’ [*amedhya*]. When it is touched by animals like dogs, pigs, donkeys and camels, it becomes “defiled” [*duṣṭa*]. It becomes “dirty” [*malina*] through charcoal, husk, hair, bones, ashes and so forth. The soil which is “impure” is purified in five or four ways.<sup>15</sup> The soil which is “defiled” is purified in three or two ways, whereas that which is “dirty” is purified in one way. (*PāM* 7.35 in *Tarkālaṅkāra* 1883–99, vol. 2: 147)<sup>16</sup>

Impurity is here divided according to degree, and the necessary purifications are likewise divided in degrees from more to less. The worst is associated with death, birth, and *Caṇḍālas*, which, as we have seen, are all connected with death impurity. But here, excrements and urine belong to the same filthy category. According to *Vij* (1.191 and 2.214), this *amedhya* type of impurity is explained as “dirt originating from the body,” which only becomes impure when coming *out* of the body (Olivelle 2005e: 237–8)—like other bodily impurities from the list of *MDh* 5.135. But for those elements that are related to death impurity, it is characteristic that the purifications must involve ritually active ingredients or actions like fire, cow dung, *homa*, and mantras, as in the case of the house, whereas the milder degrees of impurity can be overcome by simple cleaning.

## INTERNAL IMPURITY

Internal impurity was related to violent inclinations according to *BDh* 3.1.26–3.1.27 and further divided in impurity of mind, speech, eye, nose, and tongue by Harita (Kane 1962–75, vol. 2: 651). I will present just a few examples. *MDh* 12.3 divides action into three categories: mental, verbal, and bodily. Internal impurity is associated with the first two of these categories. The text specifies:

<sup>15</sup> These are digging, burning, smearing (with cow dung), washing, and rainfall according to *Śuddhikaumidī* quoted in Kane 1962–75, vol. 4: 318 n. 717.

<sup>16</sup> *yatra prasūyate nārī mriyate dahyate narah/caṇḍālādhyuṣitaṃ yatra yatra viṣṭhādisaṃga-tiḥ/evam kaśmalabhūyīṣṭhā bhūr amedhyā prakīrtitā/śvasūkarakharoṣṭrādisaṃsprṣṭā duṣṭatām vrajet/āṅgāratuṣakeśāsthibhasmādyair malinā bhavet/pañcadhā ca caturdhā ca bhūr amedhyā viśudhyati//duṣṭāpi sā tridhā dvedhā śudhyate malininaikadhā/.*

Coveting the property of others, reflecting on undesirable things in one's mind, and adhering to false doctrines are the three kinds of [impure] mental action. Harshness, falsehood, slander of every sort, and idle chatter are the four kinds of [impure] verbal action. . . . On account of faults resulting from verbal actions, he becomes a bird or an animal; and on account of faults resulting from mental actions, he becomes a man of the lowest caste [in a coming life].

(MDh 12.5–12.6, 12.9c–d in Olivelle 2005a: 230)

Smelling liquor or other things that should not be smelled is a sin causing some sort of exclusion within the caste community, and it must be expiated by a penance—a major penance (*sāmtapana*) if it was done deliberately, and a minor but still quite severe penance (*prājāpatya*), if done unintentionally (MDh 11.68, 11.125). Telling a lie makes a man unworthy of receiving gifts, and it must be expiated through another major penance (*cāndrāyaṇa* or lunar penance) (MDh 11.70, 11.126).<sup>17</sup> Similarly, there are minor penances for talking to or looking at a *Caṇḍāla*: speaking with a Brāhmaṇa for talking with him, glancing at the “heavenly lights” for looking at him (*ĀpDh* 2.2.8–2.2.9 in Olivelle 2000: 77).

The impurities of the tongue refer to the rules about unfit and forbidden food (see Chapter 14). This is a major subject.<sup>18</sup> Impure food is divided into foodstuffs that are inherently impure and cannot be eaten (*abhakṣya*) and food that is impure only owing to the influence of wrong treatment, dirt, or the person from whom it originates and should not be eaten (*abhojya*) for such reasons.<sup>19</sup>

I shall give only one example: If a Brāhmaṇa swallows something impure (*amedhya*), such as semen, or if he eats beef or the food of a *Caṇḍāla*, he should observe the lunar penance (*cāndrāyaṇa*) lasting one month. For the same transgression, a Kṣatriya or a Vaiśya must observe half of that penance, whereas a Śūdra has only to perform a Prajāpati Penance lasting twelve days. In addition, each has to offer a donation (*dakṣiṇā*) to the council of Brahmins that imposed these penances: the Brāhmaṇa must give one pair of cows; the Kṣatriya two; the Vaiśya three; and the Śūdra a donation of four pairs of cows (*Par* 11.1–11.3 in Tarkālaṅkāra 1883–99, vol. 2: 294, 301).

To swallow semen is forbidden and thus *abhakṣya*; likewise to eat beef according to Parāśara's text, which has a long chapter (Chapter 8) on penances for killing a cow. Food prepared by a *Caṇḍāla* is unfit for eating and thus is a common example of unfit food (*abhojyāṇna*). However, the commentator, Mādhavācārya, connects beef and *Caṇḍāla* food, suggesting that eating these

<sup>17</sup> For the specific penances, see the chapter on Penance in this volume.

<sup>18</sup> To compare all four Dharmasūtras, see Olivelle 2005f: 136–40. See also MDh 4.205–4.225, 11.147–11.161; YDh 1.160–1.176.

<sup>19</sup> See ViDh 37.7 with note in Olivelle 2009a: 101, 182. For a detailed analysis of the terminology of forbidden and unfit food, see Olivelle 2002a.

items may occur if a man is kept as a prisoner where *Caṇḍālas* are employed as prison guards. He also explains what else should be understood by the phrase “impure food.” His example is food contaminated by feces or urine. This, he says, no one eats intentionally, but it may happen “since it appears that eating together with one’s small children has become quite frequent among ordinary people.” And swallowing semen, he points out, happens in the situation of homosexual oral sex, or as he phrases it, it happens to men who are “afflicted with the disease of using the throat as vagina” (*PāM* 11.1 in Tarkālaṅkāra 1883–99, vol. 2: 294).<sup>20</sup>

### INTERPRETATIONS: THE CONTRIBUTIONS FROM SOCIAL ANTHROPOLOGY

Purity systems became a major topic within social anthropology during the 1960s and 1970s. The British anthropologists Edmund Leach and Mary Douglas, both inspired by the ideas of Émile Durkheim and Marcel Mauss on classification systems being rooted in social structures, did parallel studies of the notions of taboo, which they saw as a product of the cognitive ordering of experience: elements that somehow overlap between different cognitive domains, and for that reason are cognitively ambiguous, are marked by taboos. The corpse in its transition from what looks like a living body to a skeleton is a clear example. Mary Douglas, in her 1966 book *Purity and Danger*, expanded these ideas, seeing rules concerning bodily boundaries and their protection, such as rules about food and sex, as a parallel to or an expression of the existence of social boundaries and the concern to protect them. As discussed at the start of this chapter, much of the Dharmaśāstra material provides a case for the idea that the priestly emphasis on purification rules served to strengthen group boundaries, both vis-à-vis Buddhists and other heretics and internally toward Śūdras (the three “twice-born” versus the “once-born” Śūdra), as well as toward the two lower classes (Brāhmaṇa versus Kṣatriya and Vaiśya).

Primarily through the works of Louis Dumont, other anthropologists became aware of the rich material from the Sanskrit literature, and using the English translations of Dharmaśāstra works that existed then (Bühler, Jolly, Gharpure, and Dutt), they offered new interpretations in a theoretical perspective hitherto unknown (or unapplied) by most indological scholars.

<sup>20</sup> *bālāpatyasahabhojanasya prācuryeṇa loke darśanāt/retobhojanaṃ tu galayonyādivyādhi-grasteṣu sambhāvitam/*.

The inspiration from Dumont, however, had the result that most of these contributions saw degrees of purity and impurity as static indices of hierarchical social status, which, as has been argued in this chapter, is mostly a misreading of the texts (Olivelle 2005e). Some of these contributions will therefore be mentioned in Chapter 4 of this volume, on social classes. However, a few are of relevance also to the dynamic aspects of impurity and purification that have been presented here.

In an attempt to solve some of the problems inherent in Dumont's theory that the caste system is based on an ideology of relative purity, in particular the problem of accounting for the status of Kṣatriyas over that of Vaiśyas, different scholars (inspired by the works of M. N. Srinivas) developed an alternative theory, according to which the pure-impure dichotomy must be seen in relation to another dichotomy, that of auspiciousness–inauspiciousness (Carman and Marglin 1985). These scholars analyzed Indian words for the auspicious, like *śubha* and *maṅgala*, and found that such words are mostly used in contexts of time and events like astronomical constellations and lifecycle rituals, while words for purity are used for states of being, for instance with reference to the status of food and materials (Madan 1985: 12–13, 17, 24).

These analyses point to an interrelation of two sorts of agency. The auspicious and inauspicious are mainly related to cosmic or divine agencies governing, for instance, weather phenomena and biological events, especially pregnancy, birth, disease, and death, and their relation to astrological patterns. The pure and impure are related mostly to human agency, that is, to the domain of *dharma*, understood as “the right way of behaving oneself” (Rocher 1972b: 86), and as such regarded as a precondition of securing auspicious responses through ritual activity and averting inauspicious consequences. In understanding some of the complexities involved in rules about purification in the Dharmaśāstra, I think it has proved useful to apply these two sets of dichotomies together.

One especially telling example is a series of rules concerning what should happen in the case of a man's wife being revealed to have had a sexual relation with a *Caṇḍāla*. If the wife is already pregnant by her husband when she had the affair with the *Caṇḍāla*, she will not have to do any penance until the child is born, and the penance is the mildest in this series of rules. If she is not already pregnant and the sexual intercourse was interrupted, she will have to perform the penance as soon as the incident is revealed, and the penance is harsher than in the first case. If the intercourse was unintentional but was consummated without any conception, the penance is even harsher. If it was both intentional and consummated, but still without conception, then a more severe penance is needed. Finally, the worst case, if she becomes pregnant by the *Caṇḍāla*, no penance is possible and she must be exiled to another country (*Par/PāM* 10.16–10.21, 10.27c–10.28b in Tarkālaṅkāra 1883–99, vol. 2: 277–80, 284).

We may say that in the first of these events, auspiciousness is already at work, because the wife has become pregnant by her husband. The fetus is not influenced by the affair with the *Caṇḍāla* during pregnancy, but when the child is born, the wife needs to go through some purification in order to be a proper instrument for future conceptions. In the last event, it is quite the opposite: inauspiciousness has planted a bad seed in her womb and she is irreparably spoiled. But in the events in between these two, neither auspiciousness nor inauspiciousness is at work, since there was no conception. This allows the wife to go through hard penances and by this purification process, restore the purity needed for her to become pregnant by her husband after such an event (Aktor 2008: 171–9).

Another anthropological contribution relates to the rules of death impurity that were presented earlier in this chapter. The American anthropologist Henry Orenstein wanted to find out the principle that might explain the seemingly contradictory situation between the rules that, on the one hand, govern the *increasing* amounts of penance (*prāyaścitta*) enjoined on people from each of the four social classes (*Varṇa*), from Śūdra to Brāhmaṇa, and, on the other hand, the *decreasing* durations of death impurity (*āśauca*) for the four classes, again from Śūdra to Brāhmaṇa. Orenstein's solution took it as basic that a certain level of inherent impurity is an essential property of each social class, lowest for Brāhmaṇas, highest for Śūdras—much in line with Dumont's theory. His idea was then that in the case of penance, the pollution of a given sin is the same for all four classes, and the amount of purification will then be the level of pollution minus the level of inherent impurity. Since the latter is low for Brāhmaṇas and high for Śūdras, the subtractions will result in higher amounts of purification for Brāhmaṇas and less for Śūdras. This is perfectly in line with the rules about eating forbidden and unfit food (*Par* 11.1–11.3) that were discussed in the section on internal impurity: More penance for Brāhmaṇas, less for the lower classes.

However, in the case of death impurity, the impurity has to be multiplied since it affects not only the individual but also the family. Death impurity is therefore calculated according to a common multiplication factor, by which the inherent impurity levels must be multiplied. The low inherent impurity for Brāhmaṇa is set to two, and the high one for Śūdra is set to eight. When these numbers are multiplied by a common multiplication factor, say five, the amount of purification is calculated by subtracting the inherent impurity levels from the numbers reached by the multiplication, that is ten minus two for Brāhmaṇa and forty minus eight for Śūdra. This gives the numbers eight and thirty-two, which are close to the prescribed number of *āśauca* days known from *MDh* 5.83 of ten and thirty respectively for Brāhmaṇa and Śūdra (Orenstein 1968: 116–117). As already discussed in the section on death impurity in this chapter, a more obvious explanation is the need for Brahmins to be able to perform sacrifices on behalf of the other classes as soon as possible.

In line with the structuralism of his time, Orenstein insisted on a structure, a “grammar of defilement” (the title of his article), that would overcome the empirical diversity of conflicting purity rules. Although his attempt is speculative, it has the merit of insisting on explanations. The problem lies in his method. It turns out that he relied on a few general rules, but neglected to account for the complexities that appear when a broader set of material is treated. For instance, he neglected the significance of the internal *varṇa* relations in cases where a person from one class has offended a member of another class, whether *anuloma* (high-class offender, low-class victim) or *pratiloma* (low-class offender, high-class victim). He also neglected the significance of the donation (*dakṣiṇā*) that is offered at the completion of a penance. This counters the amount of penance proper: Brāhmaṇas observe more penance, but give less *dakṣiṇā*, while Śūdras observe less penance, but have more *dakṣiṇā* demanded—again, just as we saw in the rules discussed already about eating forbidden and unfit food. He also omits a discussion on the difficulty in comparing penances, the elements of which are very diverse (fasts, diets, durations, ingredients, *mantras*, etc. For a full discussion, see Aktor 2007: 13–24).

Since the 1960s, when Orenstein wrote his article, Indologists have become better informed about developments in anthropological scholarship and other branches of the humanities. This more balanced combination of high standards of indological methods, with insights from more theoretical approaches to religious and legal history, can be an enriching enterprise for the future.



## Ascetics

*vānaprastha, pravrajita*

*Patrick Olivelle*

Asceticism is at the very heart of the Dharmaśāstra project, given the centrality, as already noted, of the *grhastha* and the *āśrama* system within it (see Chapters 1, 5, and 9). The term *ascetic* is, of course, subject to varying definitions, but at its core lie the control and the discipline of an individual's body and appetites. In this sense, as I have argued elsewhere (Olivelle 2006a), asceticism is the most essential ingredient of culture and social living. But even when we take it in a more restricted sense, the *grhastha* and *brahmacārin* in the view of Dharmaśāstra clearly fall within the definition of *ascetic*: their lives are governed by rigorous discipline and self-denial. In this sense, the *dharma* of Dharmaśāstra, with the possible exception of law and royal functions, can be viewed as deeply ascetic.

Yet, given that whole chapters in this volume are devoted to those two institutions, this chapter will focus on the other two *āśramas*, that of the forest hermit and the wandering mendicant. It is within these two categories that the authors of Dharmaśāstras down the centuries discussed the strictly ascetic modes of life and laid down rules governing them.

The inventors of the *āśrama* system created a twofold classification of ascetics: the one sedentary and residing outside villages and civilized space, and the other itinerant, without fixed abode, and entering villages only to beg for food. Although this dual classification into forest hermit and wandering mendicant probably reflected the kinds of ascetics one encountered in ancient India, it also reduced in all likelihood a variety of ascetic modes of life to two broad categories.

## FOREST HERMIT

The ascetic living a sedentary life in the forest is most commonly called by two names: *vānaprastha* and *vaikhānasa*,<sup>1</sup> pointing to diverse traditions of ascetics living apart from civilized society. There does not appear to be a distinction made between these two terms, however, in the Dharmaśāstras themselves. The only specific information provided is about the possible existence of a treatise (*śāstra*) relating to hermits (*vaikhānasaśāstra*), which is followed by *vānaprasthas* (BDh 2.11.14). Manu's (MDh 6.21) statement that hermits "should abide by the Vaikhānasa doctrine" (*vaikhānasamate sthitaḥ*) also points to a possible treatise. The most common term for a hermit is *vānaprastha*, whose derivation *vana* + *prastha* is problematic; the term *prastha* may be derived from the verb meaning "to go forth," which is very similar to *pravrajati*, or it may refer to a spot of land, perhaps a clearing, in the forest. In any case, the term clearly refers to the prescribed habitation of a hermit, namely, the forest.

Two aspects of a hermit's life are highlighted in the Dharmaśāstras: habitat and food. Both these are divorced from society and civilization. A hermit lives in the forest and subsists on food that is not culturally mediated. Gautama tells him not to step on plowed land or enter a village, and to live on uncultivated vegetation such as roots and fruits, not eating anything grown in a village (GDh 3.26–3.33; VaDh 9.1–9.4; Olivelle 1991). The rejection of cultural mediation in every aspect of life defines the hermit's asceticism. This is true not just of habitat and food, but in other areas such as clothes, which are made out of tree barks and animal skins. Matted hair, another prominent feature of his bodily appearance, is also related to being "natural," letting hair grow without cutting or control. The chief activity singled out for comment is the performance of ascetic toil or *tapas*, a feature of his life that connects him to Vedic ideologies connected to bodily control and torture termed *tapas* and *śrama* (Olivelle 1993: 9–11).

Given the anticultural focus of a hermit's life, it is surprising and significant that he does not abandon the use of fire, even ritual fire. Āpastamba (2.21.21) says that a hermit should maintain "a single fire" (*ekāgni*). Gautama (3.27), Baudhāyana (2.11.15), and Vasiṣṭha (9.10) say that he "kindles the sacred fire according to the procedure for recluses" (*śrāmaṇakenāgnim ādhāya*). It is unclear what this procedure entails and how *śrāmaṇaka* relates to the Vaikhānasa treatise.<sup>2</sup> And Manu (6.4) asks him to take the sacred fires and ritual implements when he retires to the forest. The presence of ritual fire here

<sup>1</sup> The other term encountered in late texts is *vanin*, paralleling the term *grhin* for *grhastha* found in similar texts. The origin and etymology of *vaikhānasa* is not altogether clear; some derive the name from a sage called Vikhanas. In later times, *vaikhānasa* is associated with a particular tradition of Vaiṣṇavism.

<sup>2</sup> We see here the broad meaning of *śramaṇa*, which can refer to both wandering mendicants and to other kinds of ascetics (Olivelle 1993: 11–16).

stands in sharp contrast to its absence, repeatedly emphasized in the texts, in the case of a wandering mendicant.

The sexuality of a hermit is a problematic issue. If we follow the original formulation of the *āśrama* system (Chapter 5), a person becomes a forest hermit immediately after Vedic studentship, while he is still celibate. This is the understanding of Gautama and Baudhāyana, while Vasiṣṭha (9.5) explicitly enjoins him to observe celibacy. Yet, the picture is muddled in Āpastamba's account. After stating initially that he goes forth while remaining chaste (2.21.19), he goes on to say that according to some there is "an orderly sequence." The sequence consists of becoming a student, then getting married and raising a family, and finally living with his wife and children—or alone—outside the village (2.22.6–2.22.9). This comes very close to the classical formulation of the *āśrama* system. Another kind of sequence consists of the hermit assuming very stringent ascetic modes. Āpastamba (2.22.2–2.22.5) says, "Thereafter, he should roam about, living on roots, fruits, leaves, and grasses, and finally on what he happens to find lying about. After that he should sustain himself on water, air, and space. Among these, each subsequent pursuit is more exceptional in terms of its reward." Vasiṣṭha (9.11–9.12) also instructs him to live at the foot of a tree, homeless and without a fire, a mode that is very much an imitation of a wandering mendicant.

The institution of forest hermit is complicated by a parallel institution where assuming the life of a hermit is advocated for an old person, especially for a king who has abdicated his throne in favor of his son, as also for a person who is sent into exile, as in the cases of the epic heroes Rāma and the Pāṇḍava brothers. To some degree these forest modes of life parallel the classical formulation of the *āśrama* system that depicts both ascetic lifestyles as old-age institutions. There are also idyllic depictions of forest hermitages (also called *āśrama*) in epic literature and poetry, hermitages where families of hermits live in peace and harmony with forest animals. All this indicates a set of complex institutions and lifestyles that are placed within the category of hermit in the Dharmaśāstras.

At least by about the middle of the first millennium CE, however, the institution of forest hermit, in all likelihood, had become obsolete. It continues to be mentioned and described as one of the *āśramas* in the texts of the Dharmaśāstric tradition, well into the late medieval period. But it was a dead institution on the ground. This is revealed most clearly when it is included in the so-called *kaliyugavarjya*, things that are to be avoided in the current Kali age (Bhattacharya 1943).

## WANDERING MENDICANT

The central ascetic institution within Dharmaśāstra specifically, and within Hinduism more generally, is that of the world-renouncing and wandering

mendicant. He is variously referred to in our sources: *pravrajita*, *parivrājaka*, *bhikṣu*, and *muni*. Although not found frequently in the early Dharmasūtras, the most common term at least from the time of Vasiṣṭha and Manu, that is, the early centuries of the Common Era, is *yati*.<sup>3</sup> In the medieval commentaries and digests, this is the most common term, with the titles of numerous texts beginning with *yatidharma*.

The institution of the wandering mendicant, by whatever name it is identified, cuts across a broad spectrum of ancient Indian religious traditions. Clearly, the gifted wandering mendicants started most if not all of the ancient religions associated with asceticism, including the Buddhist, the Jaina, and the Ājīvika, as well as major traditions within what we call Hinduism. This institution was responsible for most of the innovative elements in the ancient Indian religious landscape (Dumont 1960). From a historical point of view, the institution can be traced back to about the middle of the first millennium BCE. From a geographical perspective, we can locate it principally in northeastern India, in the region that has been called Greater Magadha (Bronkhorst 2007).

In broad outline, both within the Dharmaśāstras and in other traditions such as Buddhism and Jainism, the mode of life of a wandering mendicant, at least in its ideal presentation, appears clear. The central feature is his departure, the “going forth” (*pravrajati*), from home. The second and equally central feature is his itinerant lifestyle without permanent abode; he is homeless. Hence, the Pāli Buddhist refrain: *agārasmā anagāriyaṃ pabbajati*, “He goes forth from home into the homeless state” (*Dīgha Nikāya* II: 153). His itinerant lifestyle is captured in the common epithet *parivrājaka*, “wanderer.” Just like the forest hermit, the wanderer is also defined by his food, in his case, alms food. To obtain it, a wanderer enters a village; he is instructed to gather food like a bee (*mādhūkaravṛtti*), that is, not from a single house but one morsel each from several houses, without becoming a burden on any. Hence, he is called a *bhikṣu*, “beggar.”

A wandering mendicant lives without any possessions, except for the bare requirements such as a begging bowl and a water pot. He is referred to as a pauper, one who owns nothing: *anicaya*, *aparigraha* (*GDh* 3.11; *BDh* 2.11.16; *VaDh* 10.6). Many sources say that he also carries a staff, a symbol that will be subject to much discussion and classification in medieval texts (Olivelle 1986–7). Some mendicants went naked, while others covered themselves with a cloth colored ochre, a color that has remained emblematic of the wandering mendicant throughout Indian history.

Another central feature is the absence of fire, especially ritual fire. This feature is present even in non-Brahmanical traditions, but it is elevated to become the central element of the rite of renunciation in the Dharmaśāstras.

<sup>3</sup> For the early history of *yati*, see Jamison 1991: 45–130.

The mendicant is frequently called *anagni*, “fireless” (*ĀpDh* 2.21.10; *BDh* 2.18.22). The rite for becoming a homeless mendicant is given for the first time by Baudhāyana (*BDh* 2.17–2.18). A prominent element of this ritual process is the formal and public abandonment of the ritual fires and ritual implements used for Vedic rites. The abandonment of fire is presented as an internalization—he deposits the sacred fires in himself (*ātmany agnīn samāropayate*) by breathing in the warmth and smoke of each fire. The abandonment of the ritual fires implies the abandonment of rites themselves. From now on, the ascetic lives a life free of rites; he is called *anārambin* (*GDh* 3.25). Not possessing a ritual or any other fire, a wandering mendicant, according to the Dharmaśāstras, was not cremated but buried either on land or in water (Olivelle 1995a: 176–80).

It is within the context of the ritual abandonment of ritual fires and ritual implements that we find the earliest use of the term *saṃnyāsa* and its verbal counterparts, a term that becomes commonplace in later texts as referring simply to the state of an ascetic.<sup>4</sup> The earliest use of this term is in Baudhāyana’s description of the rite of renunciation in the context of an old man. Indeed, it is specifically with reference to the discarding of ritual fire and implements and the abandonment of rites, home, family, and property that the term *saṃnyāsa* was initially used. Manu uses the phrase *saṃnyasya sarvakarmāṇi* (6.95–6.96), having abandoned all rites; Baudhāyana calls the rite of renunciation *saṃnyāsavidhi* (2.17.1). And the formula of renunciation, which makes a person a renouncer, consists of repeating three times: *saṃnyastaṃ mayā* (lit., “It has been renounced by me”; *BDh* 2.17.27). What he renounces is left unstated, but clearly within the ritual, the term refers specifically to the ritual fire and implements. Even Manu does not use the term to refer to a normal wandering mendicant. His *saṃnyāsa* refers to an old man who retires from normal household duties after conferring his authority on his son. Manu calls such a retiree *vedasaṃnyāsaka* (6.86). Baudhāyana also enjoins *saṃnyāsa* on a man who is over seventy years old (2.17.5).

There was a confusion, at least in the texts, between renunciation termed *saṃnyāsa* in old age by a householder and renunciation associated with the original formulation of the *āśrama* system that was undertaken by a young adult soon after the completion of his Vedic studies. This confluence of different ascetic practices is exemplified in Baudhāyana’s (2.17.2–2.17.6) note about who and when renunciation should be carried out: “Some say: ‘From that very state, remaining chaste, he should go forth’” (= *ĀpDh* 2.21.8). Alternatively, it is meant for Śālinas and Yāyāvaras<sup>5</sup> who are childless. Or else, a widower may undertake it or someone who has settled his children in their

<sup>4</sup> For an extended discussion of the semantic history of *saṃnyāsa*, see Olivelle 1981.

<sup>5</sup> These are kinds of householders with distinctive lifestyles discussed by Baudhāyana (3.1); Olivelle 1993: 162–3.

respective duties. Some prescribe renunciation for people over age seventy, or for a forest hermit who has retired from ritual activities. This confluence is evident in and resolved by the classical formulation of the *āśrama* system, which transformed the forest hermit and wandering mendicant into institutions of old age. Retirement of an old householder parallels the renunciation undertaken by a wandering mendicant. At the end of his discourse on the householder, Manu (4.257–4.258) says:

After he has freed himself according to rule from his debts to the great seers, ancestors, and gods [see *MDh* 6.35], he should hand over everything to his son and live in complete equanimity. Living alone in a secluded place, he should always reflect on what is beneficial to himself; for, by reflecting alone, he attains supreme bliss.

A feature that distinguishes the wandering mendicant from other kinds of asceticism, including the forest hermit, is his intimate association with personal liberation: *mokṣa* or *nirvāṇa*. This goal is evident in the data we have from all religious traditions including Brahmanical, Buddhist, and Jain. It is also connected to the revolutionary new worldview emerging probably in eastern India around the middle of the first millennium BCE, a worldview connected to the ideologies of rebirth and karma. The centrality of liberation also connects the institution to the pursuit of knowledge, especially mystical knowledge associated with meditation and yoga. This is evident in the earliest Dharmasūtras. Āpastamba (2.21.13–2.21.14), for example, gives the opinion of some: “Abandoning truth and falsehood, pleasure and pain, the Vedas, this world and the next, he should seek the Self. When he gains insight (*buddhe*), he attains bliss.” He rejects this by saying: “If a man attains bliss when he gains insight, moreover, he should not feel pain in this very world” (2.21.16). Vasiṣṭha (10.17) likewise cites a verse highlighting the liberated state achieved by a wandering mendicant: “Freedom from rebirth, indeed, is secure for a man who always lives in the wilderness; has brought his senses under control and put an end to all sensual pleasure; focuses his mind on contemplating the highest self; and looks upon everything dispassionately.”

It is in Manu, however, where we find the focus on *mokṣa* made most explicitly. Indeed, he calls the state of a wandering mendicant simply *mokṣa* (1.1.114, 6.35–6.37). He is also more explicit in the instruction to the ascetic to pursue the yogic path:

He should reflect on the diverse paths humans take as a result of their evil deeds; on how they fall into hell; on the tortures they endure in the abode of Yama; on how they are separated from the ones they love and united with the ones they hate; on how they are overcome by old age and tormented by diseases; on how the inner self departs from this body, takes birth again in a womb, and migrates through tens of billions of wombs; and on how embodied beings become linked with pain as a result of pursuing what is against *dharma* and with imperishable

happiness as a result of pursuing *dharma* as one's goal. By yogic meditation, he should also reflect on the subtle nature of the highest self and on its appearance in the highest and the lowest of bodies. (MDh 6.61–6.65)

Meditation is the path to attaining Brahman:

Everything prescribed here is contingent on meditation; for no one ignorant of the highest self can reap the fruits of his rites. He should practice the soft recitation of Vedic texts relating to sacrifice, gods, and self, as also those named Vedānta—this is the refuge of the ignorant, as indeed of the learned; this is the refuge of those who seek heaven, as of those who yearn for the infinite. If a twice-born lives as a wandering ascetic following the above sequence of practices, he will cast off his sins in this world and attain the highest Brahman.

(MDh 6.82–6.85)

The centrality of meditation in the life of a wandering mendicant is again taken up by Yājñavalkya, who has the longest section on this subject encompassing 151 verses (3.56–3.206). This section also contains a unique description of the human anatomy with the implication that the ascetic should meditate on these separate sections of the human body and on their transient nature. There is also a discussion of music and singing, which are seen as helping the mystical effort. One small passage deals with the actual posture in yogic meditation:

Placing his feet facing upward on his thighs, putting his right hand facing upward on his left, lifting up his face somewhat, keeping himself erect with his chest, keeping his eyes closed, abiding in the attribute of goodness, keeping the upper teeth and lower teeth from touching each other, keeping his tongue motionless against the palate, keeping his mouth closed, keeping himself motionless, keeping all his organs under restraint, and sitting on a seat that is neither too low nor too high, he should control his breath two or three times. Then, he should contemplate that lord who abides in his heart like a lamp. And the wise man should concentrate on the self abiding there, as he performs mental concentration. Becoming invisible, memory, beauty, sight, hearing, knowledge, leaving one's own body and entering another's body, and the creation of things at will—these, however, are the characteristics of yogic accomplishment. Once yogic accomplishment has been achieved, abandoning the body, he becomes fit for immortality. (YDh 3.199–3.204)

One of the principal features of a wandering mendicant's life is celibacy. The term used is *brahmacarya*, which is also the term for the life of a Vedic student. It is probably from the fact that a student was expected to refrain from sexual activity that the term developed its secondary meaning of celibacy, and this meaning is found also in Buddhist texts that refer to the life of a Buddhist monk as *brahmacarya*. Obviously, a married householder cannot adhere to *brahmacarya*; indeed, he is required to engage in sex with his wife during the wife's fertile season (*rtu*), soon after her menstrual period. Yet,

given the centrality of the wandering ascetic within Brahmanical religion, we find efforts in the Dharmaśāstras to present the householder as a true ascetic, devoted especially to *brahmacarya*. We have already seen in Chapter 5 that the *gṛhastha* is not simply a married man but also a man devoted to holiness just like an ascetic. Manu (3.50) redefines “true” celibacy: when a householder follows strictly the rules of sexual intercourse with his wife, he can be viewed as truly a celibate: “Regardless of the *āśrama* in which a man lives, if he avoids women during the forbidden nights and during the other eight nights, he becomes a true celibate (*brahmacārin*)” (*MDh* 3.46–3.47).

An issue related to ascetic lifestyles within the Brahmanical tradition concerns gender and *varṇa*. There is plenty of evidence that women and men belonging to lower social classes became ascetics in ancient India. The issue here is whether legally/theologically they were permitted to do so.

According to the *āśrama* system, Vedic initiation and studentship constituted the gateway into the *āśramas* and, therefore, into ascetic modes of life. Whether women were permitted to undergo Vedic initiation is not entirely clear (see Olivelle 1993: 184–90), but at least in the mainstream Dharmaśāstric tradition, they were barred, as were Śūdras and other lower-class men. Yet, we have voices even during the medieval period that acknowledge the ability of women to assume ascetic lifestyles. The twelfth-century commentator Vijñāneśvara (on *YDh* 3.58) interprets the expression *ekārāma* (delighting in solitude) to mean that a renouncer should not have female renouncers or other women as companions. In this context, he cites a passage from Bauddhāyana’s *Dharmasūtra*: “Some (permit renunciation) also for women” (*strī-ṇām caike*), a passage not found in the extant text. Given that this comment is made within the context of the fourth *āśrama*, it may well be that Vijñāneśvara recognized female renunciation as an *āśrama*.

With regard to social class or *varṇa*, we do not find explicit statement in the Dharmaśāstras regarding the connection of *varṇa* and *āśrama* or more specifically the ascetic institutions. Given that Vedic initiation is open to all three upper *varṇas*, it is reasonable to assume that all the *āśramas* are open to them. The only dissenting voice comes from the *Vaikhāṇasa Dharmasūtra*, a text that stands somewhat apart from the mainstream Dharmaśāstric tradition. In the opening section (1.1), it says, “(All) four *āśramas* are meant for a Brāhmaṇa, the first three for a Kṣatriya, and just two for a Vaiśya.” This view is expressed even more clearly in the *Purāṇas* (Olivelle 1993: 192), with the addition that only the state of a householder is legitimate for a Śūdra.

The view that asceticism was forbidden to Śūdras is found in numerous Brahmanical texts and underlies the episode of the *Rāmāyaṇa* (7.67.2–7.67.4), where Rāma beheads a Śūdra who is practicing asceticism. In commenting on a statement in the *Mahābhārata* (15.33.31–15.33.32) that the body of Vidura, a Śūdra, should not be cremated because he was a renouncer, two commentators take diametrically opposite positions. Medhātithi (on *MDh* 6.97) says



that a Śūdra does not actually become a renouncer but obtain its fruits by their lifelong service to twice-born people while living as a householder. Nīlakaṇṭha, the seventeenth-century polymath, however, commenting on this *Mahābhārata* passage is forthright: “This shows that the renouncer’s *dharma* is open even to those who are born from a Śūdra womb.”

As already noted, the chief textual tradition within Brahmanism to codify rules relating to asceticism was Dharmaśāstra. In the main Dharmaśāstras themselves, with the possible exception of Yājñavalkya’s, asceticism occupies a minor role; the focus is on the householder. It is in the medieval period that entire texts devoted to asceticism, specifically to the life of a wandering mendicant, came to be written. Some, like the *Mokṣakāṇḍa* of Lakṣmīdhara’s *Kṛtyakalpataru* (twelfth century CE), are parts of larger multivolume legal digests or Nibandhas. But most are monographs devoted to the topic of renunciation and the rules governing the life and death of a wandering mendicant. The former deal with the rite of renunciation and their titles generally begin with *saṃnyāsa* (e.g., *Samnyāsapaddhati*; see Olivelle 1986). Kane (I: 1139–40) lists twenty-eight such texts. The latter kind of texts begin their titles with *yati* (*Yatidharmasamuccaya*; Olivelle 1995a), and Kane (I: 1091–2) lists thirty-five such texts. Almost all of these exist only in manuscript form; very few have been edited or printed.

It is a truism to say that asceticism is central within the various religious traditions of India including the Hindu. The world-renouncing mendicant stands at the center of most Hindu sects and philosophical traditions. Yet within the Dharmaśāstric tradition, he occupies, with some notable exceptions, somewhat of a marginal position. The married householder raising a family, devoted to virtue, and engaging in ritual activities is the *homo religious*. The tension between celibacy and marriage, between the search for personal liberation and the obligation to beget offspring—what has been called the inner conflict of the tradition (Heesterman 1985)—continued well into modern times. A vice-president of India asked the question: “Who is better—the householder or the sanyasi?” The answer for him was clear: “Of course, the householder.” An ascetic is simply a parasite on society (Olivelle 1993: 237).

## Law during Emergencies

*āpaddharma*

*Adam Bowles*

The compound *āpaddharma*—“law during emergencies”—denotes those kinds of activities and occupations that can be legitimately pursued when circumstances conspire to make the normally prescribed activities and occupations difficult or dangerous. In other words, it refers to exceptional rules for exceptional circumstances. Such exceptional rules are typically regarded as legitimate for a limited period, and “normal” rules ought to be resumed once the emergency necessitating recourse to the exceptional rules has passed. For the period of the emergency, the “laws for emergencies” are deemed morally and ethically justified, and, at least in principle, there are no deleterious religious or social consequences for those reasonably deploying *āpaddharmas*.

The term *āpaddharma* appears for the first time in the *MDh* or the *MBh*, with the historical relationships between these two texts being of some complexity. However, the fundamental problem addressed by the notion of *āpaddharma* has a history that antecedes the coining of the term itself. The following will describe the core principle of *āpaddharma* as it is initially expressed in the *Dharmasūtras*, the earliest texts to articulate the problem that *āpaddharma* seeks to address, and then how later *śāstras* modify or develop this core principle. Some consideration will then be given to how this framework is expanded in the *MDh*, on the one hand, and the *MBh*, on the other.

### THE CORE PRINCIPLE

It is commonplace for Dharmaśāstras to establish a number of normative activities (*dharma*s, *karma*s) that members of each *varṇa* (social class or

“caste”) are expected to pursue. While these activities vary in number depending on the Dharmasūtra or Dharmaśāstra, these texts are sufficiently consistent that we can treat them summarily (see also Rocher 1975c).

The normative activities of a Brahmin usually include the following six (*ṣaṭkarmāṇi*), given in three complementary pairs:<sup>1</sup> studying (*adhyayana*) and teaching (*adhyāpana, pravacana*); offering sacrifices (*yajña, ijjā, yājana*) and officiating at sacrifices (*yājana*); and giving gifts (*dāna*) and receiving gifts (*pratigraha*). Of these, the non-remunerative activities of studying, offering sacrifices, and giving gifts were also regarded as obligatory for Kṣatriyas and Vaiśyas, while the other remunerative activities were seen as the sole preserve of Brahmins. In place of these, Kṣatriyas were typically expected to earn a living by protecting the people through the bearing of arms, engaging in battle and enforcing justice, and Vaiśyas by engaging in agriculture (*kṛṣi*), trade (*vāṇijya*), animal husbandry (*pāśupālya*), and money lending (*kusīda*). For a Śūdra there was only ever one normative occupation, service (*śuśrūṣā, paricaryā*) to the other three *varṇas*. The often implicit division between those activities involving remuneration and those that did not was sometimes made explicit, with the former being referred to as *vṛttis* or *jīvikās*, “livelihoods” involving some kind of payment (not necessarily monetary) enabling an individual to sustain himself and his dependents (e.g., *ViDh* 21.10–21.14; *MDh* 10.76, 10.79; Rocher 1975c: 140–1).<sup>2</sup> These activities clearly reflect a social hierarchy, where the distinctiveness of social classes is established and maintained through a distinction in normative duties, as codified and promoted by scholastic Brahmins.

These normative activities provide the context in which to understand the “core principle” of legitimate conduct in emergencies—what later is called *āpaddharma*—as it emerged in the earliest texts attempting a thorough articulation of Brahmanical social norms, the Dharmasūtras. This core principle is simply that, when prevailing circumstances render the pursuit of one’s normal activities impossible, even after certain dictates attending those activities have been relaxed, one may adopt the activities of a lower social class for the duration of the problematic circumstances. A definition of what the Dharmasūtras (and Dharmaśāstras) mean by a “time of crisis” would simply be conditions that make pursuing one’s normal occupations (especially the remunerative ones) impossible. However, the actual circumstances that might render normative livelihoods unviable receive little, if any, attention in these texts.

<sup>1</sup> See, e.g., *ĀpDh* 2.10.4–2.10.7; *GDh* 10.1–10.8; *BDh* 1.18.2–1.18.6; *VaDh* 2.13–2.20; *ViDh* 2.4–2.14; *MDh* 1.88–1.91, 10.75–10.80; *YDh* 1.118–1.120; *MBh* 3.149.35–3.149.36, 7.168.22–7.168.23, 8.23.33–8.23.35, 12.285.20–12.285.21, 13.129.8, 14.45.21–14.45.22.

<sup>2</sup> Bhār, Medh, and Kul on *MDh* 10.81, and Śaṅkha and Likhita, quoted in Lakṣ (*Gṛhasthā-kāṇḍa*, p. 186), define an emergency as when a Brahmin cannot support his dependents.

The most systematic treatment of rules for emergencies in the Dharmasūtras occurs in *GDh* 7.1–7.26. Consequently, it will provide the basis of an initial analysis (though not in sequence), with variations and developments in the treatment of similar topics in comparable texts noted. *GDh* 7.4–7.7 contains the core principle, the key feature of the treatment of *dharma* in emergencies in Dharmasūtra and Dharmaśāstra:<sup>3</sup>

*yājanādhyāpanapratigrahāḥ sarveṣāṃ | pūrvāḥ pūrvo guruḥ | tadalābhe kṣa-*  
*travṛttiḥ | tadalābhe vaiśyavṛttiḥ |*

A Brahmin<sup>4</sup> may sacrifice for, teach, and receive gifts from people of all classes. In the absence of these, he may adopt the livelihood of the Kṣatriya. And, in its absence, the livelihood of the Vaiśya.

The basic rule, then, is that once the capacity for proper occupations to provide a livelihood has been exhausted, then a Brahmin can seek a livelihood pursuing occupations normally reserved for the next *varṇa* down, that of the Kṣatriya, and, failing that, then those normally reserved for Vaiśyas. A version of this rule appears in almost all of the literature that concerns us (*BDh* 2.4.16–2.4.19; *ViDh* 2.15; *MDh* 10.81–10.82; *YDh* 3.35; *MBh* 12.79.1–12.79.2, 12.283.2; *NSm* 1.52; *BṛSm* 1.7.14<sup>5</sup>), which justifies it being referred to as the core principle. The argument that one should adopt the next contiguous (*anantara*) occupation is often explicitly extended to Kṣatriyas (*GDh* 7.25; *MDh* 10.83–10.85) and Vaiśyas (*MDh* 10.98), or stated as a general rule, so that it is clear that it applies to all twice-born *varṇas* (*VaDh* 2.22; *ViDh* 2.15). The case for Śūdras, a separate and more complicated matter, is discussed later.

A Brahmin's downward progression through permissible occupations generally stops short of those associated with the Śūdra, it being sometimes explicitly stated that the Brahmin should never adopt such a livelihood (*GDh* 7.22; *MBh* 12.283.2; *NSm* 1.53; *BṛSm* 1.7.15). However, *GDh* 7.23 suggests that some hold this to be permissible when the Brahmin's life is in peril (*prāṇasaṃśaya*), as long as the Brahmin neither mixes with Śūdras nor eats forbidden food. *ĀpDh* 1.18.6–1.18.8 and 1.18.13–1.18.15, and *MDh* 10.104, are more lenient in this regard, allowing a Brahmin to receive food in certain conditions even from Śūdras and others of lower social status. The *MDh* then follows with four examples of Brahmin sages who not only accepted food from such people, but ate forbidden food too, without incurring sin.

That occupational mobility must follow a downward progression through occupations associated with contiguous social classes is sometimes explicitly

<sup>3</sup> The translations are indebted to Olivelle's.

<sup>4</sup> *GDh* 7.1–7.3 establish the Brahmin as the subject of these sūtras.

<sup>5</sup> *ĀpDh* 1.20.11 merely notes that in an emergency a Brahmin can take up trading, which is normally a Vaiśya's occupation. Har-A takes this to imply that a Brahmin can adopt a Kṣatriya's occupation too.

stated. *VaDh* 2.23, for example, asserts that one must never resort to a superior (*jyāyasī*) occupation. *MDh* 10.95 stipulates a similar rule in regard to the Kṣatriya, a point emphasized in the following stanza (10.96) in respect to people “low by birth” (*adhamo jātyā*) who adopt superior occupations out of greed (see also *NSm* 1.53; *BrSm* 1.7.15; Vij on *YDh* 3.35; Mask on *GDh* 7.7). Nevertheless, though this is a key component of the core principle (Rocher 1975c), there are complicating factors. For example, the opening of the *GDh* passage concerning *āpatkalpas* suggests one context in which Kṣatriyas and Vaiśyas are allowed to pursue the occupation of the Brahmin (7.1–7.3):

*āpatkalpo brāhmanasyābrāhmaṇād vidyopayogaḥ | anugamanaṁ śuśrūṣā |  
samāpte brāhmaṇo guruḥ*

These are the rules for emergencies. A Brahmin may acquire knowledge from a non-Brahmin. He should follow behind him and serve him. At the conclusion of the study, the Brahmin is the superior.

Similar rules are stated at *ĀpDh* 2.4.25–2.4.27; *BDh* 1.3.41–1.3.43; and *MDh* 2.241, all of which, however, use *adhyayana* for *vidyopayoga*. As noted already, *adhyayana*, one of the non-remunerative occupations shared by all the twice-born *varṇas*, has a remunerative pair, *adhyāpana* (“teaching”), which is supposed to be the exclusive preserve of Brahmins. However, it logically follows from the above rulings that in an emergency<sup>6</sup> at least Kṣatriyas and Vaiśyas are permitted to assume this occupation, though it is ostensibly superior to their own normative occupations. Commentators frequently emphasize that instruction must only come from Kṣatriyas and Vaiśyas (see, e.g., Har-G, Mask, Medh, and Kul) since, unlike Śūdras, they have received the necessary Vedic instruction. According to Har-G on *GDh* 7.1 and Medh on *MDh* 2.241, a Vaiśya may teach a Kṣatriya as well. The texts, however, do not make a special point of this reversal of the normal direction of occupational mobility. Nor do they do so in the case where the Vaiśya (like the Brahmin) is allowed to take up arms “out of concern for the law” (*BDh* 2.4.18, *dharma-vyapekṣā*), to save his own life or when the social classes become confused (*VaDh* 3.24), or for a number of similar reasons (*MDh* 8.348–8.349). As with the same stipulation for Brahmins, it is not necessarily the case that this ruling was concerned with Vaiśyas pursuing such occupations for monetary gain, since it may merely reflect the demand for maximizing the size of the army in prosecuting war, or the contingencies of self-defense. In other words, such rulings may reflect the unlikely monopolizing of certain types of violence by the Kṣatriya, as expressed in normative texts. Whatever the case, it is apparent that the texts either did not construe these injunctions as inverting the core

<sup>6</sup> As an exemplary emergency, Medh offers the case where a teacher has abandoned his student after having begun the instruction, and there is no other Brahmin around to assume the teacher’s position.

principle, or did not want to draw attention to what seems to be their logical outcome, that upward-occupational mobility was in fact permissible in some cases.

Though most of the texts recommend that a Brahmin first pursue the occupation of a Kṣatriya, they do not discuss this at length. Many texts allow a Brahmin (like a Vaiśya) to take up weapons when his life is in danger, or in other similar emergencies (*GDh* 7.25; *BDh* 2.4.18; *VaDh* 3.24; *MDh* 8.348; *MBh* 12.79.27–12.79.33). But these situations should probably be seen as distinct from his adopting a Kṣatriya occupation for remunerative purposes. *BDh* 2.4.17 quotes a Gautama,<sup>7</sup> who says a Brahmin should not adopt a Kṣatriya lifestyle because it is too harsh, a reference most likely to the violence involved in the Kṣatriya's normative occupations.

The implications of a Brahmin adopting a Vaiśya's livelihood drew much more attention. This may reflect socioeconomic realities, since it is likely that the normative occupations typically prescribed for Vaiśyas—*kṛṣi* (agriculture), *pāśupālya* or *gorakṣa* (animal husbandry), *vāṇijya* (trade), and *kusīda* or *vārdhuṣa* (money lending)—incorporate the most common remunerative occupations in the predominately agrarian societies from which the texts arose. Even so, the ensuing discussions primarily either focus on problems associated with Brahmins adopting these livelihoods or specify restrictions under which their adoption is permissible. Animal husbandry is fleetingly mentioned (*MDh* 10.82, 10.116; *MBh* 12.79.2, 12.283.3), but otherwise ignored. Money lending for interest (*kusīda*, *vṛddhi*, *vārdhuṣa*) is generally barred for a Brahmin (“even in severe emergencies,” *NSm* 1.98; *VaDh* 2.40–2.43; *BDh* 1.10.21–1.10.25; *MDh* 10.117). Agriculture receives somewhat more attention, and attitudes toward it appear to have progressively shifted. *BDh* 2.4.20–2.4.21 permits it, but says that a Brahmin should plow the land before breakfast—perhaps because it might impede Vedic study (cf. *BDh* 1.10.30)—using two uncastrated bulls with unpierced nostrils. Further, they should not be beaten. *VaDh* 2.32–2.33 advocates a similar approach, permitting agriculture (*VaDh* 2.32–2.36) because it provides grain that can then be sold to raise wealth for other purchases. It is not clear whether these texts are simply offering advice on good agricultural practice, or whether there is a concern with the very nature of agricultural activity.<sup>8</sup> The *MDh* suggests the latter. *MDh* 10.83 says that a Brahmin, “or even a Kṣatriya,” should avoid agriculture (*kṛṣi*), since it “abounds in injury” (*himsāprāya*)<sup>9</sup> and involves “dependence on others” (*parādhīna*). The subsequent stanza (10.84) further explains the former assertion, the “iron-pointed plough destroys the earth and

<sup>7</sup> This not being in the extant *GDh*, Gov-B deduces the existence of another *Gautamaśāstra*.

<sup>8</sup> Without reference to emergencies, *GDh* 10.5–10.6 permits a Brahmin to engage in agriculture (*kṛṣi*), trade (*vāṇijya*) and money lending, as long as he does not do the work himself.

<sup>9</sup> Cf. *MDh* 4.2 and 4.5.

those living in the earth” (*bhūmiṃ bhūmiśayāṃś caiva hanti kāṣṭham ayo-mukham*), a view similarly found in the *MBh* (3.199.19, 12.254.44; cf. Harīta on agriculture in Lakṣmīdhara, *Gṛhasthakāṇḍa*, p. 191).

But for a Brahmin adopting a Vaiśya’s occupation, the texts on *dharma* are mostly preoccupied with trade. Again, the primary focus is to restrict the items a Brahmin may sell. *GDh* 7.8–7.21 demonstrates the basic thrust:

*tasyāpanyam | gandharasakṛtānnatilaśāṇakṣaumañināni | raktanirṇikte vāsasī | kṣīraṃ savikāraṃ | mūlaphalapuṣpaṣaḍhamadhumāmsatṛṇodakāpathyāni | paśavaś ca himśāsamyoge | puruśavaśākumārīvehataś ca nityam | bhūmivrihiyavā-jāvyāśvaṣabhadhenvanaḍuhaś caike | niyamas tu | rasānām rasaiḥ | paśūnām ca | na lavaṇakṛtānnayoḥ | tilānām ca | samenāmena tu pakvasya sampratyarthē |*

These are not fit for him to sell: perfume, seasonings, prepared food, sesame seeds, hemp, linen, skins, garments died red or washed, milk and milk products, roots, fruits, flowers, medicines, honey, meat, grass, water, poison, animals intended for slaughter, and never humans, barren cows, heifers and miscarrying cows. And some say land, rice, barley, goats, sheep, horses, bulls, milk-cows and oxen. But he is restricted to barter<sup>10</sup> spices for spices and animals for animals, though not salt or prepared food or sesame. One may, however, exchange uncooked food for an equal amount of cooked food for immediate use.

Similar (though not identical) lists occur at *ĀpDh* 1.20.11–1.21.4; *BDh* 2.2.26–2.2.29; *VaDh* 2.24–2.31; *MDh* 10.85–10.94; *YDh* 3.36–3.40; *MBh* 12.79.3–12.79.8; *NSm* 1.57–1.59 (see also Kane II: 126–8).

The reasons for these constraints are unclear. As with the restrictions on agriculture, activities potentially harming living things appear to be problematic (cf. *MDh* 4.2; 4.162–4.169), hence the prohibitions on trading such things as skins, meat, humans, animals, and red-dyed garments.<sup>11</sup> Derrett (1979) proposed a Jain influence on these prohibitions, because Jains typically occupied similar social positions to Vaiśyas while theoretically abiding by ethical standards strict in their prohibitions on harming living things. But one could equally explain such features through the increasing influence of ethical norms associated with the rise of renunciate traditions more generally (of which Jainism was a part), and the increasing propensity for Brahmins to monopolize these ethical norms in Brahmanical traditions. Even so, this would not explain all items in the lists. Some things might well be prohibited from being sold because of their ritual function. For example, as Kane notes (II: 127), sesame seed (*tila*), which appears on all lists, is a key component in the ritual offering to the ancestors in the *śrāddha* rites (e.g. *MDh* 3.255, 3.267). Presumably, it is for this reason that *BDh* 2.2.27 says that a man who sells sesame sells his own ancestors. On other occasions the selling of sesame is permitted in

<sup>10</sup> Har-G on *GDh* 7.16; cf. *ĀpDh* 1.20.14–1.20.15; *VaDh* 2.37–2.39; *MDh* 10.94.

<sup>11</sup> Red dye (*lakṣa*) was produced by crushing the cochineal insect.

restricted circumstances precisely to ensure that ritual procedures can take place (*VaDh* 2.31; *MDh* 10.90; *YDh* 3.39; *NSm* 1.62; Bhār and Medh on *MDh* 10.90; Vij on *YDh* 3.39), or for medicinal purposes (*NSm* 1.62). The sometime preference for bartering equal measures of goods might suggest controls on exploitative trade or price inflation in relation to commodities of significant cultural import. Indeed, both Medh and Bhār, when commenting on the provision in *MDh* 10.90 allowing a cultivator to sell sesame for ritual purposes (*dharmārtha*) as long as it has not been stored long (*acirasthita*), suggest this prevents stockpiling artificially inflating prices by restricting supply.

While the *āpaddharmas* enable the maintenance of *dharma*, they also potentially invite its abrogation, since the very strategy of *āpaddharma* is to allow, in a qualified way, the mingling of *dharma*s and *varṇa*s (i.e., *dharma-saṃkara* and *varṇasaṃkara*), conditions otherwise seen to mark societal decay. Consequently, the laws for emergencies provoked anxieties over the maintenance of prescribed ritual and social roles, the strict maintenance of distinctions between social classes, and control over the interactions between these social classes. The extent of the restrictions placed on Brahmins adopting the occupations of Vaiśyas underscores the undesirability of the recourse to *āpaddharmas* in the normative texts. This is further reflected in their regular reminders that such occupations must only be adopted for a restricted period of time, and only when the circumstances absolutely justify it. For example, *ĀpDh* 1.21.3–1.21.4, after allowing a Brahmin to engage in trade, urges that he “shouldn’t want it excessively” (*nātyantam anvavasyet*) and cease to pursue it once he can resume his normal occupation. To a similar injunction that occupational mobility be temporary, later Dharmaśāstras add that the Brahmin must undergo expiation once the emergency has passed. *YDh* 3.35, for example, says that, “Having passed over that emergency, then, having purified himself, he should give up [that occupation]” (*nistīrya tām athātmanāṃ pāvayitvā nyaset pathi*; see also *NSm* 1.55; *BSm* 1.7.17; *Par* 7.38). In the *MBh*, the dog-eating Brahmin Viśvāmitra, cited in *MDh* 10.108 as sanction for eating in emergencies normally taboo food given by normally avoided donors, purifies himself through austerities (*MBh* 12.139.91; cf. *Par* 11.5, 20). This might in part explain the tendency for sections on remedies for crises to be positioned in close proximity to sections on expiations (*prāyaścitta*) (Bowles 2007: 370–2; see also *BŚr* 29.8). Thus the *BDh*’s restrictions on Brahmin’s trading fall within its sections on *prāyaścitta*, as does the *āpaddharmaprakaraṇam* in the *YDh*; a chapter on *prāyaścitta* follows the section on *āpaddharma* in the *MDh*, and the *MBh*’s *Āpaddharmaparvan* incorporates a chapter on *prāyaścitta* (*MBh* 12.159; Bowles 2007: 360–72). Similarly, there are serious repercussions for those that invoke *āpaddharmas* for the wrong reasons, or who disobey the restrictions imposed on occupations legitimately pursued in emergencies. *VaDh* 2.27 and *MDh* 10.92 assert that a Brahmin, though permitted to trade as an emergency occupation, immediately falls from his *varṇa* if he sells meat,



lac, or salt, and becomes a Śūdra in three days by selling milk. *YDh* 3.40 contains a similar injunction with additional restrictions. *MDh* 10.93 says that a Brahmin selling commodities out of desire alone (*kāmataḥ*) becomes a Vaiśya in seven nights. *NSm* 1.56 describes the Brahmin who continues in a Kṣatriya's occupation out of fondness for it an "arrow back" (*kāṇḍapṛṣṭha*) rejected from caste (*apāṅkteya*). Similarly, *MDh* 11.28 and 11.30 strongly denounce those who apply the occupational mobility rules intended for emergencies when there is no emergency (see also *MDh* 12.70–12.72).

### MANU, MAHĀBHĀRATA, AND THE EXPANSION OF ĀPADDHARMA

The *MDh* and *MBh* offer the most expansive treatments of laws for emergencies. In the case of the *MDh*, much of this expansion treats in greater detail themes already described. The *MBh* is a slightly different case. It shows some developments similar to those found in the *MDh* but also evinces a relationship to the tradition of literature dealing with governance and policy (*arthaśāstra* or *nītiśāstra*). Unlike the other great Sanskrit epic, the *Rāmāyaṇa*, which rarely uses the word *āpad*, and never *āpaddharma*, the *MBh* uses *āpaddharma* as a key narrative device and explanatory principle.

Though the main section describing the *āpaddharmas* in the *MDh* (10.81–10.130) is long in comparison with the literature on dharma that preceded and followed it, it largely keeps to already-established principles. To the standard rules that a Brahmin may adopt either a Kṣatriya's or a Vaiśya's livelihood with the usual restrictions (*MDh* 10.81–10.94), the *MDh* adds some further rules for a Brahmin who, "remaining on his own path" (*sve pathi sthitah*), does not want to pursue a Vaiśya's occupations. These rules (10.101–10.111) expand upon *GDh* 7.4–7.5, which allow Brahmins to perform their remunerative occupations "for all." The *MDh*, however, focuses mostly on receiving gifts, which can be done even from "contemptible" (*garhita*) people (10.103–10.108; *YDh* 3.41; cf. *VaDh* 27.9). Nevertheless, the *MDh* then points out the problems with receiving gifts relative to teaching and officiating at sacrifices. A Brahmin may only engage in the latter two occupations for those who have been "consecrated" (*saṁskṛta*), whereas they can receive gifts from even a lowborn Śūdra. Receiving gifts is therefore regarded as inherently more dangerous, and gleaning (*uñcha*) or picking up (*śila*) ears of corn is considered a better option (*MDh* 10.112).

This section of the *MDh* also contains specific injunctions for non-Brahmin *varṇas*. In the case of the Vaiśya, *MDh* 10.98 merely says that he can live by the livelihood of the Śūdra. The Kṣatriya can live by all the means outlined for a

Brahmin in an emergency, but never a Brahmin's normal occupations (10.95–10.97). A little later, a Kṣatriya is permitted to raise taxes in an emergency, as long as he pursues his ordinary occupation of protecting the people (10.118–10.120). *MDh* 10.99–10.100 stipulates rules for Śūdras, who are otherwise rarely mentioned in descriptions of *āpaddharma*. In this case, Śūdras who cannot live by service (*śúśrūṣā*) to the twice-born *varṇas* can live by the occupations of artisans (*kārukarma*). *MDh* 10.100 clarifies this to mean that these occupations (and the *śilpas*, “handicrafts”) must also be in the service of the twice-born. Both Bhār and Medh, presumably under the influence of the core principle, infer from *MDh* 10.99 that such occupations are socially lower than a Śūdra's ordinary occupations. But their relative status is unclear. *GDh* 10.60 and *ViDh* 2.14 include the “crafts” (*śilpas*) under the normal occupations of the Śūdra, and *AŚ* 1.3.8 the occupations of artisans (*kāru*). Given the tendency for Śūdras, *kārus*, and *śilpins* to be grouped together (e.g., *MDh* 7.38, 10.120; *AŚ* 2.4.13), which suggests the approximate equivalence of their social standing, coupled with the insistence in *MDh* 10.100 that Śūdras perform such works in service of the twice-born, it seems reasonable to conclude that little allowance was given to the Śūdra to deviate in an emergency from his normal occupation. This impression is reinforced by the description of the Śūdra's occupations in *MDh* 10.121–10.129, the closing verses of its treatment of *āpaddharma*, which differ little from the Śūdra's ordinary occupations as described elsewhere (e.g. *GDh* 10.56–10.61).

Later Dharmasāstras, however, appear to take a different view. *YDh* 1.120 stipulates that in an emergency a Śūdra, besides being able to live by various crafts (*śilpa*), may become a merchant (*vaṇij*), an occupation normally reserved for a Vaiśya. This would seem to be another case permitting upward-occupational mobility. Similarly, both *NSm* and *BSm*, while forbidding a Brahmin to do a Śūdra's work, or a Śūdra a Brahmin's, nevertheless allowed both to do the work of the middle two *varṇas*, since these are common to all (*sarvasādhāraṇa*, *NSm* 1.53–1.54 and *BSm* 1.7.15–1.7.16). In commenting on *YDh* 3.35, Vij cites both the *BSm* passage and *YS* 1.120 to affirm that a Śūdra may live by the livelihood of a Vaiśya when overcome by adversity.

The *MDh* and the *MBh* are the first texts to describe leviratic union (*niyoga*)—where a wife whose husband is incapable of having children may be “appointed” for that purpose to a related male, usually her husband's brother—with the language of the laws for emergencies. This is not the case in the earlier Dharmasūtras, though they all provide some discussion of *niyoga* (*ĀpDh* 2.27.2–2.27.7; *GDh* 18.4–18.8; *BDh* 2.4.7–2.4.10; *VaDh* 17.55–17.66; Kane II: 599–607). In 9.56 Manu proclaims he will explain “the law for women in an emergency” (*yoṣitām dharmam āpadi*; cf. *MDh* 9.103), an emergency defined in 9.59 as “when the family line is about to

disappear” (*saṃtānasya parikṣaye*). Fourteen stanzas on levirate follow (9.57–9.70), in which it is clear that the union is for procreation alone (not sexual enjoyment).

In his commentary on *MDh* 9.60, Bhāruci illustrates two rules of *niyoga* with the *MBh*, in which leviratic union is a key narrative device. In the first, the case of a woman who, though not a widow, is “appointed” because her husband is unable to father children, is exemplified with Pāṇḍu’s “non-widow” (*avidhāvā*) Kuntī. The second illustrates the requirement that the “appointed” woman be approached during the night with Vyāsa’s manner of approaching Vicitravīrya’s widows. In the *MBh* episode of the latter case, Satyawatī, whose son Vicitravīrya has died childless, demands that her other son Bhīṣma “look to the law of emergencies” (*āpaddharmam avekṣasva*; *MBh* 1.97.21) and father children with Vicitravīrya’s widows, since the very continuation (*saṃtāna*) of the family line is at stake. Bhīṣma avers owing to a vow of celibacy he had previously taken. Eventually Vyāsa is given the task to beget children in the “fields” (*kṣetra*) of Vicitravīrya (1.99.17), and the brothers Pāṇḍu, Dhṛtarāṣṭra and Vidura result. Though the dynastic crisis has seemingly been averted, it emerges again in the next generation, when Pāṇḍu, cursed to die if he has sex, is fearful of the consequences of being childless. He calls on Kuntī to deploy a “means for engendering children in a crisis” (*apatyotpādane yogam āpadi*; 1.111.22) and, in due course, she utilizes a magical mantra given to her previously by a grateful Brahmin “in view of the laws for emergencies” (*āpaddharmānvavekṣayā*; 1.104.6) to call upon the gods to father children with her (and her co-wife Mādrī). The result is, of course, the Pāṇḍavas.

The *MBh* has an entire section, known as the *Āpaddharmaparvan* (*ĀpDhP*), dedicated to *āpaddharma*. This collection of twenty-seven texts running over thirty-nine chapters (*MBh* 12.129–12.167) does not contain much of the typical Dharmaśāstra material on *āpaddharma*, though this is sometimes found elsewhere in the *MBh*. Rather, it explores the ways in which kings ought to act in emergencies to ensure the health of their realms and in such circumstances, how kings ought to behave toward their subjects, especially Brahmins (Bowles 2007). The most famous case of the latter is the story of Viśvāmitra eating the dog haunch in a drought (*MBh* 12.139; cf. 12.130), which is cited in *MDh* 10.108. In the case of the former, the *ĀpDhP* demonstrates a close affiliation with the *Aś*, and with *nītiśāstras*, such as the *Pañcatantra*, which use fables to demonstrate political strategies. In accordance with these political traditions, the *ĀpDhP* conceptualizes its problems in terms of the relations between weak kings and strong kings, and in terms of restoring a state’s declining fortunes, as is evident from the opening questions that Yudhiṣṭhira puts to Bhīṣma in *MBh* 12.129.1–12.129.3 (see also, 12.128.1–12.128.4).

The framing of such topoi in terms of *āpaddharma*, made explicit at *MBh* 12.151.34 and in the *MBh*'s two chapter summaries at 1.2.64 and 1.2.198, distinguishes the *MBh*'s approach from that of the *AŚ*. While the *AŚ* is expansive on how a king should respond to crises in his kingdom (Bowles 2007: 54–80), unlike the *MBh* and *Dharmaśāstra* it is not concerned with “laws” in emergencies and their transcendent implications. An *āpaddharma* is so-called because it attends precisely to the transcendent consequences of a person behaving in particular ways. For not following a *dharma* on account of environmental or social (or otherwise) crises does not merely have “this-worldly” implications (starvation, poverty, etc.), but also affects the future course of an individual's very soul. Following *dharma* brings with it certain “otherworldly” benefits, namely heaven (e.g. *GDh* 28.52) or a better birth on one's return to earth (e.g. *ĀpDh* 2.2.3). Consequently, it is sometimes said that *dharma* should not be pursued for “worldly” (*laukika*) benefits (*ĀpDh* 1.20.1), or that it has (in Olivelle's translation) “no tangible motive” (*agrhyamānakārāṇa*; *ĀpDh* 1.12.8, *VaDh* 1.7). At least in principle, *dharma* ought to be pursued for reasons that are “unseen” (*adr̥ṣṭa*). The conclusion to the *MDh*'s section on laws for emergencies claims (10.130) that those who properly follow the *āpaddharmas* attain the “highest state” (*paramaṃ gatiṃ*). While it is tempting to regard this as conventional and formulaic, *MDh* 11.128 asserts that the twice-born who follows the laws for emergencies when not in an emergency (*anāpadi*) does not gain its fruit, and, similarly in 11.130, nor does one substituting the secondary rule for the primary rule (see also *MBh* 12.159.16). In other words, the *dharmas* for emergencies, when properly pursued, are subject to the same rewards as the *dharmas* observed in normal times. One's spiritual fortunes are thereby preserved from the ravages of the contingencies of emergencies. An *āpaddharma*, therefore, retains the transcendental aspect of following a righteously prescribed practice, while also allowing for a breach of the normative code when circumstances abrogate it.

The *MBh*, unlike the *AŚ*, explores the problems of kingship not merely in terms of the restitution of the realm, but also in terms of the otherworldly consequences for the royal actor in light of the actions he has had to perform to bring about this restitution. The principal cipher for such concerns is King Yudhiṣṭhira, who repeatedly raises anxieties about the violence both inherent to the warrior's duties and ensuing from the *Mahābhārata* war (see e.g. Fitzgerald 2004a: 86–142; Bowles 2007: 133–54). In response, Vyāsa promises Yudhiṣṭhira he will be cleansed of stains resulting from the war by performing an *aśvamedha* as a *prāyaścitta* (*MBh* 12.32.23–12.32.24, 12.34.26), reflecting recommendations following periods of abiding by *āpaddharmas*. The *MBh*'s fifth book, the *Udyogaparvan* (“Book of the Effort”), in which the two sides prepare for battle, frames the conflict itself in terms of the language of

*āpaddharma*. Yudhiṣṭhira, in response to Saṃjaya's recourse to *dharma* to dissuade him from war, suggests he learn something about the "laws for emergencies" (*MBh* 5.28.3). Subsequently, the various embassies sent to Dhṛtarāṣṭra's court to sue for peace are sprinkled with remarks on avoiding and overcoming emergencies. Finally, with the battle now inevitable, Vaiśampāyana describes Yudhiṣṭhira, "skilled in the meaning of the laws of emergencies" (*āpaddharmārthakuśala*), calling together his allies to share their plans. The "laws for emergencies" in such cases clearly pertain to the violence of warfare.

The idea underpinning *āpaddharma*, "law during emergencies," first appears in the Dharmasūtras as a way to ameliorate problems arising when circumstances render normative occupations unviable, especially in the case of Brahmins. The prescribed solution is to permit conditional occupational mobility. The *MDh* and the *MBh* introduce the term *āpaddharma* and broaden the basic thrust of the Dharmasūtras. The *MDh* applies the core principle to all social groups, as is sometimes the case with post-*MDh* Dharmaśāstra. Further, both the *MDh* and *MBh* apply the idea of "law during emergencies" to the practice of leviratic union, the emergency in this case being the lack of a child. And, finally, the *MBh* extends the same notion to problems associated with political violence.

## King

*rājadharma*

Mark McClish

In *A History of Indian Political Ideas*, U. N. Ghoshal distinguishes between two approaches to statecraft in ancient India. The first is followed by the expert tradition on governance (*nīti*; *arthaśāstra*) and it characterizes its greatest extant text, the *Arthaśāstra of Kauṭilya*, which “concerns itself as a rule with the inductive investigation of the phenomena of the State” (Ghoshal 1959: 82). The second approach, found in *Dharmaśāstra* (and elsewhere), is the tradition of *rājadharma*, “the law(s) for kings,” which “deals with the same as an incident in a comprehensive scheme of class duties deriving their source primarily from the eternal *Vedas*” (82). Although both address the “public functions of the king” (82), the former is characterized by its singular commitment to the techniques of statecraft that will bring worldly success to the king, while the latter conceptualizes all of this within the soteriological framework of the “Whole Duty of the king,” strongly shaped “by the ideal of the highest good of this individual” (82).

In this light, *rājadharma* appears as a fundamentally theological category whose primary value is to subordinate *nīti* to *dharma*. The religious world of *Dharmaśāstra* provides a general set of soteriological mechanisms and goals, and the technique of statecraft ultimately becomes a means of the king’s salvation within that framework. This theological perspective is hardly absent in contemporary scholarship, as when Kane essentially denies that the *nīti* tradition existed apart from *Dharmaśāstra*, arguing, “*Arthaśāstra* . . . is . . . properly speaking a part of *dharmaśāstra*” (III: 8). There are two implications of this position. The first is historical, and it understands *nīti/arthaśāstra* to have evolved out of an earlier and more comprehensive *Dharmaśāstra* tradition. The second is interpretive. When K. V. Rangaswami Aiyangar defends the “traditional approach to the study of *Dharmaśāstra* and *Arthaśāstra*” as uniquely able, for its part, to provide “for a correct comprehension of the

Hindu ideals of life” (1941c: xv), he means that we must understand that the theology of *rājadharmā* in its mature form is always already present in the *nīti/arthasāstra* literature (1941c: 12), most precisely in those cases where the plain meaning of the text controverts just such an assumption.

In fact, the *nīti* tradition did not evolve out of the *dharma* tradition. Rather, the latter made a practice of appropriating material from the former throughout the classical period.<sup>1</sup> What is more, it seems that this *nīti* tradition originally did not subscribe to the values and priorities of *Dharmaśāstra* and that the ideals of *rājadharmā* as “the whole duty of the king” were absent in the early *nīti* tradition.

## THE “THE LAWS FOR KINGS”: AN OVERVIEW

With the exception of Nārada and Parāśara, all extant *dharma* texts from the classical period possess sections on *rājadharmā*. These tracts are, in the main, given to technical *nīti* instruction. Surprisingly, however, there are few direct references to *rājadharmā* in the tradition. Most occurrences, in fact, are in the plural (*rājadharma*s), and they refer not to the soteriological or ethical dimensions of kingship, as might be expected, but serve simply to mark these tracts. So, the *Āpastamba Dharmasūtra*, our earliest extant *dharma* text, states toward the end:

*vyākhyātāḥ sarvavarṇānām sādharmaṇavaiśeṣikā dharmāḥ | rājñas tu viśeṣād vakṣyāmaḥ ||*

We have explained the general and specific *dharma*s of all the *varṇa*s. Now, we will explain those specific to the king. (*ĀpDh* 2.25.1)

What follows, running from 2.25.2 through 2.29.10, is primarily a tract on *nīti*: techniques of statecraft. Likewise, The *Mānava Dharmaśāstra* uses the term *rājadharma*s twice, once to introduce (7.1) and once to conclude (9.324) a long tract mostly taken up with *nīti*.<sup>2</sup> The *Viṣṇu Smṛti* begins its discussion of *nīti* with *atha rājadharmāḥ*, “Now, the laws for kings” (3.1). In all of these cases, it is the aggregate of techniques for statecraft that are invoked, rather than its soteriological aspects specifically (discussed below).<sup>3</sup>

<sup>1</sup> See, e.g., Samozvantsev (1980–1); Vigasin and Samozvantsev (1985); Mirasdar (1996).

<sup>2</sup> Note that at 9.325 these are also called the “rules of action for the king” ( . . . *karmavidhir ukto rājñah* . . . ).

<sup>3</sup> Compare also the discussion of the king’s duties in the *Yājñavalkya Dharmaśāstra*, which is entitled *rājadharmaprakaraṇa* and is based on the *Arthaśāstra*, as well the *Mānava Dharmaśāstra*. A verse from the reconstructed *Kātyāyana Smṛti* (946) tells us that the *rājadharma*s are one of the things included under the heading of *prakīrṇaka*, “miscellany.” The term *rājadharmā* occurs only once in the singular, in a verse also attributed to Kātyāyana (5), where Brāhmaṇas

These *rājadharma* tracts vary in length, content, and detail. Here is an outline the relevant passages from the Dharmasūtras:

### Āpastamba

*varṇadharmā* (2.10.6; 2.10.12–2.11.14)

- *kṣatriyadharmā* (2.10.6)
- king's duty to enforce *varṇa* (2.10.12–2.11.4)

*rājadharma* (2.25.1–2.29.10)

- royal fort (25.2–25.14)
  - construction
  - ritual observances
  - lodging Vedic scholars
    - king's modesty
    - provision for needy
  - gambling hall
    - officials at gatherings
- security, administration, taxes (25.15–26. 17)
  - protection from thieves
  - gifts to Brāhmaṇas
  - protecting Brāhmaṇa property
  - villages/town officials
  - taxes
- law (26.18–29.10)
  - sexual crimes
  - assault and theft
  - rights of owners
  - king's obligation to punish
  - property in marriage
  - adjudication of disputes
  - witnesses

### Gautama

*rājadharma* I (10.7–10.48)

- duties of the king (7–12)
  - protection of creatures
  - just punishment
  - support for Brāhmaṇas and others
- war (13–23)
- taxes (24–35)

are instructed to educate the king “in *rājadharma*” (*rājadharme*). Other references to the *dharma* or *svadharma* (sg.) of the king are discussed below.



- property (36–48)
  - found property
  - legitimate ownership
  - treasure troves
  - recompense for theft
  - property of minors

rājadharmā II (11.1–13.31)

- royal conduct (11.1–11.18)
  - Brāhmaṇa supremacy
  - royal virtues
  - inferiority to Brahmins
  - enforcing *varṇadharmā*
  - appointing Brāhmaṇa priest, ritual obligations, and astrology
- law (11.19–13.31)
  - sources of law
  - legal procedure
  - punishment
  - enforcing *varṇadharmā*
  - assault
  - theft I
  - owner and herds
  - disobedience
  - gleaning
  - interest on loans
  - ownership
  - debts
  - deposits
  - theft II
  - punishment
  - pardons
  - witnesses

**Baudhāyana**

rājadharmā (1.18.1–19.16)

- protection of subjects (18.1)
- *varṇadharmā* (2–6)
- obedience to *purohita* (7)
- war (9–13)
- taxes (14–15)
- property (16)
- law (18.17–19.16)

- exemption of Brāhmaṇas from capital punishment
- murder and killing
- witnesses

### Vasiṣṭha

#### rājadharma I (1.39–1.46; 2.1–2.3)

- obedience to Brahmins, king rules accordingly (39–41)
- taxes I (42–46)
- *varṇas* (2.1–2.3)

#### rājadharma II (16.1–16.37)

- law I (16.1–16.37)
  - procedure
  - social position determines offense
  - property
  - [king's retinue]
  - witnesses

#### rājadharma III (19.1–19.48)

- special duties of king (1–6)
- enforcing *varṇadharma* (7–8)
- assault (9–10)
- protection of trees (11–12)
- administrative misc. (13–16)
- ferries (17–25)
- taxes I (26–8)
- maintenance of dependents upon death of king (29–34)
- protection of impotent/mad (35–6)
- taxes II (37)
- law II (38–48)
  - guilt and sin

Despite a degree of variability (e.g., topics such as forts and ferries are not found everywhere), we find a great deal of continuity between these discussions. A few topics are found in all of these treatments: war, taxes, property, theft, and, above all, law (see the *vyavahārapada* chapter). What is not clear from this chart is the uniformity of the tradition with respect to many of the rules and principles underlying these discussions, such as the king's obligation to make good stolen property, Brahmanical exemptions from punishment and seizure, or righteous rates of taxation. On the whole, we have clear evidence of a continuous and coherent tradition of technical rules for statecraft. So, what is the origin of these rules in the Dharmasūtras?

Let us look more closely at the earliest of the Dharmasūtras, that of Āpastamba, and how its instructions to the king relate to the rest of the text. *ĀpDh* 2.25.1, cited above, signals the end of one discussion and the start of another. The latter is mainly a *nīti* tract (2.25.1–2.29.10), while the former is characterized as “the general and specific *dharma*s of all the *varṇa*s,” and it comprehends all of the preceding material comprising the Dharmasūtra (1.1–2.24). As *varṇadharmā* (and, later, *varṇāśramadharmā*) is often synonymous with the instructions of Dharmaśāstra themselves, so it seems likely that this passage marks what was originally the end of the text. Even if this speculation is not borne out, *ĀpDh* 2.25.1 nevertheless calls attention to the fact that most of Āpastamba’s treatise is entirely unconcerned with *rājadharmā* altogether (Mirasdar 1996: 288). The exception to this would be the limited attention paid to the king as Kṣatriya in the presentation of *varṇadharmā*. He is instructed there not merely as member of his *varṇa*, but as possessing a special duty to enforce *varṇadharmā* itself (2.10.12–2.11.4). Likely, this is the original context and limit of any independent focus on kingship in the earliest tradition.

All of this becomes particularly salient when we consider the great likelihood that there existed, already in the time of Āpastamba, a vibrant, independent *nīti* tradition. We possess an authentic representative of that tradition in the *Arthaśāstra* of Kauṭilya. Although its traditional ascription to the beginning of the Mauryan period (which would date it to before Āpastamba; see Olivelle in Lubin et al. 2010) is almost certainly erroneous, it was most likely composed only a century or two after Āpastamba (Olivelle 2013: 29). Its sheer complexity and high degree of development on many, varied points of statecraft imply an earlier *nīti* tradition or set of traditions. Given also that monarchies and empires had existed in South Asia already for many centuries at that point, the existence of a commensurate statecraft tradition seems a certainty.

Though we know little of the *nīti* tradition before the *Arthaśāstra*, we have no reason to assume that it is not generally representative of the teachings circulating already in Āpastamba’s time. What we find in the *Arthaśāstra*, therefore, is of great importance to understanding the early *nīti* tradition, as long as we keep in mind that it has its own complex textual history. This will be considered below when we examine the values and priorities of the original *Arthaśāstra*. But for the present, it is important only to gain a general sense of the topics discussed by the text:

### Arthaśāstra

- domestic administration (books 1–5)
  - the king
    - training princes
    - appointing ministers
    - spies and spying
    - counsel

- envoys
- protecting the king
- daily activities
- the royal palace
- settling the land
- building fortified cities
- appointment of bureaucracy
- law and order
  - city manager
  - judges and law (*vyavahāra*)
  - “clearing thorns”
- techniques for rule
- components of the state (6.1)
- international relations (6.2–13.5)
  - foreign policy
  - calamities to the state
  - the march to war
  - battlefield warfare
  - policy against republics
  - advice for weak kings
  - taking an enemy fortress
- occult practices (14)
- technical elements of the text (15)

Here, we see that the *Arthaśāstra* comprehends most, if not all, of the topics found in the *nīti* passages of the Dharmasūtras. What is less clear from this list is how much more detailed and sophisticated their treatment is in the *Arthaśāstra*. As an imperfect index of this, we can compare the number of sūtras: the *Arthaśāstra* is more than twenty-eight times as long as Gautama’s passage on *nīti*. This difference is reflected in both its greater number of topics and its much greater detail and specificity.

Proving the direct influence of the *Arthaśāstra* on Āpastamba does not appear to be possible now, but it is worth noting that Āpastamba treats three major topics (the royal fort; security and administration; and law) in more or less the same order as the first half of the *Arthaśāstra*. As for the *Gautama Dharmasūtra*, however, the direct influence of the *Arthaśāstra* (or a similar text) is easier to demonstrate. Gautama discusses the king’s duties in two adjacent, but distinct tracts (10.7–10.48; 11.1–13.31). The former is embedded in a discussion of *varṇadharma*. The latter is clearly an independent treatment of kingship, and it begins:

*rāja sarvasyeṣṭe brāhmaṇavarjam || sādhuḥkāri syāt sādhuvādi || trayyām ānvik-  
ṣikyām cābhivinitaḥ || śucir jitendriyo guṇavatsahāyopāyasampannaḥ || samah  
prajāsu syāt || hitaṁ cāsāṁ kurvīta ||* (GDh 11.1–11.6)

The king rules all except Brāhmaṇas. He should be righteous in deed and speech. He should be well trained (*abhivinīta*) in the Triple Veda (*trayī*) and Investigation (*ānvīkṣikī*). He should be pure, with his senses under control (*jīhendriya*), and furnished with virtuous assistants and policies. He should be impartial to his subjects. And he should bring about what is beneficial to them.

While this may seem like relatively basic advice for a king, we have good reason to see it instead as a digest of more sophisticated instructions. For example, Gautama uses the phrase *trayyām ānvīkṣikyām cābhivinītaḥ* (11.3). The first two terms, *trayī* and *ānvīkṣikī* are the same terms used in the *Arthaśāstra* when it presents the four *vidyās* (“sciences”) that serve as the basis for the king’s instruction (the *Arthaśāstra* also includes *vārttā*, “economics,” and *daṇḍanīti*, “governance”) (1.2–1.4). In the next chapter (AŚ 1.5), Kauṭilya gives explicit instructions that the king receive “training” (*vinaya*; past participle: *vinīta*) in these very topics.<sup>4</sup> And following directly upon this (at AŚ 1.6–1.7) are instructions on *indriyajaya* (“control of the senses”): one who has attained this is *jīhendriya* (“one whose senses are under control”). Finally, AŚ 1.9 discusses the various qualities (*guṇas*) to be desired in the king’s ministers (1.9.1–2), pacing Gautama’s reference to *gunavatsahāya*. The close correspondence in this progression of topics and terms between the two texts cannot be a coincidence. Moreover, as mentioned above, this passage begins an independent tract on *nīti* (11.1–13.31), distinct from the preceding discussion of kingship in the context of *varṇadharma* (GDh 10.7–10.48), just as the cognate topics begin the *Arthaśāstra*. All of this leads to the conclusion that someone has here, in the context of *varṇadharma*, found reason to add further instructions for the king based in part on the *Arthaśāstra* or on a text that began with the same topics in the same order. It is most parsimonious to conclude that the source was the *Arthaśāstra* itself, as it is sufficient to explain at least these sūtras and does not require us to posit the existence of a hypothetical lost text.<sup>5</sup>

Although it is difficult to detect any direct influence of the *Arthaśāstra* (or a similar text) on the later Dharmasūtras, it is beyond doubt that the Dharmasāstras of Manu (McClish 2014) and Yājñavalkya (Tokunaga 1993) drew extensively from it. The *Nārada Smṛti* does not possess a section on *rājadharmā*, but we do find one in the *Vaiṣṇava Dharmaśāstra*, which drew, at

<sup>4</sup> In fact, we see a parallel formulation describing the king’s *purohita* at AŚ 1.9.9, who is to be, among other things, *daṇḍanītyām . . . abhivinīta*, “well trained in *daṇḍanīti*,” the most important of the four *vidyās* in the *Arthaśāstra*.

<sup>5</sup> There also seems to be some agreement in the legal code presented by Gautama and that of the *Arthaśāstra*. Gautama discusses, in this order, damage caused by animals (12.19–12.26), the failure to follow what is prescribed (12.27), gleaning (12.28), interest rates (12.29–12.36), ownership (12.37–12.39), debt (12.40–12.41), and deposits (11.42). Compare this with the progression of similar topics in the *Arthaśāstra*: damage to grazing land, etc. and nonobservance of convention (3.10), debts (3.11), and deposits (3.12). While the progression is not exact, it is highly suggestive.

least, on Manu and Yājñavalkya (Olivelle 2009a: 22–6). Outlines of these sections are given here:

**Manu (7.1–9.325)**

- prolegomena (7.2–35)
  - origin of the king
  - on punishment (*daṇḍa*)
  - proper conduct
- personal cultivation (7.37–53)
  - training
  - control of senses
  - vices
- appointing officials (7.54–68)
  - counselors
  - Brāhmaṇa counselor
  - ministers
  - envoy
- royal fort (7.69–7.76)
- marriage (7.77)
- appointing priests (7.78–7.79)
- appointing collectors and supervisors (7.80–7.81)
- honoring Brāhmaṇas (7.82–7.86)
- rules of war (7.87–7.98)
- misc. advice (7.99–7.113)
- governing the state (7.114–7.126)
- taxes (7.127–7.139)
- adjudicating lawsuits; law I (7.140–7.141)
- protecting subjects (7.142–7.144)
- morning routine/taking counsel (7.145–7.155)
- international relations (7.156–7.215)
  - political theory
  - six-fold strategy
  - war
  - victory
  - misc. (on political strategy)
- afternoon routine (7.216–7.222)
- evening routine (7.223–7.225)
- law (*vyavahāra*) II (8.1–9.250)
- “clearing thorns” (9.251–9.293)
- misc. (on the kingdom) (9.294–9.297)
- misc. (on the king) (9.298–9.312)
- protecting Brāhmaṇas (9.313–9.323)

**Yājñavalkya (1.305–1.363)**

- personal qualities and training (305–7)
- appointing counselors (308)
- appointing purohita (309)
- appointing priests (310)
- gifts to Brāhmaṇas I (311–16)
- settling countryside/building forts (317)
- appointing ministers (318)
- gifts to Brāhmaṇas II (319)
- rules of war (320–2)
- daily routine/state affairs (323–9)
- protecting subjects/punishment/non-oppression (330–338)
- ruling according to local custom (339)
- guarding counsel (340)
- international relations (341–4)
- effort and fate (345–7)
- alliances (348)
- constituents of the state (349)
- punishment I (350–5)
- law (356)
- weights and measures (357–60)
- punishment II (361–3)

**Viṣṇu (3.1–14.5)**

- general duties (3.1–3.3)
- settling territory/forts (3.4–3.6)
- government officials (3.7–3.21)
- taxes (3.22–3.32)
- constituents of kingdom (3.33–3.34)
- spying (3.35–3.37)
- international relations (3.38–3.39)
- military campaign (3.40–3.41)
- victory I (3.42–3.43)
- warrior ethic (3.44–3.46)
- victory II (3.47–3.49)
- righteous conduct I (3.50–3.54)
- property/treasure (3.55–3.67)
- counteracting calamities (3.68–3.69)
- appointing chaplain (3.70)
- appointing aides (3.71)
- adjudicating lawsuits (3.72–3.74)
- righteous conduct II (3.75–3.80)

- giving to Brāhmaṇas (3.81–3.84)
- protecting the king (3.85–3.88)
- righteous conduct III (3.89–3.90)
- punishment (3.91–3.96)
- gaining fame (3.97–3.98)
- weights/measures/currency (4)
- law: crimes and punishments (5)
- law: debt (6)
- law: evidence (7)
- law: witnesses (8)
- law: ordeals (9–14)

Manu's treatment of the *rājadharmas* is unique in that it represents the most intensive presentation on the topic within the classical *dharma* literature, including the first wholesale inclusion of the *vyavahārapadas* (8.1–9.250; see the *vyavahārapada* chapter). With the exception of *vyavahāra*, which Manu isolates and treats in great detail, his presentation of the *rājadharmas* represents a dramatic condensation of the *Arthaśāstra*, with a few additional tracts added from other sources (McClish 2014). This underlines the extent to which *vyavahāra* has always been the chief interest of Dharmaśāstra jurists within *rājadharma*. Emphasis on the *rājadharmas* fades considerably after Manu. The *Yājñavalkya Dharmaśāstra* presents much of the same *rājadharma* material as Manu in even more condensed form as a subtopic within *ācāra* (“conduct”). Viṣṇu is rather more in the model of Manu, albeit also more condensed. Other *smṛti* texts, however, show very little interest in statecraft. In the *Nārada Smṛti*, only *vyavahāra* is treated, and any trace of *nīti* is reduced to procedural rules for the king as judge, as well as a few rules for punishment in the section on *prakīrṇaka*. The lost texts of Bṛhaspati and Kātyāyana appear to have followed Nārada's model.

Having reviewed all of this, it is clear that *nīti* cannot be considered an outgrowth of the *dharma* tradition. On the contrary, it appears to have been a vibrant independent tradition, and *rājadharma* in the Dharmaśāstra appears to be mostly based (either directly or indirectly) on that *nīti* tradition. While thinkers like Manu certainly made original contributions, whether by adapting the *Arthaśāstra* to their needs or introducing other material, we find, overall, that the teachings on *nīti* found within the Dharmaśāstra appear (with the exception of *vyavahāra*) highly derivative.

## “THE WHOLE DUTY OF THE KING”

Where Dharmaśāstra does appear to have deviated from the *nīti* tradition is in the promulgation of ideas about the ethical and soteriological frameworks of



kingship. The emphasis on “the whole duty of the king” grows over time in the *dharma* tradition, cresting, as with so many other things, in the *Mānava Dharmaśāstra*. From the beginning, it is *varṇadharma* that provides the conceptual context. In all presentations of *varṇadharma* in the *dharma* literature, *kṣatriyadharma* bears, in fact, a specific relation to the king beyond the class. So in Āpastamba, we find that Kṣatriyas are charged with *daṇḍa* and *yuddha*, “punishment and war” (2.10.6), the former a duty specifically of the king. Similarly, Baudhāyana: “In Kṣatriyas, Brahman placed his strength along with the duties of studying, offering sacrifices, giving gifts, using weapons and protecting the treasury and creatures, for the enhancement of dominion (*kṣatra*)” (1.18.3; tr. after Olivelle 2000).

Gautama, foreshadowing the technique of Manu, uses his discussion of *varṇadharma* to expatiate more extensively on *rājadharma*: his first tract on *rājadharma* effectively replaces an expected discussion of *kṣatriyadharma* (10.7–10.48). Vasiṣṭha, in his third tract on *rājadharma*, speaks explicitly of the *svadharma* of the king (19.1), which he identifies as the protection of creatures (*rājñāḥ pālanaṃ*). This is in agreement not only with one of the duties of *kṣatriyadharma* (2.17) as *śastreṇa prajāpālanaṃ*, “protecting his subjects by weapon” (cf. 3.24–3.25), but is also often the duty foregrounded when the king’s obligations are specifically mentioned (as at *GDh* 10.7; *BDh* 1.18.1). Often, this duty is linked to the king’s acceptance of taxes (*BDh* 1.18.1; *MDh* 7.144; *YDh* 1.331). Manu, as is well known, structures most of his text as rules for each of the four *varṇas*. His discussion of *rājadharma* occurs in the place of *kṣatriyadharma*, which, in fact, forms there a subtopic of *rājadharma*. In all, then, we see a process whereby the *nīti* rules, external to *varṇadharma* in Āpastamba, come to be fully integrated within *Dharmaśāstra* through *varṇadharma*, with which kings of old bore a special relationship in Brāhmaṇical thought as enforcers of the duties of each class (*ĀpDh* 2.10.12–2.11.4; *GDh* 11.29–11.31; *BDh* 1.18.1–1.18.8; *VaDh* 1.39–1.41; etc.).

The entirety of *nīti* teachings can be integrated theoretically within *rājadharma* as the set of practical means for achieving “the protection of creatures,” a charge providing wide latitude with respect to both tactics and morality. But, within this syncretic concentration of all royal activities under *rājadharma* certain duties receive particular emphasis. So, for his part, Gautama relates a more extensive set of obligations:

*rājño 'dhikaṃ rakṣaṇaṃ sarvabhūtānām || nyāyyadaṇḍatvam || bibhryād brāhmaṇān chrotriyaṇ || nirutsāhāṃś cābrāhmaṇān || akarāṃś ca || upakurvāṇāṃś ca ||* (*GDh* 10.7–10.12)

In addition, for the king: protecting all creatures and just punishment. He should support Brāhmaṇas who are śrotriya, non-Brāhmaṇas who are indolent, those exempt from taxes, and students.

Other duties are discussed elsewhere with respect to their soteriological consequences. For example, the enforcement of *varṇadharma*, interpreted as part of the king's duty to protect creatures, is said to win a king heaven or both worlds (e.g., *ĀpDh* 2.10.12–2.11.4; cf. *MDh* 7.89). Kings are instructed frequently to make gifts to Brahmins, which are said to lead to heaven or rewards after death (e.g., *ĀpDh* 2.26.1; *MDh* 7.84–86). Manu also emphasizes the king's duty to fight: "When kings fight each other in battles with all their strength, seeking to kill each other and refusing to turn back, they go to heaven" (7.89 tr. Olivelle 2005a). Other duties bringing rewards for kings on this model include protection from thieves, protection of property, just punishment (e.g., *YDh* 1.355), and just adjudication (e.g., *NSm Mā* 1.65). It would appear that the otherworldly benefits of activities such as these, however, do not require any soteriological mechanisms unique to the king. He benefits simply because they are his *dharma* and link him to both local and transcendental networks of reciprocity: "By protecting those who follow the Ārya way of life and by clearing thorns, kings devoted to the protection of their subjects reach the highest heaven. When a king collects taxes without suppressing thieves, on the other hand, it will cause an upheaval in his realm and he will be cut off from heaven" (*MDh* 9.253–9.254 tr. Olivelle 2005a).

Hence, the soteriology of *rājadharma* conceived in this manner can be fully explained by the more general consequences of *dharma*, namely that through observance of duty "one wins both worlds" (e.g., *ĀpDh* 1.20.5–1.20.9; 2.29.14) or one attains higher or lower rebirths (e.g., *ĀpDh* 2.2.2–2.2.7; esp. *MDh* 12; *KātSm* 9). In a few places, however, special soteriological or religious mechanisms seem to apply to kings, typically involving specific kinds of transitivity between the king and subjects. For instance, we have the well-known principle that the king partakes in merits of his subjects (e.g., *GDh* 11.9–11), as well as the sin of any criminal whom he fails to punish (e.g., *ĀpDh* 2.28.13; *GDh* 13.11). This is likely related to the more general notions of sin and guilt by association or enabling, but other transitive principles might be unique to kings. One possibility is found at *MDh* 9.246–9.247, where we learn that when a king does not accept the fines of wrong-doers, the people of his realm will live long lives; crops ripen; children do not perish; and none are born with deformities. Similarly, Manu tells us: "When a man is killed in battle by the enemy as he turns tail frightened, he takes upon himself all the evil deeds committed by his master; while any good deeds that a man killed as he turns tail has stored up for the hereafter, all of that his master takes from him" (7.94–7.95 tr. Olivelle 2005a; cf. *YDh* 1.321). It is not immediately clear that this can be easily explained by the generic metaphysics of *dharma*.

No classical jurist reflected more on the religious status of the king than Manu, who argues that kingship is a divine institution, the first king having been created out of the "eternal particles from Indra, Wind, Yama, Sun, Fire,

Varuṇa, Moon, and the Lord of wealth,” all divine kings (7.3–7.4, tr. Olivelle 2005a). He continues:

Because the king was fashioned out of particles from these chiefs of the gods, he overpowers all beings by reason of his energy. Like the sun, indeed, he burns eyes and minds; no one on earth can bear to gaze upon him. He is Fire, he is Wind, he is the Sun, he is the Moon, he is the King of the Law (Yama), he is Kubera, he is Varuṇa, and he is the Great Indra—by reason of his power . . . After examining truthfully the task to be accomplished, his own strength, the time, and the place, he assumes in turn every aspect in order to fully implement *dharma*; he, in whose benevolence lies Padmā, the goddess of prosperity, in whose valor lies victory, and in whose anger lies death—for he is made from the energies of them all.

(*MDh* 7.5–7.7; 10–11; tr. after Olivelle 2005a)

While this provides neither religious praxis nor soteriological goals exclusive to the king, it does establish his as a sacred office and a sacred power. The king channels Brahman in the form of punishment (*daṇḍa*) to preserve order in the world. This awesome power is to be used with great care, and many virtues are required for its constructive application. Otherwise, “the king who is lustful, partial, and vile is slain by that very *daṇḍa*” (7.27, tr. after Olivelle 2005a), in other words, punishment itself slays the king who disobeys *dharma*. Thus, sacred law—*dharma*—provides the force necessary to contain the potential chaos residing within the divine power of violent destruction. The king’s capacity for peace and violence extends even to the gods (7.29), and this also raises the soteriological stakes for him.

Just as royal activity is sometimes equated with the sacrifice (e.g., *VaDh* 19.2; *YDh* 1.355–56), so Manu uses the model of the vow (*vrata*) further to depict statecraft itself as a religious activity:

Kṛta-age, Tretā-age, Dvāpara-, and Kali-age—the king’s activities constitute all these; for the king is said to be the age. When he is asleep, he is Kali; when he is awake, he is Dvāpara; when he is ready to undertake operations, he is Tretā; and when he is on the march, he is Kṛta.

The king should follow the energetic activity of Indra, Sun, Wind, Yama, Varuṇa, Moon, Fire, and Earth. As Indra showers rain during the four months of the rainy season, so the king, following the Indra-vow, should shower delights upon his realm. As Sun extracts water through its rays during the eight months, so the king should constantly extract taxes from his realm; for this is the Sun-vow. As Wind moves about infiltrating all creatures, so the king should infiltrate with his mobile spies; for that is the Wind-vow. As Yama, when the time has come, holds friend and foe alike in his grip, so the king should hold his subjects in his grip; for that is the Yama-vow. As we see people bound with fetters by Varuṇa, so the king should capture criminals, for that is the Varuṇa vow. When his subjects are as delighted in him as are people when they see the full moon, that king is observing the Moon-vow. When the king is always inflamed and ablaze against evil-doers and crushes evil rulers of border districts, tradition calls it the Fire-vow.

The Earth supports all creatures equally; when a king supports all creatures in the same manner, he is observing the Earth-vow. (*MDh* 9.301–9.311, tr. Olivelle 2005a)

Here, the successful performance of the several dimensions of kingship is seen as a set of mighty vows equal to the great religious vows undertaken by human savants and gods alike. While this is in keeping with Manu's conception of kingship as a divine institution, it does not yet entertain the divinization of the king himself. Such encomia are, however, not standard for the royal soteriology of early Dharmaśāstra.

## CONCLUSION

Overall, a relatively consistent impression of *rājadharma* as “the whole duty of the king” emerges in the *dharma* tradition. It will be useful, then, to return to the *Arthaśāstra* in order to question whether these conceptions were also operative in the early *nīti* tradition. As has been argued elsewhere (McClish 2009; Olivelle 2013), the extant *Arthaśāstra* is the result of a redaction that brought Dharmaśāstric material into the text. The original text, however, seems not to have dwelt much on the ethical or soteriological aspects of kingship. Where we do find expressions of royal soteriology in keeping with the *dharma* literature in the extant text, it is usually in sections dated to the text's redaction, often in the verses at the end of each chapter. Without pushing the evidence too far, then, it is yet clear that the soteriology attending the concept *rājadharma* was largely, if not wholly, absent in the early *Arthaśāstra*.

It is worth reflecting for a moment on how to understand the original *Arthaśāstra*'s silence on the matter. For, we know from earlier Vedic texts that the practice of kingship was already understood within Brahmanical culture to carry specific soteriological consequences. Does the *Arthaśāstra*'s silence indicate that its author rejected *rājadharma* or did he merely consider his own work to be a distillation of the purely technical dimensions of kingship? Although we cannot know for certain, the former seems more likely. For, we find a thoroughgoing empiricism informing the advice of the original text, evident most clearly in the argument that royal policy is undertaken entirely within the knowable realm of manifest cause and effect (see 6.2.6–6.2.12). It follows from this that there is no place in the development of policy for consideration of invisible agencies or mechanisms (*cf.*, interestingly, *MDh* 7.205; *YDh* 1.345–1.347). Religion is present in the original text, but primarily as part of the king's stratagems to manipulate his subjects and enemies. Just such an approach is attributed in a later passage to the Bārhaspatya school: *saṃvaraṇamātram hi trayī lokayātrāvida iti*, “Vedic scripture is merely a cloak

for one who is wise in the ways of the world” (1.2.5). Kauṭilya rejects this position in the extant text, yet it seems an apt description for the original treatise.

Finally, it must be noted that, on the balance, *rājadharmā* as “the whole duty of the king” is articulated to a far greater extent in the *Mahābhārata* than in the classical *dharma* literature. The term *rājadharmā*, for instance, occurs sixty-four times in the *Mahābhārata*, with the meaning of “the law(s) for kings.” Thirty-eight of these, many more occurrences than we find in all of the classical *dharma* literature, come in the *Rājadharmaparvan*, which gives the dying Bhīṣma’s instructions to Yudhiṣṭhira on kingship. Although most of these uses, like those in the *dharma* texts, refer mainly to *nīti* instructions, a fuller sense of *rājadharmā* as “the whole duty of the king” yet emerges there. For, we are told explicitly that following *rājadharmā* leads to the winning of both worlds (12.21.16), and its loss leads to chaos (12.65.24). It is able to cast out evil activities (12.56.7) and is soteriologically comparable with renunciation (12.65.3). And, in addition to its many other merits, we read also that it is the final refuge of all creatures (12.56.3), the support of *trivarga* (12.56.4), and, as the support of all other *dharma*s, the oldest of *dharma*s (12.65.12). In the *Mahābhārata* as a whole, the religious dimensions of *rājadharmā* come to the fore in the person of Yudhiṣṭhira. A full appreciation of *rājadharmā* in the *dharma* literature, therefore, requires attention to the context provided by the epics, as well as the Purāṇas, two places where *rājadharmā* undergoes further development.

## Punishment

*daṇḍa*

*Mark McClish*

In Indic thought, the *daṇḍa* (“staff” or “scepter”) is a symbol of the capacity to inflict harm. It was associated in particular with the king, as defined by his use of violence in the practice of governance. The term is usually translated as “punishment,” although it has a somewhat broader semantic range. Within Dharmaśāstra, *daṇḍa* is the ultimate worldly means of enforcing the norms of *dharma*. The king’s role in the legal system, from this perspective, is shaped by his right and obligation as *daṇḍadhara* (“wielder of the staff”) to punish those deemed deserving of punishment under the law or who fail to perform their ascribed penances. The threat and actualization of his violence serves to put the law “in force.” At the same time, the king’s *daṇḍa* represents his raw ability to dominate others by force and is the fundamental source of his political power. By submitting it to considerations of expedience (*artha*) and lawfulness (*dharma*), *daṇḍa* is rendered a productive force for effective governance and further enhancement of the king’s power.

In this way, *daṇḍa* stands at the intersection of the political and the legal, the normalization (in a literal sense) of domination, where coercive violence becomes just punishment. An analysis of punishment, therefore, is an ideal place to explore how relations of domination (including, but not limited to, the king) were articulated and legitimized within the legal imagination of Dharmaśāstra. And in respect of this, there are two primary questions: Who could punish? And who was immune from punishment? Of these, the latter is far more complex, inseparable, as it is, from the dynamic contours of a penology characterized by differential punishment based on status. The application of punishment, whether harshly, lightly, or not at all, was shaped not only by the prejudices of a deeply inegalitarian society, but also by issues such as sovereignty, worth, and personhood. The former question—who may punish?—is better suited to the present context and addressing it will, at least,

shine some light on the political community imagined within Dharmaśāstra as revealed by the recognition of the right to punish and its limits.

We read in the *Nāradaśmṛti*:

*gurur ātmavatām śāstā śāstā rājā durātmanām |  
atha pracchannapāpānām śāstā vaivasvato yamaḥ ||* (NSm 19.57)

The guru is the punisher of the self-possessed; the king is the punisher of the wicked;

And Yama Vaivasvata is the punisher of those who conceal their sins.

This verse is probably an aphorism that circulated in legal circles and beyond (cf. *VaDh* 20.3). It identifies three “punishers” (*śāstrs*, a term that can also mean “teacher”) of men: their guru, their king, and the god of the dead, Yama, himself a king. Now, this verse does not use the technical term *daṇḍa* (“punishment”), and the guru’s punishment likely refers to *prāyaścitta*, which forms an independent and restricted domain within the greater legal world of Dharmaśāstra. Yet, the verse is clearly conceptualizing punishment in the widest scope. So, while it should not be read as a constitution delegating the power to punish, it serves nevertheless as a useful entry point into the multipolar world of punishment in the legal imagination of the Dharmaśāstra literature, where two figures, the king and the teacher, predominate.

In Indic thought, the king was uniquely associated with the power of punishment. Manu goes so far as to equate punishment with the king himself (*MDh* 7.17). One of his epithets in this regard was *daṇḍadhara*, “the wielder of the staff” (e.g., *NSm Mā* 1.2), and among his sacred duties (*rājadharmas*), along with waging war and protecting living beings, was his obligation to punish those deserving of punishment (e.g., *ĀpDh* 2.10.6; *GDh* 10.7–10.8). When the texts invoke punishment for offenses, often in the context of *vyavahāra* (litigation in state courts), it is to the king that they appeal. As Manu states:

*anubandham parijñāya deśakālau ca tattvataḥ |  
sārāparādhaus cālokyā daṇḍam daṇḍyeṣu pātayet ||* (*MDh* 8.126)

He [i.e., the king] should inflict punishment on those deserving punishment only after he has fully ascertained the proclivity, as also the time and place, accurately, and considered carefully the ability of the criminal and the severity of the crime.

(Tr. Olivelle 2005a)

Kings stood at the apex of the political system and they were generally considered immune from accusations and punishment by worldly agents (e.g., *NSm* 15–16.21). So, how was royal wrongdoing recognized and addressed? There is provision in the literature for kings paying fines for their misdeeds. In Manu we read:

*kārṣāpaṇam bhaved daṇḍyo yatrānyaḥ prākṛto janaḥ |  
tatra rājā bhaved daṇḍyaḥ sahasram iti dhāraṇā ||* (*MDh* 8.336)

In a case where an ordinary person is fined 1 Kārṣāpaṇa, the king should be fined 1,000—that is the fixed rule. (Tr. Olivelle 2005a)

This rule, however, raises a vexing issue. Who possessed the authority to determine that a king was guilty of an offense and, if so, to punish him? Certainly, our texts posit no such worldly authority standing over the king. On this verse, the commentator Medhāthiti states that the king should punish himself through an offering to Varuṇa (see below). But, there was clearly widespread discomfort with even this idea, as we find little support for Manu's rule in other *smṛtis*. The medieval jurists Lakṣmīdhara and Devaṇṇabhaṭṭa go so far as to change the wording of the verse so that it applies not to the king, but to his underlings or associates (see Olivelle 2005a: 320).

Rather, it is another kingly god of Vedic origin, Varuṇa, who is said to punish kings. He is, to be specific, “the lord of punishment”:

*īṣo daṇḍasya varuṇo rājñāṃ daṇḍadhara hi saḥ* | (MDh 9.245ab)

Varuṇa is the lord of punishment, for he is the *daṇḍadhara* over kings  
(Tr. after Olivelle 2005a)

Varuṇa is conceived as a kind of cosmic sovereign over kings, who are his worldly cognates, and their relationship is mediated through *daṇḍa*. This passage is used by Manu to support a previous rule, in which he orders a king to offer to Varuṇa any fine taken from a *mahāpātakin* (one guilty of a grievous sin) by throwing it in the water (or giving it to a learned and virtuous Brāhmaṇa). Yājñavalkya applies this practice as the remedy to any unjust fine levied by a king (YDh 2.310). The de facto punishers of kings, however, are the agentless soteriological mechanisms by which unjust or greedy kings take on the sins of wrongdoers and find hell in the next life and by which good kings reach heaven (e.g., MDh 8.386; YDh 1.353; KātSm 960–1).

As to punishment itself, a few different typologies are to be found. Nārada states:

*śārīraś cārthadaṇḍas ca daṇḍas tu dvividhaḥ smṛtaḥ* |  
*śārīrā daśadhā proktā arthadaṇḍās tv anekadhā* || (NSm 19.60)

Punishment is known to be twofold: corporal punishment and monetary punishment.

The corporal is declared to be tenfold, while the monetary is manifold.

Indeed, a wide variety of amercements are levied in the legal codes (NSm 19.62–19.64, etc.), but prominent among them is a standard tripartite set of fines called the lowest, middle, and highest fines for violence (*pūrva-/adhama-/prathama-*, *madhyama-*, and *uttamasāhasa*). These are not restricted to cases of *sāhasa* (“violence”), but borrow from them only the value of the fines assessed for various instances of such crimes. The classical jurists differ on their exact value (cf. MDh 8.138; YDh 1.361; NSm 19.37–19.38).



The ten-fold corporal punishment to which Nārada refers is given first by Manu:

*daśa sthānāni daṇḍasya manuḥ svayambhuvo 'bravīt |*  
*triṣu varṇeṣu tāni syur akṣato brāhmaṇo vrajet || (MDh 8.124)*  
*upastham udaram jihvā hastau pādau ca pañcamam |*  
*cakṣur nāsā ca karṇau ca dhanam dehas tathaiva ca || (MDh 8.125)*

Manu, the son of the Self-existent One, has proclaimed ten places upon which punishment may be inflicted. They are applicable to the three classes; a Brāhmaṇa shall depart unscathed.

They are: genitals, stomach, tongue, and hands; feet are the fifth; and then, eyes, nose, ears, wealth, and body. (Tr. Olivelle 2005a)

Manu's inclusion of "wealth" (*dhana*) in his list not only undermines Nārada's later twofold division, but it also undermines the rule at *MDh* 8.124, for it is typically understood that Brāhmaṇas are exempt from corporal but not pecuniary punishment (although Medhāthiti, interpreting this couplet strictly, argues that it does). Nevertheless, this tenfold list gives us a good idea of the various corporal punishments ascribed throughout the legal codes. The commentators tell us that punishment of the "body," the tenth place, is a reference to capital punishment.

We find another, fourfold typology of punishment in Manu (see also *YDh* 1.362; *BṛSm* 1.29.2ff., etc.):

*vāgdaṇḍam prathamam kuryād dhigdaṇḍam tadanantaram |*  
*trīṣyam dhanadaṇḍam tu vadhadaṇḍam atah param || (MDh 8.129)*  
*vadhenāpi yadā tv etān nigrahitum na śaknuyāt |*  
*tadaīṣu sarvam apy etat prayuñjīta catuṣṭayam || (MDh 8.130)*

He should employ first the punishment of verbal reprimand; next a public denunciation; third, a fine, and finally, corporal punishment.

If he is unable to restrain them even with corporal punishment, then he should impose on them all these four. (Tr. Olivelle 2005a)

The notion of escalating degrees of punishment as a means of restraining offenders is somewhat at variance with the practice of prescribing specific punishments (or set of options) for an offense, but it conforms with more general instructions on punishment that emphasize its distinctiveness from the rendering of a verdict as well as the consideration of various externals by the judge (*cf.* *GDh* 12.51; *MDh* 8.126; *YDh* 1.363; *NSm* 19.45, etc.).

Aside from the well-known penance for theft (treated as a *mahāpātaka* rather than a dispute between parties), in which he was to strike the penitent with a pestle or club (*ĀpDh* 1.25.4, etc.), the king presumably delegated his power to carry out punishment to his appointed subordinates. They are little discussed by the classical jurists, if at all.

The king's power to adjudicate disputes was routinely delegated to appointed judges (see below), but the *dharma* writers also recognize the

authority of a variety of non-state legal forums. Nārada enumerates five venues of litigation comprising the greater legal system:

*kulāni śreṇayaś caiva gaṇāś cādhiḥkrto nṛpaḥ |  
pratiṣṭhā vyavahārāṇāṃ gurvebhyas tūttarottaram ||* (NSm Mā 1.7)

Families, guilds, assemblies, appointed judge, and the king: these are the venues of litigation, each latter one superior to each former.

While Nārada (following YDh 2.31 and further refined at BrSm 1.1.58) presents these as a neat linear hierarchy, we should be cautious not to take this model as evidence of an integrated legal system. Even so, it does reveal how a jurist like Nārada thought about jurisdiction in the plural legal order of the classical period. The question we face here is how the right to punish was understood to be distributed among these various legal authorities.

The *dharma* texts address their instructions on *vyavahāra* (litigation in state courts) to the king, and they do so with reference to his unsurpassed power as chief judge and *daṇḍadhara* of the realm. At the same time, they recognize that this power is routinely delegated to appointees (MDh 8.9–8.11, etc.). In fact, the *Arthaśāstra* of Kautīlya, our most important source from the classical tradition of statecraft, addresses its rules on *vyavahāra* entirely to appointed judges called *dharmasthas* rather than to the king (3.1.1ff.). In the *dharma* literature, such appointed judges are called by a few different names, such as *sabhya* or *prāḍvivāka*. All of these are the *adhikṛtas* in the formula above, professional judges appointed by the king. In the texts, they serve as his judicial substitutes in the fullest sense (with the exception that the king himself could overturn their rulings: YDh 2.32, etc.). So, the power to adjudicate disputes prescribed in discussions of *vyavahāra* is implied as much for appointed judges as for the king. Kane, following commentators such as Medhāthiti and Devaṇ-ṇabhaṭṭa (see below), argues that the power to declare a verdict was distinct from the power to assign punishment, which remained with the king (1973: 391; cf. Jolly 1928: 290–2). However, Brhaspati (1.1.91) holds that the appointed (Brāhmaṇa) judge could personally carry out two forms of punishments, verbal reprimands (*vāgdaṇḍa*) and public censure (*dhigdaṇḍa*), while only the king could inflict pecuniary or corporal punishment. At any rate, to the extent that an appointee could act as a full substitute, he must have had some power to rule as well as sentence. Most typically, the guilty parties are said to be handed over to the king after the verdict for punishment, whether for sentencing or simply the infliction of the punishment (NSm Mā 2.43; esp. BrSm 1.1.88).

But, what of the right of the “lower courts,” the *kula*, *śreṇi*, and *gaṇa*, to punish? Brhaspati addresses the question directly:

*kulaśreṇigaṇādhyakṣāḥ puradurganivāsinaḥ |  
vāgdhigdamam parityāgaṃ prakuryuḥ pāpakāriṇām ||* (BrSm 1.17.17)

*taiḥ kṛtaṃ ca svadharmeṇa nigrāhānugrahaṃ nṛṇām |  
tad rājño 'py anumantavyaṃ niṣṣṭārthā hi te smṛtāḥ ||* (BrSm 1.17.18)

The officials among families, guilds, and assemblies, dwelling in cities and fortresses, shall carry out the verbal reprimand, public denunciation, and abandonment of wrongdoers.

And, in following their individual duty, whatever favor or disfavor they confer upon men must be approved by the king himself, for they are declared to have been entrusted.

Recalling the four types of punishment listed by above, this verse restricts these lesser legal authorities from two kinds of punishment: monetary and corporal. We learn here also that they operate as extensions of the king's judicial authority, with which these officials have been entrusted and to which they are responsible. Elsewhere, Brhaspati places further limits on them:

*rājñā ye viditāḥ samyak kulaśreṇigaṇādayaḥ |  
sāhasanyayavarjyāni kuryuḥ kāryāṇi te nṛṇām ||* (BrSm 1.1.92)

Families, guilds, assemblies and the like that have been duly approved by the king may try cases among men, with the exception of sāhasa.

Here, the lesser courts are forbidden from adjudicating disputes that are *sāhasanyaya*, meaning here cases involving “rulings on violent crimes” (see NSm 14.2–5; Rocher 1954–55). This would circumscribe many instances calling for corporal punishments according to the legal codes anyway, and it is likely that some convergence between these two rules should be understood.

Devanṇabhaṭṭa takes up the issue also in the *Smṛticandrikā* (III: 45), seeming to equate these lower courts with the “permanent” (*pratiṣṭha*) and “impermanent” (*apraṭiṣṭha*) courts mentioned at BrSm 1.1.57, as opposed to the court overseen personally by the king (*śāsita*) or by an appointed judge who possesses the king's signet (*mudrita*). He argues that judges in *pratiṣṭha* and *apraṭiṣṭha* courts could not adjudicate cases pertaining to *sāhasa*, and neither could they assign punishment (*daṇḍadāpana*) or fines (*arthadāpana*). Kane argues that they were essentially “arbitration courts” (III: 280).

A different perspective on the matter is offered by Medhāthiti in his *bhāṣya* on MDh 8.2, in which he comments extensively on the verse from Nārada cited above (Mā 1.7). There, he observes that the five different legal authorities enjoy different rights. He says:

The King's right extends up to the infliction of punishments (*daṇḍa*), while that of the Brāhmaṇa [i.e., the *adhikṛta*] and the others [i.e., the *kula*, *śreṇi*, and *gaṇa*] extends only up to the pronouncing of judgments (*nirṇaya*), this latter right is distinct from the former. (Tr. Jha 1920–39: 8)

Medhāthiti, like Devanṇabhaṭṭa, distinguishes the right to pronounce a judgment from the right to carry out punishment. All of the courts render decisions, but only the king can punish. We have already seen, however, that

Bṛhaspati recognized the right of the lesser courts to inflict certain forms of punishment (1.17.17), even if Medhāthiti and Devaṇṇabhaṭṭa disagree. And certainly, it appears that the lower courts enjoyed the right at least to enforce verdicts, for Medhāthiti's earlier comments speak specifically about the steps taken by *śreṇis* to ensure their rulings were followed:

... the members of a guild fight shy of any matter relating to themselves going before the King, as that would lend the King's officers an opportunity for interfering in the work of their guild; and hence they always take from the parties concerned sufficient security against their deviating from the decision arrived at, before they proceed to investigate a dispute; the understanding with the person standing security being that if the party deviate from the decision arrive at by the guild, he shall pay a stipulated fine, or he should not let him deviate from it. (Tr. Jha 1920–39).

Medhāthiti's discussion of the *gaṇa* also refers to the enforcement of decisions on their part (Jha 1920: 7). All of this falls short, however, of ascribing to the lesser courts any right to punish, even the verbal forms endorsed by Bṛhaspati (1.17.17).

Somewhat different from these, however, are the rights assigned by Medhāthiti to the head of house:

Similarly the ordinary householder (*gr̥hin*) also would be an "authorised person" [i.e., appointed judge] so far as his own household-affairs are concerned,—this being in accordance with the declaration that "the householder is master in his own house" (*svatantras tu gr̥he gr̥hī*), which means that he is free to deal with all disputes (*vyavahāra*) within his own household, up to the infliction of punishment (*daṇḍaparyanta*),—specially with a view to proper discipline among his children and pupils; but he may deal with all cases, except the inflicting of bodily punishment (*śārīra daṇḍa*), or the doing of acts conducive to depravity. What is meant is that in the case of minor offences (*svalpa aparādha*) the householder (*gr̥hastha*) himself acts like the King, while in that of serious offences (*mahat vyatikrama*), it is necessary to report to the king. (Tr. Jha 1920–39)

Here, the householder is analogized to the appointed judge and to the king himself, at least with respect to his own domain. This power is granted with respect to his "independence" (*svatantra*) and it clearly applies to those who are dependent upon him, such as his children and pupils. He has the right to adjudicate disputes and punish minor offenses within his house, but he is forbidden from inflicting corporal punishment. Offenses that are more serious are referred to the king. Although we cannot strictly equate correlate the *gr̥ha* with the *kula* or Medhāthiti's *mahat vyatikrama* with *sāhasa* in Bṛhaspati's rule above, certainly this passage would seem to confirm the recognition of a right to punish. As much is recognized elsewhere in the tradition:

*bhāryā putras ca dāsaś ca śiṣyo bhrātā ca sodaraḥ |*  
*prāptāparādhas tādyāḥ syū rajjivā veṇudalena vā ||* (MDh 8.299)

*prṣṭhataḥ tu śarīrasya nottamāṅge katham cana |  
ato 'nyathā tu praharan prāptaḥ syāc caurakilbiṣam ||* (MDh 8.300)

When they misbehave, a wife, son, slave, pupil, or uterine brother may be beaten with a rope or a bamboo strip on the back of their bodies and never on the head. If he beats them any other way, his liability is the same as for theft. (Tr. Olivelle 2005a)

In this passage, certain individuals are assigned the right to punish others physically for their offenses (*aparādhas*), which punishment, however, was limited to striking the back with a bamboo strip or rope. The subject of this rule is not given in the text, but the identities of the various individuals that may be punished suggest that the subject may be the head of house (*gṛhin*; *gṛhastha*); although, Medhāthiti argues that the subject is whoever bears the relation, that is, a husband, father, master, teacher, and brother. Obviously, these are not exclusive statuses. Whoever is the subject of the rule, a limited right to punish appears linked to the notion of “independence” (*svatantra*). Nārada identifies three individuals who are independent:

*trayaḥ svatantrā loke 'smin rājācāryas tathaiva ca |  
prati prati ca varṇānāṃ sarveṣāṃ svagṛhe gṛhī |* (NSm 1.28)

Three in this world are independent: the king, the teacher, and the householder of each caste in his own home.

Later, he links this, in part, to the right to chastise or discipline:

*svatantrāḥ sarva evaite paratantreṣu sarvadā |  
anuśiṣṭau visarge ca vikraye ceśvarā matāḥ ||* (NSm 1.34)

To say that someone is independent means that he has persons dependent on him, and that he is empowered to discipline, expend, and sell them. (Tr. Lariviere 1989a)

It is important to note, as Medhāthiti emphasizes, that the householder's right to punish is not merely for the purpose of beating, but is meant to have the salutary effect of helping to keep the offender on the right path (seemingly a common goal of legal authority: see Medhāthiti on MDh 8.2). Hence, milder forms of censure are to be tried first. As much is reflected in Āpastamba's instructions to teachers, where he gives a sense of graduated punishment, without, however, endorsing physical violence:

*aparādheṣu cainam satatam upālabheta | abhitrāsa upavāsa udakopasparśanam  
adarśanam iti daṇḍā yathāmātram ā nivṛtteḥ |* (ĀpDh 1.8.28–1.8.29)

When a pupil does something wrong, the teacher should always correct him. Instilling fear, making him fast or bathe, and banishing him from his presence are the punishments, and he should apply them according to the severity of the offense until the student has completed his studies. (Tr. Olivelle 2000)

The right of such people to punish their dependents, however, seems to have been understood as exercised only under or within the sovereign authority of

the king. So we read in Nārada's instructions to teachers, where the same limit on physical violence as seen in *MDh* 8.299–8.300 is observed:

*anuśāsyāś ca guruṇā na ced anuvidhīyate |*  
*avadhenāthavā hanyāt rajjvā veṇudalena vā || (NSm 5.12)*  
*bhṛṣam na tāḍayed enaṃ nottamāṅge na vakṣasi |*  
*anuśāsyātha viśvāsyah śāsyo rājñānyathā guruḥ || (NSm 5.13)*

If [a student] does not obey, the teacher may punish him; he may beat him with a rope or a split bamboo cane as long as he does not hurt him. He must not beat him harshly, nor on the head or chest; but after chastising him, he must encourage him; otherwise the king must punish the teacher. (Tr. Lariviere 1989a)

Nārada's rule makes clear that the teacher's right to punish is limited and that the king is guarantor of that limit. For, if he exceeds it, the teacher is to be punished by the king. As to the precise extent of the limit, Nārada adds the important information that the student is not to be hurt (*vadha*) by the beating. This underlines the impression that the king policed the right to punish and reserved for himself or his official delegates the right to inflict punishments considered to result in harm. What is less clear is the extent to which the householder's *gṛha* can be correlated with the *kula* as one of the five legal domains. On the balance, it seems that Medhātithi and others think of them separately, with the rules for the *gṛhin* expressed in Manu as exceptions for specific individuals carved out from the more general rules governing physical assault.

\* \* \*

A systematic perspective on the right to punish in the *dharma* literature seems hardly possible given the nature of our sources, although we do see some agreement that all or certain forms of punishment were reserved for the king, with exceptions made for "independent" individuals such as heads of house or teachers. But, even if the passages above seem to converge on a rough consensus regarding the right to punish and its limits, we can find further passages that take a different perspective, such as the following from the *Nārada-smṛiti*:

*śvapākapaṇḍacaṇḍālavyaṅgeṣu vadhavṛttiṣu |*  
*hastipavṛtāyadāreṣu gurvācāryāṅganāsu ca || (NSm 15–16.12)*  
*maryādātikrame sadyo ghāta evānuśāsanam |*  
*na ca taddaṇḍapārūṣye doṣam āhur manīṣiṇaḥ || (NSm 15–16.13)*  
*yam eva hy ativarterann ete santam janam nṛṣu |*  
*sa eva vinayam kuryān na tadvinayabhān nṛpaḥ || (NSm 15–16.14)*

If a *śvāpāka*, a man who is impotent, a *caṇḍāla*, a cripple, a butcher, an elephant driver, a man who is uninitiated, their wives, or the wives of an elder or preceptor should violate customary rules, an immediate beating (*ghāta*) is their punishment; the wise say that physical assault (*daṇḍapārūṣya*) on these is not a crime.

The virtuous man whom they offend is the very one who should punish them; the king has no role in their punishment. (Tr. Lariviere 1989a)

It appears that both in point of degree of harm as well as jurisdiction, this rule goes much farther than those previously discussed. For, *daṇḍapāruṣya*, the legal title covering physical assault, can include grave physical injury, and the commentator Bhavasvāmin argues that “beating or even killing these persons for violation of customary rules does not involve a crime and the ones who do the beating are not punishable” (Lariviere 1989a II: 188). Not only does this allow the infliction of harm by private parties, but it also allows it well beyond the narrow sphere of their particular dependents. This may have struck many, however, as too liberal of a policy, as Bhavasvāmin, despite endorsing the rule, advises the king not to encourage such behavior (188).

Insofar as the concept of “punishment” represents the legalization of domination, we can see the diversity of attitudes about it in the tradition as reflecting various claims about who has the right to enforce their will upon whom, some mediated through conceptualizations of the greater legal order and others ascribed to individual status, likely with some degree of overlap. And just as the royal power in premodern India never fully effaced the self-determination of all groups in the realm, so too the dictates of Dharmaśāstra never developed into a monolithic legal system effacing the plural legal order. What we have in this instance, then, is something of a heterogeneous record, partly descriptive and partly prescriptive, as to whose domination of whom was recognized as legitimate within legal imagination and what its limits were.

## Legal Procedure

*vyavahāra*

*Patrick Olivelle*

In a legal system, Hart (2012) contended (as we have seen Chapter 3) there are two kinds of law: primary rules and secondary rules. The former, also called substantive law, governs the everyday life and transactions of individuals and groups. Hart subdivides the latter into three: rules of recognition, change, and adjudication. As we have dealt with the first two in Chapter 3, this chapter focuses on the third kind of secondary rules dealing with the procedures to be followed in adjudicating disputes and lawsuits arising from the breach or the perceived breach of primary rules.

When there is a dispute between private individuals or groups, or when an individual is accused of a crime by the state, a legal system must have a process whereby a just resolution or verdict can be reached: justice must be seen to be done. At an anthropological level, once we move away from face-to-face small-scale communities, where one would expect the leader's wisdom and judgment to be respected, a system of justice requires transparent and accepted rules for adjudicating disputes and accusations. These rules of adjudication are what we mean by legal procedure. First, they confer on certain individuals the power to adjudicate, constituting them as judges presiding over courts of law. Second, they constrain the way judges and other court personnel conduct a court case, identify individuals who are competent to file lawsuits and the kinds of charges that may be entertained by a court, prescribe the kinds of evidence that are valid and acceptable, and point out how evidence should be assessed and the manner in which decisions are reached. From at least the first century CE, in India, we have sections of legal codes, and from about the sixth century CE, specialized codes devoted to the examination of legal procedure called *vyavahāra*. In this chapter, we examine the scholarly explorations of this topic carried out by the authors of not only the Dharmaśāstras but also later commentators and medieval writers of legal digests.



It is clear, however, that legal procedure centered on impartiality, on treating all litigants fairly, long predates the extant Dharmaśāstras. Already in the third-century BCE inscriptions of Aśoka, we have the emperor's instructions to his judicial officers to be impartial.<sup>1</sup> Further, in the *Bṛhadāraṇyaka Upaniṣad* (1.4.14) we have a statement about how a weaker man can take a stronger man to court and make demands "by appealing to *dharma*, just as one does by appealing to the king." The even and impartial judicial process makes them equal at least within the legal arena.

Yet, it is only with the writing of Dharmaśāstras texts that we are presented with the actual procedures that judges were expected to follow in a court of law.<sup>2</sup> However, it is quite likely that these procedures pertained specifically to royal courts. Whether and to what extent they were also followed by other venues for dispute resolution, such as castes and guilds, discussed below, is difficult to estimate. The procedure presented in the early Dharmaśāstras (third c. to first c. BCE), generally within the discussion of the duties of a king, is sketchy at best, and the technical vocabulary is not well developed. The earliest text, that of Āpastamba (third c. BCE), states that "men who are learned, of good family, elderly, wise, and unwavering in their duties" should resolve disputes (*ĀpDh* 2.29.5–2.29.10). If there is doubt, they should investigate through evidence (*liṅga*) and ordeals (*daiva*). The parties present their case, and the chief witness should tell the truth. If he tells a lie, he is punished by the king, and hell awaits him after death. We do not find in Āpastamba's laconic exposition any technical terms for such central figures as judge, litigant, or even witness.

We see an enormous change in the discussion of procedure just a century or so later by Gautama (second c. BCE). He has a fuller discussion of witnesses called, for the first time, *sākṣin* to which he devotes an entire chapter (13). For the very first time in Indian jurisprudence, Gautama alludes to two kinds of witnesses: those listed by the litigants and those who are not, using the term *anibaddha* for the latter. Witnesses are not to speak until they are convened and questioned by the court. Gautama says that, according to some, witnesses are to be placed under oath (*śapatha*) in front of the gods, king, and Brāhmaṇas, a common requirement in later sources. He is also the first to instruct the witnesses of the dire consequences of giving false testimony, perhaps alluding here to the judge's oration to the witnesses given in later sources, and the first

<sup>1</sup> See the separate inscriptions of Dhauḷi and Jaugada, where Aśoka asks his *nagalaviyohālakas* (*nagaravyavahārika*) not to be capricious but treat all people impartially (*majjham*). Likewise, in the fourth Pillar Edict he orders *viyohālasamatā*, equity in the administration of justice.

<sup>2</sup> There are other sources for the development of legal procedure in the earliest periods, especially the Buddhist monastic code (*vinaya*), which possibly reflect procedures found in some parts of civil society (see Chapter 29).

to give one circumstance in which lying under oath to the court is permitted—when a litigant’s life is at stake in a case involving the death penalty (*GDh* 13.24).

Besides using for the first time in the history of Dharmaśāstras the crucial terms *vyavahāra* (as litigation or court procedure) and *sākṣin* for witness, Gautama uses several other technical terms: *sabhya* (assessor, who occupies a central position in later discussions); *prāḍvivāka* (interrogator, later the chief judge); *tarka* (judicial/legal reasoning); and *vipratipatti* (disagreement between litigants or witnesses).<sup>3</sup> Gautama also has a more complete description of the legal process. Given that, as we have seen in Chapter 3, Hart’s rule of recognition is important for judges, because they must know what the law is before they can apply it, it is significant that Gautama lists various laws, besides those derived from the Veda and Dharmaśāstras, that may be applicable in particular cases: the laws of a region, caste, and family. Further, he recognizes the legal authority of groups of farmers, merchants, herdsmen, moneylenders, and artisans with respect to their members.<sup>4</sup>

Gautama is also the first to list the king as the judge (*GDh* 13.26), implying the later conception that all judicial power is vested in the king, a judge (*prāḍvivāka*) exercising it only when deputed by the king. If there is a miscarriage of justice, “the guilt falls on the witnesses, assessors, king, and perpetrator” (*GDh* 13.11).<sup>5</sup> Gautama also alludes to the possibility that the court may grant (probably the defendant) a postponement of the proceedings, except in cases requiring immediate attention (*GDh* 13.26–13.30). These points will reappear, and they will be expanded upon by later jurists.

The next jurist, Baudhāyana, unfortunately, has very little to say about legal procedure, except to cite seven verses on the way witnesses are placed under oath by the court (*BDh* 1.19.7–1.19.12).<sup>6</sup> He is, however, the earliest author to address the issue of eligibility with respect to witnesses: “People of the four classes (*varṇa*) who have sons may be witnesses, except learned Vedic scholars, royals, wandering ascetics, and those who lack humanity” (*BDh* 1.19.13). Later authors will present long lists of individuals excluded from being witnesses.

Even though Vasiṣṭha wrote over two centuries after Gautama, his discussion of legal procedure is skimpy. He begins the section quite promisingly, with the introductory statement: *atha vyavahārāḥ* (“Next, legal procedures [or] lawsuits” *VaDh* 16.1), but does not follow through.<sup>7</sup> He says that court

<sup>3</sup> See *GDh* 11.19, 11.23, 13.1, 13.11, 13.26.

<sup>4</sup> See *GDh* 11.19–11.22: *deśajātikuladharmāḥ*; *karṣakavaṇikpaśupālakusīdikāraḥ*.

<sup>5</sup> This is restated in a verse cited in *BDh* 1.19.8: “One quarter of an *adharmā* falls on the perpetrator, one quarter on the witness, one quarter on the court officials (*sabhāsād*), and one quarter on the king.”

<sup>6</sup> As we have noted in Chapter 1, Baudhāyana’s text has come down to us in a mutilated state.

<sup>7</sup> The *VaDh* has undergone corruption, and its textual transmission has been poor (Olivelle 2000).

proceedings (*sadaḥkāryāṇi*) are to be conducted by the king or counselor (*mantrin*); he is the only one to list *mantrin* as judge. Vasiṣṭha is the first to introduce the classification of evidence into three: witnesses, documents, and possession. Although both this classification and the accompanying new vocabulary—*lekhya* and *likita* for documents, and *bhukti* for possession—represent a clear advance in jurisprudential thought, given the poor transmission of the text, it is unclear whether this passage was original to the text or inserted into it at a later date, for this three-fold classification, found for the first time in Yājñavalkya, is missing even in Manu.

Two major texts of the first two centuries of the Common Era, Kauṭilya's *Arthaśāstra* and Manu's *Dharmaśāstra*, represent a watershed in the jurisprudential history of ancient India. Although evidence does not permit certain conclusions, it is quite likely that the early reflections on jurisprudence in general and on legal procedure in particular were carried out in the expert tradition of political science, whose sole extant text from the ancient period is that of Kauṭilya. It is quite certain, however, that writing a century or so after Kauṭilya, Manu derived much of his material on statecraft and law from his treatise,<sup>8</sup> and even to a greater extent, as we have seen in Chapter 1, Yājñavalkya, writing two or three centuries after Manu. Nevertheless, the traditions of *Arthaśāstra* and *Dharmaśāstra* have different ideological moorings and practical aims, and we see these expressed in the discussions of legal procedure of these authors.

In Kauṭilya's work, we have the earliest comprehensive discussion of legal procedure, given that the data from the Dharmasūtras are fragmentary and superficial. Its third book, entitled *Dharmasthiyam*, a book that is devoted to law, legal procedure, and dispute resolution, begins with the constitution of a court. A few significant points emerge from its opening statement. First, the official presiding over a legal trial is called *dharmastha*. This official is encountered both in this book and elsewhere in the *Arthaśāstra*, and his authority and duties went beyond dispute resolution. We have here for the first—and last—time the constitution of a bench consisting of three justices “of ministerial rank,” which may mean that there were justices of varying seniority, those of ministerial rank (*amātya*) being the most senior (AŚ 3.1.1). These court sessions were held in various population centers,<sup>9</sup> implying that people living in villages and outlying areas would have to travel to these locations to obtain legal remedy. The provisions for travel by court officials to be paid by the losing party (AŚ 3.1 22–3.1.24), however, indicate that other kinds of courts, perhaps lower level and consisting of fewer judges, may have traveled

<sup>8</sup> For an extended argument on this issue, see McClish 2014.

<sup>9</sup> These centers are identified as frontier posts (*janapadasamḍhi*), collection centers (*samgrahaṇa*), district municipalities (*dronamukha*), and provincial capitals (*sthāniya*).

to villages to conduct trials. The most significant point in Kauṭilya's discussion of the court is that there is no mention of the king. Court proceedings in both civil and criminal cases were carried out by professional judges. There is no mention of judicial powers being vested solely in the king, which is the ideological position implicit in the early Dharmasūtras and explicitly enunciated by Manu and his successors.

Kauṭilya presents a complete, though brief, description of legal procedure. As in most ancient discussions of the topic, disputes relating to debts (probably the most prevalent dispute in ancient India) provide the paradigmatic structure for Kauṭilya's presentation. At the beginning of the court proceeding, the court writes down details of the suit, including, for example, the amount of the debt along with the date, and the "region, village, caste, lineage, name, and occupations of the plaintiff and the defendant" (AŚ 3.1.17). The two are required to present sureties<sup>10</sup> to the court, sureties who are able to pay any compensation or fines that may be imposed on the litigants. The court reviews the written record and then interrogates the litigants. The plaintiff has the burden of proof, and the court can summarily dismiss the case for a variety of reasons, including his inability or unwillingness to present documentary evidence he has promised to produce, secret conversations with witnesses, failure to offer a response after the defendant's plea, and absconding. The defendant, however, is given a reasonable amount of time to respond, and he loses the case if he does not enter a plea within six weeks, a procedural rule common in later sources.

Kauṭilya also enunciates two basic principles of litigation that are followed by all later authors: the accused cannot countersue the accuser except in narrowly circumscribed circumstance, and a third party cannot file another lawsuit against the defendant before the first lawsuit has been disposed of.<sup>11</sup> Another feature of Kauṭilya's discussion of legal procedure is that two facets of it are dealt with in two different places. The constitution of the court and preliminary court proceedings are discussed in the first chapter (AŚ 3.1), and this feature is carried on in later texts, such as Nārada's, in an introductory section called *vyavahāramātrkā*, "topics of legal procedure." The presentation of evidence—especially the central issue of witnesses—is discussed in the section devoted to the nonpayment of debts (*ṛṇādāna*), which in the Dharmasāstras is the first ground for litigation or *vyavahārapada*. Although Kauṭilya does not use this technical term—it will be used for the first time by Manu—he uses the parallel term *vivādapada*<sup>12</sup> with the same or similar meaning, namely, the

<sup>10</sup> It is important to note that Kauṭilya uses the term *avastha* for a surety, a term used with this meaning only in the AŚ (3.1.17) and in one verse of Manu (8.60) dependent on the AŚ.

<sup>11</sup> The reasons for permitting countersuits are when the litigation involves a brawl or robbery, or is between members of a caravan or association: AŚ 3.1.25–3.1.26.

<sup>12</sup> See AŚ 1.1.5, 3.16.38, 4.7.17, 11.1.14.

grounds on which legitimate litigation can take place. Kauṭilya's discussion of witnesses is extensive, occupying twenty-six sūtras (AŚ 3.11.25–3.11.50), but it does not differ substantially from what is given by Gautama.

Another distinctive feature of Kauṭilya's work is his discussion of the criminal justice system, which occupies the entirety of Book Four. The focus of Dharmaśāstras is on private litigation in which the court acts as an impartial adjudicator or arbiter; their discussion of criminal justice, apart from police action to protect citizens, is minimal. Four significant elements of Kauṭilyan criminal justice are criminal court called *kaṇṭakaśodhana*, gathering of intelligence on criminals and criminal activities, gathering of forensic evidence including autopsies on bodies of people who have died suddenly (*āśumṛtaka*), and the interrogation of the accused.<sup>13</sup>

The criminal court, much like the civil court, is presided over by a bench of three judges called *pradeśṭṛ*. A person accused of a crime—thief and robbery are the paradigmatic examples—is sent to this court. There he is subject to interrogation, and Kauṭilya gives us a glimpse into it:

In the presence of the victim of the theft, as well external and internal witnesses, he should interrogate the accused about his country, caste, lineage, name, occupation, wealth, associates, and residence. He should corroborate these by checking them against other depositions. Then he should interrogate him about what he did the previous day and where he spent the night until his arrest. If he is corroborated by the person providing his exoneration, he is to be considered innocent; otherwise, he is to undergo torture. (AŚ 4.8.1–4.8.4)

Kauṭilya is aware that innocent people can be accused of a crime for a variety of reasons and warns the judges to be vigilant: “When a person accused of being a thief has been inculpated because of enmity or hatred, he is to be considered innocent” (AŚ 4.8.7). Even when an accused confesses to the crime, the judges are asked to be careful because people can be made to confess to things that they have not done:

Against someone on whom suspicion has fallen, he should produce tools, advisers, accomplices, stolen goods, and agents; and he should corroborate his action by checking it against the entry, the receipt of the goods, and the partition of shares. When these kinds of evidence are lacking, he should consider him as just a blabbermouth and not the thief. For we see that even a person who is not a thief, when by chance he runs into thieves making their way and is arrested because his clothing, weapons, and goods are similar to those of the thieves or because he was lingering where the stolen goods of the thieves were found, may, just like Māṇḍavya-of-the-Stake,<sup>14</sup> confess “I am a thief” even though he is not a thief, because

<sup>13</sup> For an examination of criminal courts in the AŚ, see Olivelle 2012c.

<sup>14</sup> The story of the sage Māṇḍavya is narrated in the *MBh* 1.101. For a study of the legal significance of this story, see Wezler 1997.

he fears the pain from torture. Therefore, he should punish only a man against whom there is convincing evidence. (AŚ 4.8.9–4.8.13)

If there is strong suspicion against a person, the judges can subject that person to torture, even though Kauṭilya lists many individuals who should not be tortured, including women, children, and the insane (AŚ 4.8.17–4.8.20).

Kauṭilya is the only ancient jurist who discusses the gathering of forensic evidence for criminal cases. He gives the example of a house that has been burgled at night (AŚ 4.6.16–4.6.19). The investigators are to gather evidence by examining any breach in the wall, footprints, and the like to determine whether the crime was committed by an outsider or by someone within the house, such as a servant. Any suspect taken into custody should be examined for bruises, damage to clothing, dust on the body, and the like. A kind of statute of limitations, however, is given: “A suspect may not be arrested after the lapse of three days, because questioning becomes infeasible—except when the tools are found on him” (AŚ 4.8.5). Kauṭilya also gives perhaps the only description of an autopsy in ancient India (AŚ 4.9). The body is first coated with oil. Different kinds of murder, such as strangulation, hanging, drowning, and poison, leave telltale marks on the body. The investigator also questions the relatives, enemies, and those found nearby, as well as family members, professional colleagues, and rivals.

The two parallel court systems, the civil courts run by *dharmasthas* and the criminal courts run by *pradeṣṭṛs*, have their own jails, and Kauṭilya gives us precious information about the construction and running of these jails (AŚ 2.5.5; 4.9.21–4.9.27), about ways in which corruption in the judiciary, court officials, and prisons (AŚ 4.9.13–4.9.28) is to be eradicated.

A final point to note is Kauṭilya’s use of a spectrum of technical legal terms, evidencing the emergence of a highly theoretical jurisprudential system. Given the constraints of space, here I will only give a list of such terms, which we will also encounter in the later Dharmaśāstric literature.

*abhiyukta*, accused, defendant (3.1.25; 4.6.6); *abhiyoga*, lawsuit (3.1.26); *abhiyokṭṛ*, plaintiff (3.1.27); *adeśa*, a document that is inadmissible in court (3.1.17); *adhikaraṇa*, court (3.1.17); *anuśiṣṭa*, a case in which a verdict has been rendered (4.9.15); *artha*, lawsuit (3.1.1); *avastha*, surety (3.1.17); *āgama*, title to property (4.6.7, 8); *āvedaka*, defendant (3.1.17); *deśa*, documentary evidence (3.1.19); *hīnadeśa*, defective document (3.1.19); *karma*, torture during interrogation (4.8.14, 17); *lekhaḥa*, court scribe (4.9.17); *niyamyā*, losing party, one subject to penalty (3.1.24); *niṣṭ* *ṣpat*, to abscond, not to appear in court (3.1.32–3.1.33); *parokṭa*, loss of suit (3.1.19–20, 27); *prati-abhi* *vyuj*, to countersue (3.1.25); *prati* *ṣbrū*, to give a reply, to enter a plea (3.1.27, 31); *prativādin*, defendant (3.1.17); *pramāṇa*, evidence (3.11.26); *saṃpratipatti*, admission, guilty plea (3.11.25–3.11.26); *tārīta*, a case already tried (4.9.15); *vāda*, plaint (3.1.19); *vādin*, plaintiff (3.1.17); *vedaka*, plaintiff (3.1.17).

Writing a century or so after Kauṭilya, Manu, in all likelihood, had a copy of the *Arthaśāstra* before him when he composed his justly famous *Dharmaśāstra*. Manu was the first author in the Dharmaśāstric tradition to fully integrate these areas of statecraft and law. The dependence of Manu on Kauṭilya in the sections of the king and legal procedure is firmly established.<sup>15</sup>

Manu, however, introduces several noteworthy innovations. First, the judicial authority of the state is vested in the king; there is no separate judiciary like the one envisioned by Kauṭilya. When the king is unable to perform his judicial function, however, he may delegate it to another person or persons, who then function as substitute judges in place of the king; but their authority is derivative. The person whom the king appoints to try cases in his place is not given a special or technical name. Manu simply calls him “a leading minister” or “a learned Brāhmaṇa” (*MDh* 7.141, 8.9). The term *prāḍvivāka* that Manu, as Gautama before him, uses in the context of examining witnesses,<sup>16</sup> most likely refers to a court official designated to interrogate witnesses rather than to the officiating judge, even though in medieval legal literature this term is used with reference to the chief judge. Another legal principle articulated by Manu (8.44) is that the state—whether it is the king himself or an officer of his—cannot initiate a lawsuit. This clearly applies to civil suits, and I will return to this issue later in the context of criminal justice.

Manu has one of the longest and most detailed accounts of witnesses and of how the court is expected to assess the veracity of their testimony. Witnesses must be listed by the plaintiff and the defendant at the very start of the trial, even though in exceptional circumstances others not initially listed may be permitted to testify if in the judgment of the court their testimony will lead to a just verdict. When human testimony is unable to resolve a dispute, Manu permits oaths (*śapatha*). He does not make a clear distinction between an oath and an ordeal; at 8.114–8.116, for example, Manu gives the fire and water ordeals within the context of oaths. He does not employ the term *divya*, which become standard in later texts, to designate ordeals.

The most far-reaching innovation introduced by Manu is the list of *vyavahārapadas*, enunciating the acceptable legal bases for any lawsuit. Even though Kauṭilya, as we see in the chart given below, lists many of these, he does not give them the prominence or the formal structure found in Manu. They number eighteen, a sacred and common number in ancient India, and although later authors will not always abide by Manu’s list, the number eighteen will remain constant.

<sup>15</sup> For an analysis of Manu’s dependence of the *AS*, see Kangle 1964; Olivelle 2004b; McClish 2014.

<sup>16</sup> See *MDh* 8.79, 8.181, 9.234. See my study of this term in Olivelle 2016b.

Table 22.1 The Organization of vyavahārapadas

Manu	Arthaśāstra	Yājñavalkya	Nārada
1. <i>ṛṇādāna</i> : non-payment of debt	<i>strīpuṃdharma</i> : <sup>17</sup> law concerning husband and wife	<i>ṛṇādāna</i> : non-payment of debt	<i>ṛṇādāna</i> : non-payment of debt
2. <i>nikṣepa</i> : deposits	<i>dāyavibhāga</i> : partition	<i>upanidhi</i> : deposits	<i>nikṣepa</i> : deposits
3. <i>asvāmivikraya</i> : sale without ownership	<i>vāstuvivāda</i> : property disputes	<i>dāyavibhāga</i> : partition	<i>saṃbhūyasamutthāna</i> : partnerships
4. <i>saṃbhūyasamutthāna</i> : partnerships	<i>samayasānapākarma</i> : breach of contract	<i>sīmāvivāda</i> : boundary disputes	<i>dattāpradānika</i> : non-delivery of gifts
5. <i>dattasānapākarma</i> : non-delivery of gifts	<i>ṛṇādāna</i> : non-payment of debt	<i>svāmipālavivāda</i> : disputes between owners and herdsmen	<i>abhyupetyāśuśrūṣā</i> : breach of contract of service
6. <i>vetanādāna</i> : non-payment of wages	<i>aupanidhikam</i> : deposits	<i>asvāmivikraya</i> : sale without ownership	<i>vetanasānapākarma</i> : non-payment of wages
7. <i>saṃvidvyatikrama</i> : breach of contract	<i>dāsakarmakalpa</i> : rules regarding workers	<i>dattāpradānika</i> : non-delivery of gifts	<i>asvāmivikraya</i> : sale without ownership
8. <i>krayavikrayānuśaya</i> : cancellation of sale or purchase	<i>saṃbhūyasamutthāna</i> : partnerships	<i>kṛtānuśaya</i> : cancellation of purchase	<i>vikriyāsaṃpradāna</i> : non-delivery after sale
9. <i>svāmipālavivāda</i> : disputes between owners and herdsmen	<i>vikṛitakṛtānuśaya</i> : cancellation of purchase or sale	<i>abhyupetyāśuśrūṣā</i> : breach of contract of service	<i>kṛtānuśaya</i> : cancellation of purchase
10. <i>sīmāvivāda</i> : boundary disputes	<i>dattasānapākarma</i> : non-delivery of gifts	<i>saṃvidvyatikrama</i> : breach of contract	<i>samayasānapākarma</i> : breach of conventions
11. <i>vākpārūṣya</i> : verbal assault	<i>asvāmivikraya</i> : sale without ownership	<i>vetanādāna</i> : non-payment of wages	<i>kṣetrajavivāda</i> : land disputes
12. <i>daṇḍapārūṣya</i> : physical assault	<i>sāhasa</i> : violence	<i>dyūtasamāhvaya</i> : gambling and betting	<i>strīpuṃsaṃyoga</i> : relations between husband and wife
13. <i>steya</i> : theft	<i>vākpārūṣya</i> : verbal assault	<i>vākpārūṣya</i> : verbal assault	<i>dāyabhāga</i> : partition
14. <i>sāhasa</i> : violence	<i>daṇḍapārūṣya</i> : physical assault	<i>daṇḍapārūṣya</i> : physical assault	<i>sāhasa</i> : violence
15. <i>strīsaṃgrahaṇa</i> : sexual crimes against women	<i>dyūtasamāhvaya</i> : gambling and betting	<i>sāhasa</i> : violence	<i>vākpārūṣya</i> : verbal assault
16. <i>strīpuṃdharma</i> : law concerning husband and wife	<i>prakīrṇaka</i> : miscellaneous	<i>vikriyāsaṃpradāna</i> : non-delivery after sale	<i>daṇḍapārūṣya</i> : physical assault
17. <i>vibhāga</i> : partition		<i>saṃbhūyasamutthāna</i> : partnerships	<i>dyūtasamāhvaya</i> : gambling and betting
18. <i>dyūtasamāhvaya</i> : gambling and betting		<i>steya</i> : theft	<i>prakīrṇaka</i> : miscellaneous
		<i>strīsaṃgrahaṇa</i> : sexual crimes against women	
		<i>prakīrṇaka</i> : miscellaneous	

<sup>17</sup> This term is not given in the *Arthaśāstra*, but the topic is treated at the very outset.



Writing and record keeping was central to the administration of the Kauṭilyan state, and every administrator was required to keep written records of their activities and present them to the central authority; even wardens of elephant forests were expected to keep records of their elephant census. Yet in both Kauṭilya and Manu, documents play a marginal role in evidence presented in court. Kauṭilya (3.1.19) uses an unusual term, *deśa*, to refer to legal documents, and it is used also by Manu (8.53–8.57) in a passage dependent on Kauṭilya (Olivelle 2005a: 46–50), but the terms *lekhyā* and *likhita*, so common in later sources, are absent in their vocabulary. For these early jurists, living witnesses provided the most significant evidence for resolving disputes.

Even though the available evidence does not permit a firm conclusion, it appears quite likely that the emergence of the Gupta polity in the fourth century CE transformed court procedures and spurred parallel developments in jurisprudential thinking. These are reflected in four major legal texts produced during or shortly after the Gupta period, that is, between the fifth and seventh centuries CE: the Dharmaśāstras or *smṛtis* of Yājñavalkya, Nārada, Br̥haspati, and Kātyāyana. As we have seen (Chapter 1), book two of Yājñavalkya that deals with legal procedure is closely dependent on the *Arthaśāstra*. The most obvious change in these post-Gupta documents is the prominence given to documentary evidence along with the use of technical terms for a legal document, most commonly *lekhyā* and *likhita*, discussed below.

Jurisprudential reflections on legal procedure more generally also accelerated during this period. Yājñavalkya, for example, presents the legal procedure in a court proceeding as consisting of four feet or phases (*catuspād*: YDh 2.8). They are plaint (*bhāṣā*), plea (*uttara*), evidence (*kriyā*), and verdict (*nirṇaya*). All later jurists follow this fourfold scheme, even though, as we will see, they introduced some new elements and complexities into it.

The filing of charges by a plaintiff raises another central issue of jurisprudence: what are the venues for filing a lawsuit? We have seen the issue of courts addressed already by Kauṭilya and Manu. Later jurists bring in additional data, generally mentioning five judicial venues of increasing authority: family (*kula*), guild (*śreṇi*), company (*gaṇa*), courts with appointed judges (*adhikṛta*), and the king himself (NSm Mā 1.7). Appeals to higher courts were permitted from judgments rendered by lower courts. Other sources also include such venues as villages, cities, ascetic orders, traveling traders, and the like.<sup>18</sup> It is clear, however, that lower courts had jurisdiction over individuals within a defined geographical area (village, city) or members of its organization (guild, company). Jurists explicitly state that when there are disputes between individuals within a particular place or organization and

<sup>18</sup> See *SmṛC* III: 39–42 for these sources.

outsiders, the trial must be conducted in a royal court. It is also clear that the legal procedures delineated in the legal literature pertain to royal courts, even though such basic procedures as rules of evidence may have been followed also in lower courts. Yet, procedures in courts of families and guilds may have been rather informal.

Later sources provide detailed accounts of the constitution of a royal court. Nārada (*NSm Mā* 2.15) sees the court as consisting of eight limbs: king along with his appointed official, assessors, legal treatise, accountant, scribe, gold, fire, and water. Other sources include the bailiff (*sādhyapāla*, sometimes simply called *puruṣa*: *BṛSm* 1.1.88). The late medieval text, *Sarasvatīvilāsa* (68), provides the seating arrangement of the court: king or judge facing the east, assessors to his right facing the north, accountant in front facing the west, and scribe to his left facing the south.

The law permitted the plaintiff to put the defendant under legal detention prior to filing charges in case there was a fear that he may flee or abscond. The technical term used for such detention is *āsedha*, which is used for the first time by Nārada (*NSm Mā* 1.42). There are, however, individuals who are exempt from such detention, and Nārada's long list includes a person about to get married or to perform a ritual, farmers during harvest time, soldiers during a time of war, and sick people (*NSm Mā* 1.45–1.47). Once the charges are filed, the court summons the defendant generally by sending the bailiff along with the summons and the royal seal, and we see technical terms for such summons, *āhvāna*, used for the first time by Nārada (*NSm Mā* 1.47), and *ākāraṇa* by Bṛhaspati (*BṛSm* 1.1.82).<sup>19</sup>

One other general issue in ancient Indian jurisprudence relates to legal representation and the role of lawyers. As Rocher (1969) in his exhaustive study of this subject has shown, we can safely conclude that there was no legal representation by professional lawyers in the courts of ancient India. A litigant was, however, permitted to be absent from court for a variety of reasons, including ill health, timidity, and preoccupation with other matters, and to appoint a representative. He is given the technical term *prativādin* by both Bṛhaspati (1.2.23) and Kātyāyana (89, 93), and in general, he is someone closely connected to the litigant, such as a brother or relative. The representation by a substitute is not permitted in serious cases such as murder and theft where the accused is expected to be physically present in court (*BṛSm* 1.2.23–1.2.25). It stands to reason, however, that there were legal experts in ancient India, especially with the development of an enormous legal literature and of a sophisticated jurisprudence, and that such individuals may have been consulted by parties to disputes. Rocher (1969) concludes that “professional lawyers did not exist” in ancient India, at least in the sense of legal experts hired by litigants to plead their cases in court.

<sup>19</sup> On this, see *SmṛC* III: 39.

The plaintiff and the plaintiff receive the most detailed treatment by jurists. Already Yājñavalkya (2.5) uses the technical term *āvedayati* for the initial complaint made by the plaintiff to the court. This complaint, called *āvedana*, is written down on a surface where it can be corrected and edited easily, such as a chalkboard or the ground spread with sand. The plaintiff is permitted to emend this charge sheet until the defendant has been summoned and he makes his plea. In the presence of the defendant, then, the emended *āvedana* is written down on a more durable surface such as a palm leaf. The plaintiff so written down is given the technical term *bhāṣā*, and the plaintiff is not permitted to alter it under the penalty of losing the case. There are, furthermore, detailed requirements regarding what a proper plaintiff should contain, including the names and residences of the litigants, the title of law under which the charge is filed, the dates, and details of the charges. When any required element is lacking, the plaintiff becomes specious (*pakṣābhāsa*) and the charges are dismissed. The charge also should be admissible, represent a true damage, and not be implausible. A frequently cited example of a frivolous lawsuit is the charge that a neighbor works in his house with light shed by the lamp in one's own house.

We encounter in the writings of later jurists a number of terms for the plaintiff: *abhiyoga*, *artha*, *pakṣa*, *pūrvapakṣa*, *pratijñā*, *sādhyā*, and the like. Many of these are derived from the metaphors used to describe litigation: military attack = *abhiyoga*; debate = *pakṣa* and *pūrvapakṣa*; logical proof = *pratijñā* and *sādhyā*. The proliferation of technical terms for various aspects of court proceedings indicates a rising level of sophistication in jurisprudence. Br̥haspati, for example, classifies lawsuits into those involving property or money (*arthamūla*) and those resulting from an injury (*hiṃsāmūla*: Br̥Sm 1.1.9–1.1.10).

The plea or response (*uttara*) of the defendant is likewise written down. The plea also has detailed requirements similar to those of the plaintiff, but in addition, it must address all the elements of the charge, and be unambiguous and comprehensible without explanations.<sup>20</sup> Otherwise, the plea is said to be specious or invalid (*uttarābhāsa*) and it is rejected by the court. The court is permitted to grant a delay ranging from a day to a year (*KātSm* 148) to the defendant to give him sufficient time to draft a proper plea, unless the matter is urgent requiring an immediate remedy.

Jurists classify pleas into four types: denial (*mithyā*), admission (*satya*, *saṃpratipatti*), special plea (*kāraṇa*, *pratyavaskandana*), and prior judgment

<sup>20</sup> Clarity of the written words and the syntax was required in a special way because Sanskrit, because of the absence of a strict word order and the ambiguities created by Sandhi, can often be opaque and thus present the possibility of different and often opposite meanings. Mādhava (*PāM* III: 75–6) gives a classical example of an ambiguous plea: *mayādeyam*, which could be *mayā deyam* ("I have to give it"), which is a plea of admission, or *mayā adeyam* ("I do not have to give it"), which is a plea of denial.

(*prāñnyāya*). In the case of admission, the court proceedings end with the plaintiff winning the case; sources note that in this case the trial has only two feet. A denial places the burden of proof on the plaintiff. A special plea results when the defendant admits the plaintiff's statement, but presents a reason why he is not guilty: for example, he may admit that he borrowed the money but has already returned it. Prior judgment results when the defendant claims that he has been acquitted by a court of the same charge brought previously by the same plaintiff. In both the latter kinds of plea, the burden of proof shifts to the defendant.

The third foot in Yājñavalkya's classification consists of the presentation of evidence. The litigants are required to write down at the beginning of court proceedings the kinds of proof they will offer, and, in the case of witnesses, their names. These witnesses are called listed or appointed (*kr̥ta*, *nibaddha*), even though under some circumstances others not so listed can be permitted by the court to testify.

Some sources, however, identify the third foot as the deliberation by the court assessors regarding which litigant has the burden of proof, technically called *pratyākalita* and sometime *parāmarśa*.<sup>21</sup> As we have seen, the burden of proof, which generally falls on the plaintiff, may shift to the defendant depending on the kind of plea he enters.

Post-Gupta jurisprudence, as we have seen, placed much greater emphasis on documentary evidence. Even though there are long and detailed discussions of live witnesses,<sup>22</sup> these sources do not add anything quite new or substantial to what we have seen in earlier jurists, although they give detailed lists of individuals who are, for a variety of reasons, disqualified from being witnesses (*NSm* 1.137–1.144). When it comes to documents, however, we have the emergence of a totally new branch of jurisprudence detailing the precise format required of any legal document (*YDh* 2.85), including the details of the transaction and the parties to it and their signatures, as well as the signatures of the witnesses and the scribe, if the document was not written by one of the parties.

Besides the three kinds of evidence we have looked at thus far, which are considered "human" evidence, another kind, the "divine," was also permitted. This consisted of oaths and ordeals that the litigants could undergo to prove their innocence or their claims. Ordeals, although present marginally in Manu, come into prominence as a mode of proof in the writings of post-Gupta jurists, such as Yājñavalkya and Nārada. Yājñavalkya is the first author to use the

<sup>21</sup> For a detailed discussion, see *SmrC* III: 113–23.

<sup>22</sup> There are some voices, however, that speak against the scholastic penchant for ever-greater classifications. The ninth-century commentator Viśvarūpa (on *YDh* 2.71), for example, says that the eleven-fold classification of witnesses by Nārada (*NSm* 1.130–1.132) is meant for foolish people.

technical term *divya* for an ordeal.<sup>23</sup> These jurists present a limited number of ordeals—generally, fire, water, balance, poison, and holy water. The ordeals were conducted according to strict procedures overseen by the court. The literature on ordeals expands in the medieval period with specialized treatises on the topic and a vastly expanding the number of ordeals.<sup>24</sup> The general principle of jurisprudence, however, is that divine evidence can be invoked only when human evidence is unavailable and only in cases involving serious charges.

The final step in the judicial process is the verdict (*nirṇaya*). After the court has deliberated and evaluated the evidence presented in the third step, the chief judge (*sabhāpati* or *prāḍvivāka*) announces the court's verdict. It is clear from numerous statements by our jurists, however, that the actual decision is made by the three assessors (*sabhya*), who are legal experts.<sup>25</sup> Thus, when there is a miscarriage of justice, our sources tell the king to punish the witnesses who gave false testimony, the litigant who may have suborned that perjury, and the assessors who may have taken bribes or not followed correct legal procedure. The chief judge is left out, thus indicating that in general, he is not held personally responsible when there is a miscarriage of justice in his court (*YDh* 2.305; *NSm Mā* 1.57).

There has been a controversy among comparative legal scholars as to whether court decisions in ancient societies were actually enforced by the judicial or civil authorities. If, as in many ancient societies, court proceedings were a kind of arbitration, then the implementation of the decisions was up to the litigants themselves. In the case of the legal literature of ancient India, however, it is very clear that courts were not simply arbitrators. Courts were authorized to actually punish or fine litigants with the use of the term *danḍa*, and compel the losing party to pay the amount claimed or compensation for losses suffered. The jurists frequently use the causative form of the verb “to give” (*√dā*)—*dāpyaḥ*, *dāpayet*—to indicate that the court or the king should force compliance by the losing party.

Given the burden of fines and court costs involved in bringing a formal lawsuit to a royal court, it was probable that most disputes were resolved privately and informally. The sources, however, do not look kindly on litigants who decide to make out-of-court settlements after filing a lawsuit. *Br̥haspati* (*Br̥Sm* 1.3.42) is the first jurist to note this. He uses the technical term *saṃdhi* for this agreement between the litigants, and recommends the imposition of double the amount under dispute as a fine on both. *Br̥haspati* (*Br̥Sm* 1.3.45),

<sup>23</sup> We saw the term *daiva* used by Āpastamba, while the use of *divya* by Vasiṣṭha is suspicious and possibly a later addition.

<sup>24</sup> See, for example, Raghunandana's *Divyatattva* in Lariviere 1981a.

<sup>25</sup> See, for example, *Br̥Sm* 1.1.88, where the judge is said to pronounce the verdict, while the assessors are the ones who examine the case and the evidence (*kāryaparikṣaka*).

however, leaves open the possibility that in a difficult case where evidence is strong for both sides, the judge himself may encourage the parties to arrive at a mutually agreed settlement.

I have already alluded to the possibility of appeals from lower to higher courts. This principle is laid down for the first time by Yājñavalkya (*YDh* 2.308), who instructs the king to review any wrong decisions and to punish the court officials. Brhaspati (*BrSm* 1.9.23) states this principle clearly:

When someone is not satisfied, however, even after a decision has been reached by a family and the like, the king should investigate how it was carried out and take up again for review one that has been badly conducted.

The sources, however, also allow for appeals to the king himself from a decision of a judge in a royal court, especially when the losing party suspects that the assessors were involved in a miscarriage of justice. Corruption was an ever-present danger, both in the judiciary and in the state bureaucracy more generally. Kātyāyana (*KātSm* 337) uses the term *saṃpralobhakriyā* in the context of bribing court officials. Whether through corruption or owing to wrong legal reasoning, when the assessors are found guilty, they are punished, and a new trial initiated. Yājñavalkya (*YDh* 2.305) states this clearly: “After subjecting lawsuits that have been wrongly tried to a new trial, however, the king should punish the assessors along with the victorious party with a fine that is twice the amount in dispute.”

The focus of Dharmaśāstras is on private litigation with the court acting as an impartial referee. In the famous dictum of Manu (8.44), “Neither the king nor any official of his shall initiate a lawsuit independently,” the principle is articulated that bars the state from initiating or suppressing a lawsuit. Yet, this is not the whole story. The state, for example, was permitted and even required to initiate lawsuits in the case of individuals who are especially vulnerable to exploitation, such as children and holy men. Indeed, the last of the eighteen titles of law, the miscellaneous (*prakīrṇaka*), was sometimes viewed as containing offenses where the state may initiate legal proceedings (Lingat 1973: 237). Brhaspati (1.29.1) states explicitly that *prakīrṇaka* contains issues that are to be taken up by the king himself. Other sources indicate that offenses bearing the technical terms *aparādha*, *pada*, and *chala* can be investigated and prosecuted by the king himself (Kane III: 264). The clearest statement on the duty of state officials to initiate legal proceedings to protect the interests of helpless and holy individuals is found in Kauṭilya’s *Arthaśāstra* (3.20.22):

In the case of gods, Brāhmaṇas, recluses, women, children, the aged, the sick, and the helpless, who may not (be able to) come (to the court) themselves, the Justices (*dharmaṣṭha*) would initiate lawsuits on their behalf.

There is also a section in Dharmaśāstras dealing with the “eradication of thorns” (*kaṇṭakaśodhana*), which is generally viewed as containing instructions for

police action against criminal elements of society. Yet, as we have seen, the fourth book of the *Arthaśāstra*, which is the *locus classicus* for the treatment of this topic, clearly establishes a criminal court system presided over by a senior official called *pradeśṭṛ* (magistrate) with powers of investigation and prosecution.

The medieval period saw the production of legal digests (*nibandha*; Chapter 2) that contained large separate sections devoted to legal procedure: for example, Lakṣmīdhara's *Kṛtyakalpataru* (KKT) and Devaṇṇabhaṭṭa's *Smṛticandrikā* (*SmṛC*). There were, however, also specialized treatises devoted exclusively to legal procedure, such as Jīmūtavāhana's *Vyavahāramātrkā*, Vācaspati Miśra's *Vyavahāracintāmaṇi*, and Varadarāja's *Vyavahāranirṇaya*. Legal procedure is one area of law in which the volume and sophistication of Indian jurisprudence surpasses that of any other legal system of the ancient world.

## Titles of Law

### *vyavahārapada*

Mark McClish

The term *vyavahārapada* has two related meanings: “a matter under dispute” and “an area of litigation,” sometimes rendered as a “title of law.”<sup>1</sup> Both refer to the subject of a legal dispute, with the former emphasizing the matter at stake in a particular lawsuit and the latter a theoretical category of transactions from which complaints typically arise. The second of the two meanings predominates in the *dharma* tradition, where the *vyavahārapadas* represent the categories of private transactions that can be litigated in royal courts. Although such bodies of rules have probably existed in some form since at least the time of Aśoka (third c. BCE) and Khāravela (*ca.* second–first c. BCE), they were first codified in the *Arthaśāstra of Kauṭilya*. It is only in the *Mānava Dharmaśāstra*, however, that they are presented taxonomically and first called *vyavahārapadas*. Manu (8.4–8.7) lists eighteen:

1. *ṛṇādāna*: nonpayment of debt
2. *nikṣepa*: deposit
3. *asvāmivikraya*: sale by non-owner
4. *saṁbhūya samutthāna*: partnership
5. *dattasya anapakarman*: nonfulfillment of gift
6. *vetanasya adāna*: nonpayment of wage
7. *saṁvidāḥ vyatikrama*: breach of contract
8. *krayavikrayānuśayo*: canceling purchase or sale
9. *svāmipālayoḥ vivāda*: dispute between owner and herdsman
10. *sīmāvivādadharma*: law of boundary dispute
11. *daṇḍapāruṣya*: physical assault
12. *vācikapāruṣya*: verbal assault

<sup>1</sup> So, too, its synonym, *vivādapada*.



13. *steya*: theft
14. *sāhasa*: violence
15. *strīsaṃgrahaṇa*: sexual crimes against women
16. *strīpuṃdharma*: law of husband and wife
17. *vibhāga*: inheritance
18. *dyūtāhvaya*: gambling and betting

The *vyavahārapadas* are distinct from other kinds of law in a few different ways, which will be useful to keep in mind as we explore their history in the *dharma* literature. First, they pertain specifically to cases in which a private party feels it has suffered an injury at the hands of another and goes voluntarily to the king or royal court to make an accusation. This is made clear in the *Yājñavalkya Dharmaśāstra*, which presents the earliest definition of *vyavahārapada*:

*smṛtyācāravapyapetena mārgenādharṣitaḥ paraiḥ |*  
*āvedayati ced rājñe vyavahārapadam hi tat ||* (YDh 2.5)

If someone, injured by others in a manner opposed by *smṛti* or proper conduct, announces it to the king, that is a *vyavahārapada*.

In this sense, the *vyavahārapadas* are, in principle, distinct from the rules that the king may enforce on his own initiative for the purpose of public order (these latter are categorized under such headings as *prakīrṇaka*, “miscellaneous rules,” or *kaṇṭakaśodhana*, “clearing thorns”).

Second, the body of rules that comprise the *vyavahārapadas* is presented in abstraction from any specific social group, whose own particular rules are usually referred to as “customary law” (*caritra*; *ācāra*) or as various types of contextual and limited *dharma*s: e.g., regional (*deśadharmā*), caste (*jātidharma*), or family (*kuladharmā*). Such rules are in force only among their respective groups, and the authority assigned to them relative to the rules of the *vyavahārapadas* varies, as explored below.

Finally, and following from both of these, the *vyavahārapadas* are related specifically to the adjudication of disputes in royal courts. Although they were not the only rules bearing on the resolution of disputes in royal venues and were not to be applied like modern statutes (*BṛSm* 1.1.114), they nevertheless provided the fundamental jurisprudential framework through which royal judges reached their verdicts.

Within *Dharmaśāstra*, the *vyavahārapadas* are one part of the more general topic of “litigation” (*vyavahāra*). Its other component is “judicial procedure” (*vyavahāramātrkā*). Of these two, the substantive law of the *vyavahārapadas* receives far more attention than the procedural rules of *vyavahāramātrkā*. Although all *dharma* texts, from the beginning of the tradition, possess some discussion of the legal domain represented by *vyavahāra*, it only becomes a major topic beginning with the *Mānava Dharmaśāstra*, of which

around a quarter is devoted to the topic. A few centuries later, Yājñavalkya presents *vyavahāra* as one the three major topics of Dharmaśāstra, alongside *ācāra* (“conduct”) and *prāyaścitta* (“penance”), and he spends a third of his text discussing it. After this, *vyavahāra* continues to grow in importance in the *smṛtis* of Nārada, Bṛhaspati, and Kātyāyana, who show either an exclusive or an overwhelming interest in it. It is in these three texts, in particular, that many of the finer points of *vyavahāra* are examined. Quite the opposite of this, however, are texts such as the *Vaiṣṇava Dharmaśāstra* and *Parāśara Smṛti*. The former treats the topic more briefly than Manu, and the latter, at least in its extant form, does not deal with *vyavahāra* at all.

### THE ORIGINS OF THE VYAVAHĀRAPADAS AND THE NĪTI TRADITION

The roots of the *vyavahārapadas* lie outside of the *dharma* tradition. In order to trace their earliest history, we must look more closely at the development of the concept of *vyavahāra* itself. The earliest attested uses of *vyavahāra* and related forms in Indic texts refer not to law at all but to “transaction,” “exchange,” or “use.” This can denote a variety of interactions and activities, often with an emphasis on their transactional nature, but also comes to refer specifically to “trade” as mercantile activity (e.g., *ĀpDh* 2.16.17). In the ritual manuals, someone with whom interaction is allowed is called *vyavahārya* “to be interacted with” (e.g., *KātŚr* 22.4.28), in this sense, denoting full access to social interaction and membership in society (cf. *YDh* 3.222; *NSm* 14.10). Forms of the term are used more abstractly in the early grammatical literature, where *vyavahāra* can refer to the characteristic linguistic practices of specific communities (e.g., Patañjali, *Mahābhāṣya* I 284.2–284.8, I 379.17–380.5) or more generally to the common language observed in everyday interaction, as opposed to the highly refined language of the Vedic Saṃhitās (e.g., *Nirukta* 13.9).

These meanings persist in the *dharma* literature and continue to flesh out the greater semantic range of the term. Moreover, they give us a sense of how the specifically legal valence of *vyavahāra* might have developed. If *vyavahāra* represents observable, norm-governed interactions, and if these interactions delineate communities to which some are admitted and others not, then we are already very close to the notion of *vyavahāra* as a legal domain.

The earliest explicitly legal use of the term comes not in the *dharma* literature, but in the edicts of the Emperor Aśoka. In his fourth pillar edict (ca. 242 BCE), the emperor expresses his desire for *viyohālasamatā*, “uniformity in *vyavahāra*,” and *daṃḍasamatā*, “uniformity in punishment,” on the part of

his regional officials called *Lajūkas*. What Aśoka means precisely by *vyavahāra* here is not clear from the context, but its use as a technical legal term is. Some, such as Hultzsch (1925: 125), have interpreted it as “judicial proceedings,” in keeping with its later use and forming a tidy dyad with *daṇḍa* as “procedure” and “punishment.” But, the meaning here need not be so narrow. Elsewhere (Separate Rock Edict I, Jaugāḍa and Dhāuli), Aśoka refers to officials called *nagalaviyohālakas* (Skt. *nagaravyavahārikas*), who are ascribed clear judicial functions. These officers appear to be the same as the *mahāmātā* (“high official”) called *nagalaka* (“city manager”) mentioned in the Jaugāḍa edict. Nomenclature of this type is also used for legal officials in Buddhist texts of the same general era: the *vohārikamahāmatta* is mentioned in the *Mahāvagga* (1.40.3) and *Cullavagga* (6.4.9).<sup>2</sup> If these represent “city judges,” as seems to be the case, then *vyavahāra* probably has the broader meaning of “law” or “state law,” in the sense of “litigation in state courts.” In another early inscription, King Khāravēla (ca. second–first c. BCE), relates that, among other subjects, he has studied *vavahāra*vidhi (or, perhaps, *vavahāra* and *vidhi*). This compound (*vyavahāra*vidhi) is found in both Manu (8.45) and Yājñavalkya (2.31), where it probably means something like “legal proceedings” or “litigation.” There is no other term in the early inscriptions that more closely approximates “law” in its juridical sense than *vyavahāra*, and it appears that, at least by the time of Khāravēla, it existed as the subject of an expert tradition.

This expert tradition on *vyavahāra* comes fully to light first in the *Arthaśāstra* of Kautilya, the most significant text to survive from the classical *nīti* tradition of statecraft. The *Arthaśāstra* gives abundant evidence of a comparatively well-developed expert tradition of litigation in royal courts, presenting the first full codification of the *vyavahārapadas* (3.2–3.20), although not by that name, as well as rules on legal procedure (3.1) and topics such as the investigation of judicial corruption (4.9). Even if we reject a Mauryan provenance for the text, we are yet justified in drawing some degree of connection between its instructions and the legal world of Aśoka and Khāravēla. The term *vyavahāra* and related forms are common in the *Arthaśāstra*, where it refers sometimes to “transactions” in the abstract, and specifically to transactions that can be litigated in a royal court (Rocher 1978) or to an individual who has “obtained *vyavahāra*” (*prāptavyavahāra*), the legal status conferring the right to engage in legally binding transactions. Most

<sup>2</sup> The Aśokan tradition finds a degree of continuity on this point also with the *Arthaśāstra*, where we read of officials called *nāgarika*, as well as *pauravyavahārika*, the latter clearly synonymous with the *nagalaviyohālaka* of the Aśokan edicts. As Scharfe has pointed out, however, the responsibility for *vyavahāra* falls in the *Arthaśāstra* not to the *nāgarika* but to a different official called the *dharmastha*, a point of difference between that text and Aśokan tradition (1993: 75).

importantly, though, *vyavahāra* refers a few times in the *Arthaśāstra* to the types of rules themselves to be used in legal disputes over such transactions (Olivelle and McClish 2015).<sup>3</sup> These rules are given in the third book, called *Dharmasthīya*, “On Justices,” under seventeen headings:

1. *vivāhasamyukta*: concerning marriage
2. *dāyavibhāga*: inheritance
3. *vāstuka*: on real estate
4. *samayasya anapākarman*: nonfulfillment of convention
5. *ṛṇādāna*: nonpayment of debt
6. *aupanidhika*: on deposit
7. *dāsakarmakarakalpa*: rules for slaves and laborers
8. *sambhuya samutthāna*: partnership
9. *vikṛitakṛitānuśaya*: canceling sale or purchase
10. *dattasya anapākarman*: nonfulfillment of gift
11. *asvāmivikraya*: sale by non-owner
12. *svasvāmisaṃbandha*: relationship between property and owner
13. *sāhasa*: robbery
14. *vākpāruṣya*: verbal assault
15. *daṇḍapāruṣya*: physical assault
16. *dyūtasamāhvaya*: gambling and betting
17. *prakīrṇaka*: miscellaneous rules

Although there is some question as to whether it was augmented over time, the *Arthaśāstra*’s presentation is relatively systematic. It starts with the family, dealing first with (i) marriage law and (ii) inheritance. Then the code moves to (iii) property and (iv) nonfulfillment of conventions, both largely within the context of village life. Then we have more purely economic topics: (v) loans, (vi) deposits, (vii) labor, (viii) partnerships, (ix, xi) sales, (x) gifts, and (xii) ownership. Following are discussions of (xiii–xv) violent offenses and two appendectical topics: (vxi) gambling and (xvii) miscellaneous rules.

The *Arthaśāstra* also provides us our first clear sense of how *vyavahāra* fits into the complex legal order of the period. When the king or an appointed judge was attempting to reach a verdict in a case, there could be a variety of norms, rules, or laws bearing on a just verdict. It appears from the *Arthaśāstra* that these bodies of law were understood as comprising a hierarchy of four domains called the “four feet” (*catuspada*) of law (Olivelle and McClish 2015).

<sup>3</sup> It is only in what are clearly later parts of the *Arthaśāstra* (see McClish 2009; Olivelle 2013), namely the cluster of end verses appended to the first chapter of the third book (*AS* 3.1.38–3.1.47), that the term is used to mean “litigation” or a means of reaching a verdict based on witnesses. This is discussed below.

They are, in ascending order of legal authority, *dharma* (“righteousness”), *vyavahāra* (“state law”), *caritra* (“custom”), and *śāsana* (“royal edict”). The most powerful type of rule was a royal edict. If the king had issued a decree pertinent to a case, no other rule could supersede it. Failing that, the judge should look to whatever customary law (*caritra*) the parties might observe, presumably because they belonged to the same private community (*cf. KātSm* 47). In absence of both royal decree and custom, the *vyavahārapadas* would have legal authority. Finally, if no pertinent rule could be found among any of these bodies of law, then *dharma* in a generic sense provided the normative framework for the judge’s decision. Hence, the *vyavahārapadas* were applied in disputes that could not be resolved with respect to decree or customary law, probably for the most part in disputes between members of different corporate groups (*cf. Davis* 2005).

## THE VYAVAHĀRAPADAS IN THE DHARMASŪTRAS

*Vyavahāra* and the *vyavahārapadas* enter the Dharmasūtras as part of the more general appropriation of the *nīti* statecraft tradition under the rubric of *rājadharmas*, “the laws for kings” (see the *rājadharmas* chapter). The earliest Dharmasūtra, that of Āpastamba, was probably composed sometime around the reign of Aśoka, but before the *Arthaśāstra*, perhaps during the third century BCE (Olivelle 2010b). It is far more primitive than the *Arthaśāstra* in respect of legal thought, innocent of any legal sense of the term *vyavahāra* and possessing only a brief treatment of dispute resolution in royal courts. Āpastamba’s substantive rules cover the following areas:<sup>4</sup>

1. sexual law
  - a. sexual misconduct and assault
    - i. punishments (2.26.18–2.26.21)
    - ii. royal maintenance for victims or expiation (2.26.22–2.26.27.1)
  - b. levirate (2.27.2–2.27.7)
  - c. adultery (2.27.8–2.27.13)
2. other crimes and punishments
  - a. offenses by a Śūdra (2.27.14–2.27.15)
  - b. offenses by a Brāhmaṇa (2.27.17–2.27.20)
  - c. who may pardon (2.27.21)

<sup>4</sup> It should be noted that Āpastamba discusses both marriage (*vivāha*) and inheritance (*dāy-avibhāga*), but, unlike the *Arthaśāstra*, not in the context of litigation.

3. rules protecting owners and masters
  - a. rules for sharecroppers and herdsmen (2.28.1–2.28.6)
  - b. obligation to return escaped cows (2.28.7–2.28.9)
  - c. expropriation and theft (2.28.10–2.28.12)
4. miscellaneous rules
  - a. king's obligation to punish (2.28.13)
  - b. guilt of accomplices (2.29.1–2.29.2)
5. ownership of marital property (2.29.3–2.29.4)

It has often been assumed that Āpastamba represents the nascency of such legal reflection, but this conclusion is undermined by the likely existence of a contemporaneous independent tradition of *vyavahāra*. In this light, it seems that Āpastamba is simply operating at the margins of a more robust *nīti* tradition. Particularly telling, in this regard, is Āpastamba's treatment of crime and punishment (2.27.14–2.27.21), which offers only an incomplete jurisprudence of crimes by various groups. His treatment is not an embryonic version of what will be more fully developed in the *Arthaśāstra*, but in fact, merely a selective emphasizing of certain legal principles, such as the degradation of Śūdras and the immunities of Brāhmaṇas.

The integration of *vyavahāra* into the *dharma* tradition, however, did change the legal authority of the former. This is explained by another section of the text, where Āpastamba enunciates the principle that the customary law of individual groups is invalid if it is opposed by scripture. Specifically, he argues that the *śāstras* forbid the eldest son from inheriting the entire family estate (2.14.6ff.). A few sūtras later, he expands this to a general principle: “This explains the laws of regions (*deśadharmā*) and families (*kuladharmā*)” (*etena deśakuladharmā vyākhyātāḥ*; 2.15.1). To the extent that *vyavahāra* becomes Dharmaśāstra, its primacy relative to customary law is enhanced.

The *Gautama Dharmasūtra*, composed not long after Āpastamba, clearly drew from the *nīti* tradition, and probably from the *Arthaśāstra* itself (see the *rājadharmā* chapter). It is, therefore, not at all surprising that Gautama is the earliest extant *dharma* writer to use *vyavahāra* in a legal sense. He begins his discussion of state law with two sections, the first on *vyavahāra* (11.19–11.26) and the second on *daṇḍa* (11.27–11.32), recalling Aśoka's reference to *viyohālasamatā* and *daṇḍasamatā*. What is more, Gautama's discussion of *vyavahāra* prioritizes not procedure, but substantive law:

*tasya vyavahāro vedo dharmasāstrāṇy aṅgāny upavedāḥ purāṇam* || (GDh 11.19)

*deśajātikuladharmās cāmnāyair aviruddhāḥ pramāṇam* || (GDh 11.20)

*karśakavaṇīkpaśupālakuśīdikāravaḥ sve sve varge* || (GDh 11.21)

*tebhyo yathādhikāram arthān pratyavahr̥tya dharmavyavasthā* || (GDh 11.22)

His *vyavahāra* shall be the Veda, the Dharmaśāstras, the Supplements (*aṅgas*), the minor Vedas, and Purāṇa. The Laws of regions, castes and families are authoritative when they are not opposed by the scriptures. And farmers, merchants, herdsmen, lenders, and artisans each have authority over their own group. He should consider the cases and render a rule of *dharma* unto them according to the relevant authority. (GDh 11.19–11.22)

Here, Gautama equates *vyavahāra* with Brahmanical scripture. This would appear to advocate the supplanting of *vyavahāra* as presented in the *Arthaśāstra*, a process that will be fully realized with Manu's wholesale integration of *vyavahāra* into his Dharmaśāstra. Moreover, he states as a juridical principle that *vyavahāra* based in scripture is indeed of greater legal authority than customary law. Gautama also covers a greater number of topics than his predecessor, even if briefly, and it may be that topics three to eight loosely follow cognate material in the *Arthaśāstra*:

1. crime and punishment
  - a. offenses by a Śūdra (12.1–12.7)
  - b. verbal and physical assault
    - i. by a Kṣatriya against a Brāhmaṇa (12.8–12.9)
    - ii. by a Vaiśya against a Brāhmaṇa (12.10)
    - iii. assault by a Brāhmaṇa against other classes (12.11–12.13)
    - iv. assault by Kṣatriyas and Vaiśyas (12.14)
2. theft I
  - a. by a Śūdra (12.15)
  - b. by other classes (12.16)
  - c. by a learned man (12.17)
  - d. petty theft (12.18)
3. owner and herdsman; damage by animals (12.19–12.26)
4. failure to do what is taught; doing what is forbidden (12.27)
  - a. allowable gleanings (12.28)
5. interest rates (12.29–12.36)
6. ownership (12.37–12.39)
7. debt (12.40–12.41)
8. deposit (12.42)
9. theft II
  - a. penance (12.43–12.45)
  - b. Brahmanical exemption from corporal punishment (12.46–12.48)
  - c. associates of thieves (12.49–12.50)
10. miscellaneous
  - a. determining appropriate punishment (12.51)
  - b. who may pardon (12.52)

According to Olivelle's dating of the Dharmasūtras (2000), Baudhāyana is later than Gautama, but with respect to *vyavahāra*, Baudhāyana seems rather more primitive. For instance, he only uses the term *vyavahāra* to refer to the legal status of one who has obtained "*vyavahāra*" (2.3.36), rather than in reference to litigation itself. Regarding litigation, he is really only concerned with Brahmanical exemptions from punishment (1.18.17–1.18.18) and murder (1.18.19–1.19.6), and in both topics he demonstrates a notable admixture of *prāyaścitta* ("penance").

The *Vasiṣṭha Dharmasūtra*, which in its present form postdates the *Mānava Dharmaśāstra*, is aware of "the *vyavahāras*" as rules for litigation (16.1), yet does not present substantive rules of the *vyavahārapada* type independently. He introduces his discussion of *vyavahāra* with the phrase *atha vyavahārāḥ*, "Now the *vyavahāras*" (16.1). What follows after are two separate tracts (16.1–16.37, 19.38–19.48) covering aspects of litigation, including sections on both procedure and witnesses. His discussion of substantive law is limited, however, to a few rules embedded in a short treatment of property law (16.6–16.20) and a tract on the transfer of guilt for crimes and the miscarriage of justice (19.38–19.48).<sup>5</sup> In the end, perhaps Vasiṣṭha preferred the system of *prāyaścitta* for addressing wrongdoing rather than *vyavahāra* (on these two domains, see Lubin 2007), as he follows the last section on the king with a treatment of penances.

## THE VYAVAHĀRAPADAS IN THE DHARMAŚĀSTRAS

The early development of *vyavahāra* in Āpastamba and Gautama is carried to maturity in the *Mānava Dharmaśāstra*, which, as mentioned, possesses the first comprehensive presentation of the *vyavahārapadas* in the *dharma* literature. Moreover, Manu gives them this name. He drew extensively upon the *Arthaśāstra* (McClish 2014), and, in doing so, established *vyavahāra* as a primary concern of subsequent *smṛtis*. It will be useful to examine his presentation in the context of the other extant codes:

<sup>5</sup> It is possible that certain passages falling between these (on courtiers, 16.21–16.26; sons, 17.1–17.39; inheritance, 17.40–54; 81–7; levirate, 17.55–17.66; marriage, 17.67–17.74; and absent husbands, 17.75–17.80) in fact indicate that all of 16–19 is meant as a long passage on *vyavahāra* within *rājadharmā*, but that remains uncertain.



**Table 23.1** Vyavahārapadas

<i>Arthaśāstra</i>	Manu	Yājñavalkya	Nārada	Bṛhaspati
1. marriage	1. debt	1. debt	1. debt	1. debt
2. inheritance	2. deposit	2. deposit	2. deposit	2. deposit
3. real estate	3. sale by non-owner	3. inheritance	3. partnership	3. gift
4. nonfulfillment of convention	4. partnership	4. boundary dispute	4. not giving gift	4. partnership
5. debt	5. nonfulfillment of gift	5. owner and herdsman	5. violation of agreement	5. nonpayment of wage
6. deposits	6. nonpayment of wage	6. sale by non-owner	6. nonpayment of wage	6. violation of agreement
7. slaves and laborers	7. breach of contract	7. not giving gift	7. sale by non-owner	7. land dispute
8. partnerships	8. canceling purchase or sale	8. canceling purchase	8. nondelivery of sale	8. sale by non-owner
9. canceling sale or purchase	9. owner and herdsman	9. violation of agreement	9. canceling purchase	9. canceling purchase or sale
10. nonfulfillment of gift	10. boundary dispute	10. breach of contract	10. nonfulfillment of convention	10. violation of convention
11. sale by non-owner	11. physical assault	11. nonpayment of wage	11. land dispute	11. husband and wife
12. owner and property	12. verbal assault	12. gambling and betting	12. husband and wife	12. theft
13. robbery	13. theft	13. verbal assault	13. inheritance	13. inheritance
14. verbal assault	14. violence	14. physical assault	14. violence	14. gambling
15. physical assault	15. sexual crimes against women	15. violence and robbery	15–16. verbal assault/physical assault	15. verbal assault
16. gambling and betting	16. husband and wife	16. nondelivery of sale	17. gambling and betting	16. physical assault
17. miscellaneous	17. inheritance	17. partnership	18. miscellaneous	17. violence and robbery
	18. gambling and betting	18. theft		18. sexual crimes against women
		19. sexual crimes against women		
		20. miscellaneous		

Manu follows the *Arthaśāstra* closely, even if tending to treat topics more briefly, but he introduces several important innovations. First, he begins with *ṛṇādāna*, “nonpayment of debts,” which becomes, thereafter, the archetypal *vyavahārapada* for all subsequent texts. This is part of a general prioritization of economic transactions, with family law moved near the end.<sup>6</sup> He adds sections on *svāmipālayoḥ vivāda* (“dispute between owner and herdsman”; probably based on Gautama), *steḥya* (“theft”), and *strīsamgrahaṇa* (“sexual crimes against women”). He provides new nomenclature for a few titles, including the (*vetanasya adāna*) “nonpayment of wage”, *saṃvidah vyatikrama* (“breach of contract”), and *śīmāvivādadharmā* (“the law of boundary disputes”). In addition, there are specific changes to the content of some of the *vyavahārapadas*, such as a greater emphasis on the rights of masters than seen in the *Arthaśāstra* and the treatment of *sāhasa* as violence rather than robbery per se.

From Manu forward, there is no dramatic change among of the *vyavahārapadas* themselves, although a few interesting observations can be made. First, although Manu established the eighteen *vyavahārapadas*, later jurists did not feel compelled to reproduce them exactly, varying somewhat in number, title, and nomenclature. Yājñavalkya, for instance, divides “canceling purchase and sale” into two separate titles and introduces the title *abhyupetyāśuśruṣā*, “violation of agreement,” which is picked up by subsequent writers. Both Yājñavalkya and Nārada have *prakīrṇaka* (“miscellaneous”) sections. All of this speaks to the great continuity of the tradition, as later writers looked back not only to earlier *dharma* jurists, but to the *Arthaśāstra* as well.

The first significant formal development among the eighteen *vyavahārapadas* is introduced by Brhaspati, who divides them into fourteen *dhanasamudbhava* (“arising from property”) and four *himsāsamudbhava* (“arising from injury”) (1.1.9), which division is followed also by Kātyāyana (30). A comparison between civil and criminal law suggests itself here, but is ultimately imperfect, as the *vyavahārapadas* pertain always to disputes brought voluntarily by the aggrieved party.<sup>7</sup> From the beginning, however, it was recognized that the *vyavahārapadas* were not exhaustive (*MDh* 8.8). Nārada, who presents eighteen *vyavahārapadas*, argues at one point that the *vyavahārapadas* are, in fact, 108 in number or that “they have one hundred branches because of the variety of men’s deeds” (*NSm Mā* 1.20; tr. Lariviere 1989a), meaning they are in practice manifold (*cf. BrSm* 1.1.13). His commentator Asahāya is yet more specific: the eighteen are divided into 132 subtypes

<sup>6</sup> Manu also excludes the discussion of types of marriage from his treatment of the law for husband and wife.

<sup>7</sup> Medieval jurists, however, will build upon this a distinction between grievances remediated by payment and those by punishment (Nibandhanakāra in *Sarasvatīvilāsa*, p. 51 as cited in Kane III: 258).

(but, see Larivere 1989a II: 8). For his part, Bṛhaspati agrees with the number eighteen, but states that the titles rooted in injury are, in fact, threefold: each divisible into least, middle, and greatest (1.1.15). Kātyāyana is most comprehensive, arguing that the *vyavahārapadas* are twofold: “non-delivery of what is due” (*deyāpradāna*) and injury. But, these two become eighteen-fold “because of differences in what is to be proven” and then again become 1008, “because of different kinds of evidence” (29).

Most importantly, however, Manu’s wholesale incorporation of the *vyavahārapadas* represents the complete identification of *vyavahāra* as state law with Brahmanical scripture. As mentioned before, this enhances the legal authority of the *vyavahārapadas* found in Dharmaśāstra over against other kinds of rules. We find in several places in the *dharma* literature the argument that customary law is invalid if it is opposed by sacred texts (e.g., *GDh* 11.20; *KātSm* 46; cf. *MDh* 8.41). That this authority comes by virtue of their inclusion within Dharmaśāstra specifically can be implied from the principle that, when there is disagreement between the two, Dharmaśāstra is to be considered more authoritative than Arthaśāstra, which, in fact, contains many of the same rules without, however, any sacred warrant (*YDh* 2.21; *NSm Mā* 1.33; *BṛSm* 1.1.111). While Vijñāneśvara, in his comment on *YDh* 2.21, argued that the two traditions were unlikely to be in conflict owing to differences in subject matter, this position cannot be sustained with respect to the *vyavahārapadas*, which often treat the same topics in both traditions. The supremacy of *smṛti* over royal edict is even suggested in a few places (*NSm* 18.8; *KātSm* 38; 668–9).

The jurisdictional changes attending the incorporation of the *vyavahārapadas* are, perhaps, nowhere more in evidence than in the reformulation of the “four feet” among the later classical jurists (Olivelle and McClish 2015). It is clear that any hierarchy of legal authority in which *dharma* is considered the least powerful could not be acceptable to the tradition of Dharmaśāstra. So, in the later layer of the *Arthaśāstra* (specifically, at 3.1.43), which was influenced by Dharmaśāstra, as well as in Nārada, Bṛhaspati, and Kātyāyana, the four feet come to be reinterpreted (see *NSm Mā* 1.10–1.11; *BṛSm* 1.1.18–1.1.22; *KātSm* 35–51). They are no longer treated as a set of four hierarchical legal domains, but as four means for reaching a verdict in a lawsuit. In this model, *dharma* refers either to an admission of guilt or trial by ordeal, *vyavahāra* is a trial by witnesses, and *caritra/cāritra* is either “inference” (*anumāna*) or customary law. The most dramatic change, however, comes in the interpretation of *śāsana* (“royal command”), which comes to be understood as “When a king issues in a matter of dispute an order which is not opposed to *Smṛtis* or local usages and which is thought out as the most appropriate one by the king’s intellect or which is issued to decide a matter when the authorities on each of two sides are equally strong” (Kane III: 261). Kātyāyana gives the most detailed description among the classical jurists. He equates *vyavahāra* with Dharmaśāstra (36), defines *customary law* (*caritra*) as only what agrees with

the Vedas and Dharmaśāstra (46), and argues that a “lawful” (*nyāyya*) royal command is one that specifically establishes a *dharma* not opposed by *smṛti* (38). Only under such circumstances, we are told (43), are each of the four feet more powerful than each earlier. The implication is that the rules of *vyavahāra* in the *śāstra* not only overrule custom, but should also govern the king’s decision, as argued unambiguously in stanzas 44–5.

There is, however, an aspirational quality to all of these claims, as we read also of contending positions, for instance that a judge should try cases so as there is no conflict between Arthaśāstra and Dharmaśāstra (*NSm Mā* 1.31) and that royal edicts do, in fact, nullify *śāstra* (*AŚ* 3.1.45, a late verse). Even so, the legal authority of the *vyavahārapadas* was undoubtedly enhanced through their incorporation into Dharmaśāstra.

## CONCLUSION

An increased emphasis on *vyavahāra* defines the development of the mature *dharma* tradition, and yet most of the innovation in this period had to do not with the *vyavahārapadas* as a group but with legal procedure and specific points of law. This holds true, generally, for the commentarial literature as well.

We might conclude, then, with reference to Medhāthiti’s *Manubhāṣya*, where he addresses the place of *vyavahāra* within the greater framework of *dharma*, a topic mostly neglected by the classical texts and commentaries. For, *vyavahāra*, manifestly the most “juridical” part of Dharmaśāstra, is both continuous and distinct from the broader concept of law that informs *dharma* generally. In his commentary on *MDh* 8.1, Medhāthiti says:

Troubles are of two kinds—*seen and unseen*. It is a case of “seen trouble” when the weaker man is oppressed by the stronger, who takes away by force his belongings; and it is a case of “unseen trouble” when the latter person suffers pain in the other world, through the sin accruing to him on account of his having transgressed the law... People very often act toward one another in hatred, jealousy, and so forth, and hence going by the wrong path they become subject to “unseen” evils; and thence follows the disruption of the kingdom... It is for this reason that when cases are investigated and decided in strict accordance with the ordinances of scriptures, people, through fear, do not deviate from the right path; and hence they become protected against both kinds of trouble... From all this it follows that for the sake of preserving the king, investigation of cases is necessary... (tr. Jha 1920–39 VI: 2)

He draws here a connection between wrongs suffered, wrongs committed, and dangers to the kingdom. For him, *vyavahāra* addresses all of them. It

remediates the injury suffered by one at the hands of another, but it also prevents people and the kingdom from having to suffer the ill consequences of criminal behaviors. When *vyavahāra*, here understood in both its procedural and substantive dimensions, is applied diligently, the king addresses not only the injury of his subjects but also their fate in the other world, all the while supporting the well-being of his realm. *Vyavahāra* may be the king's law but it serves both the worldly ends of the king and the greater salvific project of *dharma*.

## Penance

### *prāyaścitta*

David Brick

Although the Dharmaśāstra tradition uses a number of different words to denote an expiatory rite or penance (e.g., *nirveśa*, *niṣkṛti*, etc.), by far the most common such word is *prāyaścitta*, a term whose seemingly clear etymology remains, nevertheless, difficult to account for.<sup>1</sup> Like many religious traditions, Dharmaśāstra understands a “penance” (*prāyaścitta*) to be a ritual, through the proper performance of which a person is freed from some or all of the various effects of “sin,” a concept expressed in Sanskrit by several more or less synonymous terms (e.g., *pāpa*, *agha*, *enas*, etc.).<sup>2</sup> Therefore, within Dharmaśāstra the topic of penance is inextricably linked to the topic of sin. And sections of Dharmaśāstra works dealing with penance or *prāyaścitta*, in fact, deal not only with penance in the strict sense of the term, but also with the general topic of sin (i.e., its classifications, effects, etc.). This practice will be followed in this chapter. And, thus, we will examine in some detail Dharmaśāstric treatments of both sin and penance. However, because the limited amount of space here available makes an exhaustive treatment of these topics unfeasible,<sup>3</sup> this chapter will aim simply to provide a useful framework for

<sup>1</sup> Etymologically, *prāyaścitta* is seemingly a compound of the adverb *prāyas* (“commonly, generally”) and the noun *citta* (“thought, mind”). Thus, it would appear to denote a ritual somehow involving “common thought,” but how this describes a penance is unclear. The most viable account of *prāyaścitta*’s etymology would seem to be Gampert’s (1939: 28) suggestion that it literally denotes an intention (*citta*) for something to go away (*prāya*), in this case, specifically sin. For detailed discussions of this issue, see Gampert (1939: 23) and Kane (IV: 57–61).

<sup>2</sup> A few early texts (*GDh* 19.2–19.10; *BDh* 3.10.2–3.10.8; *VaDh* 22.1–22.7) acknowledge that one might consider penances’ special ability to negate the effects of sinful acts to be tantamount to an impossible violation of the accepted laws of karma. All of these texts, however, explicitly reject such a position and endorse the general legitimacy of penance.

<sup>3</sup> For such a treatment, one may turn to Gampert (1939) or Kane (IV: 1–178). For an interesting recent discussion of penance in Dharmaśāstra, also see Davis (2010: 128–43).

understanding certain salient Dharmaśāstric ideas pertaining to sin and its ritual expiation. More specifically, it will focus on demonstrating how numerous features of the theory of sin and penance expounded in Dharmaśāstra reflect a pervasive concern with two fundamentally different human activities: (a) the personal quest to avoid an undesirable life after death and (b) the process of excommunicating and readmitting members of a given social community.

Given the well-known penchant for taxonomy within Brahmanical scholarly traditions, it should come as no surprise that Dharmaśāstra texts dealing with penance contain long lists of sins that they classify into various groups, ranging from the most to the least grievous in nature. The *Āpastamba Dharmaśūtra* (1.21.7–1.21.11), probably the oldest surviving Dharmaśāstra work, refers to the most grievous sins as *patanīyas*, whereas the later tradition (*GDh* 21.2; *MDh* 11.55; *ViDh* 33.3; etc.) generally refers to them as *pātakas*. Importantly, both of these terms are derived from the verb root  $\sqrt{\text{pat}}$ , meaning “to fall”; and the reason for using nominal derivatives of this particular root to denote the most grievous sins is clear: unlike most lesser types of sin, these sins are held to cause a person to fall not only into hell, as one might expect, but also from his or her caste. Thus, the *Gautama Dharmaśūtra* (21.4–21.6), one of the very earliest Dharmaśāstra texts, explains the sort of “falling” that certain major sins entail as follows: “Falling” is exclusion from the activities of twice-born men; and a lack of success in the hereafter. Some call this “hell.” Moreover, the *Mitākṣarā*, Vijñāneśvara’s celebrated commentary on the *Yājñavalkya Dharmaśāstra*, clearly agrees with Gautama about the basic effects of sin, for it (on *YDh* 3.226) nicely summarizes these effects as follows: “Sin possesses two powers: that which brings about hell and that which prohibits social interaction.” Hence, throughout its long history, the Dharmaśāstra tradition consistently regards sin as possessing two distinct powers. The first of these is the power to cast a person into one or another of the various recognized hells (*YDh* 3.222–3.225), as well as to cause additional undesirable rebirths in the mundane world, specifically as a plant or an animal, a member of a low-caste community, or a person afflicted with a congenital disease or deformity (*YDh* 3.207–3.215). In other words, a sin is, according to Dharmaśāstra, an act that produces negative soteriological consequences. And this is, of course, quite close to certain popular Western conceptions of sin. The second power of sin, however, is perhaps more distinctively Indian, for it is the power to prohibit one from social and ritual interaction with other respectable people. That is, in addition to resulting in hell and other unpleasant rebirths, sin can also cause a person to lose his or her caste status and, thus, become an outcaste.

According to Dharmaśāstra, all sins possess the first of these powers, that is, the power to produce negative otherworldly results; only the most serious possess the second. These are, however, by far the most extensively discussed

and analyzed sins within Dharmaśāstra literature. For instance, Dharmaśāstra works invariably treat the *pātakas* or “sins causing loss of caste” before any other sins and typically divide these into a number of important subcategories. Specifically, the five most grievous *pātakas* are called the “great *pātakas*” (*mahāpātaka*), which are universally understood to be: killing a Brahmin, sleeping with an elder’s wife, drinking liquor, stealing a Brahmin’s gold, and associating with an outcaste.<sup>4</sup> Following these in seriousness are slightly lesser sins regarded as equivalent to one or another of the five great *pātakas* (*pātakasama*).<sup>5</sup> And, thereafter, one finds in various texts miscellaneous lists of “lesser *pātakas*” (*upapātaka*).<sup>6</sup> Only at this point, after having listed the *pātakas* of different types, do the texts generally treat sins of less grievous sorts; and this they do in a comparatively cursory fashion. Moreover, sometimes the titles of even these relatively minor sins suggest a connection with social ostracism. Thus, for example, one lesser type of sin in Manu is the “sin causing a fall from caste” (*jātibhramśakara*)<sup>7</sup> and another is the “sin causing one to become mixed” (*saṃkarikaraṇa*).<sup>8</sup> Therefore, Dharmaśāstric theory places roughly equal emphasis on the soteriological and social effects of sin. Thereby, it addresses within its system of sin and penance two fundamentally distinct cultural phenomena: the quest for personal salvation and the process of excommunication from and readmission to good society.

Although not explicitly stated within Dharmaśāstra works, the logic underlying the ubiquitous connection made between undesirable rebirths, excommunication, and sin is fairly easy to surmise. The belief that certain acts, which we can appropriately call “sins,” yield negative otherworldly results is essential to the karmic worldview upon which Brahmanism and, indeed, all early Indian religions are based. Therefore, sin’s close association with soteriology within Dharmaśāstra is entirely unsurprising. Moreover, it is crucial to note that like many religious traditions, Brahmanism evinces a strong propensity to identify entities as impure and to prohibit contact with such entities lest one contract their impurity and, thus, suffer horrible calamities.<sup>9</sup> Therefore, it makes sense that participants in this culture would regard those who have committed sins as impure and, as a result, fastidiously shun them until they are deemed to have removed their impurity. And, in fact, Dharmaśāstric texts frequently cite purification (*śuddhi*) as the purpose of penance.<sup>10</sup> Hence, one

<sup>4</sup> *GDh* 21.1–21.3; *VaDh* 1.19–1.20; *MDh* 11.55; *YDh* 3.227; *ViDh* 35.1–35.2.

<sup>5</sup> *GDh* 21.10; *MDh* 11.56–11.59; *YDh* 3.228–3.233; *ViDh* 36.1–36.7.

<sup>6</sup> *GDh* 21.11; *BDh* 2.2.12–2.2.13; *VaDh* 1.23; *MDh* 11.60–11.67; *YDh* 3.234–3.242; *ViDh* 37.1–37.34.

<sup>7</sup> *MDh* 11.68; also see *ViDh* 38.1–6.

<sup>8</sup> *MDh* 11.69; also see *ViDh* 39.1.

<sup>9</sup> For a detailed discussion of traditional Brahmanical notions of purity/impurity, see Kane (IV: 267–333).

<sup>10</sup> See, e.g., *YDh* 3.20.



can reasonably account for the link between sin and excommunication within Dharmaśāstra as a result of the Brahmanical preoccupation with purity.

Turning to what precisely excommunication means within the context of Dharmaśāstra and how it was theoretically enacted, several early texts (*GDh* 20.2–20.7; *BDh* 2.1.36; *MDh* 11.183–11.184) prescribe slight variants of an apparently ancient rite used for formally outcasting a person known or at least widely believed to have committed a grievous sin. According to all accounts, the central element in this ritual comprises the overturning of a water pot in the presence of the sinner and his relatives, an act typically performed by a male or female slave of the family. Following this ritual, an outcaste person then loses—at least temporarily—all rights to inherit property, and respectable people are strictly forbidden from associating with him (*MDh* 11.185–11.186). The *Āpastamba Dharmasūtra* (1.29.8–1.29.9) further explains the manner of living that an outcaste should adopt:

Reviled persons should congregate and conduct themselves focused on what is right, sacrificing for one another, teaching one another, and marrying amongst themselves. To any sons they beget they should say, “Go away from us, for you would thus have been accepted as Āryas amongst us (in our former lives).”

If, however, an outcaste successfully performs the appropriate penance to expiate his sin, several texts (*GDh* 20.10–20.20.14; *BDh* 2.1.36; *MDh* 11.187–11.188) prescribe rather different rituals that he and his relatives are supposed to jointly perform in order to effect his full readmission to caste. Hence, penance is widely considered capable of restoring a sinner’s caste status, and a set public ritual is supposed to mark the occasion of such restoration.

This general description of the process and effects of societal excommunication within Dharmaśāstra strongly suggests that one should understand sins within this tradition to be essentially equivalent to violations of caste laws, against which two basic and closely related worldly sanctions were devised: loss of caste and the need to perform an arduous penance in order to restore it.<sup>11</sup> To be more precise as to the relationship between sin and caste within Dharmaśāstra, the various lists of sins found in Dharmaśāstra works seem to reflect the communal rules of the orthodox twice-born social classes, which above all, mean Brahmins. This would explain why Gautama (21.4) cites “exclusion from the activities of twice-born men” as a principal effect of sin, as we have seen, and also why acts such as neglecting the Veda (*brahmojjha*), which apply only to twice-born men, are commonly listed as sins (e.g., *ĀpDh* 1.21.8; *MDh* 11.57). There are, however, one or two references in Dharmaśāstra sources to penances specifically for Śūdras (e.g., *ĀpDh* 1.26.4), which shows that

<sup>11</sup> It is also noteworthy, in this regard, that many texts seem to have charged the king with ensuring that publicly known sinners performed the appropriate expiatory rites. For a discussion of this, see Brick (2012b: 22–3) and Kane (IV: 68–74).

Dharmaśāstric discussions of *prāyaścitta* apply, at least on rare occasions, to lower-caste people as well. Such references naturally complicate to some degree the straightforward equation of the various sins laid out in Dharmaśāstra with the rules governing twice-born communities.

Before directly discussing the other major worldly sanction against sin, namely, the need to perform penance in order to restore caste status, it is worth noting a few significant factors that are held to affect the seriousness of a sin aside from its classification as a *mahāpātaka* or the like. One such factor is whether a person has committed the sin in question habitually or simply on one or two occasions. A belief that habitual sinning is especially grievous is fairly well attested in textual sources. It is, for instance, detectable in Āpastamba's list of *patanīyas* or "sins causing loss of caste," which concludes with the sin of "constantly performing unrighteous acts" (1.21.11).<sup>12</sup>

Probably the most important factor in determining the seriousness of a sin, however, aside from its basic classification, is whether it was done intentionally or unintentionally. Unsurprisingly, the Dharmaśāstra tradition consistently regards intentional sins as far weightier than unintentional ones. Again, Āpastamba (1.29.2–1.29.4) explicitly articulates this general principle:

If a person kills someone accidentally, he reaps the fruit of that sin, but it becomes greater, if he acted with intention. The same applies to other sinful acts as well.

With regard specifically to the archetypal Dharmaśāstric sin, Brahmin-murder, Baudhāyana (2.1.6) quotes an authoritative verse to the effect that expiation is only possible if the deed was done unintentionally. Furthermore, both Vasiṣṭha (20.1–20.2) and Manu (11.45) hold that while unintentional sins are always expiable through penance, only some people believe this to be true of intentional sins. It is noteworthy, however, that the Dharmaśāstra tradition on the whole sides with these unnamed people.<sup>13</sup>

Beyond this, the *Yājñavalkya Dharmaśāstra* contains a statement on the relative seriousness of intentional and unintentional sins that is especially informative for the purpose of this chapter. In Sanskrit, the relevant verse (*YDh* 3.226) reads:<sup>14</sup>

*prāyaścittair apaity eno yad ajñānakṛtaṁ bhavet |*  
*kāmato [']vyavahāryas tu vacanād iha jāyate ||*

The first line of this verse is fairly unambiguous and can be reasonably translated as, "Sins that are done unintentionally depart through penances."

<sup>12</sup> Note that the "unrighteous acts" (*adharma*) referred to in this passage must be regarded as too minor in nature to warrant loss of caste if done in isolation, but not if habitually performed.

<sup>13</sup> On this complicated issue, see Kane (IV: 61–8).

<sup>14</sup> It is noteworthy that this verse is absent from the versions of the *YDh* commented on by Viśvarūpa and Aparārka.

Thus, by all accounts, it denotes that penances thoroughly expiate sins that a person unwittingly commits, indicating again that such sins are markedly less serious than intentional ones are. The second line, however, is by far the more telling part. But it also contains a crucial ambiguity, for Sanskrit grammar allows one to analyze the words *kāmato* [*vyavahāryas* there as either *kāmataḥ vyavahāryaḥ* or *kāmataḥ avyavahāryaḥ*. Readers with a moderate proficiency in the language will likely recognize the implication of this. A person can justifiably translate the line in one of two diametrically opposed ways, either as:

However, if a person sins intentionally, he *just becomes fit* for association in this world on account of scripture.

Or as:

However, if a person sins intentionally, he *is still unfit* for association in this world on account of scripture.

Consequently, the verse can mean either that (a) penances negate all the effects of unintentional sins, but just the *worldly* effects of intentional sins or (b) penances negate all the effects of unintentional sins, but just the *otherworldly* effects of intentional sins. In other words, it allows for two radically contradictory interpretations, both of which are adopted by different commentators.<sup>15</sup> Nevertheless, in accordance with the above verse of Yājñavalkya, all exegetes within the Dharmaśāstra tradition seem to agree not only that sin has distinct social and soteriological effects, but also that these effects, in an important sense, exist independently of one another, for penance has, under certain conditions, the power to negate one of them without necessarily affecting the other. Hence, the above verse of Yājñavalkya allows us to see how the Dharmaśāstric theory of sin and penance assumes a rather stark separation between social and soteriological concerns.

Further evidence of such a clear separation between worldly and other-worldly concerns can be found in the final significant factor that helps determine the seriousness of a given sin, namely, whether its commission is a matter of public knowledge or remains a secret known only to those directly involved. For sins of these two basic types, two completely different sets of

<sup>15</sup> The *Mitākṣarā*, for instance, adopts the interpretation that penances expiate just the worldly effects of intentional sins and makes no mention whatsoever of the alternative. It is unclear why Vijñāneśvara does this. One plausible reason is his view of penances ending in death (*marañāntikaprayāścitta*), of which the Dharmaśāstras prescribe a number for especially severe sins (e.g., *YDh* 3.247–3.248). According to him (on *YDh* 3.226), these lethal penances have the unique ability to expiate the otherworldly effects of very serious intentional sins. Thus, if all penances negate merely the otherworldly effects of intentional sins, these lethal penances would have no advantage over nonlethal penances and, therefore, be unacceptably pointless. In contrast to Vijñāneśvara, Mādhava (on *Parāśara Smṛti* 8.1.) cites both interpretations of *YDh* 3.226 and, rather than deciding between them, concludes that penances for various sins causing loss of caste can negate *either* their worldly *or* their otherworldly effects.

penances, determined via very different processes, are prescribed in texts as early as the *Gautama Dharmasūtra*<sup>16</sup> and throughout the later tradition. These are the so-called “public penances” (*prakāśapṛāyaścitta*) and “secret penances” (*rahasyapṛāyaścitta*). And of these two sets of penances, public penances are invariably far more severe than the corresponding secret ones. To give an example that illustrates the extent of the difference in severity between these sorts of penance, one might compare the public penance for Brahmin-murder with the secret penance for the same sin, both as prescribed in the *Yājñavalkya Dharmaśāstra*. The standard public penance for this sin in *Yājñavalkya* (3.243), as in other *Dharmaśāstras* (e.g., *GDh* 22.4, *BDh* 2.1.2–2.1.3), consists of living as an itinerant beggar for twelve years, while carrying a skull and announcing one’s sin to all those whom one meets. In comparison with this, the secret penance for Brahmin-murder (*YDh* 3.301) is extremely mild: one must simply fast for three nights, recite the Vedic *aghamaṛṣaṇa* hymn (= *RV* 10.190) while submerged in water, and give away a milk cow.

Seeming to recognize that the comparative mildness of secret penances might be troubling to some within the Brahmanical community, the commentator *Viśvarūpa* writes when introducing the topic:<sup>17</sup>

And one should not object to this by asking why the penances for those whose sins are not publically known should be so mild, for scripture should never be called into question. Moreover, since a man who performs them must be learned, he cannot be generally associated with sin; and, thus, *Yājñavalkya* himself will state later on that “sins do not touch a man who delights in reciting the Veda, is forbearing...” (3.310). And because they are undertaken essentially to purify oneself, the mildness of such penances is, indeed, proper.

Here *Viśvarūpa* proposes three reasons that secret penances should be so relatively mild. Firstly, he points out that this is the view of the authoritative scriptures and, as such, requires no further support. Secondly, *Viśvarūpa* does not allow those ignorant of the scriptures to learn the appropriate secret penances for their sins from others.<sup>18</sup> Consequently, he argues that since a person must be quite learned to perform a secret penance, he cannot be generally associated with sinful behavior and, therefore, can reasonably be expected to perform a lighter penance than an ordinary person would. Finally, and most revealingly, *Viśvarūpa* states that the purpose of undertaking a secret penance, unlike a public penance, is simply to purify oneself and not to regain caste status. Therefore, it is fitting in his mind that such penances should be

<sup>16</sup> Compare, e.g., *GDh* 22.1–23.33, 24.1–24.12.

<sup>17</sup> This is at *YDh* 3.296, which is equivalent to *YDh* 3.300 in the *Mitākṣarā*’s version of the text.

<sup>18</sup> Instead, citing *MDh* 11.228, *Viśvarūpa* (on *YDh* 3.296) explains that the secret penances of those who are neither educated nor twice-born should comprise announcing their sins, feeling remorse for them, performing unspecified austerities (*tapas*), and the like.

rather mild. Here we find explicit recognition that secret penances are intended to negate merely the soteriological effects of sin and the strong implication that the comparative severity of public penances is intended primarily to mitigate the social opprobrium connected with sin and, thus, to facilitate sinners' readmission to caste. However, in order to appreciate fully how public penances are designed in Dharmaśāstra to facilitate the restoration of caste status and how secret penances avoid the issue of social ostracism altogether, it is necessary to examine the distinguishing features of such penances, to which we will now turn.

The essential differences between public and secret penances are most clearly laid out in the digests and commentarial literature. As is often the case, the *Mitākṣarā* is especially eloquent in this regard. It (on *YDh* 3.300c–d) explains a “secret penance” as follows:

A man whose sin is unknown to persons other than the perpetrators of the act should carry out a secret, i.e., non-public, penance. Hence, one should understand, for instance, that because in cases of illicit sex, the woman is also a perpetrator, a man whose sin is unknown to anyone other than her should perform a secret penance. In such an event, if the perpetrator is himself learned in Dharmaśāstra, he should undertake the penance appropriate for what occasioned it (i.e., the sin) without informing anyone else. If, however, he is personally ignorant of the subject, he should carry out the correct secret penance after learning it through some pretext or other, such as saying that somebody has secretly killed a Brahmin and asking what is the secret penance for that.

Thus, a “secret penance” is not just a penance used to expiate a sin known only to the sinner and others directly involved in its commission but also a penance that one must secretly perform. According to Vijñāneśvara, as well as other commentators, if a person is learned enough to already know the scripturally prescribed penance for his sin, he should simply proceed to perform it. If, however, he does not know the penance prescribed in scripture, Vijñāneśvara recommends a rather different course of action than Viśvarūpa does. For he enjoins a sinner to find out the appropriate secret penance for his sin from a knowledgeable person, but to take special care in so doing not to inform him or anyone else of his guilt. In other words, Vijñāneśvara recommends inquiring under some pretext. And in this regard, it is noteworthy that the generally mild character of secret penances makes it plausible that one could theoretically perform them without drawing public suspicion. Indeed, Viśvarūpa even goes so far as to spell out that “one should perform a secret expiatory rite under the pretense of a pious act or the like so that even bystanders do not recognize it.”<sup>19</sup> Hence, the public awareness upon which all societal excommunication must depend is decidedly absent in the case of secret penances.

<sup>19</sup> See Viśvarūpa on *YDh* 3.296.

In direct contrast to this, a “public penance” is not only a penance designed to atone for a publicly known sin, but also a penance that one must publicly perform. Vijñāneśvara (on *YDh* 3.300a–b) explains penances of this sort as follows:

A man whose sin is apprehended, i.e., known, by people other than those necessary to commit the sin should perform the penance instructed by an assembly of learned Brahmins (*parṣad*). Even if he is personally adept at ascertaining the meaning of all the scriptures, he must approach such an assembly, ascertain together with it the correct penance, and perform only what it has approved.

Hence, public penances directly contrast with those of the secret variety in that even if a person knows the scripturally enjoined penance for his sin, he is not permitted to go ahead and perform it. Instead, he must approach a *parṣad*,<sup>20</sup> which is a specially constituted assembly of learned Brahmins, and have it assign him the appropriate penance.

Unsurprisingly, the precise and legitimate makeup of such an assembly or *parṣad* is a subject of considerable discussion within Dharmaśāstra. In one passage (11.84–11.86) that seems to describe specifically the sort of *parṣad* that should assign public penances, Manu states that a sinner should announce his sin before a gathering of the local king and learned Brahmins and that three Veda-knowing Brahmins there should prescribe for him the appropriate penance. Yet in another more general passage (12.110–12.112), he describes the makeup of a *parṣad* slightly differently:

One should not violate any law that a learned assembly (*parṣad*) of at least ten or at least three members who adhere to right conduct has established. Men learned in each of the three Vedas, a logician, a hermeneut, a grammarian, a legal scholar, and men belonging to the first three orders of life—these comprise a learned assembly of at least ten members. A man who knows the *R̥gveda*, one who knows the *Yajurveda*, and one who knows the *Sāmaveda* are to be known as a learned assembly of at least three members that may decide doubtful matters in the law.

Beyond this, Madanapāla, in his fourteenth-century legal digest, cites a passage ascribed to the sage Aṅgiras that again differs somewhat from Manu and gives an even more detailed description of the ten members of a proper *parṣad*.<sup>21</sup> In any case, whatever the precise makeup of such an assembly might be, its social function in issuing public penances appears to be fairly obvious. An individual performing a penance on his own—however knowledgeably—may well be unable to convince many of his fellow caste

<sup>20</sup> It may be worth noting that certain texts prefer to use the word *pariṣad* instead of its shortened form *parṣad*.

<sup>21</sup> See *Madana-Pārijāta* p. 773 and, for a discussion of the relevant passage, Brick (2012b: 20–2). An independent Dharmaśāstra ascribed to the mythical sage Aṅgiras no longer survives.

members that he has expiated his sin truly and successfully. A properly constituted *parṣad*, however, is much more likely to have success in this regard, for the judgment of an assembly of well-known, revered, and erudite Brahmins would surely have carried much more weight than that of an individual sinner. And in the society portrayed in Dharmaśāstra literature, popular consensus is essential if a sinner is to recover his former caste status, for, as mentioned above, Dharmaśāstra texts consistently list association with an outcaste as one of the five most grievous sins (*mahāpātaka*). Hence, one can plausibly interpret the strict requirement of a *parṣad* in public penances as an attempt to meet the high standards that members of Brahmanical society adhered to when assessing whether or not a person had truly expiated his sins.

Moreover, one can see how the need for a *parṣad* would have become particularly pressing, when one notes the confusing array of penances laid out for assorted sins in various authoritative texts. As Gautama (19.11) accurately explains, penances within Dharmaśāstra—whether secret or public—generally comprise some combination of reciting sacred texts, performing austerities, making ritual offerings, fasting, and gifting. Nevertheless, determining the precise combination of these actions suitable for expiating a specific act of sin is far from a simple task. To begin with, for some sins, such as having sex with an elder's wife, an array of specific penances is prescribed;<sup>22</sup> and some of these are tantamount to ritual suicide,<sup>23</sup> which Āpastamba (1.28.16–1.28.17) and other authorities seemingly forbid. Yet, for certain, other recognized sins, Dharmaśāstra texts do not seem to enjoin any specific penances at all. Furthermore, these texts also lay down an array of generic penances that are not prescribed exclusively for any specific sins, but instead presented as generally and powerfully expiatory, such as the oft-discussed “lunar penance” (*cāndrāyaṇa*).<sup>24</sup> Thus, given the confusing state of the scriptural corpus and the variety of seemingly legitimate options available, determining the correct penance for a given sin would seem to require both considerable erudition and a great deal of personal discretion. With this in mind, it is easy to see why members of Brahmanical society would have felt much more comfortable entrusting this task to a properly constituted *parṣad* than to an individual sinner.

Beyond this, an earnest desire to allow sinners to regain their caste status seems to underlie several other notable features of public penances, as

<sup>22</sup> See, e.g., *ĀpDh* 1.28.11–1.28.18; *MDh* 11.104–11.107, 11.252.

<sup>23</sup> See, e.g., *ĀpDh* 1.25.1–1.25.2, 1.28.15; *GDh* 23.8–23.10; *BDh* 2.1.13–2.1.15; *MDh* 11.104–11.105.

<sup>24</sup> This rite typically starts the day of the full moon, when a person subsists on fifteen mouthfuls of food. Every day thereafter, he decreases his daily food by one mouthful, so that he completely fasts on the day of the new moon. Then he begins to increase his daily food by one mouthful each day until the day of the next full moon. For textual descriptions, see *GDh* 27.1–27.18; *BDh* 3.8.1–3.8.31; *MDh* 11.217.

prescribed in textual sources. For instance, a *smṛti* cited in several medieval commentaries flatly forbids a *parṣad* from refusing to issue a penance for a sin if it knows of one,<sup>25</sup> and another instructs that to the greatest extent possible, it must avoid issuing needlessly harsh penances.<sup>26</sup> Both of these passages suggest that a *parṣad* was not, at least in theory, simply a committee of staunchly orthodox Brahmins responsible for the vigilant guardianship of their community's purity. To the contrary, they make a *parṣad* appear more like a benign institution charged with curbing overly stringent standards of purity within Brahmanical society. And this benevolent character of *parṣads* would appear to explain why Dharmaśāstric texts sometimes refer to the process of issuing a penance with the curious expression "to do a favor" (*anugrahaṁ kuryāt*).<sup>27</sup> It also supports Timothy Lubin's (2007: 109–10) significant contention that a major difference between penance and punishment within Dharmaśāstra is the element of coercion, which is generally missing in the former, but present in the latter.

Lastly, it is worth noting a special ceremony that the *Parāśara Smṛti* (8.41–8.42) prescribes to mark a cow-killer's formal readmission to caste after his proper completion of his assigned penance: a ceremony that the commentator Mādhava fittingly refers to as the "publicizing of purity" (*śuddhiprakāśana*) and extends to all public penances. Given that the fundamental component of this ceremony is the ritual feeding of Brahmins, the creation of social consensus would again seem to be its clear purpose, for strict dietary rules and limits placed on commensality are ubiquitous characteristics of Brahmanical culture. Therefore, if a man can successfully perform *śuddhiprakāśana* and get Brahmins to eat his food, it would be very hard for his fellow caste members to deny his caste status, for to do so would be to impugn all those whom he has fed.

To summarize then, in laying down rules for the performance of public penances Dharmaśāstra texts repeatedly show a deep concern with the creation of social consensus. Evidence for this starts with the necessity of a *parṣad*; continues with the marked severity of public penances in comparison to secret ones; and concludes—according to Parāśara at least—with the sinner's final act of formally feeding Brahmins. This deep concern of the Dharmaśāstras with social consensus regarding the expiation of publicly known sins likely stems from the extremely high standards of purity that

<sup>25</sup> See, e.g., *Mitākṣarā* 3.300a–b; *Madana-Pārijāta* p. 779; *Parāśara-Mādhaviya* 8.30: "When Brahmins who know the correct penances refuse to give them to tormented solicitors, they become the same as them."

<sup>26</sup> See *Parāśara-Mādhaviya* 8.30: "Taking into account concerns of age, time, and mortality in the case of a Brahmin, Brahmin scholars of Dharmaśāstra should issue a penance through which the sinner will attain purification and neither be robbed of life nor experience great torment, for one should never instruct rites of that sort."

<sup>27</sup> See *Parāśara-Mādhaviya* 8.6 and *Madana-Pārijāta* p. 778.



prevailed in orthodox Brahmanical communities. Therefore, it would appear that the Dharmaśāstra tradition provides in public penances an authoritative institution capable of establishing two matters of grave importance for Brahmanical social order: (a) how sinners can expiate their sins and (b) when they have done so. This is not to deny that the spectacle of public penances in Brahmanical communities also served as a means of naturalizing the wrongness of sin and, therefore, essentially of deterrence, as some scholars have recently argued.<sup>28</sup> Instead, the point is simply to stress that while the Dharmaśāstra tradition sees unchecked sin as a serious danger to society, it also recognizes a similar danger in the puritanical attitudes fostered in traditional Brahmanical culture.

<sup>28</sup> See Davis (2010: 133–8) and especially Olivelle (2011).

## Vows and Observances

*vrata*

*Donald R. Davis, Jr.*

The topic of *vrata*—vows, regimens, and austerities of many kinds—captures in miniature the general history of the development of Dharmaśāstra in a way that few other topics do. In brief, *vrata* appears in the early Vedic texts but has several meanings that subsequently are narrowed and expanded in later texts. The Vedic usages become a touchstone for later meanings, but at the same time, the category catches on to describe a whole series of devotional vows and regimens that are seen textually first in the Purāṇas and only later in the medieval Dharmaśāstra digests. By then, the *vrata* practices described are already well established in connection with temples, pilgrimage centers, and domestic vows. The *dharma* texts nevertheless co-opt the *vrata* category, as if it had been there all along (which in a very loose way it had). Huge *dharma* tomes appear that collect the Purāṇic material and add to it. From then on, *vrata* remains a standard topic of *dharma* in Dharmaśāstra, while also maintaining its relevance as a broad category for innumerable religious vows and austerities, especially by women, in Indian society. Indeed, women so dominate the observance of *vratas* today and in recent centuries that it is practically only a women's ritual. Figuring out how far back this dominance goes, however, is difficult, but the question is essential to understanding how Hinduism evolved.

### THE SEMANTIC DEVELOPMENT OF VRATA AS A TOPIC OF DHARMAŚĀSTRA

In early Vedic texts, *vrata* is a flexible term meaning either “rule, divine attribute, or observance.” It then narrows in later Vedic texts to signify an

ascetic regimen that was part of a ritual consecration (Lubin 2001).<sup>1</sup> There it is used in connection with preparatory rites that form part of ritual consecrations, especially either the restrictions on food to be observed in such moments or the restricted food itself (Kane V: 22–5). Within the *Gr̥hyasūtra* and *Dharmasūtra* texts, *vrata* similarly means a “ritual observance,” especially for students and especially rites involving fasting. Āpastamba (*ĀpDh* 2.1.1), for example, states, “After marriage, the special observances (*vratāni*) of the couple living the household life come into force” (Olivelle 1999a: 43). A series of food restrictions follows. However, *vrata* should not be considered an important term in these latter texts, since it occurs infrequently.

The most common meaning of *vrata* in the early *Dharmaśāstra* texts is expiation (Kane V: 27). In other words, it is often a synonym of the more common word for expiation, *prāyaścitta*. For instance, in the chapter on expiation, Manu (*MDh* 11.170) reads, “Through these observances (*etair vratair*), a twice-born should remove a sin incurred by stealing. The sin incurred by having sex with a woman with whom sex is forbidden, on the other hand, he should remove by means of the following observances (*vratair ebhir*)” (Olivelle 2005a: 224). Here, as elsewhere, the affinities between ascetic practices involving fasting and other restrictive observances led to frequent semantic overlap between concepts that later become clearly differentiated. *Vrata* is often synonymous with *niyama* (restrictive observance) and with *upavāsa* (fasting rites) (McGee 1987: 50–3). McGee calls some rites of the early texts not labeled *vrata* “precursors” of later vows for removing inauspiciousness, safe journeys, long life, and wealth (1987: 22), but the conceptual and ritual affinities are loose and sustained mostly by back reading later understandings onto earlier. In short, even by the time of the major root texts of the *dharma* tradition, we are still somewhat far from the later standard denotation of *vrata* as a voluntary vow made to a deity to observe a fast or other ascetic regimen in favor of a worldly reward.

Within Hindu jurisprudence, the number of recorded *vratas* expanded rapidly in the period between the basic *Dharmaśāstra* root texts and the digests of *dharma* composed from the twelfth century CE on. From less than twenty, often ill-defined vows, consecratory rites, and regimens in the major root texts, we very quickly jump to a description of 170 *vratas* in the twelfth-century *Vratakāṇḍa* of Lakṣmīdhara’s *Kṛtyakalpataru*. Several hundred more appear in subsequent *dharma* digests, with the total number approaching a thousand. The dramatic increase in the number of attested *vratas* can be explained textually by the fact that the *vrata* material is almost wholly Purāṇic in origin. The early *Dharmaśāstra* provided little to draw upon for this topic in the medieval digests. So, textually, the *dharma* tradition just took everything

<sup>1</sup> Compare *MDh* 3.1, where the core ritual life of the student (*brahmacārin*) is called the “observance relating to the three Vedas” (*traivedikam vrataṃ*).

from the Purāṇas and presented their long praises and descriptions of *vratas* as though they had been *dharma* all along. Historically, however, the question is whether the *vratas* represent an intrusion of proverbial popular custom or came out of another religious tradition, namely the Purāṇas, now appropriated by Dharmaśāstra.

McGee's unsurpassed study of *vratas* in the medieval Dharmaśāstras presents the explosion in *vrata* literature as an incorporation of "good custom" (*sadācāra*) into the Hindu law (1987: 37). She describes the difference between Vedic and Purāṇic *vrata* as a shift from impersonal to personal acts and from mandatory to optional observances (1987: 33). However, these explanations may be incomplete both because they assume that "popular culture" is the source of innovation in history (especially when the change seems to open up practices and institutions) and because another explanation is in evidence.

It was Christian bishops, not popular folk, who introduced the cult of the saints to early Christianity (Brown 1981), and it was Buddhist monks and nuns, not the laity, who introduced the image cult to early Buddhism (Schopen 1997). Similarly, what I want to suggest is that the Brahmin authors of the Purāṇas created the idea of *vrata* as a voluntary vow made to a deity and available to a wide segment of the populace. The Purāṇas should be considered a parallel expert tradition to the Dharmaśāstras, not part of one monolithic Brahmanical tradition. Therefore, the textual proliferation of *vratas* occurred owing to their promulgation by expert Paurāṇikas in the second half of the first millennium. If Hindu temple culture takes off under and after the influence of the Gupta kings in the fifth and sixth centuries CE (Willis 2009), then the textual correlate of that rise is the Purāṇa tradition with its glorification of sacred pilgrimage sites and its intricate narrations of the lives and acts of the Hindu deities. *Vrata* as we now know it originates in the Purāṇas. Beginning with Lakṣmīdhara in the twelfth century, the Dharmaśāstra authors simply decide that Purāṇas are authoritative sources for rules regarding vows, pilgrimage, the consecration of images, and *pūjā*.<sup>2</sup> In other words, the *dharma* authors accepted temple Hinduism explicitly in a way that they had not done previously.

Nevertheless, it is a curious fact requiring an explanation that early attestations of *vrata* are male-centered regimens associated strictly with socially exclusive Vedic rites, while medieval and especially contemporary *vratas* are socially open, female-centered vows to deities associated with family reputation and success. As McGee (1987: 85) points out, the *dharma* digests do not resolve the issue of whether and how women and lower classes may be eligible to perform *vratas*. The core tension arises from the Dharmaśāstra authors'

<sup>2</sup> The inclusion of the Purāṇas among the fourteen bases of knowledge (*vidyāsthāna*) at YDh 1.3 should be understood as supportive of the performance of *dharma*, but not as an authoritative source (*dharmamūla*).

commitment to women's lack of independence in matters of law and religion. Viṣṇu (*ViDh* 25.16) states, "If a wife performs a vow of fasting while her husband is alive, she robs her husband of his life and also goes to hell" (Olivelle 2009a: 90). The medieval authors agree that this passage and similar ones mean that women must ask for the permission of their fathers, husbands, or sons before undertaking a vow (Kane V: 51). An old disability of women and Śūdras in the Dharmaśāstra and Mīmāṃsā texts is that their rites cannot be performed with Vedic mantras. This technical prohibition, for several *dharma* authors, excludes women and lower classes even from *vrata* observance.

What male experts dictated, however, only women could maintain. It is impossible to know how many or which vows were observed by women in medieval India, but we do find a lot more reference to women in connection with *vratas*, not to mention the possibility that lower castes and even foreigners (*mlecchas*) could undertake *vratas* of various kinds (Kane V: 54, 157). Hemādri, for example, describes 35 vows for women and another 125 that were open to women or men (McGee 1987: 86, fn. 27). In the end, as McGee suggests, the digest authors permitted *vratas* for all classes and for women, often assigning special *vratas* to different groups across the social spectrum, in spite of the objections that some held about their being qualified or permitted to do so (1987: 87). This acquiescence supports the possibility that vibrant, but only partially textualized, practices of women's vows existed alongside the vows found in the Purāṇas.

Textually, the Dharmaśāstra digests draw only on previous textual prescriptions and descriptions of vows and make little or no claim to incorporate customary or regional *vratas* as such. We seem then to have three simultaneously functioning *vrata* "worlds": the partially recorded world of customary and regional *vratas*, the huge sections on vows in various Purāṇas, and the digests and manuals of Dharmaśāstra that systematized the Purāṇa material. Historically, these must have been in constant interaction, but we are limited by our dependence on the texts in our ability to describe this interaction in full. What is clear, however, is that the observance of *vratas* comes in the modern age as one of the, if not *the*, primary religious practices of Hindu women.

## ELEMENTS OF STANDARD VRATAS IN DHARMAŚĀSTRA

In the earliest *dharma* digest on *vratas*, that of Lakṣmidhara, the 170 odd vows form the structure for a religious calendar (Aiyangar 1953: xi–xx). The chapters are arranged first by vows to be observed on specific days of the week, then days of the month, then fortnights, then months, then seasons,

then annually. The annual cycle of vows emerges from this calendar as a template for an observant Hindu, or at least a Hindu who would like to appeal to the power of various deities to ensure the success of various worldly goals. Given that *vratas* in Dharmaśāstra are usually classed as *kāmya* rites, meaning they are motivated by the fulfillment of a particular desire, the long list of vows is not at all meant to be observed in its entirety. Rather, the appropriate times, deities, and ritual procedures for each vow are systematically presented according to their calendrical periodicity. The close association of vows with the calendar means that the literature on vows intersects frequently with Hindu astrological doctrines and calculations and with festivals that mark the passage of religious time.

The standard elements of a vow include a statement of intention, the identification of the deity, the correct time, the necessary ritual procedures, and the rewards to be received. Long discussions of the ritual eligibility for making vows, the incapacity to undertake a vow, and failure to complete a vow surround *dharma* discussions of *vrata*. Procedurally, *vratas* are comprised of other rites that are timed and carried out in order to achieve a specific purpose. What brings the elements of a vow together is the statement of one's intention (*saṅkalpa*) to perform the vow. So, a vow might ask the votary to perform a fast (*upavāsa*), offer a *pūjā*, say muttered prayers (*japa*), give a gift (*dāna*), make an ancestral offering (*śrāddha*), or even go on a pilgrimage (*tīrthayātra*). In addition, most vows come with a story, the *vratakathā*, usually a mythological episode involving the performance of the vow, an instance of its effectiveness (McGee 1987: 226).

The statement of intention that precedes the principal and subsidiary rites provides the religious link necessary for the overall vow to work, to have its desired effect. Indeed, the statement of intention is generally considered the most essential element in a *vrata* precisely because it puts often-generic ritual actions in the service of a specific votive rite and, in effect, guarantees the proper internal commitment or devotional attitude (*bhāva*, *bhakti*) by externalizing it in words. For many *dharma* authors (Kumārila, Medhātithi, Śrīdatta, etc.) the *saṅkalpa* defines the *vrata* itself and distinguishes it from other rites (Kane V: 29–30). The definition by Raghunandana captures this view: “A vow refers to an intention to perform restrictive rites accompanied by a range of various procedures that must be observed for a long time” (cited in Kane V: 30, fn. 63).<sup>3</sup> Nevertheless, the details of the *saṅkalpa* are often not expressed in the description of different vows.

A *vrata* may be stated simply or may include a host of procedural details, backstory, and praise of its rewards. Here is a simple example from the *vrata* book of the twelfth-century *Kṛtyakalpataru* of Lakṣmīdhara:

<sup>3</sup> *dirghakālānupālaniyattatitiktartavyatākālāpasahitaniyat[m]asaṃkalpaviṣayo vratam ||*.

When the Sun is passing into a new position, if one offers the ancestral rite with the appropriate procedures for the sake of pleasing the Sun, then that wise person will be honored in the world of the Sun. On the sixth lunar day, the man should observe a fast and, on the seventh, recite, “May the Sun be pleased,” according to the usual procedure. He is released from all disease and honored in the world of the Sun. This is the vow to the Sun. (Aiyangar 1953: 388–9)<sup>4</sup>

In this case, a *śrāddha* ancestral rite is the basis for the vow, which is now dedicated to the Sun and accompanied by a fast and an additional recitation. Like all vows to the Sun, this one provides the benefit of health. In Susan Wadley’s famous phrase, this *vrata*, like others, is a “transformer of destiny,” and takes shape as “a willing or a vow to gain some desired end, undertaken optionally” (1983: 148–9). To prevent or to combat illness, Hindus may undertake a vow to the Sun as needed in their life. The vow is thus a religious tool to reshape one’s karmic future.

One further example illustrates a women’s vow from the *vrata* book of the *Caturvargacintāmaṇi* of Hemādri (II: 154):

And, a woman should fast on the 14th lunar day of each dark fortnight for a year. At the end of the year, after fashioning an auspicious image out of rice flour, she should honor and adorn it with songs, oil libations, garlands, and yellow clothing. Once everything is prepared in the specified manner, she should offer it to Śiva. “In the specified manner” means observing nonviolence, abstinence, sleeping on the ground, etc.<sup>5</sup> Travelling in seven-storied vehicles resplendent with refined gold, she is honored at the very summit of the world of Rudra for hundreds of millions of eons. Having enjoyed all the pleasures she could desire in all the worlds of Śiva and the other gods, in due course she will return to this world and obtain a king as a husband. This is the vow of Dark 14 as stated in the *Śivadharmā*.<sup>6</sup>

As before, another common rite, in this case *pūjā*, forms the procedural core of the vow, though some necessary elements of the *pūjā* are specified. The proper time and duration of the vow open the description, and the praise of its great rewards close it. The reward in this case, as for most women’s vows, pertains to their husbands or families. The exclusion and subordination of women in the rites of early Dharmaśāstra yield here to a wide array of rites that are

<sup>4</sup> *mārtaṇḍapṛīṭaye yas tu śrāddham kuryād vidhānataḥ | samkrāntāv ayane dhīra sūryaloke mahīyate || kṛtopavāśaḥ śaṣṭhyām tu saptamyām yas tu mānavaḥ | karoti vidhivad bhāskarahaḥ priyatām iti || sa sarvaroganirmuktaḥ sūryaloke mahīyate | iti sūryavratam ||*

<sup>5</sup> This is Hemādri’s commentarial clarification of the quoted phrase.

<sup>6</sup> *nārī copavased abdaṃ kṛṣṇām ekāṃ caturdaśīm | varṣānte pratimāṃ kṛtvā śālīpiṣṭamayīm śubhām || gītānulepanair mālyaiḥ pītavastrais tu pūjayet | pūrvoktam akhilam kṛtvā śivāya vinivedayet || pūrvoktam ity ahiṃsābrahmacaryabhūṣāyanādi | saptabhaumair mahāyānais taptacāmīkaraprabhaḥ || yugakoṭīśataṃ sāgram rudraloke mahīyate | śivādisarvalokeṣu bhogān bhuktvā yathepsitān | kramād āgatya loke ’smin rājānam patim āpnuyāt || iti śivadharmoktam kṛṣṇacaturdaśivratam ||*

independent of men, but conceptually directed toward their welfare and success. Hemādri's digest appears to be the first major collection of vows to include a high percentage of women-centered and women-permitted vows. The proportions grow in later texts such as the *Vratarāja*, *Vratārka*, *Nirṇaya-sindhu*, and *Vrataprakāśa*. The standard elements of vows remain the same, but women now seem to be the dominant performers of vows, even in the *dharma* texts.

To return to the three *vrata* "worlds," reviewing the *dharma* digests on *vrata*, one notices both an expansion in the total number of vows described and an increase in the proportion of vows exclusively for women or permitted to both men and women. These women-centered and women-permitted vows are also gleaned from various *Purāṇas*, which suggests that the *Purāṇas* at least had already opened a new religious space for women. However, the early *dharma* digests of *Purāṇic* *vratas* did not incorporate a large number of these vows, thereby yielding the impression that women were not the main social group who made vows. Digests in and after the fourteenth century, by contrast, incorporate more and more *vratas* for women, indicating the acceptance of women's vows as a part of orthodox Hindu *dharma*. Historically, women were practicing vows all along and probably to a greater extent than men were. Did that social reality overwhelm the *Dharmaśāstra* as it had the *Purāṇas* earlier? Or, did the *Purāṇa* authors instill a new, more open theology that included women's vows prominently and promulgated the practice among women? If so, once the *Dharmaśāstra* authors had embraced the *Purāṇas*, it must have become increasingly hard or unnecessary to reject some parts of the *Purāṇas* and not others.

A fascinating example of just this sort of partial acceptance is found at the beginning of the *Dānasāgara* of Ballālasena (Bhattacharya 1953: 6–7). Though the text concerns religious gifts, not vows, the same dilemma faced its author. He needed material to compile for his digest on gifting, but he did not trust all of his *Purāṇic* sources. He writes, "Only the seventh book of the *Bhaviṣya Purāṇa* has been carefully compiled here, as I have rejected the eighth and ninth as tainted by heretics" (ibid.: 7).<sup>7</sup> After deeming several other *Purāṇas* either acceptable or irrelevant, he then states, "After examining the *Devī Purāṇa* which stands outside the standard enumeration of the various *Purāṇas* and sub-*Purāṇas*, I have not digested it here as it conforms to the scriptures of heretics by promoting impure rites" (ibid.: 7).<sup>8</sup> When it comes to women's vows, my guess is that a theological innovation of the *Purāṇas* gradually gained full acceptance, after an initial period of critical and skeptical adoption of

<sup>7</sup> *saptamyaiṣa purāṇaṃ bhaviṣyam api saṃgrhītaṃ atiyatnāt | tyaktvāṣṭamīnavamyau kal-pau pāṣaṇḍibhir grastau ||*

<sup>8</sup> *tattatpurāṇopapurāṇasamkhyābahiṣkṛtaṃ kasmalakarmayogāt | pāṣaṇḍāstrānumataṃ nirūpya devīpurāṇaṃ na nibaddham atra ||*



Purāṇic material. Full acceptance textually was bolstered by the social reality of women performing *vrata*s as a key part of their religious lives.

## THE CENTRALITY OF VOWS IN CONTEMPORARY HINDUISM

In recent years, many anthropologists have brought to light the importance and functions of vows in contemporary Hinduism.<sup>9</sup> Almost all acknowledge a deeper history in the Purāṇas and Dharmaśāstra.<sup>10</sup> At the same time, all struggle to link the history and the ethnography through explicit connections. In short, the practices of *vrata* found in Dharmaśāstra and in the observable practices of Hindu women feel similar and they share a common conceptual space, but the names, procedures, performers, deities, and purposes do not always match up in precise or direct ways. The gap between text and practice should not, however, be seen as a failure of text to control practice.

It is rather at the level of broad goals and procedural frameworks that we can see how contemporary vows influenced, and are influenced by, the Dharmaśāstra. As with its historical development, the *vrata* tradition today exemplifies the continuing presence of Dharmaśāstra norms, concepts, and expectations among Hindu communities. But not in the details.

Both McGee and Pearson, for instance, observed that the classificatory boundary of *nitya* (mandatory and perpetual), *naimittika* (required on certain occasions), and *kāmya* (optional and in view of specific desires) vows from Dharmaśāstra is much more flexible in women's practice than the scheme would normally allow. Family tradition or personal inclination regularly converts an occasioned vow into a mandatory vow or a vow of desired welfare and most women do not speak of vows in these terms (Pearson 1996: 75, 208). By contrast, men's vows in contemporary Hinduism usually fall into the category of "occasioned" observances: the marriage of a daughter, the celebration of a festival, etc. Very few men, it seems, observe regular vows as mandatory rites or as rites to achieve particular end. The textual scheme fails, then, as description of contemporary *vrata*s, but succeeds in its differentiation of vow types that are still culturally and academically relevant.

<sup>9</sup> Important recent studies not cited elsewhere in this chapter include Flueckiger (2015); Gold (2015); Pintchman (2010); McDaniel (2002); McGee (1991); and Raj and Harman (2006), which examines vows in several South Asian religions.

<sup>10</sup> Anthropological studies tend to treat the Purāṇas and Dharmaśāstras together as part of the single genre of *smṛti*. For the reasons stated in this chapter, it is more helpful to distinguish the two as distinct textual traditions in order to see their interaction in the development of Dharmaśāstra and Hindu religious practices.

For further insight, let us look at the most reported overarching goal of vows, the welfare of one's husband and family, generally called *saubhāgya*. McGee has "defined this concept of *saubhāgya* as one which encompasses all the desires and goals of women and, in the context of *svadharma*, equated women's pursuit of *saubhāgya* to a man's pursuit of *mokṣa*. To be a *saubhāgyavatī* [a woman of good fortune] is the sole aim and desire of many Hindu women" (1987: 388). For the most part, *saubhāgya* is a virtue directed outward toward others, the securing of good fortune for those who are close to a person. Creating good fortune for one's family obviously brings satisfaction, comfort, and joy to oneself, too. *Saubhāgya* as good fortune is widely touted in the Dharmaśāstra digests, too, where it also serves as a collective category for a range of hopes and desires women have for their families: material and business success, good health, harmonious marriage, successful education, and the birth of children. Likewise, these components of good fortune are frequently mentioned as the desired ends of vows in the *dharma* texts. In terms of general goals, therefore, we find considerable congruence between text and practice, especially regarding women's vows.

The actual *vrata* procedures observed show a variation in practice that is unparalleled in the texts. Regional, village, and family vows involve intricacies and specific ritual requirements that we just do not find in textual sources, even in the modern manuals printed to facilitate the correct observance of widespread vows. Karva Chauth (Pitcher Fourth, on the fourth day of the month of Kārttika), for example, which is very popular as an annual festival and vow of fasting in North India, has similarities to rites described in Dharmaśāstra, but hardly "derives" from them. It consists of a sunrise-to-sunset fast and often the exchange of earthen pots containing auspicious items of feminine beauty (bangles, cosmetics, etc.). Other rites accompany the day-long celebration for the longevity of one's husband, but these vary across localities. In recent years, the popularity of the vow has made it increasingly more of a commercial festival, with shops and communities preparing collectively for the observance of married women (and sometimes even unmarried women seeking a good husband). None of these preparations is part of the *dharma* texts' concerns. Probably thousands of other vows—some grand, some private—are similarly part of a living tradition that may nod to Dharmaśāstra but passed down not through textual study but through family and community tradition.<sup>11</sup>

<sup>11</sup> It is possible that an early hint of the existence of religious traditions maintained and controlled by women is seen in *ĀpDh* 2.29.15: "According to some, one should learn the remaining Laws from women and people of all classes." This brief statement may point to living traditions that the Dharmaśāstra texts were not equipped to capture or perhaps interested to include in detail.

Although the specifics diverge, the broad procedural frameworks of *vrata* found in Dharmaśāstra nevertheless remain. The standard elements described above still capture well the cultural expectations of good intention, austerities, core and accompanying rites, proper eligibility, and desired ends as essential pieces of a valid *vrata*. To that extent, Dharmaśāstra synthesizes a theological summary of vows that still holds good to understand Hindu observances in practice today. We cannot say that Hindus “apply” Dharmaśāstra very often or at all in their *vrata* practices. Yet, by bracketing the independent development of regional and customary vows, we can still reliably turn to *dharma* texts in order to discern the basic goals and elements of vows even in contemporary Hinduism.

The practice of *vrata* in Hinduism today has long attracted anthropological interest because it is so obviously central to women’s religious lives in ways that correct for textual misogyny and provide insight into a prevalent and ubiquitous element of Hinduism generally. Vows are a domain of Hindu religious life that women control and promote as key to the well-being of Hindu families. Women lead in other areas of Hindu religious practice, such as domestic *pūjā* and religious education, but *vratas* have become a special technique that Hindu women take pride in. In her study of vows observed by Varanasi women, Pearson speaks of “a certain possessiveness that Hindu women seem to feel about the *vrata* tradition,” even as they acknowledge that men can and do observe vows on certain occasions (1996: 126).

These anthropological observations make a richer understanding of the independent world of women’s *vrata* observance possible. On the basis of these ethnographies, we are able to postulate a historical depth for women’s vows for which the texts only provide a partial, often reluctant, glimpse. The fascinating story of Hindu *vratas* is precisely their historical evolution from ascetic and ritual observances by men in the service of other rites to the transformative use of other rites by women and their fasts in the service of worldly desires that bring prosperity to Hindu families.

## Pilgrimage

### *tīrthayātrā*

*Knut A. Jacobsen*

Pilgrimage is a popular Hindu religious practice that became a central subject in the Dharmaśāstra literature at the time of the Dharmaśāstra digests (Nibandhas) from the twelfth century CE. Pilgrimage was not a Vedic ritual practice but it came to be part of the Hindu tradition gradually, probably during the first centuries CE, although it seems to have been opposed by sections of the Brahmanical communities for a long time after that. It took many centuries for pilgrimage to become a dominant feature of the Hindu tradition, and even longer for it to become a main subject in the Dharmaśāstra literature. Since pilgrimage places and pilgrimage are not included as subjects in most of the Dharmaśāstra texts until the genre of Dharmanibandha (digests) (twelfth c. CE) P. V. Kane's observation in his *History of Dharmaśāstra* that "The literature on tīrthas is probably far more extensive than on any single topic of Dharmaśāstra" (IV: 581) may appear puzzling. In line with this observation by Kane, the section on pilgrimage places (*tīrthas*) and pilgrimage (*tīrthayātrā*) in the *History of Dharmaśāstra* is also one of the most extensive in the volumes.<sup>1</sup> However, most of the main texts on pilgrimage places and pilgrimage are found in the *Mahābhārata* and the Purāṇas and in numerous *Māhātmyas*. The number of *Māhātmyas* on specific *tīrtha* places "are almost beyond counting" (Salomon 1985: xx), while the number of available Dharmaśāstra texts that treat pilgrimage places and pilgrimage travel as a general subject is quite small. In the Nibandhas, the convention is that the first part covers the topic of rules and regulations of pilgrimage, while the subsequent parts cover a number of individual places. These parts about individual places

<sup>1</sup> See Section IV, vol. 4, pp. 552–827, which is divided into six chapters: "Tīrthayātrā (pilgrimage to holy places)"; separate chapters on Gaṅgā, Kāśī, and Gayā; a chapter on various places; and finally, a "Comprehensive list of tīrthas."

are by far the longest parts. The Nibandhas on pilgrimage places and pilgrimage are lengthy. The first of the Nibandha texts, Lakṣmīdhara's multivolume *Kṛtyakalpataru* included a large volume on pilgrimage places and pilgrimage, the *Tīrthavivecanakāṇḍa*, and this book probably became a model for later Nibandha authors on pilgrimage. In the centuries after the *Tīrthavivecanakāṇḍa*, several long Dharmanibandha volumes on pilgrimage places and pilgrimage travel were produced. The section on general rules and regulation of pilgrimage in *Tīrthavivecanakāṇḍa* comprises only eleven pages. In these Nibandhas, the *Purāṇas*, *Mahābhārata*, and *Māhātmyas* are probably more often quoted as authoritative, and commented on by their authors, than are any particular Dharmaśāstra text.

There seems to be a tension in the treatment of pilgrimage in the Dharmanibandha texts on *tīrtha*. On the one hand, it serves to propagate the exaggerated salvific rewards described in the promotion texts of the different pilgrimage sites, and on the other hand, there is the attempt to infuse rationality, rules, and regulations into the pilgrimage tradition, by attempting to limit the salvific power of the places and make the rewards dependent on rules and restraint. The authors searched the texts to be able to construct a *dharma* of pilgrimage. The promotion of particular places may reflect the situation of the authors and be a function of the interest of the patrons of the authors. Economic interests seem to have been a dominating feature in the Hindu pilgrimage phenomenon right from the beginning and up to the contemporary situation, and to have had a role in the promotion of the exaggerated salvific rewards described in the texts.

## ORIGIN OF HINDU PILGRIMAGE

There was no pilgrimage in the Vedas (Angot 2009), and pilgrimage to particular places is not recommended in any texts earlier than the *Mahābhārata* and the *Purāṇas* (Bharati 1963). It is significant that Yāska's *Nirukta* (c. 250 BCE), a book on etymological explanations did not list pilgrimage as a synonym of travel (*yātrā*). The earliest descriptions of pilgrimage places and pilgrimage travel and their benefits are found in the *Mahābhārata*, in its later parts, dated probably from the third to fifth centuries CE. Pilgrimage is an important feature of the *Mahābhārata* and some verses on pilgrimage are found in almost every one of *Mahābhārata*'s eighteen books (Vassilkov 2002), most significant are the lengthy *Tīrthayātrāparvan* of the *Āraṇyakaparvan* (Book Three, Chapters 78–148), and the chapters in *Śalyaparvan* (Book Nine, Chapters 35–54) and *Anuśāsanaparvan* (Book Thirteen, Chapters 25–26). Pilgrimage subsequently became a central feature of the *Purāṇas*, which contains numerous *Māhātmyas* of pilgrimage places. The growth of Hindu

pilgrimage is probably grounded in the same development that gave rise to the worship (*pūjā*) of divinities embodied in statues (*mūrtis*) in Hindu temples, that is, the religious ritual that partly replaced the sacrifice (*yajñā*).<sup>2</sup> Worship of Hindu *mūrtis* has a strong economic dimension and its origin may perhaps be sought in the competition with Buddhists for the economic resources of ritual clients (Jacobsen 2013). The contrast of the Vedic sacrifice with the Hindu temple is striking. In the Vedic sacrifice, the gods traveled to where the ritual of sacrifice took place. With the Hindu temples, the divine was thought to be permanently present at particular sites and humans had to travel to those sites to get their blessings (see Angot 2009; Jacobsen 2013: 65–70). This gave rise to a geography of statues, shrines, and temples. Images of gods could also be worshiped in the home, but assumedly some particular powerful presences of the gods were in the shrines and temples located at a distance. To meet these particular powerful presences of the gods it was necessary to go on a pilgrimage.

*Tīrthayātrāparvan* of the *Mahābhārata* gives economic arguments when it introduces the ritual of pilgrimage. The *Tīrthayātrāparvan* presents pilgrimage as a ritual as orthodox as the Vedic sacrifice, but especially available to poor persons who were not able to pay for the sacrifice. It is significant that the authors of *Nibandhas* such as the *Tīrthavivecanakāṇḍa*, the *Tīrthacintāmaṇi*, and the *Tristhalīsetu*<sup>3</sup> at the outset of their texts, also give the economic argument for pilgrimage by quoting the verses from the *Tīrthayātrāparvan* that pilgrimage is a ritual for poor persons and that it is even more meritorious than is sacrifice:

*na te śakyā daridreṇa yajñāḥ prāptum mahīpate,  
bahūpakaraṇā yajñā nānāsaṃbhāravistarāḥ.  
prāpyante pārthivair etaiḥ<sup>4</sup> saṃrddhair vā naraiḥ kvacit,  
nārthanyūnair avagaṇair ekātmabhir asaṃhitaiḥ.<sup>5</sup>  
yo daridrair api vidhiḥ śakyah prāptum sureśvara,<sup>6</sup>  
tulyo yajñaphalaiḥ punyais taṃ nibodha yudhiṣṭhira.<sup>7</sup>*

<sup>2</sup> Pilgrimage contains a number of ideas and practices such as *darśan* and *pūjā* to gods and goddesses present in statues (*mūrtis*), ideas of meritorious rewards (*puṇya*) and purification from *pāpa* by ritual bathing, ritual shaving, *tarpaṇa*, and *śrāddha*, and these may have separate histories.

<sup>3</sup> In *Tīrthavivecanakāṇḍa* and *Tīrthacintāmaṇi*, the texts open with this quotation. The *Tristhalīsetu* also quotes it in the first chapter, but the chapter starts with a discussion of the *puruṣārthas*, to argue that *dharma* should be practiced first, then *artha*, and lastly, *kāma*, and that the *dharma* of pilgrimage to *tīrthas* is better than other kinds of *dharma* because everyone can perform it, also *Sūdras*, *saṃkīrṇas* (castes of mixed origin), and *pravrajitas* (*Tristhalīsetu* commentary on quotation 38).

<sup>4</sup> The critical edition of the *Mahābhārata* has *ete* instead of *etaiḥ*.

<sup>5</sup> In the critical edition of the *Mahābhārata*, this line reads *nārthanyūnopakaraṇair ekātmabhir asaṃhataiḥ*.

<sup>6</sup> The critical edition of the *Mahābhārata* has *nareśvara* instead of *sureśvara*.

<sup>7</sup> The critical edition of the *Mahābhārata* has *yudhām vara* instead of *yudhiṣṭhira*.

*ṛṣiṇām paramaṃ guhyam idaṃ bharatasattama,  
tīrthābhigamanam puṇyam yajñair api viśiṣyate.* (*Mahābhārata* 3.80.35–3.80.38,  
as quoted on page one, line 3–10 of *Tīrthavivecanakāṇḍa*)

A poor person is not able to perform these sacrifices, Oh King, they require much equipment and materials. These sacrifices are performed by kings and sometimes by rich persons, but they cannot be performed by poor persons, or without assistance by others or by one person alone. Oh Naresvara, but note the ritual that can be performed even by the poor person, which gives the same merit as sacrifices, Oh Yudhiṣṭhira. This is the greatest secret of the sages, Oh most noble of the Bharatas: visiting *tīrthas* gives such religious merit and is superior even to the sacrifices.

By starting the text with this quotation, which states that pilgrimage is a ritual for poor people and superior to the sacrifices, the author of these verses of the *Mahābhārata* explains why pilgrimage should be accepted as proper and meritorious. For poor people, pilgrimage corresponds to the Vedic ritual. The agenda of the Nibandha authors quoting them seems to be the same, to legitimate pilgrimage ritual as Vedic. The Brahmanical tradition had competed for economic support with the Buddhists, whose pilgrimage had begun with religious travel to the *stūpas* with the relics of the Buddha and places associated with the main events of his life, and Hindu pilgrimage probably evolved in competition with this ritual tradition (Falk 2006; Jacobsen 2013). The Hindu *tīrthas* were promoted by Brahmans who had moved away from the “placelessness” of the Vedic gods and the rituals of sacrifice to the worship of divinities present permanently at particular sites. The goal of the priests at the shrines was to lead as many people as possible to the presence of a god (Stietencron 1977), and this continues to be the basic ideology of pilgrimage places: it is open to everyone; there is no ritual pollution from others at pilgrimage places; and it gives great rewards for very little. Fairs and festivals are organized in order to attract more people, and the success of a pilgrimage festival is typically measured in the number of people participating and visiting. The places compete for visitors by outbidding each other in promising exaggerated rewards. This ideology is to some degree opposite to the Vedic sacrificial ideology. There seems to have been a conflict between Vedic Brahmans, who were against the concept of a permanent presence of the divine at specific sites, and other Brahmans, who had started to function as priests at the temple sites (Olivelle 2010a; Stietencron 1977). This conflict is detectable in the quote from the *Tīrthayātrāparvan* that compares pilgrimage to sacrifice and concludes that pilgrimage is even more meritorious than sacrifice is. That there is an almost total absence of the temple in the early Dharmaśāstra literature (Olivelle 2010a) seems to point to this Brahmanical opposition. The Dharmaśāstra literature follows the path of the Vedic ritual life in which no public structure of worship or ritual played any role (Olivelle 2010a: 193). None of the principal Grhya- and Dharmasūtras contains any

procedures of consecration of images in a temple, argues Patrick Olivelle, and he states that, “in the religious life of a good Brahmin...the temple or anything resembling it plays no significant or even a secondary role” (Olivelle, 2010a: 193). Further, there is “no archaeological evidence for temples in what could be termed the mainstream Brahmanical tradition, as opposed to the Buddhist and Jain, until at least the time of the Kushana, that is, the second century CE” (Olivelle, 2010a: 194). The functionaries of the temples, the *devalaka*, were despised by the Dharmaśāstra tradition, and were, argues Olivelle, “ostracized by the Brahman community” (2010a: 202). Stietencron (1977) thinks that the first custodians of images, the *devalakas*, were Śūdras, but some Brahmins started to perform services for the shrines, and the Vedic Brahmins considered them fallen Brahmins. The statements in the *Mahābhārata* and the *Purāṇas* about the rewards of visiting *tīrthas* being compared with the sacrifices, which the visit was supposed to supersede, is probably a function of the conflict between the two groups of Brahmins and the need to devalue the Vedic sacrifice for the priests who took care of images. The comparison of the rewards by implication ridicules the ritual of sacrifice as pointless. The escalation of the conflict was, argues Stietencron (1977), to a large degree, economic and it concerned the gifts to the Brahmins. The result of the conflict was that the priests of the shrines, statues, and *tīrthas* accumulated great wealth, whereas the priests of the sacrifices lost out. The shrines and *tīrthas* were open to a much larger part of the population than the sacrifices were, so the number of donors increased. The priests then could use the wealth to arrange festivals that attracted more pilgrims (Stietencron 1977). The donations of the pilgrims more than covered the expenses of the festivals. With growing wealth, the temples were expanded, and the fame of the place increased. Temples that accumulated wealth probably also became more important centers of pilgrimage as their powers were also thought to increase.

The ritual specialist connected to the temple, the *devalaka*, is mentioned in *Manusmṛti* and was here condemned. “Doctors, priests of shrines, people who sell meat, and people who support themselves by trade are to be excluded from offerings to the gods and ancestors” (3. 152). The *Manvartha-Muktāvalī* commentary by Kullūka Bhaṭṭa explains that the *devalakas* serve the shrine not for the sake of *dharma* but for their own profit (*vartanārthatvenaitat karma kurvato 'yaṁ niṣedho na tu dharmārtham*). In classical Dharmaśāstra texts such as *Manusmṛti*, *tīrtha* is not a topic of discussion, but the condemnation of the *devalakas* could perhaps be interpreted to include shrines at *tīrthas*. Some Dharmaśāstra texts show awareness of the existence of the phenomenon of *tīrtha* as bathing place, but do not make it a topic of discussion. *Tīrtha* is mentioned, but without naming any particular site, which probably means that some particular pilgrimage place is not the intended meaning of *tīrtha* here. In a verse found with some variation in the *Gautama* (19.14), *Baudhāyana* (3.10.12), and *Vasiṣṭha Dharmasūtra* (22.12),



bathing places (*tīrthas*) are stated to be places for expiation of sin (*sarve śiloccayāḥ sarvāḥ sravantyaḥ punyā hradās tīrthāny ṛṣiniketanāni goṣṭhakṣe-trapariskandhā iti deśāḥ*).<sup>8</sup> *Tīrtha* here does not seem to refer to some particular pilgrimage places, which later becomes the meaning of the term, but perhaps just to places (*deśa*) for purificatory baths. In *Manusmṛti* religious travel for purification is mentioned (as something one does not need to do in a particular case if you have no quarrel with the god of death Yama) (*Manusmṛti* 8.92):

*yamo vaivasvato devo yastavaīṣa hṛdi sthitaḥ,  
tena ced avivādas te mā gaṅgā mā kurūn gamaḥ.*

This god, Yama the son of Vivasvat, dwells in your heart. If you have no quarrel with him, then you do not have to go to the Ganges or the Kuru land.

(trans. Olivelle 2005a)

The mentioning of Gaṅgā and the Kuru land indicates religious travel for purification, but *Gaṅgā* and *the Kuru Land* refer to large areas and not to one particular pilgrimage site. Interestingly, *Baudhāyana* (3.5.7) and *Vasiṣṭha Dharmasūtra* (29.11) use the concept “all *tīrthas*.” *Baudhāyana* 3.5.7 says that if a person performs *aghamaṣaṇa* ritual of recitation and bathing for twenty-one days at a bathing place (*tīrtha*), “he becomes a man who has bathed in all the bathing places (*sarveṣu tīrtheṣu snāto bhavati*)” (*Baudhāyana* 3.5.7). It is unclear what exactly is meant by “a man who has bathed in all the bathing places.” The same phrase is used in *Vasiṣṭha Dharmasūtra* 29.11 about giving gifts. By allowing others to use his cows, he gets “the same reward as by bathing in all sacred bathing places” (*sarvatīrthopasparśanam*). The idea of all sacred bathing places might point to the emerging ideology of pilgrimage, although here, as well, no specific place names are mentioned, unless *sarvatīrtha* refers to a specific place such as Prayāḡ.<sup>9</sup> It is the mentioning of specific place names and the narratives of the places and their meritoriousness that is the distinguishing mark of a textual tradition of *tīrtha* as “pilgrimage place” in the *Mahābhārata*. The first emergence of the listing of names of *tīrtha* in any of the law books is in *Viṣṇusmṛti*, which devotes a whole chapter (Chapter 85) on mentioning names of different *tīrthas*, which are recommended for performance of *śrāddha*. This text is quite late, it was written between 700 and 1000 CE (Olivelle 2007), and by that time, pilgrimage had become a widespread Brahmanical institution.<sup>10</sup> It is

<sup>8</sup> *Baudhāyana* 3.10.12. The texts of Gautama and Vasiṣṭha read *ṛṣinivāsā* for *ṛṣiniketanāni*.

<sup>9</sup> For a discussion in a *nibandha* of the meaning of the term *sarvatīrtha*, see *Tristhalisetu* verses 226–59 and discussions, and English translations pp. 274–84.

<sup>10</sup> That the *Viṣṇusmṛti* deals with pilgrimage is used as one argument by Olivelle for identifying the text as a late composition. Previously the text has often been incorrectly dated to the third century CE, and it has been used repeatedly as evidence for an early origin of the institution of pilgrimage. An example is Arya (2004) who writes, “Of all the *Smṛtis*, the *Viṣṇusmṛti* is the earliest text which refers to some *tīrthas* like Vārāṇasī, Gayā, Prayāga, Ayodhyā,

probably close in time to the date when we get the first digests on pilgrimage, Lakṣmīdhara's *Tīrthavivecanakāṇḍa*. A geographical expansion of the Hindu pilgrimage tradition, which is witnessed in the *Mahābhārata* and the *Purāṇas*, happened probably especially from the fourth century CE. Urban decay and a feudalization of the economy seem to have been important processes for the extreme success of the tradition of *tīrthayātrā* (Jacobsen 2013; Nandi, 1979/80; Nandi 1986; Nath 2001; Nath 2007; Sharma 1987). Hindu pilgrimage is primarily a medieval and modern tradition and came about "due to the Brahmin revival, and to the ruralization of religion in the Hindu Middle Ages through its partial absorption into local, non-Brahmanic cults" (Bharati 1963: 137). The historian R. S. Sharma suggested that urban decay led to agricultural expansion and a feudalization of the economy, and that several cities that decayed as centers of trade were recreated as sacred centers to benefit from the new pilgrimage economy (Sharma 1987). The transformation of cities from centers of trade to centers of pilgrimage thus had economic reasons. The Dharmanibandhas on *tīrthas* primarily promoted these pilgrimage cities, and their authors were probably also based in these cities.<sup>11</sup>

## PILGRIMAGE PLACES AND PILGRIMAGE IN THE DHARMANIBANDHAS

The topic of pilgrimage places and pilgrimage enter the Dharmaśāstra textual tradition fully only with the Dharmanibandhas. The Nibandhas on *tīrtha* attempted to superimpose a logical coherence on a diverse popular tradition and attempted to make pilgrimage subject to rules and regulations. The inclusion of pilgrimage in the Dharmanibandhas was perhaps attempts to infuse orthodoxy into a tradition that was to some degree driven by the economic benefits of the *tīrtha* priests, and this indicates that pilgrimage had become central to the economy of certain cities. Geographical integration was probably also a factor. Perhaps another purpose was to give approval of Brahmins to travel to *tīrthas*.

The first Nibandha to incorporate the subject of pilgrimage was Lakṣmīdhara's *Kṛtyakalpataru* (twelfth c. CE), which was also the first of the Nibandhas (Olivelle 2010b: 55). One of *Kṛtyakalpataru*'s fourteen parts is devoted to *tīrthas*, the *Tīrthavivecanakāṇḍa*, of extensive length. The printed edition of

Vidiśā, and Śūraspāraka (Sopara). These references are important because the *Viṣṇusmṛti* is assigned to a fairly early date, the third century AD" (Arya 2004: 8).

<sup>11</sup> Many of the *nibandhas* were promotion texts for particular cities. *Tīrthavivecanakāṇḍa* focused on Vārāṇasī; the *Tīrthacintāmaṇi* on Puri; and *Tristhalīsetu* on Vārāṇasī, Prayāg, and Gayā.

the Sanskrit text is 264 pages. It set the standard for the later Nibandhas on *tīrthas*. The next significant Nibandha text on *tīrthas* was the *Tīrthacintāmaṇi* of Vācaspatimiśra (fifteenth c. CE), the printed Sanskrit edition of which is 271 pages. The first part of the *Tristhalīsetu* of Nārayanaḥṭṭa (sixteenth c. CE), the most authoritative Sanskrit text on the subject (Salomon 1985), the *Sāmānyapraghaṭṭaka*, which alone is 178 pages. Several Sanskrit digests of *Tristhalīsetu* exist: *Tristhalīsetusārasaṃgraha* by Bhaṭṭoj Dīkṣita, *Tīrthakamālākara* by Kamalākaraḥṭṭa, and *Tīrthenduśekhara* by Nāgeśaḥṭṭa. The printed edition of the “most authoritative of the later texts on *tīrtha*” (Salomon 1985: xix), the *Tīrthaprakāśa* of Vīramitrodaya (seventeenth c. CE) is 510 pages. These are the most important *dharma* texts for treatment of the details of pilgrimage travel and pilgrimage places. The *dharma* texts on *tīrthas* contain long quotations mainly from the *Mahābhārata*, *Purāṇas*, and *Smṛti* texts, describing the places and instructions relating to the performance of pilgrimage rituals. However, in contrast with *Tīrthavivekanakāṇḍa*, later texts included some lengthy technical discussions on a number of specific topics pertaining to pilgrimage and the pilgrimage rituals.

Lakṣmīdhara composed the *Kṛtyakalpataru* under the patronage of King Govindachandra, who ruled in Kāśī and Kanoj. Olivelle has suggested that Lakṣmīdhara “was probably the editor who supervised the work of pandits working under him” and that “many of the digest writers of medieval India were closely associated with rulers and probably worked under their patronage” (2010b: 55). Pilgrimage probably played an important role for the economy of several cities. However, S. Pollock has suggested that *Kṛtyakalpataru* was written in an environment in which the Turkish invasion was believed to threaten society and that the production of the digests followed the path of the advance of the Delhi Sultanate (Pollock, 1993: 106). For the pilgrimage tradition, this would mean that the need to consolidate power led to the final inclusion of the pilgrimage ritual into the Dharmaśāstric tradition, in spite of the earlier opposition to it. The pilgrimage tradition sanctified geographical space, and with a threatening “other,” it became strategically important to define space as having salvific value common to all Hindus within a geographically unified area. That the Dharmanibandhas do not seem to distinguish between rewards attained at places devoted to Śiva and Viṣṇu and other gods and goddesses, in that all places were thought to have power to give merit and *mokṣa*, also points in that direction.

## RULES AND REGULATION

*Tristhalīsetu* is one of the most authoritative of the Sanskrit texts on *tīrthas* and pilgrimage travel (Salomon 1985). The subject of its general section

(*Sāmānyapraghaṭṭaka*) is rules and regulations of pilgrimage. One purpose may perhaps have been to establish rules and regulations in order to promote pilgrimage as a practice appropriate for Brahmans. The titles of the chapters of its general section (*Sāmānyapraghaṭṭaka*) is indicative of the topics that was considered central for the attempt to create rules of the pilgrimage ritual in the Dharmaśāstra tradition: the *puruṣārthas*; praise of the ability of *tīrthas* to destroy moral impurity (*pāpa*); the nature of *tīrthas*; secondary *tīrthas* such as truthfulness, self-control, and the inability of *tīrthas* to purify persons who have not abandoned moral impurities; those authorized to make pilgrimages; causes for varying degrees of benefit (*phala*) from *tīrthas*; varying degrees of benefit based on particular vehicles (*yāna*); *tīrthas* and equivalent substitutes; purity of times for pilgrimage; the way of going to *tīrthas*; observances on a pilgrimage; duties on the day of arrival at a *tīrtha*; fasting; shaving (a long chapter); bathing; *tarpaṇa*; defilement of rivers, *śrāddha*, prohibited elements in *tīrthaśrāddha* (a long chapter); discussion of *śrāddha*; discussion of the coincidence of the *tīrthaśrāddha* and other *śrāddhas*; persons authorized to perform *tīrthaśrāddha*; exception to persons authorized to perform *tīrthaśrāddha*; beneficiaries of *tīrthaśrāddha*; guide for procedure; and miscellaneous rules of *tīrthas*.

One interesting way the *Tristhalīsetu* tried to bring order and orthodoxy into the pilgrimage tradition, and perhaps unity to it, was to attempt to measure exactly the salvific power of the various pilgrimage places. The chapter on *tīrthas* and equivalent substitutes starts by quoting the *Ādityapurāṇa*, which says that the Pāṇḍavas together with a number of other sages took on twenty-four years of penance and “carried them out by means of *tīrthas*.” This quotation is meant to legitimate that the salvific power of the *tīrthas* can be calculated in terms of penance equivalents. The number of *yojanas*<sup>12</sup> traveled is then calculated in terms of penances (*kṛcchra*<sup>13</sup> and *prājapatya*). This merit varies according not only to distance traveled but also to the power of the place. *Tristhalīsetu* does not quote any texts as precedence for the exact calculation. So “bathing in Bhagirathī (Ganges) after coming sixty *yojanas* on foot, with a declaration of intent made beforehand according to the rule for penances, is equal to six years of *kṛcchra* penance” (p. 229). For each *yojana*, an increase of one half *kṛcchra* penance is added. At Prayāg, Vārāṇasī, Gāṅgādvāra, and Gāṅgāsāgara, it is equal to twice of that. Bathing in Yamunā after coming twenty *yojanas* is equal to two years of *kṛcchra*s; at Mathurā twice of that; and so on. The calculation builds on the principle that salvific power is stronger at some places and weaker at others, but such calculations are completely contradicted by the promotion texts of the individual places, in which each place celebrates its absolute power, and the normative calculations

<sup>12</sup> A *yojana* is around one and a half kilometers.

<sup>13</sup> One *kṛcchra* takes twelve days.

of *Tristhalīsetu* seem to have had a limited effect on the actual behavior of pilgrims. In the *Māhātmyas*, the promotion texts of particular pilgrimage places such as in the *Narmadāmāhātmya* of *Tīrthavivecanakāṇḍa*, quoting *Matsyapurāṇa* it is said that the river Yamunā purifies a person after bathing for seven days, Sarasvatī for three days, or Gaṅgā on bathing once, but Narmadā purifies on the mere sight of seeing it (*darśanād eva*) (*Tīrthavivecanakāṇḍa*, p. 198). In the promotion text of Naimiṣāraṇya, it is claimed that walking thirteen kilometers along the Gaṅgā gives a reward equal to the *aśvamedha* sacrifice; the same result is attained by walking four miles in Vārāṇasī or two miles in Kurukṣetra, but by walking in Naimiṣāraṇya, one attains the reward of an *aśvamedha* sacrifice for every step. Such computations of the *Māhātmyas* included in the *tīrthanibandhas* and the attempts of calculations of the general section of the *Tristhalīsetu* contradict each other completely. The way of calculation of the *Tristhalīsetu* probably never attracted much interest from the pilgrims,<sup>14</sup> but it is an example of the scholastic attempts to incorporate pilgrimage into the Dharmaśāstra tradition and infuse some sort of rationality into it.

The Nibandhas encourage giving of large amounts of wealth to the *paṇḍās* and salvific awards are calculated on the basis of the gifts. Such calculations are often overstatements, such as the statement “for each pore on the skin of the cow and its calf” the gift giver “will enjoy heaven for thousands of years” in the *Tīrthacintāmaṇī*:

He who offers a *kapilā* cow in Prayāg, giving plenty of milk, with gold horns, silver hooves, and white neck, should properly engage a learned and holy Brahman, clad in white garment, who is calm, knowledgeable in *dharma*, and accomplished in the Veda, and should give him the cow, beautiful clothes and many gems. For each pore on the skin of the cow and its calf he will enjoy heaven for thousands of years. (313–16)

And, when not following the prescribed rules, such as buying the service of having oneself shaved when arriving at a pilgrimage place, punishment in hell follows:

If one arrives at the Gaṅgā, best of rivers, and does not have oneself shaved, he and tens of millions of others go to the Raurava hell until the end of the eon.  
(*Tristhalīsetu* 256, trans. R. Salomon, p. 284)

Given the stress on giving to Brahmans at *tīrthas*, it is interesting that the Nibandhas also contain statements that condemn Brahmans who accept gifts at *tīrthas*. *Tristhalīsetu* says, quoting Padmapurāṇa:

One must not accept gifts at a *tīrtha*, even with his dying breaths. Even a creature mad with desire protects at least his mother; but acceptance of gifts at a *tīrtha* is

<sup>14</sup> I am not aware of any evidence that such calculations were of interest to pilgrims, but examples can probably be found.

the same as selling the tīrtha. When the Gaṅgā is sold, then Janārdana (Viṣṇu) is sold; when Janārdana is sold, the three worlds are sold. If a brāhmaṇa out of greed wishes to accept gifts in a sacred place, there is no world beyond for that evil one, nor even this world. Brāhmaṇas weak in wisdom who accept great gifts (there)—those Brahma-demons are born as trees with a brāhmaṇa's form. One must not desire to accept gifts, relying on the strength of the Veda... one should not sell the Veda: the lowest of twice born men should rather kill a cow and eat its flesh. (*Tristhalīsetu*, *Sāmānya-praghaṭṭaka* 651–2, trans. Richard Salomon, 1985: 437–8)

The author of the *Tristhalīsetu* instead of commenting himself on this, quotes from the *Tīrthavivecanakāṇḍa*:

As long as a man enjoys the wealth accepted as a gift (at a tīrtha), as long as a man who has accepted gifts at the tīrtha continues to keep possession of that wealth obtained there, for so long he cannot generate the benefit of donations etc. at a tīrtha, which benefit is characterized by such qualities as being multiplied by ten million. But by discarding that wealth he does generate that proper benefit for himself. (Trans. Richard Salomon p. 439)

And quoting again *Padmapurāṇa*:

Accepting gifts (*pratigraha*) at a tīrtha is to be avoided, as is selling of the Dharma. A sin committed at a tīrtha is hard to atone for, and so is acceptance of gifts (*pratigraha*) (there). (656; trans. Richard Salomon p. 439)<sup>15</sup>

Such condemnations of Brahmins who accept gifts at tīrthas might be difficult to understand, and such statements were perhaps directed at Brahmin pilgrims. The *Nibandha* text addresses, one would assume, primarily Brahmin pilgrims and it states the proper behavior of Brahmins on pilgrimage. They might perhaps also echo the old condemnation of *devalakas* in earlier Dharmaśāstra literature and the tension between Vedic priest and *devalakas*, a tension also confirmed in contemporary ethnographic observations. The verses reflect perhaps that while pilgrimage had become a Brahmanical practice the author still had a negative view of the pilgrimage priests (*paṇḍās*). Maria Heim in her study on *dāna* comments that “Several studies show that, far from being idealized as virtuous, brahmin recipients of *dāna* are despised for their status as dependents” (2004: 58).

In the general section of the *Dharmanibandhas*, human virtues are said to be more important than tīrthas are, and it is stated that there are no rewards from visiting tīrthas if the mind is not pure. That the fruits of being present at a tīrtha depended on possession of high moral qualities goes against the promotion texts of the places, which are quoted again and again in other

<sup>15</sup> *Pratigraha* is a gift or present, especially, a donation to a Brahmin. According to *Manusmṛti*, Brahmins were allowed to receive gifts from worthy persons of the three higher *varṇas*, and this was known as *pratigraha*.

sections in the Nibandhas. *Tirthavivecanakāṇḍa* argues that virtue is the highest *tīrtha* and that the rewards for visiting *tīrthas* are dependent on ascetic values and correct ritual performance at the sites. In these parts on rules for pilgrimage, moral purity is presented as a necessity to gain the fruits of pilgrimage. These sections of the texts attempt to put limitations on the salvific power of place. But at other places, the texts argue that just by being present at the *tīrtha* or having the sight of it, by the thought of it, or even just by having the desire to visit the place, all wishes will come true. Just being touched by the dust of Kurukṣetra blowing in the wind is enough to remove all moral impurity and attain *mokṣa*, according to promotion verses of Kurukṣetra quoted frequently. The salvific power of place is absolute. This power of place of Kurukṣetra contradicts the teaching of the *dharma* of Kṛṣṇa to Arjuna, narrated in the *Bhagavadgītā*, which took place at the same Kurukṣetra. However, the Nibandhas include both views. The authors of the Dharma-nibandhas on *tīrthas* supply the well-known argument that if mere physical presence were enough, all the fishes in Gaṅgā would attain *mokṣa*. But how do we really know that they don't? The popular view of the salvific power of place contradicts the idea of salvation as a gradual attainment of purity dependent upon ritual performance and the cultivation of human virtues. However, as in other dimensions of the Hindu tradition, these two points of view, power and purity, flourish side by side.

Given the great popularity and influence of the Hindu pilgrimage tradition, the number of texts that treat *tīrtha* and *tīrthayātrā* as a subject of Dharma-śāstra is surprisingly small. In addition, many discussions in the Nibandhas of rules of pilgrimage have probably had a very limited influence on the pilgrims. These texts should be used with care as sources for descriptions of actual Hindu pilgrim behavior. Many of the rules were probably never followed by the great majority and they were perhaps never meant for them but rather for a few Sanskrit-knowing Brahmins. However, they did give opportunities for persons fascinated by rules and regulations to feel at home in the pilgrimage ritual.

## Images and Temples

*Richard H. Davis*

During the first millennium CE, Hindus in India developed a complex and conspicuous set of religious practices and institutions, centered on the worship of physical images or icons. These images were treated as theophanies, that is, as material embodiments or supports for the tangible presence of the Hindu gods. Images could be placed in small domestic shrines, in village temples, or in massive palatial stone temples, often built by ambitious kings to signal their claims to sovereignty. Whether in a small home shrine or a great royal temple, the images were to be venerated as the divinities they were believed to be. In this religious culture, Hindu texts articulated iconographic protocols for the fabrication of images, proper procedures for the consecration of images as worthy receptacles of the divine, ritual etiquette for worshiping the divine icons, and rules for the construction and maintenance of public temples as divine homes or mansions, as well as systems of theology within which these actions were suitable and necessary. Here I will call this religious culture of practice and knowledge *temple Hinduism* (Davis 1995: 27–31).

Considering the importance of these religious practices in classical and medieval India (and continuing to the present day, in many respects), it is surprising that discussion of them in the Dharmaśāstra literature is quite sparse. If the Dharmaśāstra authors view *dharma* as “the totality of duties which bears upon the individual” in that individual’s particular social situation (Lingat 1973: 4), then one would expect them to weigh in on matters of image worship and temple construction, and to bring these topics within the code of *dharma* they sought to articulate. However, key works of Dharmaśāstra like the *smṛtis* of Manu and Yājñavalkya, composed in the early centuries CE as the image-based religious practices were becoming prevalent in Northern India, remain virtually silent on the subject. “Ironically,” observes Patrick Olivelle (2010a: 193), “even though a temple locates the visible presence of the divinity on Earth, yet the temple is conspicuous by its absence or insignificance in the legal literature of ancient India.” What is the reason for this orthodox reticence?



The religious culture of temple Hinduism that emerged in classical and early medieval India was a significant departure from the earlier program of Vedic sacrifice. The Brahmin authors and transmitters of the Dharmaśāstra literature were, above all, loyal to the Vedic tradition. The emergence and rise of image-related religious practices in the early centuries CE provoked a tension within the class of orthodox Brahmin religious specialists. Some disdained them, while others actively entered into the new ritual culture. Heinrich von Stietencron (1977: 131–2) described this tension in dramatic terms, as a schism in the Brahmin class. Orthodox Brahmins began a “bitter feud” with the Brahmins who participated in temple practices. This tension is reflected in the Dharmaśāstra treatment of the topics of images and temples.

My aim in this chapter is to trace the discourse pertaining to Hindu images and temples within the Dharmaśāstra genre. This is not a general history of Hindu image worship or temple Hinduism. I will consider both sides of the Brahmanical ambivalence toward images within the literature. First, I will look at the iconophobic orientation, as found in texts such as the Dharmaśāstra of Manu. Then, I will examine those orthodox iconodules within the Dharmaśāstra ambit who engaged with and articulated programs of image-related practice. These include several “supplements” to the Gṛhyasūtras, one notable Dharmaśāstra, some Purāṇas, and the compilations or digests (*nibandha*) of Dharmaśāstra teachings. Finally, I will give a brief description of non-Vedic genres of prescriptive religious literature, such as the Vaiṣṇava Samhitās and the Śaiva Āgamas, that embraced more fully the religious culture of temple Hinduism.

## ORTHODOX ICONOPHOBES

The Dharmaśāstra is a Vaidika discipline of knowledge. The social, legal, and religious instructions within the Dharmaśāstra genre rest on the preeminent authority of the Veda.

Historically, the Vedas presume and outline a ritual program of sacrifice (*yajña*). Sacrifice, it is said, involves three principal elements: the substance (*dravya*) to be offered, the deity (*devatā*) to whom the offering is made, and the giving up or abandonment (*tyāga*) of the substance to the deity. In practice, Vedic sacrifice involves offerings of substances made into a sacrificial fire, which conveys the offerings to the gods, who remain invisible or distant. The offerings are accompanied by the recitation of mantras, oral passages of the Veda, which are considered to have sacred potency.

Within the Veda, a certain amount of anthropomorphic imaging of the deities is present. The hymns of the Ṛg Veda speak of Indra’s hands and eyes, Agni’s mouths, and so on. But, this does not indicate that the Vedic religion

made use of anthropomorphic icons. As P. V. Kane (1927–8: II: 207) concludes, “one can say without much fear of contradiction that the religious practices among the higher strata of the Vedic Aryans did not include the worship of images in the house or in temples.”

Yet there is clear and abundant evidence that, outside this orthodox “Vedic Aryan” world of practice, many other ritual cultures were prevalent in India. Best known are the developing religious practices of the Jains and Buddhists. Dharmaśāstra authors regularly dismiss these communities as *nāstika*, “atheist.” But, the *Gr̥hyasūtras* also acknowledge others. They refer to *devakula*, *devāyatana*, and *devāgāra*, terms that designate “homes of the gods.” These appear to be early shrines or temples, usually located outside villages or towns, housing images representing *devas*, Hindu deities. The *Gr̥hyasūtras* generally counsel their audience of pious Vedic Brahmins to show respect toward these shrines, but they never recommend any direct ritual participation. By the first century of the Common Era, religious icons meant for veneration were beginning to make their presence in Northern India inescapable.<sup>1</sup> From then on, the religious culture of temple Hinduism grew.

This posed a deep challenge to the Vedic order, both ideological and economic. Responses to this new challenge within the Brahmin class were not uniform. To those orthodox Brahmins who held that the primordial responsibilities of the Brahmin class were to recite and transmit the Veda, to offer and officiate at sacrifices, and to receive and give gifts (as Manu states in *MDh* 1.88), images and shrines appeared as a threat. But, other Brahmins took a more conciliatory or integrative position. These iconodule Brahmins sought to engage themselves within the emerging practices of temple Hinduism and to articulate these practices within a Brahmanical orientation.

The full dimensions of this intraclass dispute are not known, and historians have characterized it in different ways. In his stimulating 1977 essay, von Stietencron portrays it as a fundamental schism within the Brahmin class, leading to a long-lasting “bitter feud” between iconophobic and iconophilic Brahmins (1977: 131–2). Ronald Inden sketches out how some Vedic transmission schools or branches (*śākhās*) began to reframe Vedic practices within a theistic, image-based liturgy. For Inden, this change is a matter of religious

<sup>1</sup> On the *Gr̥hyasūtra* references, see Gopal 1959: 475–6. Kane considers three hypotheses for the origin of Hindu image and temple practices: (i) the “Dravidian” origin and subsequent absorption into Brahmanical cult, (ii) copying from the Buddhists, and (iii) a natural and spontaneous growth within the orthodox tradition. He sides with the third: “When Vedic sacrifices became less and less prevalent owing to various causes . . . there arose the cult of the worship of images. Originally it was not so universal, or elaborate, as it became in medieval and modern times” (Kane II: 712). In an overview of the archeological evidence, John Cort (2010) argues persuasively for the more-or-less simultaneous adoption of image-based ritual practices by Jains, Buddhists, and Hindus in Northern India (and especially in Mathura) in the period from 100 BCE to 100 CE. From this point on, the archeological evidence for the growth of temple Hinduism becomes increasingly prevalent.

politics. He regards it as “the result of contestation among different religious orders or schools for the “enunciative function” with respect to the religious or ontological commitments of ancient Indian polities (1992: 573).” Gérard Colas (2004) likewise recognizes the economic conflict. As royal and elite patronage of temples increased, grants to Vaidika Brahmanical settlements (*agrahāras* and *brahmadeyas*) correspondingly decreased. He traces a multiplicity of critical opinions on image worship within several Sanskrit disciplines of knowledge, including Pūrva Mīmāṃsā, Nyāya, and Advaita Vedānta. Despite the critiques within these genres of orthodox discourse, however, he observes that most refrain from a thorough condemnation of image-related practices. They adopt an “ambivalent” position, he argues (171).

Whatever bitter feuds, contestation, or ambivalence among Brahmins may have played out on the ground in classical and early medieval India, the iconophobic discourse we see in the Dharmaśāstras and related literature does not take the form of harsh attacks or denunciation. Rather, the orthodox opponents of image worship follow the more subtle rhetorical strategies of omission, distancing, and ontological subversion.

If classical Dharmaśāstra works set out comprehensive ideals of proper conduct for members of the twice-born classes, and especially for Brahmin males. The great majority of these works omit any mention of image-related practices, either as domestic rites or as a worthy profession. For Manu, a central daily ritual task for a pious male householder is to perform the five “great sacrifices” (*mahāyajña*): sacrifices to the Veda, to the ancestors, to the gods, to beings, and to humans (*MDh* 3.70). The sacrifice to the gods here remains very clearly within the paradigm of sacrifice. One adds wood to the domestic fire, reciting a Vedic mantra. Other Dharmaśāstras follow suit (with one exception, discussed in the following section). The worship of gods in the form of images is omitted as part of the proper daily conduct of an orthodox Brahmin.

As with the earlier Ṛgṣyasūtras, the Dharmaśāstras of Manu and Yājñavalkya do acknowledge the existence of physical “gods” (*deva*, *daivata*). In his general rules of conduct for a bath-graduate, Manu states that one should circumambulate a mound of earth, a cow, a god (*daivata*), a Brahmin, ghee, honey, a crossroads, or a significant tree (*MDh* 4.39). The commentators gloss *daivata* here as “image of god.” Yājñavalkya (1.133) likewise recommends passing on the right a god, a mound of earth, cow, Brahmin, or large tree (literally, “king of the forest”)—all objects worthy of honor. Here, it would seem, a shrine with an image of a god is something one might encounter on route while traveling. If so, the authors urge the pious householder to show all due respect, and then move on down the road.

As for those who officiate at these shrines, that is a different matter. Manu addresses this in his discussion of monthly ancestral observances. A pious householder should be very careful about whom he invites. Ancestral offerings have much to do with maintaining the continuity and status of one’s lineage,

so it makes sense to exclude those who might detract from the family purity. Among those to be excluded are *devālakas*. “Physicians, *devālakas*, butchers, and tradesmen should all be excluded from divine and ancestral offerings” (*MDh* 3.152). The *devālakas* are, according to Kullūka and other commentators, those who attend on images (*pratimā-paricāraka*), temple officiants. This is one portion of a much larger set of exclusions. The careful *śrāddha* host will also avoid men with deformed nails or black teeth, people with one eye, actors, singers, gamblers, drunks, spice-merchants, and of course, *nāstikas*, along with many others, from such ceremonies of ancestral solidarity. People with these imperfections would contaminate the purity of the offerings.

Manu does not provide a rationale for excluding *devālakas* from ancestral rites. Since he places the image attendant in between physician and butcher, it is tempting to construe them together. Doctors earn a living by ministering to living human bodies, and butchers by dealing in dead animal bodies. Temple attendants also attend on the physical bodily forms of gods. Is it a matter of pollution through direct engagement with the organic, as anthropologists have argued? In his commentary, Kullūka suggests a different reason. *Devālakas* perform the rituals of worship of images for the purpose of gaining a livelihood, and not based solely on the principles of *dharma*. Feeding such an unworthy person at one’s *śrāddha* ceremony, says Kullūka, renders the ritual fruitless (Kullūka on *MDh* 3.180).

The notion of improper livelihood appears, again, when Manu discusses wrongful actions or sins (*papa*) that cause a fall in (*pātaka*) and require an expiation (*prāyaścitta*). Among those wrongful actions is the appropriation of property that should belong to gods or Brahmins. “If one seizes the property of a god (*devasva*) or of a Brahmin out of greed,” declares Manu (11.26), “in the next world that sinful person will subsist on the leftovers of greedy vultures.” What is the property of a god? Kullūka glosses *devasva* as wealth that is given for the purpose of a divinity, such as for an image of the god. Temple priests are condemned to a future life of vulture leftovers for making a living, in this life, from food and other offerings made to the gods they attend.

The ninth-century Kashmiri commentator Medhātithi took this condemnation a step further, into ontological subversion. Medhātithi was an erudite Dharmaśāstrin who applied the Vaidika interpretive principles of Pūrva Mīmāṃsā in his commentary on Manu (Derrett 1976b). *Devasva*, he begins, is actually the property of males of the twice-born classes who are disposed to perform sacrifice. It is considered the “property of god” only insofar as it is intended for use in sacrifice or other rituals, since it is not possible for gods to own property. “Gods do not make use of property by their own desire, and one never sees them engaged in protecting it,” he asserts (Medh on *MDh* 11.26). Here Medhātithi’s Mīmāṃsā roots show through.

By the ninth century, it had become common in India to regard the god inhabiting the central image of a temple as the proprietor of the temple, the true

recipient of donations and offerings, and the owner of its wealth. This view is reflected in myriad inscriptions of early medieval India. (Buddhists of the period likewise regarded the Buddha as owner of monastic property, as Gregory Schopen [1990] shows.) Medhātithi acknowledges this is a “common view” (*loka*), by presenting the preliminary argument of an opponent. “In the common view,” this imagined interlocutor states, “the term *devasva* is used for property attached to an image, such as a four-armed temple icon.” Speaking for himself, Medhātithi firmly denies this. Divinity does not belong to a four-armed image. The fact that one uses the term “image” (*pratimā*, literally “likeness” or “imitation”) shows that it is not in fact the god (Medh on *MDh* 11.26).

Medhātithi’s view here accords with the position taken by Pūrva Mīmāṃsā, as presented in Śabara’s fifth-century commentary on Jaimini’s *Mīmāṃsāsūtras*. According to Mīmāṃsā, gods do not have bodies. This denial of divine agency applies to the anthropomorphic imagery of gods used in the *Rg Veda*, to understandings of sacrificial efficacy based on divine-human reciprocity, and to the painted or sculpted icons of temple worship (Clooney 1988; Davis 2001: 119–21; Colas 2004: 151–5). One performs sacrifice according to injunction in order to obtain a result through the transcendent principle of *apūrva* (the “remote”). For Mīmāṃsā, pleasing, feeding, or petitioning of deities cannot be the rationale for sacrifice or worship, for the gods do not intervene. Śabara (9.1.9) also observes that deities, being only sound, cannot in fact own or administer property. The so-called property of gods is in fact administered by temple attendants.

The worship of images is grounded solely on human custom, not on the transcendent basis of Veda. Gérard Colas sees Śabara’s position here as “complicated”: “Śabara rejects the notion of the embodiment of gods, but accepts image ‘worship.’ At the same time, however, he empties it of the worshipping dimension and refuses to accept that ‘worship’ is addressed to a god” (2004: 154). I would put it more strongly. Although Śabara does not condemn image worship as a sinful practice, leading to vulture leftovers, Pūrva Mīmāṃsā does seek to subvert the ontological or theological premises of image worship. This iconophobic orientation continues within some lineages of Dharmaśāstra discourse, as we see in the commentary of Medhātithi.

## VEDIC ICONODULES

The earliest positive treatments of image worship and temple practices in orthodox Brahmanical literature appear in a set of late Gṛhyasūtra texts:

*Āgniveśyagrhyasūtra* (2.4.10)

*Baudhāyanagrhyapariśiṣṭasūtra* (2.13, 2.16)

*Hiranyakeśigrhyaśeṣasūtra* (1.7.11–1.7.12)

*Āśvalāyanīyagrhyapariśiṣṭa* (4.4–4.6)

*Vaikhānasagrhyasūtra* (4.10–4.11)

Several of these include *śeṣa* or *pariśiṣṭa* (“supplement”) in their titles, and Shingo Einoo (2005a: 9) classifies them as belonging to the “Grhyapariśiṣṭa level.” Such texts are meant to complete an earlier existing work within a Vedic branch. As Jan Gonda (1977: 513) has observed, such supplementary additions may well incorporate “rites or variants of rites that had become in vogue after the completion of their *samhitās* and *brāhmaṇas*.” The dating of this group of texts is not certain. Einoo points to features indicating a relatively late composition, but sets a *terminus ad quem* at the late fifth century CE, with the composition of Varāhamihira’s *Bṛhatsamhitā*. Composition in the early centuries CE, then, would place them contemporary with the expansion of image worship and the beginnings of Hindu temple construction, as indicated by archeological evidence. In these Grhyapariśiṣṭa texts, we see orthodox Brahmins belonging to select branches of the Veda taking an active role in articulating ritual procedures for the emerging religious culture of temple Hinduism.

The *Āgñiveśyagrhyasūtra* (*ĀgGr*), belonging to a branch of the Black Yajurveda, presents a relatively simple account of the rite of image worship, as part of the daily conduct of a pious householder. After completing the fire rites (*agnikārya*), it says, one should invoke and honor Viṣṇu.

In a diagram (*maṇḍala*), on a consecrated ground (*sthaṇḍila*), in water, within one’s heart, in a lamp, in fire, or else in an image (*pratimā*), one should invoke Viṣṇu and worship him. (*ĀgGr* 2.4.10)

For this work, then, the image is not considered an exclusive or privileged site for Viṣṇu’s presence. The employment of an image is just one of a series of possible locations in which to invoke the god. Later theistic texts would stress the compassion and generosity of god in making his or her divine presence accessible to human devotees in many places. *Āgñiveśya* goes on to provide more details about the use of an image.

Now if one is using an image, one should have fabricated from gold or metal, or if that is not possible then from stone, an image of four-armed Viṣṇu holding conch, discus, and mace, and have it established (*pratiṣṭhā*) in a home (*agāra*) or in a shrine (*vimāna*).

*Āgñiveśya* introduces three topics here: the substance of the image, its proper iconography, and the location for the installation or establishment of the image. Each will be greatly expanded in later treatments.

*Āgñiveśya* directs the image worshiper to install or establish the image in an appropriate location, but the text does not provide any directions on how this should be done. The word he uses, *pratiṣṭhā*, in general usage, indicates

standing firmly or providing a stable foundation. As Gonda (1975) has shown, this term has a remarkably wide range of uses in Vedic and post-Vedic literature. In temple Hinduism, *pratiṣṭhā* becomes the most common designation for the process—often very complex—by which an object is made suitable for sacred use. It denotes an instrumental and efficacious ritual that brings about a transubstantiation in the physical nature of the object (Davis 1997: 33–7). The *pratiṣṭhā* of a fabricated image of a god transforms it into a fit embodiment for that god’s divine presence. Shrines and temples also undergo a ritual *pratiṣṭhā*, making them fit residences for the divine, and even more “secular” things like wells, tanks, parks, and towns can be consecrated through a procedure of *pratiṣṭhā* (Kane 1962–75: II 889–96). Several other works of the Gr̥hyapariśiṣṭa genre provide guidance for the ritual establishment of a newly fabricated image or icon.

The *Baudhāyagr̥hyapariśiṣṭasūtra* (2.13) sets out a procedure (*kalpa*) for the establishment of Viṣṇu in image form.<sup>2</sup> The ritual procedures require a Brahmin officiant knowledgeable in the Vedas, for each action is accompanied by Vedic recitations, and more specifically passages from the Taittirīya recension of the Black Yajurveda, to which the Baudhāyana *śākha* is affiliated. The ritual of *pratiṣṭha* incorporates a Vedic fire sacrifice as an important auxiliary rite, and it begins and ends with the feeding of Brahmins. So Baudhāyana’s procedure for *pratiṣṭha* is in many respects a Brahmanical or Vaidika ritual.

However, the central acts of the ritual are directed toward an image (*pratikṛti*) of Viṣṇu, understood as the Primordial Person (*puṛuṣa*). At an appropriate time, Baudhāyana begins; the officiant should serve food to Brahmins and have them declare an auspicious day. An image is made. (Baudhāyana gives no details on the substance or iconography of the image.) Placing the image on a platform, the officiant sprinkles it three times with water, reciting Vedic passages from the Taittirīya recension, and then ties a protective cord on it. The image spends the night in water. (In later texts, this rite is known as *jalādhivāsa*.) The following morning four Brahmins remove the image from the water and set it up in a pure place, where the primary acts of consecration will occur.

The officiant first bathes the image with *pañcagavya*, the five products of the cow. Baudhāyana explains the preparation of this decoction (consisting of cow urine, dung, milk, curd, and ghee), and he cites the Vedic mantras that should accompany each substance. Einoo (2005b: 106–8) provides further comparative details on *pañcagavya*.) Then the officiant should sprinkle the image with water from a jar containing bark from all the trees used in sacrifice. Next, he sprinkles the image with a jar containing pearls, jewels, silver, and copper. The term here is *abhiṣeka*, a key rite in all establishment rituals and many others as

<sup>2</sup> Harting 1927. Einoo 2005b provides outlines of the largely parallel procedures of *pratiṣṭhā* given in *Baudhāyana*, *Vaikhānasa*, and *Āśvalāyana* works.

well. *Abhiṣeka* is a constitutive ritual action, in which substances and related powers are first collected into a liquid form and then infused into a recipient by pouring the substances over it.<sup>3</sup> After these affusions of the Viṣṇu image, the officiant uses a golden needle to open its eyes. Later texts call this the *netra-unmīlana*, the opening of the eyes, and often consider this particular act to be the climactic moment in which the material object becomes alive. Finally, the officiant sets up a sacrificial fire. He recites the Hymn of Puruṣa (*TĀ* 3.12), offers oblations into the fire, and then touches the image at its feet, its navel, its head, and then its entire body, each time reciting again the Puruṣa Hymn.

The ritual pattern in Baudhāyana's account of *pratimā-pratiṣṭhā* suggests a concentrating of powers onto the object, a ritual that constructs the image as a comprehensive body of the god Viṣṇu. The employment of the Puruṣa hymn here is clearly significant. It identifies Viṣṇu as the Puruṣa, the Vedic primordial being and the paradigmatic sacrificial victim. But, here, the ritual process reverses the direction of the Puruṣa hymn, as Shantanu Phukan (1989) has observed. If the Puruṣa hymn narrates a sacrificial dismemberment of the Puruṣa to create the phenomena of the existing world, here the materials of the created world are returned and reassembled to constitute the new image body of the god Viṣṇu.

Once this initial consecration of the image has been completed, one should take it into the shrine (*devālaya*). In the context of a Gṛhyasūtra supplement, we can presume that Baudhāyana has in mind a domestic shrine, but there is no fundamental difference between *pratīṣṭhā* rituals for images meant for domestic shrines and those for larger public temples. After precious gems and metals have been placed on the pedestal, the image is set there. The officiant now performs the first ritual of worship (*pūjā*) of the newly established Viṣṇu image.

First, the god must be invoked (*āvāhana*) into the image. In Baudhāyana's account, this is accomplished by reciting a series of Vedic mantras and the phrase, "I invoke the Puruṣa." Baudhāyana goes on to list a series of offerings or services (*upacāra*) that the worshiper now presents to Viṣṇu embodied in the image. These include a seat (*asana*), water for the feet (*pādya*), reception water (*arghya*), and water for sipping (*ācamana*). Each time the worshiper recites a request that this offering be accepted. In effect, the worshiper is treating Viṣṇu as an honored guest. He follows the same kind of ritual etiquette of respect that one would offer to a worthy Brahmin guest (*atithi*) attending a *śrāddha* ceremony.

The worshiper now unties the protective cord from the image, and next offers more acts of honor or service. He presents to the image sweet-smelling perfume (*gandha*), a garland (*mālya*), flowers (*puṣpa*), incense (*dhūpa*), and

<sup>3</sup> For examples of complex *abhiṣeka* rites, see the royal *abhiṣeka*, described by Inden 2000, based on the *Viṣṇudharmottara Purāṇa*.



the illumination of a lamp (*dīpa*). He gives flowers while pronouncing the twelve names of Viṣṇu. The offerings here go beyond the more modest treatment of a guest, and begin to suggest a second model for the services of worship: the acts, honor, or veneration (*vandana*) directed at a lord or king in court. Both are appropriate: Viṣṇu is both an honored guest in the home and the Primordial Person and Lord of the Cosmos.

Following these ritual attentions directed toward the image, the officiant offers oblations into the sacrificial fire and ends with a final offering of *bali* or “tribute.” He accompanies this final offering with a verse that reiterates the underlying theology of the ceremony.

You are the One, the original, the ancient Primordial Person (*puruṣa*). We sacrifice to you, Nārāyaṇa, the creator of everything. You alone are the sacrifice, both completed and to be completed. Please accept this offering in yourself, by yourself. (Harting 1922: 32)

Here again is stressed the identification of the image of Viṣṇu with the *Puruṣa*. To complete the ritual, Baudhāyana prescribes that the officiant circumambulate two or four times while reciting praises of the god, and then feeds twelve Brahmins.

## A THEISTIC DHARMAŚĀSTRA

While some of the later “supplements” to the Vaidika Gr̥hyasūtra literature began to envision the worship of divine images as a viable practice for orthodox Brahmins, the most prominent Dharmaśāstras of the early centuries CE—those of Manu, Yājñavalkya, and others—did not follow this orientation. Loyal to a more conservative vision of Vedic Brahmanical conduct, they took a dim view of image worship and temple practices, as we have seen. One Dharmaśāstra, however, departs from this iconophobic orthodoxy: the *Vaiṣṇava Dharmaśāstra*.

Composed around the seventh century CE, the *Vaiṣṇava Dharmaśāstra* (often referred to by scholars as the *Viṣṇusmṛti*) is both a traditional and a new type of work within the Dharmaśāstra genre. On the one hand, like other Dharmaśāstras, it belongs to a specific Vedic branch, the Kathaka *śākha*, and it shares many of the concerns and much of its content with Manu, Yājñavalkya, and other earlier Dharmaśāstra texts. But, unlike those other Dharmaśāstras, the *Vaiṣṇava Dharmaśāstra* articulates a decidedly theistic perspective, and more specifically a Vaiṣṇava orientation.<sup>4</sup> The frame narrative established that

<sup>4</sup> Following Olivelle, I use the title *Vaiṣṇava Dharmaśāstra*, consistently used in the manuscripts, and not the *Viṣṇusmṛti* found in many Western scholarly accounts. Earlier scholars

the god Viṣṇu himself, not just some venerable human sage, is the primary speaker of the principles of *dharma* here. Shortly after Viṣṇu, in the form of a giant boar, has rescued the Earth and again created the manifest world—so goes the story—the Earth becomes anxious about its own preservation and seeks out Viṣṇu to learn the teachings of *dharma* that will maintain the proper order of things. Among his many teachings to Earth, Viṣṇu advocates the worship of an image of himself as an important part of the daily routine of a pious male Brahmin in the householder stage of life (*grhāśrama*). He outlines a basic paradigm for the practice of daily worship (*arcana*).

Viṣṇu specifies that the worshiper should have bathed well, washed hands and feet, and sipped water before interacting with the gods. The Lord Viṣṇu, he adds, may be worshiped in the form of a divine image (*devatārcā*), on the ground, or in water. The worshiper should begin with two actions aimed at bringing the divine presence into the material support. First, he enacts the “giving of life” (*jīvadāna*) for the image, and then he invokes (*āvāhana*) Viṣṇu, each time reciting a suitable Vedic mantra. Then the worshiper should prostrate himself before Viṣṇu “with knees, hands, and head.” Throughout its account of *nityapūjā*, the *Vaiṣṇava Dharmaśāstra* prescribes specific passages from the Vedas to accompany each action.

Next, the worshiper presents a series of offerings to Viṣṇu in the image. These are similar to those prescribed by Baudhāyana:

Reception water (*arghya*),  
 Foot water (*pādya*),  
 Sipping water (*ācamana*),  
 Unguents (*anulepana*)  
 Ornaments (*alamkāra*),  
 Garment (*vasa*),  
 Flower (*puṣpa*),  
 Incense (*dhūpa*),  
 Lamp (*dīpa*),  
 Honey mixture (*madhuparka*), and  
 Food (*naivedya*).

including Jolly (1880) and Kane (1962–75, II) postulated that the existing *Vaiṣṇava Dharmaśāstra* was a recasting of an earlier Kāthaka-school Dharmasūtra. This was, they held, taken over by a later group of Viṣṇu worshipers, who added a new Vaiṣṇava frame or veneer to the older, more traditional text. More recently, Olivelle finds no evidence of an earlier prose Dharmasūtra, and argues persuasively that the existing *ViDh* is the coherent work of a single time and place. “The substance of the *ViDh*, including the frame story,” he states (2009a: 13), “belongs to the original text written by a learned scholar of the Kāthaka branch somewhere in Kashmir, a scholar deeply versed also in the *Dharmaśāstra* literature.” The Vaiṣṇava character, he notes, pervades the text. On the dating of the text, see Olivelle (2009a: 15), where he narrows the chronological parameters to sometime between the sixth and eighth centuries CE.

Each of these presentations has its own Vedic formula. The *Vaiṣṇava Dharmaśāstra* then adds a verse with six additional offerings:

Chowry (*cāmara*),  
 Fan (*vyajana*),  
 Parasol (*chatra*),  
 Mirror (*mātrā*),  
 Vehicle (*yāna*), and  
 Seat (*āsana*).

These six should be accompanied by the Sāvitrī mantra. For all these offerings, says Viṣṇu, the worshiper should bow his head. He should act in a benevolent manner, avoiding both passion and anger. Finally, the worshiper should perform a mantra-recitation (*japa*) of the Puruṣa hymn. As in Baudhāyana's account of image establishment, the *Vaiṣṇava Dharmaśāstra*'s account of image worship stresses the identification of Viṣṇu with the Vedic Puruṣa, through the repetition of this crucial Vedic hymn.

I have argued elsewhere, based on Śaiva texts from a later period, that Hindu *nityapūjā* consists in three primary sequences of ritual acts (Davis 1991: 39). The first sequence involves purifications, and especially purification of the self (*ātmaśuddhi*), to render the human worshiper fit for engagement with the divine. The second sequence, invocation, summons the deity to become fully present in the icon to be worshiped. God becomes manifest in a material form. These two preliminary sequences bring the worshiper and the god toward one another, onto a common ground, where direct interactions between human and divine can occur (Davis 1991: 134–6). The *Vaiṣṇava Dharmaśāstra* presents the two initial portions as simple preliminaries, but they come to be greatly elaborated in later theistic ritual guides. Once this common ground is reached, the worshiper performs his homage to god in a sequence of services (*upacāra*). These are mostly physical offerings or gifts, presented before the image, understood to be a divine person. The services are modeled on hierarchical human interactions, in which a subordinate treats a superior with respect and veneration.

It is important that the offerings presented to the divine person be the best possible substances. Accordingly, the *Vaiṣṇava Dharmaśāstra* (Chapter 66) provides some specifications. The unguents should consist only of sandalwood, saffron, aloe, camphor, deer-musk, or nutmeg. One should never offer ornaments of counterfeit gems or gold. One must not offer flowers that have no smell, nor ones that have a rotten odor. Only ghee and sesame oil may be used in the oil lamp. One must not offer food that is proscribed for the twice-born, not goat or buffalo milk, nor meat from five-nailed animals, fish, or wild boar.

As in all Dharmaśāstras, the *Vaiṣṇava Dharmaśāstra* assumes that different actions are suitable for different stages of life (*āśrama-dharma*). The worship

of Viṣṇu in image form is part of the daily conduct appropriate for a male householder. Later in the text, Viṣṇu sets out a different code for the fourth stage of male life, the renouncer or “Brahmā-stage” of life (Chapters 96–7). For the renouncer, yogic meditation (*dhyāna*) replaces the worship of images. But, Viṣṇu recognizes that not all renouncers are equally adept at meditation, and so he sets out a series of possibilities, based on an individual’s capacity. Best is to meditate on Puruṣa as the One who transcends all material constituents. But, if one cannot fix one’s mind on this formless Absolute, one may try other options, such as meditating on the Puruṣa shining like a lamp at the center of the heart. Finally, says Viṣṇu, if the renouncer is not able to manage these abstract meditations, he may focus his mind on Viṣṇu in a visual form.

And if he cannot even do that, he should meditate on the auspicious form of Lord Vāsudeva wearing a crown, earrings, and bracelets. On his chest is a garland of forest-flowers, and in his four hands he holds conch, discus, mace, and lotus. The goddess Earth is between his feet. (*ViDh* 97.10)

Here the renouncer’s mental visualization of Viṣṇu parallels the householder’s use of a physical image of the god.<sup>5</sup>

Viṣṇu’s instructions to Earth contained in the *Vaiṣṇava Dharmaśāstra* are directed primarily to an audience of pious Brahmins. He sets out proper conduct for individual Brahmins at different stages of life. This includes the worship of physical images of Viṣṇu as part of a male householder’s daily conduct, and meditation on Puruṣa or Viṣṇu for the renouncer. Viṣṇu does devote some attention to the proper conduct of a king, but he says nothing about the royal activity of temple construction or about public temple ritual. These matters were taken up in a related work, the *Viṣṇudharmottara Purāṇa*, composed in Kashmir in roughly the same period.<sup>6</sup> Both works articulate a similar theistic orientation, but they address themselves to differing audiences.

The *Viṣṇudharmottara Purāṇa* consists in a dialogue between the eminent Brahmin sage Mārkaṇḍeya and the Kṣatriya king Vajra. The great-grandson of Kṛṣṇa, Vajra is ruling at Indraprastha. When Vajra sets out to perform a Vedic horse sacrifice, Mārkaṇḍeya journeys from his forest-retreat to Indraprastha, and the two engage in an extended colloquy. Mārkaṇḍeya’s aim, and that of the *Viṣṇudharmottara*, is to persuade an aspiring imperial ruler to accept the

<sup>5</sup> Olivelle (2009a: 7–11) observes that this distinctive meditative form of Viṣṇu with Earth between his two feet corresponds to the iconography of extant Viṣṇu images found in early medieval Kashmir.

<sup>6</sup> The textual genealogy of the *Viṣṇudharmottara Purāṇa* (*VidhPu*) is complex. For a general outline of its contents and intertextuality, see Hazra (1958: 155–218). Olivelle observes the “unmistakable connections” of the *ViDh* and the *VidhPu*. Inden (2000: 43) notes that the *VidhPu* also incorporates much content from Dharmaśāstras like Manu and Yājñavalkya, but that it “appropriates” the *ViDh*. Inden goes on to identify the “supplements” (*uttara*) within the *VidhPu* as the chapters on matters of Pāñcarātra theology and liturgy (2000: 47).

theistic and activist perspective of the Pāñcarātra school of Vaiṣṇavas. The sage outlines a series of devotional actions that will lead ultimately to union with Viṣṇu. Mārkaṇḍeya's recommendations integrate political and religious actions, and place temple construction as a central part of royal conduct. As Ronald Inden (2000: 30) puts it, "the grandest of these works would have the king of kings build a large, commanding Pāñcarātra temple after he had 'conquered the quarters' and made himself the paramount king in an imperial formation that embraced all of India." Mārkaṇḍeya's program here also has the effect of demoting the role of the Vedic horse sacrifice that Vajra is performing. "The Pāñcarātra temple, together with its elaborate liturgy of temple-honoring," Inden (2000:30) observes, "would displace the Vedic sacrificial liturgy as the capstone of... the imperial formation of India in its own age." In these prescriptions of the Brahmin sage Mārkaṇḍeya, the worst fears of the orthodox iconophobes loyal to the old Vedic order would seem to be borne out.

The *Viṣṇudharmottara Purāṇa* discusses matters of image fabrication, temple construction, and liturgical procedure on a grand scale at great length. Indeed, among scholars, this text has been utilized most often by historians of medieval Indian art and architecture, as it provides one of the earliest and most comprehensive prescriptive accounts of Hindu iconography and temple architecture (Kramrisch 1928; Sivaramamurti 1978). These topics are also taken up in the genres of Śilpaśāstra and Vāstuśāstra, directed primarily at the sculptors and architects responsible for fabricating images and homes for the gods.

It is no coincidence that Mārkaṇḍeya's teachings to Vajra are contained not in a Dharmaśāstra, but in a Purāṇa. To follow the discursive thread of orthodox literature pertaining to images and temples, we must turn now to that other genre of *smṛti* texts, the Purāṇas.

## PURĀNIC THEISTS

Let us begin with the case of Lakṣmīdhara, compiler of the great digest (*nibandha*) of *dharma* teachings, the *Kṛtyakalpataru*. Lakṣmīdhara served as a high official under Govindacandra, an imperial Gāhadavāla ruler of twelfth-century North India based in Varanasi. At royal behest, Lakṣmīdhara set out to compile a comprehensive topical anthology of *dharma*, drawn from available *smṛti* literature. The resulting compilation amounted to an extraordinary work of some 30,000 *ślokas*, arranged in fourteen book-length sections, covering all major subjects of the Dharmaśāstra genre. His effort may have been provoked by the political encounter in Northern India during this period with an expansive Islamic world, as Sheldon Pollock has suggested, which led to a

desire among Hindu elites for “totalizing statements” of the Brahmanical world vision. Or it may simply reflect, as David Brick (2015: 16) counters, the inherent appeal to an ambitious ruling power of a collection that is comprehensive in scope, well organized by topic, and impressively massive.<sup>7</sup>

Lakṣmīdhara treats *pratiṣṭhā*, “the construction and establishment of images and temples,” as one of the fourteen sections.<sup>8</sup> If we judge by the historical evidence, *pratiṣṭhā* would have been a subject of great interest for an ambitious twelfth-century Hindu ruler, for this was a period of extensive, grandiose temple building, often undertaken by royal patrons. But, a composition of writings on this topic drawn exclusively from Dharmaśāstra texts would not have amounted to much. Fortunately, Lakṣmīdhara could make use of another genre of orthodox literature, the Purāṇas. From at least the time of Yājñavalkya, the Purāṇas had been considered a valid source of orthodox knowledge and dharma, part of the *smṛti* (YDh 1.3). Accordingly, Lakṣmīdhara was able to rely entirely on the genre of Purāṇic literature for his compilation on the subject of *pratiṣṭhā*. Ludo Rocher (1986: 87) has observed that the Purāṇas are quoted so often in Dharmaśāstra commentaries and digests as “the logical consequence of their containing materials very similar to, if not identical with, the primary sources of those texts, the dharmasūtras and dharmaśāstras.” But, with topics of *pratiṣṭhā* and image worship, digest writers turn to the Purāṇas, owing to the paucity of discussion in the primary sources of Dharmaśāstra.

In the *Kṛtyakalpataru*, Lakṣmīdhara organizes his treatment of *pratiṣṭhā* into several key topics:

the fruits of establishing a temple, etc. (*prāsādādīphala*),  
description of images, or iconography (*pratimādīlakṣaṇa*),  
the proper time for establishment rites (*pratiṣṭhākāla*),  
a general template for establishment rites (*sādhāranapratīṣṭhā*),  
specific rules for establishment of different deities (*pratiṣṭhā* of Sūrya, Śiva, Brahmā, Viṣṇu, and Devī),  
raising of the banner (*dhvajārohana*), and  
restoration of a disused Śiva-liṅga (*jirṇaliṅgoddhārana*).

He cites no Dharmaśāstra texts, but draws on many Purāṇas. Several of these are of particular importance: *Matsya Purāṇa*, *Devī Purāṇa*, *Bhaviṣya*

<sup>7</sup> Rangaswami Aiyangar (1941d), editor of the KKT, points out that Lakṣmīdhara was a contemporary with two other major Dharmaśāstra writers working at twelfth-century royal courts: Vijñāneśvara, author of the *Mitākṣara* commentary on Yājñavalkya, patronized by the Calukya ruler Vikramāditya VI, and Ararārka, also a commentator on Yājñavalkya, who was a member of the Silāhāra court based in Western India.

<sup>8</sup> There is some dispute concerning whether the *Pratiṣṭhākāṇḍa* was one of the fourteen original sections of the KKT. Twelve of the fourteen have been positively identified, and the section on *pratiṣṭhā* (whose printed edition is based on four manuscripts) was likely one of the two unidentified ones. See Rangaswami Aiyangar 1979; Brick 2015: 5.

*Purāṇa*, and *Varāha Purāṇa*. As one might expect, his treatment of the establishment of a goddess image bases itself on the *Devī Purāṇa*, and the *Varāha Purāṇa* is a primary source for his treatment of Viṣṇu-*pratiṣṭhā*. Of all the *Purāṇas*, śmidhara anthologizes most often the *Matsya Purāṇa*, which offers an early and exemplary *Purāṇic* treatment of images and temples.

The *Matsya Purāṇa* is a lengthy, varied work that treats all of the conventional subjects to a *Purāṇa*.<sup>9</sup> It discusses matters of cosmic creation and dissolution, narratives of the deeds of the deities, and genealogies of legendary rulers. It also covers numerous topics of concern to *Dharmaśāstra*, such as gift giving, ancestral offerings, impurity rules, and expiations for failures to follow *dharma*. The *Matsya Purāṇa* also devotes eighteen chapters (Chapters 252–70) to a full treatment of the subject of *vāstu*, the construction of dwelling places, or loosely architecture. As V. S. Agrawala (1963: 342) suggests, these chapters may well have been an independent treatise, a *Vāstusāstra*, that the compilers of the *Matsya Purāṇa* have incorporated into their text.

*Matsya Purāṇa* begins its discussion of *vāstu* by citing eighteen preceptors in the discipline of *Vāstusāstra*. The narrator *Sūta* proposes to offer a brief summary of their knowledge to his audience of sages. *Sūta* goes on to relate the story of *Vāstudeva*, a deity born of Śiva's sweat who subsequently serves as a foundational matrix set out for any constructed dwelling place. The geometrical diagram or *vāstu-maṇḍala* contains within it up to eighty-one squares, where forty-five different deities are invoked. This insures that any building rest on a comprehensive foundation of the divine. Religious shrines and temples are one category of dwelling place, since they house gods, but the *Vāstusāstra* also includes within its purview, many other types of buildings, homes, and palaces. *Sūta* describes to his audience such matters as auspicious times for house construction, testing and preparing the soil before construction, the proper dimensions and proportions for building elements like pillars and doors, the types of trees to use for wood, how to cut down trees respectfully, and dangerous omens that might be observed during the process of construction.

After this treatment of “secular” architecture, *Sūta* moves on to the sacred.

I will tell you the discipline of action (*kriyāyoga*) which consists in the worship of deities (*devatārcanā*) and the narration (*anukirtana*) of their deeds. Nothing else

<sup>9</sup> Determining the date of *MatsPu*'s composition presents a problem common to the *Purāṇas*. V. S. Agrawala (1963: iii) considers it one of the three oldest *Purāṇas*. Kane suggests a date not later than the sixth century CE. R. C. Hazra (1940) argues that no single date can suffice, since it is a composite work. He estimates the date of the *vāstu* section as 550–650 CE and suggests that the *Purāṇa* was compiled originally by Vaiṣṇavas in the Narmada River area. Hazra also points out that early *Dharmaśāstra* commentators like Aparārka and Hemādri (of thirteenth century Deccan) also quote from the *vāstu* section of the *MatsPu*.

in all the worlds provides as much worldly benefit and liberation. Establishment (*pratiṣṭhā*) of the gods, worship of the deities, narration of their deeds, sacrifices to the gods, and festivals are means by which one is liberated from bondage.

(*MatsPu* 258.2–258.3)

The *Matsya Purāṇa* first provides a detailed descriptive account of how images of the gods should look. This encompasses not only iconography, but also iconometry, the proportional measurements of all the body parts of the anthropomorphic statues. Sūta begins with images of Viṣṇu, in accord with the text's Vaiṣṇava orientation. He goes on to discuss many forms of Śiva, as well as images of Skanda, Gaṇeśa, Katyāyanī, Durgā Mahiṣāsura-mardīnī, Indra, Sūrya, Agni, Yama, the Lokapālas, the Mātṛkās, and many others. It is a comprehensive collection of Hindu deities similar to what one would see in temples of the early medieval period.

Following this treatment of the proper appearance of divine images, Sūta addresses the topic of *pratiṣṭhā*. Once the divine images have been fabricated, how should they be ritually established as divine? In outline, this account resembles those in the *Gṛhya-pariśiṣṭas*, but in an expanded form. A temporary pavilion must be constructed adjacent to the shrine, and this serves as a site for Vedic-style fire rites. There is a preparatory rite of *adhivāsana*, which may last for one night, three, five, or up to seven nights. (Helene Brunner-Lachaux (1968: 36) defines *adhivāsana* as “the dwelling near God, during at least one night, of objects and persons who will be central to an important ceremony requiring a ritual preparation.”) Here and throughout, the *Matsya Purāṇa* allows options of scale. A more ambitious *pratiṣṭhā* ceremony or one enjoying greater material and human resources would presumably choose a longer *adhivāsana*, leading to a greater proximity to the divine. After the preparations, the officiant has the image set up and ritually inscribes eyes onto it. Throughout the *pratiṣṭhā* rites, Vedic mantras are employed. The text also specifies that the supervising priest (*sthāpaka* or *ācārya*) should be versed in Vedas, Purāṇas, and Vāstuśāstra, and he should be of good character (*MatsPu* 265.1–265.4). The *Matsya Purāṇa* locates the establishment of images within a Vedic lineage of ritual practice.

At the conclusion of *pratiṣṭhā*, Sūta tells the sages, one should celebrate a great festival (*mahotsava*), lasting from three to ten days. He does not describe this festival, but such *mahotsavas* become a major topic in later texts of the Hindu theist schools. (See Davis 2010, for a twelfth-century Śaiva *mahotsava* guidebook.) The *Matsya Purāṇa* also provides instructions for elaborate bathing rituals (*snāpana*), involving up to one thousand jars of liquid. These are prepared and consecrated individually and then poured over the central image, conferring the powers of each onto that deity. These optional ceremonies reflect the growing scale of ritual practice within temple Hinduism during the early medieval period.



The *Matsya Purāṇa* concludes its embedded Vāstuśāstra with several chapters describing and classifying temples (*prāsāda*) and ancillary pavilions (*maṇḍapa*). The text lists twenty-one kinds of temples. These range from modest Garuḍa and Hamsa types of eight or ten *hastas* or about fifteen feet in height, up to the lofty Meru type, which should be around seventy-five-feet tall, with four doors and hundreds of peaks. The text also classifies twenty-one kinds of pavilions, scaled according to the number of pillars. Here again, the *Matsya Purāṇa* provides options of scale, so the patron and builder may select a structure conforming to their resources and capacities. But, for both temples and pavilions, proportionality is crucial. At whatever scale, the Vāstuśāstra seeks to set out proper relations of parts to the whole, whether in images, homes, temples, or pavilions.

By incorporating a Vāstuśāstra within its capacious design, the *Matsya Purāṇa* transformed knowledge of *vāstu* into *smṛti*, the remembered knowledge of orthodox tradition. And this enabled Lakṣmīdhara to quote extensive sections of this embedded Vāstuśāstra within his own digest of Dharmaśāstra teachings. Some aspects of the disciplinary scope of *vāstu*, like the story of Vāstudeva and the description of house building, did not fit into Lakṣmīdhara's treatment of *pratiṣṭhā*. He did however include large sections from the *Matsya Purāṇa*'s treatment of *vāstu*, such as the description of iconography and iconometry of divine images and the procedures to establish these images as divine icons worthy of human worship.

### THEISTS OUTSIDE SMṚTI

Concurrent with the Purāṇas, schools of Hindu theism directed toward the primary deities Viṣṇu and Śiva articulated programs of theology, personal conduct, and ritual practice. Most prominent among these early medieval schools were the Vaikhānasa and Pāñcarātra sects devoted to Viṣṇu and the Pāsupata and Śaiva Siddhānta groups centered on Śiva. These schools presented and eventually systematized teachings that were fundamental to temple Hinduism. They considered one deity to be the Absolute: a personal deity who was both identical with the Vedic Puruṣa and the Vedāntic *Brahman*, and became manifest in the world through physical forms such as anthropomorphic incarnations. Such manifestations enabled humans to enter into close devotional relationships with the embodied divinity. Within this theistic outlook, images served as one particular material form that a deity could enter to become accessible for direct worship and veneration.

In some cases, these theistic schools set out their theological and ritual programs within texts that could be classified as orthodox *smṛti*, most often in Purāṇas. So a group of Kashmiri Pāñcarātra Vaiṣṇavas, as we have seen,

presented a comprehensive set of teachings in the *Viṣṇudharmottara Purāṇa*. The Pāśupata School of Śaivas appropriated the *Kūrma Purāṇa* to make their case. As Andrew Nicholson (2014: 12–15) has argued, the Pāśupata sections of this *Purāṇa* appear to be engaged in “mainstreaming” Pāśupata teachings, previously directed at a community of yogic renunciants, for a broader and more orthodox audience. But, these schools also began to present their religious visions within new and increasingly voluminous corpuses of religious texts that did not affiliate themselves directly with *śruti* or *smṛti*. Framed as the direct teachings of the preeminent god (whether that be Viṣṇu or Śiva), they bypassed the need for Vedic authorization. Most notable of these theistic canons were the Pāñcarātra Vaiṣṇava Saṃhitās and the Śaiva Āgamas of the Śaiva Siddhānta School. Scholars often refer to these genres of texts collectively as works of Hindu Tantra, a useful but elusive category. The full textual history of these bodies of religious literature is only beginning to be clarified by scholars like Alexis Sanderson (2009), Dominic Goodall and Harunaga Isaacson (2011), and others.

By and large, the Saṃhitās and Āgamas did not directly dispute the authority of the Vedas, as the heterodox Jains and Buddhists had previously done, but they did subordinate the Vedic tradition in various ways (Davis 1991: 29–31). They might relocate the Vedas as a lesser revelation that has been supplanted by the direct teachings of the Supreme Lord. They might claim that the Vedic texts were valid but less comprehensive than the Saṃhitās or Āgamas, which gave a fuller portrayal of the divine. They might allege that the Vedic teachings were suitable for humans of lesser attainments, while only the new theistic texts enabled their votaries to attain the highest state of being. They usually replaced the old Vedic mantras with other more potent Tantric mantras. Within their ritual programs, they maintained many elements from the Vedic program, but clearly placed image worship above the Vedic sacrificial cult. And they were naturally critical of the iconophobic orientation within some communities of the orthodox.

One of the earliest Śaiva Āgamas, the *Mṛgendrāgama*, illustrates this measured repositioning in its frame story.<sup>10</sup> At the onset of this introduction, a group of ashram-dwelling sages has set up a Śiva-liṅga and is offering worship to it. The Vedic god Indra becomes aware of their practice and decides to test the sages’ commitment to this new form of ritual. He disguises himself as an ascetic and visits the ashram. “Why aren’t you following the *dharma* enjoined by the Veda?” Indra challenges. The sages reply that the worship of Śiva, as Rudra, is indeed recognized in the Vedas. But, Indra continues his

<sup>10</sup> *MṛĀ vidyā* 1.2–1.19. See Hulin 1980. *MṛĀ* was commented on by the tenth-century Kashmiri Śaiva exegete Nārāyaṇakanṭha, and it may be provisionally dated to the eighth or ninth century CE. An earlier Śaiva Tantric work that sets out procedures for *pratiṣṭhā* is the *Niśvasastattvasaṃhitā*, a text that probably dates to the seventh century (Goodall 2015).

examination of the sages by citing Mīmāṃsā principles. “The divinity is only sound,” he argues, and continues, “If it were other than sound, a deity could not be present among sacrificers in different places at the same time.” The sages defend themselves against this orthodox criticism. “What if that principle were applied in the case of the word ‘pot’ the same as in the word ‘Indra,’ since both consist of sound? But the word ‘pot’ does not hold water, and the sound of the word ‘moon’ does not shine.” They go on to explain that divine bodies are not spatially limited the way human ones are, and they cite examples of Śiva’s great powers to liberate persons from bondage. Indra is so pleased by their stout defense of Śiva-worship that he reveals his own lordly form. The sages immediately bow and praise Indra with hymns from the Vedas. In return, he offers them a boon. They request that he teach them the knowledge of Śiva, and Indra goes on to relate the teachings of the *Mrgendrāgama*.

This brief narrative has the effect of relocating Indra, preeminent among the Vedic gods, as an acolyte of the new cult directed to Śiva. He is even placed in the uncomfortable position of using Mīmāṃsā arguments to deny his own corporeal existence, albeit as a rhetorical strategy to test the sages. The sages may be practicing a non-Vedic form of Śivaliṅga worship, but they, nevertheless, claim that it also rests on passages found in the Veda, and they are readily able to recite Vedic hymns celebrating Indra when he appears before them in his proper form.

*Mrgendrāgama* directs itself primarily toward an audience of initiated Śaiva mendicants, much like the sages in the frame narrative. In Śaiva texts, these religious specialists are often classified as *sādhakas*, “mantra adepts” (Brunner, *Sadhaka*). In its section on ritual action, the *Mrgendra* focuses on the daily practices of such an adept, and the practice of daily worship figures prominently. In a pure place of worship, it begins, “one must become a Śiva and then worship Śiva, inside and outside” (*MṛĀ kriyā* 3.1). The initial phase of worship, self-purification, is expanded into a veritable self-deification. The worshiper purifies himself by transforming his own impure body into a divine one, by imposing mantras onto it. The worshiper becomes, in the dualistic theology of Śaiva Siddhānta, a temporary support for the presence of Śiva. And this self-transformation leads to an interior worship. The worshiper invokes Śiva onto a throne in the center of the heart, and then makes offerings to that manifestation of Śiva. The ensemble of services is similar to other descriptions of *pūjā*.

Bath, clothing, sacred thread, incense, sandal-paste, unguents, all the ornaments, the chowry, lamp, mirror, divine weapons, garlands, betel-leaf, drink and food, canopy, parasol, and upraised shining banner—one should give [to the interior Śiva] these services, accompanied by the mantra HRḌ, or the mantra OM, or with another mantras employed in sacrifices. (*MṛĀ kriyā* 3.15–3.17)

But, these are interior services, performed through visualization and mantras, not external physical presentations or actions. The worshiper uses Tantric

Śaiva mantras for these ritual acts, though the text also allows one to utilize “sacrificial” mantras that, according to the commentator, could be the Vedic *gāyatrī* mantra.

After interior worship, the worshiper proceeds to the worship of Śiva outside himself. In the *Mṛgendra*’s account, this need not be a Śiva-liṅga; a sanctified platform (*sthaṇḍila*) will also serve. Whatever support is used, it must also be transformed into a suitable body for Śiva to inhabit, utilizing much the same procedures the worshiper used for his own body. And much the same pattern of services may be offered. However, it is important to keep in mind that the *Mṛgendrāgama* sets out practices for an individual ascetic practitioner, not a temple priest. Other later temple-oriented Āgamas like *Kāmikāgama* provided elaborate accounts of the services of worship prescribed for public institutions of worship in southern India (Davis 1991: 147–62). Such expansive Āgamas also incorporated extensive accounts of iconography, temple architecture, and other aspects of Vāstuśāstra.

Hindu Tantra works like the Śaiva Āgamas and the Vaiṣṇava Saṃhitās were not classified as *smṛti*, and, hence, they were off limits to Dharmasāstra commentators and digest compilers. However, the boundaries were not always so clear. Here again, the Purāṇas might act as an intermediary genre, orthodox enough to qualify as *smṛti*, but flexible enough to assimilate Tantric teachings. The *Agni Purāṇa*, for example, incorporated large portions of a Śaiva Siddhānta work, the *Somaśambhupaddhati*, treating matters of daily worship of the Śiva-liṅga, establishment of icons and shrines, as well as the various initiations for members of the Śaiva community.<sup>11</sup> A Purāṇic imprimatur might render these teachings acceptable within orthodox circles. But, the process could also provoke controversy. Sanderson (2009: 250) notes the case of the twelfth-century Bengali ruler Ballālasena, composer of a massive digest on gift giving, the *Dānasāgara*. He rejects several Purāṇas, including the *Agni Purāṇa*, from consideration as sources of *dharma*, since they contain instruction on Śaiva initiation and the establishment of images.

<sup>11</sup> Brunner-Lachaux 1998: lix–lxi. See also Sanderson 2009: 249–51 on Smārta incorporation of Śaiva ritual, mediated through several Purāṇas.



# Part III

## Influences



## History of the Reception of Dharmaśāstra

*Donald R. Davis, Jr.*

The primary social context for the reception of Dharmaśāstra throughout its long history was the *gurukulam*, the “family,” comprised of a teacher and student disciples. As with most educational contexts, this one too was both a sincere effort to transmit knowledge across generations and an elite institution of power consolidation and control. To know *dharma* through its texts was both to enter the deeply religious ritual life of an orthodox Brahmin and to claim a special social status premised on religious and legal knowledge. In short, scholars of this tradition believed in its efficacy and its claims but they also understood the social and political advantages it afforded those who mastered it. Dharmaśāstra had both an intrinsic value as a repository of sophisticated religious, legal, and intellectual thought and an instrumental value as a handbook of jurisprudence, substantive law, ritual instruction, and political strategy. Given the semiprivate nature of the guru’s household and the students who lived and studied there, however, we cannot see the inner workings of this basic social context but rather only the byproducts of this relationship.

The direct results or products of this educational setting are its graduates and the texts they wrote. We can see hints of the orality and the exchange that must have characterized the discussions in a guru’s house in the texts themselves. The texts are frequently framed as the systematic responses of a sage to requests for an exposition of *dharma*. The opening lines of the *Laws of Manu* read:

Manu was seated, absorbed in contemplation, when the great seers came up to him, paid homage to him in the appropriate manner, and addressed him in these words: “Please, Lord, tell us precisely and in the proper order the Laws of all the social classes, as well as of those born in between.” (*MDh* 1.1–1.2, Olivelle’s trans.)

Within the texts and their commentaries, the scholastic style of objection and reply mirrors an oral exchange: “if you say such-and-such, then we say



no” (*iti cen na*). Though the debates are often between authors of comparable status, the explanation is nevertheless pedagogical, hoping to instruct readers or listeners as to the correct interpretation of a subject. The commentarial style consists of other features or services that intend to make a foundational text intelligible to students. Each of these, we suspect, resulted from an oral explanation that made use of synonyms, supplied words, reframed grammatical structures, and argumentative refutations (Tubb and Boose 2007: 3–5). In summary, the reception of Dharmaśāstra internal to the tradition itself took shape as training in an academic field, the philological methods for which were shared across several fields of study. Though the rest of this chapter focuses on the reception of Dharmaśāstra outside of its inner circle of practitioners and transmitters, it is worth keeping in mind the educational setting of its internal transmission.

## THE INFLUENCE OF DHARMAŚĀSTRA ON EXPERT TRADITIONS IN SANSKRIT

What started in a guru’s house spread quickly into other areas. The wider reception of Dharmaśāstra into other social institutions and historical sources attracts our attention precisely because it did not remain confined to an isolated, elite transmission from teacher to disciple. Dharmaśāstra infiltrated many areas of the cultural life of India far beyond its intended audience of orthodox Brahmins. Still, Dharmaśāstra rules rarely controlled other cultural institutions directly. Rather, hints and traces of the traditions are found in sources ranging from epic literature to didactic story to epigraphy.

In many Sanskrit traditions, the idea of *dharma* in Dharmaśāstra was a key instrument of the “the brahmanical regulatory project” (Squarcini 2011: 135; cf. Stein 1969). Other Sanskrit texts cite, use, allude to, and contest Dharmaśāstra, and this intertextuality is one of the most pervasive ways in which the *dharma* of Dharmaśāstra moved into so many branches of Hindu texts, not to mention influencing Buddhist and Jain thought. *Dharma* was one of the most fought over terms in the religious history of India (Olivelle 2005c). Nevertheless, Dharmaśāstra, along with its philosophical partner the Pūrva-Mīmāṃsā, laid claim to preeminence as the “science” of *dharma*. Part of the motivation for its transmission was the promotion of a relatively stable concept of *dharma* as *varṇāśramadharma*, the duties of the castes and life-stages. The detailed aspects of *dharma* in the Dharmaśāstra are contained in Part 2 of this book. By about the seventh or eighth century CE and the work of Kumārila and Bhāruci, this way of looking at *dharma* had become the dominant meaning of the term in Hindu traditions. *Dharma* in the Dharmaśāstra thus served as a persistent

touchstone or point of reference for other Hindu traditions that built on, challenged, or even rejected it (Davis 2007b).

To being with, the epics *Rāmāyaṇa* and, especially, *Mahābhārata* present what should be considered competing conceptions of what *dharma* is and how to accomplish it. Part of the difference lies, however, in the manner of expression, namely the difference between narrative and treatise. Stories have to present complexity and conflict in relation to moral problems. Plots are hard to move otherwise. Systematic treatises, by contrast, may present moral problems in straightforward normative terms. The gray areas of moral life are part and parcel of good story, but anathema to normative texts.

For the characters in the *Rāmāyaṇa* of Vālmīki, there are moral dilemmas and plenty of conflict, but their solutions rarely seem difficult or unclear. Rāma always seems to know just what to do and why, even if the moral justifications sometimes feel like technicalities. The nature of *dharma* in this text ranges from piety and righteousness to caste, family, and legal duties (Brockington 2004). In spite of this range, the *Rāmāyaṇa* emphasizes *dharma* in formalistic or legalistic terms that are less common in the *Mahābhārata* (see Matilal 1980–1). Though immoral decisions and acts move the plot forward at every turn, for Rāma and his close narrative partners, Rāma almost never has doubts about what is right and lawful. To this extent, formal norms akin to those of Dharmaśāstra lurk within the narrative structure of the *Rāmāyaṇa* and its morally assured characters.

In contrast, the *Mahābhārata* did not receive a formalistic notion of *dharma* from Dharmaśāstra into its narrative proper. Moral quandaries, dubious acts, and complex moral figures run through the massive story from start to finish. *Dharma* in this literary world is ever subtle (*sūkṣma*) and hard to discern, even and especially for its righteous heroes (Fitzgerald 2004b: 672–3). As a result, the nature of *dharma* in this text shifts and eludes simple categorization, functioning perhaps as a proving ground of competing notions of *dharma* (Hiltebeitel 2011).

In the twelfth and thirteenth books of the epic, however, there appears a long set of instructions by the dying preceptor Bhīṣma, about a range of *dharma* topics, from kingship to social emergency to women. As Hopkins (1885; 1902: 17–23) and Bühler (1886: 533ff.) showed long ago, many passages from the received text of the *Laws of Manu* are either directly quoted or found in reworked parallel forms in the *Mahābhārata*. Almost all of the directly parallel passages come from the two didactic, “Dharmaśāstra-like” books of the epic. These books interrupt the narrative in a way that has struck most readers as a later interpolation. Nevertheless, there may be good reasons to read the narrative and didactic portions of the text as a cohesive whole (Bowles 2007). The style, as well as some of the content, is hard not to liken to a Dharmaśāstra in its normative rather than narrative exposition. The narrative books of *Mahābhārata* did not directly accept Dharmaśāstra, but the didactic

portions did. Why would the authors or redactors of the story feel compelled to incorporate a stylistically incongruous, yet very lengthy, section of normative thought into the story? My suggestion would be that these books are a response by Brahmins of the “*Mahābhārata* department” to the power of early syntheses of *dharma* such as the Dharmaśūtras and the *Laws of Manu*. The *Mahābhārata* encompasses the Dharmaśāstra in a way that claims the epic to be a superior synthesis of *dharma*, even as it draws upon the influential formulation of *dharma* in Dharmaśāstra. In this way, the great epic had to respond to a culturally powerful discourse by creating an alternative discourse that nevertheless depended upon the normative mode of Dharmaśāstra.

Other genres such as the Purāṇas borrowed verbatim from Dharmaśāstra. At one extreme, we can point to the wholesale reproduction of the entire Book of Legal Procedure from the *Laws of Yājñavalkya* in the *Agni-Purāṇa* and of the majority of its two other books, *Good Conduct* and *Expiation*, in the *Garuḍa-Purāṇa* (see Mandlik 1880: lvii–lviii). Likewise, the *Bhaviṣya-Purāṇa* reproduces the first three chapters of the *Laws of Manu* (Laszlo 1971). The open texture of Purāṇas allowed for the incorporation of many different textual genres under this amorphous label. Single verses, short passages, and whole chapters from known Dharmaśāstras find their way into many Purāṇas. In spite of their name, which means “ancient lore,” the Purāṇas are generally a more recent genre of Sanskrit text, associated especially with the rise and eventual dominance of temple cultures across India between the fifth and tenth centuries CE. Initially, therefore, it was the Purāṇas that borrowed from early Dharmaśāstra. By about the ninth or tenth century CE, however, *dharma* texts began to cite Purāṇas by name, though hesitantly. And by the thirteenth century CE, and the rise of a new class of *dharma* digests (*nibandhas*), new topics of Dharmaśāstra such as pilgrimage and *pūjā* rites were freely expounded with the help of Purāṇa materials (see Chapter 2). The appeal to Purāṇas for norms concerning such topics was necessary because earlier Dharmaśāstra said very little about these subjects. Digest writers thus needed material for matters that, by their time, were considered part of *dharma* in their community, or that they wanted to be so. In the seventeenth century, in texts such as the *Vīramitrodaya*, we can see that Dharmaśāstra set few limits on its purview, with almost no area of religious, legal, or daily life beyond its interest, even *bhakti* devotionism. One may view these transformations as a gradual assimilation of new ideas and practices into Dharmaśāstra, an effort to bring more and more topics under the heading of *dharma*. Nevertheless, some textual genres—most philosophical traditions, Tantric literature, and vernacular devotional texts, for example—stayed largely independent and rarely found expression as part of a Dharmaśāstra.

Alongside Purāṇa texts, we should mention the regular use of Dharmaśāstra concepts, rules, and sayings in the didactic story literature of ancient and medieval India. The famous *Pañcatantra* employs many principles of *dharma*

in its fables intended to instruct dullard princes (Sternbach 1965–7). Story literature such as the *Kathāsaritsāgara* and historical works such as *Rājatar-aṅgaṇī* similarly weave rules of *dharma* and categories of Dharmaśāstra into their plots, often exploiting the gap between norm and practice to create intrigue and plot twists. Like the Epics, these stories yield some insight into the contemporary consciousness of its authors about religion and law, as well as how the received norms of Dharmaśāstra influenced the flux of real life (Davis and Nemec 2016).

Medieval sectarian traditions often adopted the form of Dharmaśāstra to propound rules relating to their religious regimens and rules of conduct. During the medieval period, for example, one dramatic and important shift in Hindu thought played out over the nature of and rites for ascetic renunciation of the world. Philosophical and sectarian divisions about renunciation generated new Dharmaśāstra treatises that recast renunciation as a form of *dharma*, not a rejection of it (Olivelle 1986, 1987–8, 1995a). Further, as early as the sixth or seventh century CE, authors of Śaiva Pāśupata sects created a corpus of normative texts under the heading of Śivadharmā. The contents of the corpus provide liturgical and behavioral prescriptions for devotees but take the form of and call themselves “śāstra” (Bonazzoli 1993; Magnone 2005). Familiar topics, including gifts, ritual offerings, karma’s effects, purification, and expiation, are presented in a style close to and often echoing Dharmaśāstra. The Śivadharmā texts, therefore, “explicitly recast classical Dharmaśāstric ideas in accordance with their own theological and liturgical commitments” (Lubin: n.d.). Parts of the *Viṣṇudharmottarapurāṇa* too read like a recasting of Dharmaśāstra for the new religious world and new theological outlook of the Vaiṣṇava Pāñcarātras (Inden 2006: 167). As noted for other genres, the power of Dharmaśāstra here came down to a cultural expectation that a complete religious tradition needed a Dharmaśāstra-like text to bolster its normative and social claims. The substance of such imitative genres differed dramatically, but every tradition needed a *dharma* to be spelled out in one way or another.

## THE ROLE OF DHARMAŚĀSTRA IN EPIGRAPHICAL AND DOCUMENTARY SOURCES

Moving from the texts of various expert traditions, we should now explore the reception of Dharmaśāstra in epigraphical and transactional writings from premodern India. While modern scholars and colonial lawyers have created the habit of citing Dharmaśāstra texts by chapter and verse, the truth is that the *dharma* texts were not often cited in this way outside of expert traditions in Sanskrit. The modern habit thus sets up false hopes when reading other

historical sources that we should expect the rules of Dharmaśāstra to be cited to justify or prove ethical positions, legal verdicts, or religious practices. Instead, we get brief allusions, partially congruent concepts, and ornamental invocations, leading us to think that Dharmaśāstra did not have great influence because it was not cited the way we cite it today.

We should remember that Dharmaśāstra developed at the same time as other types of writing did and it often codified norms that existed outside of it rather than prescriptively imposing norms on practice. It is usually impossible to tell whether a particular rule is the cause of or the effect of a cultural norm observable in inscriptions, archival materials, and transactional records. It is part of the nature of Dharmaśāstra as a genre to erase its social and historical origins, even though comparison with other historical materials can frequently suggest times and motivations for specific innovations. The dates and names found in inscriptions and documents give us both a better chronology of the development of Hindu jurisprudence and a way to situate the reception of Dharmaśāstra in particular times and places (Michaels 2010c). Both are essential to any responsible history of this tradition, as it affected the history of Hinduism.

One way to corroborate the relevance of rules of Dharmaśāstra is to find epigraphical sources that propagate the same or similar rules. Even if direct reliance is not mentioned, we can still speak of a shared culture of religious law. In 1426, Brahmins of the Paḍaivīṭu province in Vijayanagara promulgated a “statutory reform of marriage practices” that required marriage of the *kanyādāna* (gift of the bride) variety, and specifically prohibiting marriage that involved either bride-price or dowry (Lubin 2015: 247–8). This inscription is a rare case of implementing a norm of religious law that is clearly specified in *dharma* texts. Public expiations for legal offenses are recorded in early modern Kerala following *dharma* rules for penance (Davis 2004: 93–4). Similarly, practices of “restorative ordeals,” voluntary expiations undertaken to regain one’s reputation, show a reliance on Dharmaśāstra principles (Brick 2010). Famously, land grants, especially religious donations to temples and Brahmin communities, in many parts of India, incorporated verbatim Dharmaśāstra warnings to future rulers not to interfere with the grant (Jolly 1913; Sircar 1965a: 170–201). Finally, we also find epigraphical examples of caste status and privilege being determined by reference to *dharma* texts and invocations of the five “great sins” (*mahāpātaka*) of Dharmaśāstra (Veluthat 1993: 159–61). From this sort of historical evidence, we may safely conclude that Dharmaśāstra exerted considerable influence on locally administered systems of religious law.

I end this section by mentioning documents associated with Hindu monasteries (*maṭha*), temples, and Brahmin councils of various names (*sabhā*, *dharmādhikaraṇa*, *samaya*, *saṅketa*, *svarūpa*, etc). For at least the last 600 years, these Brahmin authorities have received inquiries and requests from

laypeople, rulers, and fellow Brahmins about how to adjudicate problems or resolve conflicts that have arisen in their lives or communities. The request may be simple: is a Hindu allowed to marry someone of the same *gotra* or not? Or, it may be more complex: if a member of a certain, matrilineal caste makes a gift to his son or other relative, is he required to have the consent of his sister's son, his rightful heir? In every case, however, some doubt about religious law prompts a question to a recognized, authoritative body, which then responds to the question. The process involved is familiar from other systems of religious law in which *responsa*, formal legal opinions on doubtful matters, form important sources of law making (Davis 2014). The fact that Brahmin authorities delivered their opinions with reference to Dharmaśāstra makes these *responsa* the most direct way that this tradition influenced the wider public. It is difficult to tell exactly how old *responsa* practices were in Hindu traditions, especially since many or most may have occurred orally. References to Brahmin councils called *pariṣad* appear in early *dharma* texts and suggest the possibility that religious law was promulgated primarily through networks of councils and the answers they provided to inquiries and dilemmas posed by their constituencies.

The epigraphical and documentary evidence for the influence of Dharmaśāstra remains an open field for further research, in spite of the recent efforts cited above to explore these historical sources. Nonetheless, even the work accomplished so far demonstrates that Dharmaśāstra touched many areas of cultural life in classical and medieval India. In particular, the names, dates, and places in such sources help us create suitable historical frameworks for the history of Hinduism. In short, these sources disrupt any timeless image of Hinduism and bring Hinduism down to the ground of real people in real moments.

## DHARMAŚĀSTRA AND THE INVENTION OF “HINDU LAW” UNDER COLONIALISM

In the late 1700s, the early Orientalists imposed a model derived from the history of Roman law on to the Sanskrit texts they encountered and then commissioned as part of their decision to administer native law. Between 529 and 534 CE, at the direction of the Roman emperor Justinian, the jurist Tribonian and a large team created a comprehensive statement of Roman law, “a fair and everlasting monument,” in Gibbon’s phrase, that was divided into three parts known as the Code, the Institutes, and the Digest (Humfress 2005: 161). It was, therefore, both an homage and a majestic claim to have named the first three English translations of Dharmaśāstra the *Code of Gentoo*

*Laws* (Halhed 1776) the *Institutes of Hindu Law* (Jones 1794), and *A Digest of Hindu Law* (Colebrooke 1801). This pretentious inauguration of the colonial appropriation Dharmaśāstra set in motion a gradual but deliberate decline in the need for and the value of traditional study of the texts. In spite of its intention to do exactly the opposite, the colonial government dismantled traditional Hindu law and jurisprudence. First, it reduced Dharmaśāstra to a handful of practical *legal* topics. Second, it adjudicated Hindu law in colonial courts that followed English procedure. Third, it systematically modified the textual law known to the British with English law according to the doctrine of “justice, equity, and good conscience” (Derrett 1962b).

Understood on the model of ecclesiastical law in England, Dharmaśāstra was mined for its “religious law,” and the rest was ignored (Lariviere 1989b: 758–60). Only those legal portions of the traditional texts that dealt with topics pertaining narrowly to family law (inheritance and marriage) and religious matters (especially caste) were accepted as “Hindu law.” Huge areas of law and nearly all ritual matters in Dharmaśāstra were excluded. Crime, contract, procedure, state administration, and commerce, for example, were all eliminated. Colonial Hindu law thus received Dharmaśāstra on its own terms and in such a way as to sever the connection it had to traditional pandit culture.

The story of how Dharmaśāstra was identified and then promulgated by the colonial government as “Hindu law” looks strange more than 200 years later (see R. Rocher 2010). In 1772, fifteen years after the Battle of Plassey, a government run by a corporation, the East India Company, and headed by its first Governor-General Warren Hastings made the decision to implement laws of the Hindus and Muslims that, in their understanding, “continued, unchanged from remotest antiquity” (see Cohn 1996: 26–9). On the Hindu side, the source of those “unchanged” laws was to be the Dharmaśāstra, though only its “religious” portions. In this way, it was thought, Indians could be governed by their own essential principles of law and religion, albeit in English law courts with British judges and staff who had little or no knowledge of India’s history, culture, or languages.

Whatever the intentions were, the effect of this policy was to initiate a gradual, but deliberate takeover of both India’s legal system and its religious practices. The religious matters ceded to “Hindu law,” inheritance, marriage, adoption, and caste, were “safe” in the sense that the British had few moral qualms about letting Hindus follow their existing practices in these areas. In many other areas of religious life, however, the colonial government felt entitled to reform practices such as widow burning, widow remarriage, child marriage, idolatrous rites, temple administration, and religious endowments (Davis and Lubin 2015). In fact, the whole setup of colonial governance in terms of religious toleration forced Indians “to frame protest against state interference in the language of religious rights,” and it implies that “far from a contradiction in terms, the secular state invariably interferes with religion”

(Adcock 2013: 24). What would be tolerated as religious practice and what would be reformed or abolished as repugnant to natural principles were determinations that the state authorities made.

The reception of Dharmaśāstra as “Hindu law” under Hastings’ *Judicial Plan* (Desika Char 1983) and the subsequent translations of Sanskrit *dharma* texts into English legal codes facilitated justifications of early colonial rule as benevolent and protective. More importantly, the selective *dharma* corpus used by the British became a convenient representation of who “Hindus” were and what their religion was. In short, the colonial state’s first official image of Hinduism was the one presented in early translations of Dharmaśāstra. First impressions being hard to dislodge, the Brahmanical and *dharma*-centric view of Hinduism quickly settled into the background of studies and views of Hinduism for at least the next hundred and, some would say, two hundred years.

Basic ideas of religious life in Dharmaśāstra became cornerstones of the ideal “Hindu” life. Hindus had four castes and four stages of life. They performed five great sacrifices in their domestic worship. Brahmins were the undisputed leaders of Hindu communities. The lowest caste, the *Sūdras*, served the “twice-born” castes as their only religious duty, while Brahmins obsessively worried about how many clumps of earth to use when ritually and hygienically cleaning themselves. These and other stereotypes emerged from the pages of freshly translated *dharma* texts, laying a firm foundation for the Brahmanical view of Hinduism both in scholarly and administrative circles. Even worse, actual Hindus had to contend legally and religiously with this standard of Hinduism, which shaped the terms of their own efforts to define and determine the course of Hindu institutions and practices.

The legal protection and promulgation of Dharmaśāstra were bolstered by the simultaneous appointment of “native law officers,” to assist the colonial courts both with their knowledge of the texts and their ability to interpret the litigants’ pleas in local languages. The earliest translators and judges, however, harbored deeply prejudiced suspicions about the character and corruptibility of these Indian assistants to the courts. Though the court pandits remained intact until 1864, from the beginning, the British tried to diminish their involvement in the determination of the law and even in the determination of the facts. As case law developed and more *dharma* texts became available, textual representations of Hinduism in legal circles replaced conversation and engagement with actual Hindus almost completely. Thus, the colonial legal image of Hinduism became a cornerstone of the wider Orientalist image of Hinduism in Said’s sense (1979).

By the mid-nineteenth century, while the reception of Dharmaśāstra in legal circles had been focused on medieval commentaries concerning inheritance, marriage, and adoption, scholarly interest in the texts as sources of historical and cultural knowledge grew. Stenzler’s translation (1849) of the *Laws of*



*Yājñavalkya* was the first full translation of a root-text besides Manu, soon to be followed by Bühler's translation of the Dharmasūtras (1879–82) and Jolly's translations of the *dharma* texts of Viṣṇu (1880), Nārada, and Bṛhaspati (1889), in the Sacred Books of the East series. The Indological penchant for origins and ancient ritual slowly displaced the practical interest in Dharmaśāstra. Increasing academic work on the full range of *dharma* topics revealed the large gap between ancient text and contemporary practice, to the point where severe critics of the promulgation of Dharmaśāstra as Hindu law emerged in the third quarter of the nineteenth century (Goldstücker 1871; Nelson 1877). Instead, colonial policy shifted toward custom as the practical source of law for Hindus and others, provoking large projects to collect customary laws in various parts of India (Tupper 1881, Moore 1905).

One final burst of interest in Dharmaśāstra during the colonial period arose in the first quarter of the twentieth century, led by Indian scholars who had both traditional Sanskrit education and training in English law. The research and translations of scholars such as Kane, Gharpure, Jha, Laxmanshastri Joshi, Mandlik, Sankararama Sastri, and many others gave studies of Dharmaśāstra a renewed scope and breadth. It should not diminish the fact that this work remains essential—indeed, unsurpassable in many ways—for modern scholarship to say that it was generally motivated by nationalist aspirations and hopes that a sophisticated, modern Hindu law might be developed for the new nation. On the one hand, these scholars held genuine respect for English law and were habituated to its procedures and institutions. On the other, they felt a pride in the wide-ranging, elaborate legal thought of Dharmaśāstra and its potential as a basis for modern law. Just prior to Independence, therefore, intense debates took place over the advisability of preserving Hindu and Muslim law as separate systems of personal law versus a uniform civil code (UCC) for all Indians. The former plan won the day, but the Constitution of India (1950) included a directive for the state to create a UCC that to this day has not been followed (see Narula 2010).

## RELEVANCE OF DHARMAŚĀSTRA AFTER INDIA'S INDEPENDENCE

In the preceding section, I gave the purposeful impression that the transmission of Dharmaśāstra was given over to British administrators, European scholars, and Indian lawyers. It is important to see how the official presence and reception of this tradition moved into state and university domains. We must remember, however, that traditional scholarship and transmission of the texts continued, although to a diminishing extent. A few new texts

were produced, and a few outstanding teachers remained. Some ideas and expectations from Dharmaśāstra had become part of the “cultural DNA” for certain Hindu communities and a lingering presence of traditional pandits gave yet some life to a tradition being strangled by state and university institutions (Derrett 1957a). In a meaningful way, civil society retained a principled commitment to Dharmaśāstra, even if the commitment was largely symbolic and not grounded in direct knowledge of the texts (Dhavan 1992). The vanishing community of Dharmaśāstra pandits, however, no longer influenced public discourse around Hinduism.

The Hindu Code Bills of the 1950s solidified a nominal presence for *dharma* ideals in the form of statutory norms that had some weak connection to Dharmaśāstra. The legislation really continued the colonial system of personal law, but its codified form obviated once and for all any real need to consult Dharmaśāstra directly (Williams 2006). Being a legal Hindu was now defined in English through these statutes and the case law that built upon them. As a result, the official reception of Dharmaśāstra by the state effectively ended with the passage of these bills. A few important additional reform bills only confirmed that, in Derrett’s words, “for practical purposes, Hindu law died on the 27 May 1976” (1978: vii).

Judicial opinions in contemporary India will occasionally refer to arguments made in Dharmaśāstra or principles derived from Mīmāṃsā. In every case, I have seen, however, the legal basis for the decision rests upon statute or precedent, not upon the appeal to traditional Hindu law rules or interpretations. In India’s current legal system, therefore, the older texts provide corroborative support, though most references are ornamental flourishes on a decision made on other grounds.

Dharmaśāstra remains an important symbol of Hindu society and identity, at least for upper-class and upper-caste segments of the population. Many Brahmin families, and some others, continue to consult *dharma* texts and family traditions based on them to conduct their domestic rites. That said, whatever importance Dharmaśāstra has today (and for many Hindus it is not much at all) depends on the image of this tradition as a repository of Hindu wisdom and normative standards. Parallel systems of religious law retain a living class of experts who continue to produce new work that keeps their traditions alive, even when they are folded into state legal systems—rabbis who know and debate Halakhah; *muftis* and *kadis* who interpret the Quran and Hadith; canon lawyers who work to understand and enforce the law of the Church. The experts of Hindu law, the Brahmin pandits who know and debate Dharmaśāstra, have all but disappeared. Hindu law, as preserved in a heavily abridged form in India’s legislative and judicial systems, lacks a thriving independent class of experts to provide dynamism and fresh ideas that draw upon the traditional system. As mentioned and lamented in the introduction to this volume, the most active group studying Dharmaśāstra today, therefore,

is the small community of university-based scholars around the world who continue to make the case that the tradition is incredibly subtle, complex, and influential. While acknowledging that the drive to push Dharmaśāstra studies into academic circles has contributed to its gradual disappearance outside of the university, we nevertheless continue to press the case that the history of Hinduism and the history of Dharmaśāstra remain inextricably linked and the two histories must be told together.

## A Buddhist Monastic Code as a Source for Indian Law

*Gregory Schopen*

Buddhist texts must be one of the few things that P. V. Kane was not particularly interested in. References to Buddhist texts—or indeed to “Buddhism” or the Buddha—are rarely met in the thousands of pages of his enormous *History of Dharmaśāstra*, and when they are the references are overwhelmingly to Pāli texts: when Buddhist *Vinaya* or monastic “law” is cited or referred to, for example, it is always only the Pāli *Vinaya*, and often oddly enough, only in its English translation. This cannot be because the Pāli *Vinaya* was the only *vinaya* material that was easily available. In fact what is from the point-of-view of legal history one of the most important sections of another Buddhist *Vinaya*—the *Cīvaravastu* of the *Mūlasarvāstivāda-vinaya*—was published in Sanskrit in 1942 from Calcutta. But, here it is not impossible that Kane was the victim of his own assumptions. He seems to have assumed and certainly asserted that “Buddhists had hardly any independent set of juristic ideas or works different from those of the brahmanical jurists...”<sup>1</sup> Since Kane was focused primarily on “juristic ideas or works,” Buddhist texts would have had little or no importance for his project.

Kane does not give any examples to support his claim here, and his terms of reference—“Buddhists,” “Brahmanical”—are entirely too broad: while “Brahmanical” might be twisted into *Dharmasūtra*/*Dharmaśāstra*, “Buddhists” could be located in a very wide range of texts. If anything has become clear in recent years, it may be, in fact, that there is no single monolithic “Buddhist” view of anything, and this appears to be especially true of *vinaya* or law, about which at least learned Buddhists argued endlessly. The multiplicity of *vinaya* or law traditions composed by Buddhists is certainly an obstacle to testing

<sup>1</sup> Kane III: 640, but notice that this assertion is made in arguing against there having been “Buddhistic influence” on the *Mitākṣarā*.

Kane's assertion in his terms, and the difficulties are compounded by the fact that the various Buddhist *Vinayas* are unevenly preserved and have been even more unevenly studied. The Pāli *Vinaya*, for example, is by far the best known, and although what Kane says may—at least in part—apply to it, the evidence is accumulating that it is the least representative of the extant *Vinayas* (Clarke 2009). This, however, has only become visible when those other *Vinayas*—preserved largely in Chinese and Tibetan translations—have been taken into account, and this has rarely been done. Comparative *vinaya* studies, moreover, have been more consistently focused on finding similarities and have frequently passed over some sometimes startling differences.

But, if testing Kane's assertion in his broad, global terms is neither practicable nor viable, a much more modest test might be. We might here put his assertion alongside one of the lesser known *Vinayas* and see if it can hold up. The *Vinaya* in question is the *Mūlasarvāstivāda-vinaya*, and in size, it is a work that makes even *History of Dharmaśāstra* look small. Significant parts of it have survived in Sanskrit in an early (seventh-century) manuscript from Gilgit, and lengthy excerpts from it—often clumsily done—are preserved in a much later Sanskrit anthology called the *Divyāvadāna*. But, the most complete version of this *Vinaya* appears now to be available only in its Tibetan translation and this translation can be a little daunting: it fills thirteen fat volumes and is more than 8,000 pages long. Much of its bulk, it is true, is made up of story or narrative literature, but even this cannot be safely ignored since such literature in India—as Sternbach (1964–7, part II), for one, has clearly shown—very often deals with legal issues.

Size, however, is not the only difficulty involved in using the *Mūlasarvāstivāda-vinaya* to test Kane's old assertion: chronology is most certainly another. Especially when similarities are encountered between this Buddhist *Vinaya* and the “juristic ideas or works... of the Brahmanical jurists,” it would be nice to determine their relative priority. But, this is doubly difficult. The dating of the *dharma* literature still is, in Richard Lariviere's seemingly immortal words, a “chronological house of cards,” (1989a: ii.xx), and the dating of this *Vinaya* is almost equally uncertain or insecure. For a long time it was dated late. The great Belgian scholar Étienne Lamotte initially said it could not be dated earlier than the fourth–fifth centuries, and although, over time, he clearly changed his mind, and began citing this *Vinaya* as evidence for the first or second century CE, he never explicitly revised his initial date, causing a great deal of confusion. Gnoli placed the “compilation” of this *Vinaya* in “the times of Kaniṣka” (first/second centuries).<sup>2</sup> Schopen placed its redaction in much the same period, based on linkages between the contents of the *Vinaya* and what occurs in the pre-Kuṣāṇa and Kuṣāṇa archeological and epigraphical records, while acknowledging that

<sup>2</sup> For references and discussion of both, see Schopen 2004: 20 and notes.

some of this enormous code must be later (Schopen 2004: 20ff.; Schopen 2014: 74). More recently, Petra Kieffer-Pülz (2014: 52, n. 45), citing a particular instance in support, says that the *Mūlasarvāstivāda-vinaya* was “redactionally closed in India probably around the fourth–fifth century CE”; and Pagel (2014: 17 n. 5) says that “Schopen’s attribution to the first or second centuries may well be correct,” and then adds the wholly unnecessary caveat that it, like others, “deals in probabilities linked to circumstantial evidence and calculation of plausibility—not chronological certainties.” No one I know has ever claimed otherwise.

If, however, *dharma* texts and the *Mūlasarvāstivāda-vinaya* are both hedged about with chronological conundrums and uncertainties, and if both bodies of material represent compilations that could be, and were, added to over time, there is still at least one more similarity: neither makes explicit reference to the other. There have, of course, been attempts to see references to Buddhist monks or Buddhist views in *dharma* texts but none is certain or has found wide acceptance,<sup>3</sup> and any explicit reference to a *dharma* text in our *Vinaya* has gone completely unnoticed. Commentators on *dharma* literature—both ancient and modern—have also seen references to Buddhists in terms like *pāṣaṇḍa*, “heretic,” but this is neither certain, nor particularly helpful. It might, perhaps, be more promising to take seriously the possibility that Buddhist communities were understood as, or taken to be, guilds by *dharma* writers. This is an idea worth pursuing, and one for which there appears to be some supportive evidence.

Even though the use of mercantile language and figures of speech in Buddhist literature is well known, still one of the opening verses to the *Mūlasarvāstivādin Prātimokṣa-sūtra* is at least a little startling. The *Prātimokṣa-sūtra* is a ritual formulary that announces and enumerates the more than two hundred monastic rules in descending order of importance. It is supposed to be recited aloud every fortnight in a formal communal gathering that every member of the Community is normally required to attend. One of the opening verses which would have been heard every fortnight describes the *Prātimokṣa* itself thus:

*eṣa bhikṣuvāṇagrāmasya śikṣāpaṇyamahāpaṇaḥ* (Clarke 2014a: 234, (1) r.4)

This is the great warehouse for the merchandise of rules for the mercantile guild of the monks.

Although striking, this could still be set aside as mere metaphor. It is more difficult, however, to do so with a significant number of other things, starting with the term the Buddhists themselves used to refer to their groups: they called them *saṃghas*, and *saṃgha* is one of a string of terms used to refer to

<sup>3</sup> For one example, see Olivelle 1995a: 32 n. 10.

a guild. The terms *ācārya* and *antevāsin*, “teacher/master” and student/apprentice,” would have been at home in both guild and Buddhist *saṃgha*; both made their own laws or regulations; both were involved in banking and lending money; and both had corporate seals and property. Unlike recognized religious renunciators, Buddhist monks, like individual merchants, were subject to tolls and taxes, and this may have to mean—at least in the narrow sense—that Buddhist groups were not considered to be primarily religious, nor did they claim to be. Buddhist *vinaya* itself provides the fullest details of a monk’s tax obligations, and, although it suggests occasional strategies for avoiding such obligations, the Buddha himself insists that if those strategies fail the monk must pay the tax. The Buddhists never call into question or argue against such tax obligations.<sup>4</sup>

Admittedly very little is known about the specifics of guild law or the legal concerns of mercantile groups, but what little is might be equally suggestive. Two inscriptional charters have been cited for guild law: one from the sixth century and one from the eighth. The first, the charter of Viṣṇuṣeṇa, is addressed to a Community of merchants and it contains, in Sircar’s words, “a long list of regulations which look like prevalent customary law.”<sup>5</sup> The very first regulation is *āputrakam na grāhyam*. Here Sircar says *āputraka* means “the property belonging to a person who died without leaving a son. This seems to say that such property should not be confiscated by royal officials” (Sircar 1953–4: 170), which theoretically is what should otherwise happen. Kosambi pads it out even further: “the property of one (who has died) sonless is not to be attached (by the crown, but disposed of according to guild rules).” The same regulation occurs in the second charter, also addressed to merchants by a king—the Cālukya Bhojaśakti: *aparam ca aputradhanam nnaṣṭi*, which Mirashi (1955: i.158) renders “Besides, there is not (to be escheat to the crown of) the property of a person who dies sonless,” and Kosambi (1959) “Furthermore, there is (to be) no confiscation (by the crown) of property (of one dying) sonless”.

These two charters suggest that merchant groups or guilds were concerned with shielding the property of their members who died sonless from confiscation by the state, and they sought and received royal assurance in writing that that would not happen. But, the Buddhist *saṃgha*, all members of which would have theoretically died sonless, had the same concern and sought the same relief, at least according to the *Mūlasarvāstivāda-vinaya*. It is clear first of all that the redactors of the *Mūlasarvāstivāda-vinaya* were well aware of some version of a rule that stipulated that the estate of someone who dies sonless

<sup>4</sup> For a preliminary study of monks’ tax obligations in the *Mūlasarvāstivāda-vinaya*, see Pagel 2014.

<sup>5</sup> Sircar 1953–4 for an edition and translation with discussion; discussed again in Sircar 1984. The first of these is sharply criticized and corrected, with a new translation in Kosambi 1959. For a more recent study, see Davis 2005.

goes to the state. In fact, this rule is not infrequently expressed, even in narrative portions of this enormous *Vinaya*. In the *Adhikaraṇavastu*, for example, a childless man laments: *anekadhanasamuditaṃ me grhaṃ na me putro na duhitā. mamātyayāt sarvasvāpateyam aputraka iti kṛtvā rājavidheyam bhaviṣyati iti* (Gnoli 1978: 69.16): “my house is possessed of much wealth, but I have no son, no daughter. After my passing all my property, being declared sonless will come to be subject to the king.” This same lament is found again and again, with minor variants, in this *Vinaya* and literature related to it.

Our redactors, however, were not just aware of this rule, they—like the merchants of the charters—appear to have been concerned about its application to members of their group, and to have formulated an argument against it. The evidence here is the fact that this issue is treated not once, but twice, in this *Vinaya* in two long and legally sophisticated accounts.<sup>6</sup> In the first of these accounts, a monk named Upananda dies, leaving a very large estate: “three hundred thousands of gold.” The king is informed and he orders that the monk’s cell be sealed (*gacchata asya layanaṃ mudrayateti*). The king’s men do so, and when the monks see Upananda’s cell sealed with the king’s seal (*layanaṃ rājamudrāmudritam*), they report it to the Buddha, and he says to his attendant Ānanda:

Go, Ānanda! Ask after the health of King Prasenajit and speak to him thus in my name: “On any occasion when you had royal affairs (*rājakaraṇīya*) did you then look to (*avalokayasi*) Upananda the monk?”

“Or on any occasion when there was the bringing of a bride or the taking of a bride, did you then look to Upananda?”

“Or at any time during his life was Upananda provided by you with the necessities, robes, bowls, bedding and seats, and medicine for the sick?”

“Or did you attend to him when he was sick?”

If he says “no,” this must be said: “Great King, the affairs of the house of householders are one thing, those of renouncers are quite another (*pr̥thaṃ mahārāja grhiṇāṃ grhakāryāṇi/ pr̥thak pravrajitānām*). You must remain with little concern. This acquisition falls to his fellow monks (*sabrahmacāriṇāṃ eṣa lābhaḥ prāpadyate*). You must leave off your involvement!”

Since the redactors are presenting the case, they, of course, get to have the king respond as they would want:

The King said: “Reverend Ānanda, as the Blessed One orders (*ājñāpayati*) so it must be! I leave off my involvement”

(Dutt 1942: 117.8–119.11; Schopen 2004: 102–3; 115–16)<sup>7</sup>

<sup>6</sup> The second of these accounts will be treated later below.

<sup>7</sup> Many of the passages that are cited or discussed in the present chapter have been referred to, cited, or discussed in previous works, and references to those will usually be added.



Any number of things might be noted here, but the first thing must be this: the common elements and concerns that merchant groups or guilds and Buddhist *saṃgha* share do not prove that the *saṃgha* was considered—and considered itself—a guild. They do, however, suggest that this is a possibility worth pursuing, that it is at least possible that the Buddhist *saṃgha* was modeled on, and functioned as, a merchant guild, and that Buddhist *Vinayas*, therefore, represent variant versions of a remarkably detailed and well-preserved early Indian guild law. A second thing might be that the *Vinaya* account of the death and estate of the monk Upananda presents what appears to be found nowhere else in *dharma* literature, and what might even be called an “argument for the separation of church and state.” This argument appears to be unique and—as we will see—its subsequent citation and use in our *Vinaya* certainly is. But a final point is one that anticipates a good deal that will follow here: it is possible—at least at first sight—to see in the *Vinaya*’s numerous references to the rule of *aputraka* an example that confirms Kane’s assertion that “Buddhists had hardly any independent set of juristic ideas.” Indeed, it is easy enough to assume that this is a case of borrowing by the *Vinaya* from the *dharma* literature. But, being comfortable with this assumption will require ignoring a number of other points. First of all, it is not clear where this idea came from. It is not found in the *Dharmasūtras*, and the term *aputraka* does not seem to occur in any *Dharmaśāstra*. It is true that both *Manu* 9.189 and *Nārada* 13.48–13.49 have rules that say that *in the absence of all other heirs* the king gets the property of deceased non-Brahmins, but it is not yet clear that this is the same rule or concept as that expressed by the term *aputraka*, the term used by both our *Vinaya* and a good number of inscriptions,<sup>8</sup> and one that does not necessarily mean *all* heirs. Should it turn out that *Manu*, *Nārada*, and *Vinaya* are all referring to the same rule, that still will not change the fact that the rule is not well anchored in *dharma* literature, and not particularly early there. Olivelle (2010b: 57) has put *Manu* in the second century CE and *Nārada* in the fifth or sixth century: however sobering, the borrowing could then have been in the opposite direction! We arrive at much the same point, it seems, if we approach the issue from a different angle. Our *Vinaya* first argues that a distinction must be made between renunciators and householders with regard to property and inheritance. Then without actually making the claim that Buddhist monks are renunciators, it makes the further claim that the property of a deceased Buddhist monk should not go to the king, but to his fellow monks. This looks like it might well be a first tentative attempt to establish a contested principle, and is in marked contrast to what is found in *Dharmaśāstra*: by the time the issue appears in *Yājñavalkya* 2.137, what

<sup>8</sup> For some examples, see *Epigraphia Indica* 20 (1929–30) 66; 28 (1949–50) 291; 34 (1960–1) 114. See also Tewari 1987: 27–8.

problems there might have been appear to have been resolved: “The heirs of a hermit, of a renouncer and of a perpetual student are in that order, the teacher, the virtuous pupil and the spiritual brother and associate in holiness.”<sup>9</sup> Moreover, since Olivelle (2010b: 57) puts *Yājñavalkya* in the fourth or fifth century, it is possible that the *Vinaya* passage predates it by more than one century. And, here again, even if *Yājñavalkya* and *Vinaya* turn out to be roughly contemporaneous, who borrowed from whom remains indeterminate: this may be a Buddhist contribution. Yet another similar case—also involving the *Yājñavalkya*—can be cited.

There is evidence that Buddhist monks in various locations and Śaiva ascetics too lent money on interest.<sup>10</sup> Our *Vinaya* not only authorizes such activity on the part of both monks and nuns but also gives explicit directions on how to write a loan contract:

... writing out a contract that has a seal and is witnessed, it (the loan) is to be given. In the contract the year, the month, the day, the name of the Elder of the Community (*saṃghasthavira*), the Provost of the monastery (*upadhivārika*), the borrower, the sum, and the interest must be recorded (Schopen 2014: 106–7)

*Yājñavalkya* (2.86–2.89) is obviously similar:

For whatever business (*artha*) is freely and mutually agreed upon, a witnessed contract should be made. The creditor should be put first with the year, the month, the fortnight, the day, place of residence, caste and *gotra*, with the name of a fellow student, his own and his father’s it is marked.

*Yājñavalkya* goes on to indicate that the debtor and witnesses must sign the document “in their own hand” (*svahastena*), and to explain how payments should be recorded and a receipt written. It is, in fact, considerably more detailed or developed, and yet the two are basically similar: many of the minor differences are attributable to the fact the *Vinaya* is presenting a contract between an institution or corporation and an individual, but *Yājñavalkya* is presenting one between individuals.

Here again there appear to be basically two chronologically determined possibilities. It is possible that the *Vinaya* and the *Smṛti* are roughly contemporaneous—either second or fourth/fifth century—and may then simply be variant versions of a shared or common idea adapted to different circumstances. Any borrowing would again remain indeterminate. But if *Vinaya* is second century and *Yājñavalkya* fourth/fifth, then the rules for written contracts may have to be seen as another Buddhist contribution that

<sup>9</sup> The translation is from Olivelle 1984: 144. The same rule is also given in Aś 3.16.37, but, in spite of recent heroic efforts, perhaps only the foolhardy would use the latter in a chronological argument.

<sup>10</sup> See most recently Schopen 2014: 103–13; also Singh 1983: 121.7; Derrett 1983: 82; Dikshit and Sircar 1955–6: 33, 36.19; Nandi 1973: 95; Bouillier 1997: 181.

was incorporated into Dharmaśāstra. There is also another consideration that might support this view.

The Buddhist rules on written contracts are not delivered in isolation but always in conjunction with another financial instrument that, while having wide currency in practice, is nowhere mentioned in Dharmaśāstra. Starting from the beginning centuries of the Common Era, Indian inscriptions—the early ones are predominantly, but not exclusively Buddhist—frequently record the gift of what are usually called *akṣayanīvīs*.<sup>11</sup> Since these same records often go on to specify what is to be done with the interest generated by these gifts, it is clear what they did. That, plus their name, allows for the conventional translation “permanent endowment.” These were funds that could not be spent, but were to be invested or lent out to generate interest. However, Derrett (1974: 95), who already long ago noted “the absence of the term [*akṣayanīvī*] from the abundant and versatile *dharmaśāstra* literature,” found it “odd that a word which plays so important a role in the legal *practice* of ancient and mediaeval India” was not found there (89), and said how “puzzling it remains that technical terms which had a great currency should be missing from the [*dharmaśāstra*] literature” (90). Derrett saw in this situation an important “lesson” about “the nature of the *śāstra*,” “viz. that the *śāstra* though strong on the jurisprudence . . . did not aim to be comprehensive when it came to its incidents” (90). That of course may be so, but, on the basis of material that Derrett did not know or have access to, a different lesson might also be learned. Derrett, it seems, may have been looking in the wrong place.

In contrast to its apparently complete absence in Dharmaśāstra, the term *akṣayanīvī*—sometimes simply *akṣaya*—is found repeatedly in the *Mūlasarvāstivāda-vinaya* and not just in one part of it. It occurs in its *Cīvaravastu*, in both its *Bhikṣu*- and *Bhikṣuṇī-vibhaṅgas*, and its *Uttaragrantha*; it also occurs in several medieval handbooks of the *Mūlasarvāstivāda-vinaya* (Schopen 2014: 103–13). These occurrences deliver the initial authorization and origin tale for these endowments; they explain their name—they are called *permanent* because they are not to be consumed or spent; and they indicate how they are to be used. Given all of this, there would seem to be good reasons for suggesting that not only might Yājñavalkya’s rules on written loan contracts be dependent on a Buddhist model, but a word and financial instrument which “plays so important a role in the legal *practice* of ancient and mediaeval India” might well have been a Buddhist invention, or, if *vinaya* law be taken as a species of guild law, an instrument that was created by guilds. There is, not incidentally,

<sup>11</sup> Old but still useful is Njamasch 1971; for a more recent example, see Falk 1999/2000. One of the earliest of these records describes an *akṣayanīvī* meant to pay for feeding Brahmins: Konow 1931–2.

ample inscriptional evidence to show that these endowments were often placed in the hands of guilds. The even larger lesson here, however, may be that if “the legal *practice* of ancient and mediaeval India” is ever to be fully understood, the legal contents of at least this *Vinaya* will, it seems, have to be taken into account.

If in this case of the written loan contract the chances are reasonably good that the Dharmaśāstra was dependent on *vinaya*, there are other cases where the direction of any dependence is much less determinable, or of no particular interest. There are, for example, a number of terms used by both *vinaya* and Dharmaśāstra, where this seems to be the case. In the *Cīvaravastu* of the *Mūlasarvāstivāda-vinaya*, to cite a first term of this kind, the division of the estate of the monk Upananda is announced in the following form:

*asminn āvāse upanando bhikṣuḥ kālagataḥ / tasyedaṃ mṛtapariṣkāraṃ dṛśyaṃ  
adṛśyaṃ cāvatiṣṭhate / sacet saṃghasya prāptakālaṃ kṣametānujānīyāt saṃgho  
yat saṃgha upanandasya bhikṣor mṛtadravyaṃ dṛśyaṃ adṛśyaṃ ca mṛtapariṣ-  
kārikam adhiṭṭhēd ity eṣātra jñaptiḥ /* (Dutt 1942: 120.13)

In this residential area Upananda the monk has died. This estate of his, visible and invisible, remains. If the time seems right to the Community [or Corporation] the Community [or Corporation] should authorize it that the Community should take formal control of the property of the deceased Upananda the monk, both visible and invisible, as property belonging to an estate—this here is the motion.

The terms *dṛśya* and *adṛśya* applied twice to the property of the monk here are not common in this *Vinaya*, but they do occur—although rarely and late—in Dharmaśāstra and apparently only in the context of partition (*YDh* 2.122, 2.126; *BṛSm* 1.16, 1.40; *KātSm* 841–2). Another term that occurs in both *vinaya* and Dharmaśāstra in discussion of partition is *avibhājya*, and—like *dṛśya* and *adṛśya*—it is applied to property that is indivisible or “not subject to partition.” While the term *avibhājya* occurs already in *Gautama* (28.44), where it is applied to “sources of water, security measures, and cooked food...also women belonging to the family,” Kane (III: 587 n. 1107) has said: “the basic verse on things impartible from their very nature is *Manu* IX.129 (= *Viṣṇu.Dh.S.* 18.44),” which has a similar but expanded list adding “a garment, a vehicle, an ornament” (but for one addition *Viṣṇu* has the same). The longest list, however, occurs in our *Vinaya*. When it describes the division of a lay estate that comes to the Community, the first things it does is give a long list of things that it declares *avibhājya*, only some of which occur in *Gautama*, *Manu*, and *Viṣṇu*, although some others are added in later lists: land or fields, houses, shops, bedding and seats, a variety of vessels, female and male slaves, servants, laborers, food and drink, and grain (Dutt 1942: 141.11; Schopen 2004: 118–19). Even the one additional item found in *Viṣṇu*, books (*na vibhājyaṃ ca pustakam*), which for Kane is “an indication of its posteriority to *Manu*,” occurs already as a separate item in the *Vinaya*.

In the cases of the terms *dr̥śya/adṛśya* and *avibhājya/vibhājya*, it is almost impossible to detect even a vague indication of the direction of any dependence. It is not even clear that these are technical terms and not just elements of general vocabulary—the first pair is not even listed in the new dictionary compiled by Olivelle (2015). There are, as well, a number of other terms or expressions, like *daśaikādaśa* or *dviguṇa*, which fall into this category or exemplify this pattern: here, too, the first of these is not registered in the new dictionary, and both terms could easily be part of the common vocabulary of accountants or scribes.

The passages cited so far represent only a few of the patterns of relationship that can be observed between *dharma* literature and *vinaya*. Several more are worth noting. There are instances, for example, where it is virtually certain, or highly likely, that a concept, idea, or rule that appears in this *Vinaya* had already appeared much earlier in *dharma* texts. Here one of the clearest examples is also one of the least noticed. The term *āpad* in the sense of “time of adversity or emergency during which normal *dharma* does not apply” (Olivelle 2015: 83)—or some similar expression—occurs already in all four of the Dharmasūtras (*ĀpDh* 1.20.11; *GDh* 9.67; *BDh* 2.4.16; *VaDh* 2.22). It continues to occur in *Manu* (1.116, 9.56), and *Yājñavalkya* (3.35); it appears in the *Arthaśāstra* (6.1.10, 9.5.2) and in the *Mahābhārata* (XII.129–67). Both the idea and the term are deeply and firmly embedded in *dharma* literature from its beginnings and both, while not nearly so well anchored, are not, however, entirely rare in the *Mūlasarvāstivāda-vinaya*. They occur several times in its *Poṣadhavastu*, more than once in its *Bhikṣuvibhaṅga*, and again several times in the *Uttaragrantha*. The instances in the *Poṣadhavastu* have been preserved in Sanskrit. Typical is:

A monk on the day of the fortnightly gathering on the 15<sup>th</sup> day, must not go from a residential area (*āvāsa*) with monks to a residential area without monks... except in adversities [or emergencies] or with the entire Community (*sthāpayitvā āpatsu vā sarvasaṃghena vā*). (Hu-Von Hinüber 1994: 492)

Here, simply put, the *Vinaya* allows a monk to do, during an emergency or a time of adversity, what is otherwise forbidden. Fuller still is a passage in the *Bhikṣuvibhaṅga*. This is a particularly good example because it allows not one, but two separate actions that are forbidden by specific *Prātimokṣa* rules in normal times to be undertaken in times of danger or adversity, and because it explicitly limits the authorization. The text has not survived in Sanskrit, but the Tibetan translation is clear. It says that when dangers arose, monks abandoned their *vihāras* or monasteries and fled, leaving the *vihāras* to be looted by thieves. The Buddha is then made to correct the situation. He orders that before the monks flee, the “treasure and gold” belonging to the Community should be hidden. The monks, however, did not know who should hide it. The Buddha first says that this should be done by a monastery attendant or a

lay brother, but when they themselves steal it—he modifies his order by first adding a qualification—it should be done by a *trustworthy* lay brother! In the absence of such an individual, it should be done by a novice, in the absence of a novice, it should be done by the monks themselves. To hide it, a hole had to be dug, and the same question arose. The Buddha responds again with the same sequence: it should be dug by a trustworthy lay brother; in his absence a novice; in his absence the monks themselves must dig it. This text, then, in effect, in certain circumstances abrogates or suspends the *Prātimokṣa* rules against monks “touching” gold and digging holes. But it puts firm limits on the suspension. The text ends with the Buddha saying:

Monks, what I authorize in times of adversity (or emergency) that must not be practiced in favorable circumstances! If practiced then one comes to be guilty of a transgression.

(*dge slong dag ngas phongs pa'i dus dag tu gnang ba gang yin pa de bde ba'i gnas skabs dag tu spyad par mi bya ste / spyod na 'gal tshabs can du 'gyur ro*)<sup>12</sup>

Although *phongs pa* is an attested translation of *āpad*, and *āpad* was probably the original here too, in the absence of the Sanskrit text that was being translated absolute certainty is not possible. The Sanskrit text could have read, for example, *vipatkāla*, which has been translated by *phongs pa'i dus*, or something very like that. But if the exact term used by the *Vinaya* here is not certainly recoverable, and if it is only highly likely that that term was *āpad*, still, there can be no doubt about the virtual identity between the idea or principle expressed by the *Vinaya* and the principle of *āpad* in the *dharma* literature. Given that identity, and given the chronological priority of the principle of *āpad* in the *dharma* literature, it must be extremely likely that the *Vinaya* was dependent on the *dharma* literature, and probably directly so, that it took over the principle and used it with little or no alteration or adaptation.

There are still other cases where the priority of the *dharma* literature is probable, yet less certain, but where the extent of the adaptation is considerably greater. One of the more interesting examples here is again one that has received little attention. It concerns what in the *dharma* literature is expressed in a variety of ways: property that is given as “a token of affection,” an “affectionate gift,” what is given “out of affection” (*dattaṃ ca prītikarmaṇi*, *MDh* 9.194; *prītena yad dattaṃ*, *NSm* 1.24; *prasādo yaś ca paitṛkaḥ*, *NSm* 13.6). Property that falls into this category belongs to the individual to whom it was given and it does not become a part of the joint family property, nor is it subject to partition. Our *Vinaya* has something very similar. In fact, it may be

<sup>12</sup> *Bhikṣuvibhaṅga*, ‘Dul ba, Cha 149b.1–149b.7. All references to or citations of the Tibetan translation are to or from Barber 1991. There is a very similar statement at Ca 81b.3, which seems not to have been fully understood at Pagel 2014: 67.

the same basic idea or principle that has been adapted to an entirely different situation. It is at least sometimes expressed in much the same language.

*NSm* 13.6 refers to property of this kind as a *prasāda*, “a mark of affection or favor,” and this is not a particularly common usage of the term, but its usage here allows—perhaps requires—a very different reading of a Buddhist passage than the one that passage might normally get. When Guṇaprabha condensed the canonical text we are about to see in his early medieval handbook of our *Vinaya*, he put it this way:

*na prasādalābhasya vaihāratvam* / (Sankrityayana 1981: 111.2)

Since *prasāda* is almost axiomatically taken to mean “faith” or “devotion,” or something similar in Buddhist texts, and since Edgerton’s great dictionary, which only records peculiarly Buddhist usages, gives “faith” as its first meaning for *prasāda*, this would probably be rendered as:

There is no ownership by the monastery of a gift [made] from faith.

Such a translation could probably be made to make sense, but it is almost certainly off the mark—*NSm* 13.6 makes this likely, as does the canonical passage on which Guṇaprabha’s statement is based.

The canonical passage is from the *Śayanāsanavastu*, another section in this *Vinaya* that is rich in legal material, and it involves, in part, an area of law little touched by Dharmaśāstra but of considerable importance to *vinaya* and presumably any guild or corporation: the ownership and use of corporate property. In this case, that property was a Buddhist monastery, and the ownership of a Buddhist monastery is—at least in this *Vinaya*—far more complicated than had previously been thought (Schopen 2004: 219–59). Here, for example, the donor continues to refer to the monastery he had built as “his” even though it is also referred to once as *sāṃghika*, “belonging to the Community.” When the donor promises further gifts, the monk Upananda gets the monastery assigned (*uddiśita*) to him, but he lives elsewhere, leaving that *vihāra* empty. A pilgrim monk comes there and asks Upananda if he could stay there, and Upananda allows it—being “assigned to” him apparently gives him complete authority over the monastery. The pilgrim monk was “industrious and not lazy” (i.e., a good monk). Every day he cleaned and swept that monastery. When the donor saw this, he was extremely pleased (*prāmodyam utpādayati*). He is also described as *abhiprasanna*, and because he is *abhiprasanna*, he gives that monk a gift of cloth. But, when Upananda hears about this, he rushes to the monastery and demands the cloth for himself. The pilgrim monk, fearing that Upananda will throw him out of the *vihāra*—which he apparently could do—gives him the cloth. All of this is then reported to the Buddha and he rules that:

*yasya prasannaḥ prasannādhikāraṃ karoti tasyaiva sa / upanandasya tu vārṣiko lābhaḥ iti* // (Gnoli 1978: 38.12)

Like *prasāda*, the related *abhiprasanna* and *prasanna* might easily here be translated “devout,” “believing,” or something similar, but here that seems not to fit the context very well. The donor here is first described not as religiously impressed or moved but as “extremely pleased” and he appears to be expressing not his faith but his gratitude or appreciation. There is an almost exact parallel to our passage that is entirely secular in character and where the same phrase cannot possibly be expressing faith or devotion. This parallel occurs in the *Vibhaṅga* of our *Vinaya* and it is preserved in Sanskrit as an extract in the *Divyāvadāna*. Our phrase occurs in two instances in this long account. First, when a rich householder is having a house built, he hires a day laborer, who manages to get twice the normal work done, and, as a consequence, he starts to give the day laborer twice the normal wage. But, the laborer hesitates and asks why. The householder then says:

*putra na dvidaivasikāṃ dadāmy api tu prasanno 'haṃ prasannādhikāraṃ karomi /*  
(Cowell and Neil 1886: 305.6)

This would seem to mean something like:

Son, I am not giving you two days' wages but, being pleased, I am doing what is required from gratitude.

The statement made here could easily be paraphrased: “I am giving you a token of my gratitude.” That is what the phrase means here and that is almost certainly what it means in the passage from the *Śāyanāsanavastu*. There the Buddha rules:

He to whom a token of gratitude is given by one who is pleased, to that person alone it belongs. But any donation for the rains is Upananda's.

The “token of affection” in Dharmaśāstra literature is then an exceptional category of property that belongs exclusively to whom it was given, does not become a part of joint ancestral property, and is not subject to partition. The Buddhist *prasannādhikāra*—however translated—is also an exceptional category of property that belongs only to the person to whom it was given, does not become a part of the monastery's property, and is not to be distributed. The basic idea in both, it seems, is too close to be coincidental, and there is even some vocabulary overlap (*prasāda*, *prasanna*). It might, therefore, not be unreasonable to suggest that we have here a case where Buddhist *vinaya* has taken over a legal notion that occurs in *dharma* literature in regard to one set of circumstances and applied it to a completely different situation. But, if nothing else, this case might provide an example of how reading *vinaya* in light of Dharmaśāstra opens up otherwise unnoticed possibilities.

Yet another case where Buddhist *vinaya* has adapted a legal principle to its own situation or institutional needs concerns the oral disposition of property or what might even be called a nuncupative will. Whether or not this is an



element of Dharmaśāstra, or was an actual legal practice that did not clearly make it into Dharmaśāstra will depend on how one understands a father's right to effect partition while still alive (cf. Lariviere 1989a: ii.172). But, our *Vinaya*, in any case, presents the "oral will" as a fact it had to deal with both internally and externally. The case starts—at least in narrative time—when a monk who knows he is going to die says to another monk:

For as long as I live, so long you should attend to me. When I am dead, my robe and bowl are for you to treat as you please.

(*yāvadd ahaṃ jīvāmi tāvadd upasthānaṃ kuru / madiyaṃ pātracivaraṃ mṛte mayi tava yathāsukham iti* / Dutt 1942: 124.2).

The second monk attends the first, but when the latter actually dies, a dispute arises in regard to his "robe and bowl," a standard euphemism for a monk's possessions. The case is presented to the Buddha, and he rules:

Monks, that deceased monk did not give it when still living, how now, he being dead, will he give it? This is not an act of giving when one says, "after I am dead, it will be for him."

(*jīvaṇṇ evāsau bhikkhavo na dadāti / kutaḥ punar mṛto dāsyati / nāstidaṃ dānaṃ mamātyayād asya bhaviṣyati* / Dutt 1942: 124.7)

As a provision of monastic law, this promulgation is unproblematic: it is clear and concise and it denies the validity of the oral disposition of property by one who is still alive. Context makes it clear in this case that the oral will was made by a monk and that the provision applies to the monks, but the wording is vague and too broad: it could easily be misinterpreted and put Buddhist monastic law in conflict with Dharmaśāstra or actual legal practice. That the redactors of our *Vinaya* either anticipated or experienced this would seem to follow from the fact that they present a second text that quotes or paraphrases the first, and it appears to recognize, and wants to remove, the potential conflict.

In the second text (*Kṣudrakavastu*, 'Dul ba, Tha 252b.3–254a.1; Schopen 2004: 177–82), a householder who knows he is about to die calls together "friends, relatives, brothers, and neighbors" and declares, "I have three sons, these are the two older, the youngest has entered the Order of the Buddhist *śramaṇas*. Therefore, whatever property there is in my house, however small, all of that must be divided equally." Notice that this may not be a partition strictly speaking—it does not appear to involve ancestral property like the house, but the father's (movable) property that was in the house (*bdag gi khyim na nor*). Note, too, that the father is presented as assuming that Buddhist *śramaṇas* could inherit, although late Dharmaśāstra rules that a renouncer "after renunciation...can no longer inherit property," (Olivelle 1984: 143); he also seems to assume that an oral disposition is valid and binding, and he is not the only one who is presented as assuming both. When the youngest son who is a Buddhist *śramaṇa* hears of his father's

death, he returns home to recite the *dharma* and console his family, but he also weeps. A neighbor woman observes his tears and says:

Son, do not lament! Since your father had done meritorious actions, he has gone to the land of the gods (*lha yul du song ngo*). Moreover, your father, having assembled friends, kinsmen, brothers, and neighbors, has also given a third share of his property to you (*nor gyi sum cha gcig kyang byin no*).

The neighbor woman is presented, then, as making the same assumptions as the dying father: Buddhist *śramaṇas* can inherit, and oral wills are binding. But, the returning son does not share these assumptions. He is made to say that she has misunderstood his tears—he was not expecting to inherit, and an oral will on the part of his father was invalid. He says this because he seems to think that monastic law applies to lay-household heirs. He says, quoting or paraphrasing our first text:

Moreover, the Blessed One forbids it declaring that, “saying ‘when I have died, this must be given to him’ is not giving” (*yang bcom ldan ’das kyi nga ’das nas de la byin cig ces zer ba ni sbyin pa ma yin no zhes bkag go*)

The young monk’s assertion reveals the problem in the original promulgation: it does not explicitly distinguish or differentiate between layman and monk and, therefore, can be misinterpreted or misapplied to the monastic Communities’ disadvantage. It could—and would—render all oral wills invalid, even those made in favor of a monk or the monastic Community, and it would put monastic law in conflict with Brahmanical law or actual practice. Our redactors’ remedy should look familiar and it represents, it seems, a second argument for what again might be called “the separation of church and state.” We have seen above in the monastic or *vinaya* response to “the law of sonlessness,” the assertion that “the affairs of the house of householders are one thing, those of renunciators are quite another”—that is to say, “the law of laymen does not apply to monks.” In the present case, however, the redactors do not repeat the assertion verbatim, but in effect reverse it: if the law of laymen does not apply to monks, then the law of monks does not apply to laymen. When the remarks of the returning son who is a monk are reported to the Buddha, he further rules:

The Blessed One said: ‘Monks, what I said [in the *Cīvaravastu*] did not refer to householders (*khyim pa=grhin*), but was said in reference to renunciators (*rab tu byung pa=pravrajita*). When a householder would die having attachments this is not a renouncer. Therefore, then, when this householder thought “when I have died, this is given to him,” this indeed was an act of giving. Moreover, because he was not a renouncer it should be accepted.’ (’Dul ba, Tha. 253b.6)<sup>13</sup>

<sup>13</sup> For further examples of the formula “what I said in regard to X was not meant in regard to Y” see Schopen 2014: 337, 346, and n. 50.

If the initial promulgation denying the validity of oral wills was the original position of our *Vinaya*—and that seems highly likely—then the account of the returning son must represent a conscious revision in which monastic law is brought into line with Dharmaśāstra or actual practice by adopting their position, but explicitly adapting it to prior monastic law, and strictly limiting its application. The account of the returning son also presents a second example of this *Vinaya*'s attempt to establish a clear separation between monastic law and lay law, and there is a third: the account discussed here occurs in the section of our *Vinaya* called the *Kṣudrakavastu*, but another version of this account, with only very minor variants, is also found in the *Uttaragrantha*, a completely different section.<sup>14</sup> The fact that the account is repeated in two different sections may point to how important it was to the redactors to promote this general principle, a principle that, in this explicit form, seems to be otherwise unknown in Indian law or Dharmaśāstra and is an innovation unique to Buddhist monastic law. Lingat long ago, in speaking about the lack of distinction between religious and penal sanctions in Dharmaśāstra, for example, lamented, “on this subject we seek in vain for a generalization,” and said “the religious law and the secular law thus interpenetrate each other. The two domains are never clearly distinguished” (Lingat 1973: 78). The innovation we see here is not, however, the only one.

Two more innovations in law on the part of our redactors occur in a single text, and in a way, they bring us full circle. One of the first texts that was presented here in any detail was from the *Cīvaravastu* and it dealt with the large estate left by the monk Upananda and the problem of Buddhist monks dying “sonless” and, therefore, without heir. One of our last texts comes from the same *Cīvaravastu* and it explicitly refers to the case of Upananda and starts again from the problem of “sonlessness.” It introduces two things that appear to have been otherwise unknown, at least in Dharmaśāstra: true precedent and the written will.

Until recently, it was commonly maintained that “Hindu law . . . lacked a notion of precedent” (Davis 2007c: 47). Davis (2007c) has challenged this view, but largely on the basis of late, even very late (seventeenth-century) traditional commentaries, and by expanding the scope of what the term *precedent* can refer to. Even he, however, says in regard to “the scholarly denials of precedent in Hindu law,” that they are “perhaps accurate when compared with systems of binding precedent such as modern Anglo-American law” (2007: 49). But without wanting to get tangled up here with definitional issues, it is possible to suggest that our *Vinaya* presents an instance of what is much closer to the common understanding of “precedent” than anything that has so far been noted in Dharmaśāstra, and at a

<sup>14</sup> The second version is found at *Uttaragrantha*, 'Dul ba, Pa 130a.4–131a.3; see also Schopen 2004: 282 n. 54.

comparatively early date. Similarly it has been said from the days of Colebrooke and Wilson, that a “last will and testament is unknown to the *Hindu* law” (Colebrooke 1801: ii.516n.) Mukherjee and Wright challenged this view more than thirty years ago, but again on the basis of very late material (1979: esp. 318–20),<sup>15</sup> and our *Vinaya* presents a very clear instance of a written testament.

The *Cīvaravastu* text (Dutt 1942: 139.5–141.2) deals with a rich householder who—being sonless—decides to enter the Buddhist Order. He approaches a monk who shaves his head and starts to give him the rules of training, but the householder falls ill and, therefore, cannot be fully ordained. The monks, however, continue to attend to him even after he was taken back home. The householder realized he was about to die:

*tatas tena maraṇakālasamaye sarvaṃ santa[ka]svāpateyaṃ patrābhilekhyam  
kṛtvā jetavane preṣitam / sa ca kālagataḥ /*

Although the language here may be a little crabbed and awkward, and although strictly speaking, there is no word for *will*, still there can be no doubt about what the passage is describing: it describes the conveyance in writing, in anticipation of death, of one’s property. It describes in other words what we would call a will. It might be rendered:

Then he, at the time of death, having put into a written document all of his property (*rang gi nor thams cad glegs bu la bris te*) he sent it to the Jetavana [Monastery], and he died.

The king’s ministers (*amātya*) report to him that a “shaven-headed householder” (*muṇḍo gṛhapatir*)—a liminal category, a layman in the process of becoming a monk—has died, and that he was sonless (*aputra*), very rich, and that, “having put all that [wealth] into a written document, he sent it to the Jetavana to the Noble Monastic Community” (*etac ca sarvaṃ patrābhilikhitam kṛtvā jetavanam āryasaṃghāya preṣitam*). The king’s response is key.

*āryopanandasantakam eva mayā apatrābhilikhitam na pratilabdham prāg eva  
patrābhilikhitam pratilapsye / api tu yad bhagavān anujñāsyati tad grahīṣye /*

(Dutt 1942: 140.21–141.2)

I did not obtain the property of the Noble Upananda for which there was no written document (=will). How much less will I obtain that for which there is a written document (=will). Moreover, what the Blessed One orders, that I will take.

At the very least, the king here is making a legal argument on the basis of a prior case, and this—by almost any definition—must be precedent. Read in light of this account, our earlier account of the returning son and the oral will also could be taken as another instance of precedent. When he says, “the

<sup>15</sup> See also the discussion of “wills” in Lingat 1937: 461–7.

Blessed One forbids it declaring that ‘saying “when I have died, this must be given to him,”’ is not giving,” the returning son is also making a legal argument, and in citing the Buddha’s words, he is in effect citing the prior case that produced them.

If the written will and the citation of precedent can both be found—and found early—in Buddhist *vinaya*, but not—or not until very late—in Dharmaśāstra, the same might be said of what is not so much a specific instrument or practice, but a broad concept. A good deal has been written on “the juristic personality of Hindu deities” (see Sontheimer 1965), but in all of what has been said, it has rarely been noted that this is a relatively late manifestation of an idea that had been around for a long time in India, that the concept of juristic personality was not new. If we knew more about early Indian guild law, we might be able to determine—rather than guess—that it originated there. If—as seems highly likely—early Indian guilds owned property or had assets, something like the juristic personality would seem to have been required in any case. And, if the idea originated there, and if *vinaya* law represents a species of guild law, the appearance of the concept of the legal person in *vinaya* law would not be a surprise. The fact that the concept appears in *Vinaya* very early and fully formed may support the suspicion that it was not developed there but borrowed, even if this cannot now be confirmed. Some things can, however, be confirmed.

Many scholars have argued that the *Prātimokṣa-sūtra* is the earliest part of Buddhist *vinaya*. Should this turn out to be so, it would mean that some idea of the juristic personality was present in Buddhist *vinaya* from the beginning. Already in the *Prātimokṣa* of our *Vinaya*—and in all others it seems—the *Samgha* or monastic community appears as a legal entity that owns property: it owns cushions, couches, and chairs (*sāṃghikaṃ maṃcaṃ vā pīṭhaṃ vā vṛṣiko vā*); monasteries are repeatedly described as “belonging to the community” (*sāṃghike vihāre*). There is a separate category of acquisition or profits that the community owns (*sāṃghikaṃ lābhaṃ*), which must be kept distinct from the personal property of monks (*paudgalika*)—all of this in the *Prātimokṣa* (Banerjee 1977: 33 (nos.14–18); 32 (no. 9)). Elsewhere, to cite only a few examples, it is said that the community can accept and own *real property*—defined as villages and fields—and things like oxen, buffalos, etc., but individual monks cannot (*Kṣudrakavastu*, ’Dul ba, Da 15a.7–16b.2); it owns unspecified riches and gold (*Vibhaṅga*, ’Dul ba, Cha 149b.1–149b.7); property that belongs to it is subject to taxes (*Vibhaṅga*, ’Dul ba, Ca 76b.4–78a.4); it can borrow money through its officers, and it is liable for repayment, but it cannot be held responsible for the debts of its members (Schopen 2004: 132–40). Even then, in most modern senses, the Buddhist *Samgha* was a legal person and—according to our *Vinaya*—it acted and functioned like one. Although it is presented in less detail, it is clear that in this *Vinaya* and elsewhere in Buddhist literature the *stūpa* was also a legal person

that owned property, but it is not possible to pursue this further here. Suffice it to say that this conception of *saṃgha* and *stūpa* predated by centuries what came to be argued for the Hindu image.

\* \* \*

What it has been possible to present here is in no sense comprehensive. It represents rather an unsystematic sampling of legal concepts, principles, and practices found in a single Buddhist *Vinaya*. Even such a sampling is, however, sufficient to show that Kane's old assertion in regard to the relationship between Dharmaśāstra and "Buddhists" is not valid for this *Vinaya*: the Buddhists who wrote or compiled it most certainly had "independent . . . juristic ideas." Even on the basis of this single *Vinaya*, it is already clear that the relationship between Buddhist *vinaya* and Dharmaśāstra could be—and probably always was—a complicated, if not convoluted one. It could be that in some cases, Dharmaśāstra had chronological priority and first developed an idea or concept that was taken over by Buddhist *vinaya*, sometimes with considerable alteration or adaptation and sometimes not. The reverse could hold; or priority might prove impossible to determine, and that in fact might be rather frequent. It may be, too, that something found in Buddhist *vinaya* and actual practice may not appear at all in Dharmaśāstra or vice versa, and there could be cases where both Dharmaśāstra and *vinaya* may have borrowed from another source, such as guild law. Clearly, the emerging picture is complex and it promises only to get more so. It should prove interesting.



## Part IV

### Interpretive Approaches





## Body

*Ariel Glucklich*

### INTRODUCTION

A few years ago, an Indian Brahmin couple living in an American state filed a multimillion-dollar lawsuit against the hospital where their son had been born. They took this action because the boy was circumcised without the knowledge and permission of the parents. This sort of thing happens now and then in American hospitals, and the cases are usually settled between 50 and 100 thousand dollars per case. According to the distraught parents, the size of the award demanded was owing to religious reasons: “a circumcised male cannot be a good Hindu—the ancient tradition precludes bodily modifications and degrades those whose bodies are imperfect.” Furthermore, they argued, the boy would be subject to ridicule and would have an exceptionally difficult time acquiring a high-caste wife because of the “deformity.” The case was settled out of court for an undisclosed amount, which means that an American court did not have to rule on the matter of the integrity of the body in normative Hindu traditions.

An examination of the Dharmaśāstras and later commentaries and compendia provides no clear answer to the question raised: can a Brahmin be a “good Hindu” if he has been inadvertently circumcised (as opposed to, say, a Kṣatriya, who loses an arm in battle). The legal texts do not cover this topic, just as they do not cover many other topics. For example, can a modern college teacher use some Hindu justification to reject radio technology that would assist a deaf student hear her lectures. Simply put, the texts cannot cover what they do not imagine, and so, one might have to deftly turn to Mīmāṃsā meta-rules in order to produce viable conjectures (Lingat 1973: 158; Derrett 1968: 86; Kane III: 842–3).

However, the emotional issue underlying the parents’ distress, their shame is as old as culture itself and it may be stated in the following general terms: How is the body conceived within a normative cultural worldview, how is the

body experienced, and are the two related? More specifically, what social and cultural representations does the body articulate (however implicitly) and how do power relations become manifest in the way that the socialized body imposes itself on the individual's embodied experiences? Michel Foucault has been instrumental in framing the relationship between the world and the body by means of which "the most minute and local social practices are linked up with the large-scale organization of power" (1988: 17).

Perhaps the best methodological approach for closely examining the intersection of sociocultural values and embodied experience is phenomenology. This has certainly been the case in recent decades among contemporary anthropologists who have focused on cross-cultural embodied experiences (Desjarlais and Throop 2011). However, it may be possible to extend this approach to ancient material where firsthand informant data are unavailable (Glucklich 1994). It may still be possible to examine how concentrating on our experience "allows us to account for the many forms of mediations of experience and perception itself" (Ram and Houston 2015:4). Such mediations "encompass long histories of power relations that connect as well as divide people." (Ram and Houston 2015: 4). Included among these mediations, or modes of shaping embodied experience, are traditions of representation that take the form of rules and regulations, institutions, social classes, aesthetic and hygienic norms, and many others. It is within this context that such a subtle and powerful concept as body image emerges and it is where the shame of a contemporary Hindu family assumes specific contours.

Hence, in the study of Dharmaśāstric conceptions of the body (and mythological Vedic precedents), and in the rules governing the conduct of the body in multiple contexts, we gain a potential glimpse into the spaces where social and political relations meet subjective experience—even in the absence of rich subjective material. In such spaces, the body is no longer "a mere metaphor for conceptual notions, it claims attention as a noetic force, a creator of truths" (Glucklich 1994: 5). We can study the texts and identify narratives on the Creator's (Self-existent—*Svayambhū*) body, the (male and female) Brahmanical body, the consecration and purification of the body in times of transition (*dīkṣā*, *saṃskāra*), the ascetic body, the criminal's body, the body of the sinner and the penitent, the body of the bride and her groom, the patient's body or that of the chronically or congenitally ill and handicapped, the dead body, and others. No single text dominates such descriptions. The *Manu Smṛti* (*Manu*) may perhaps be the most systematic elaboration of the socially mediated body, but the *Caraka* and *Śuśruta-saṃhitas* are more detailed with respect to the patient's body; the *Gr̥hyasūtras* are better for a description of the ritualized (*saṃskāra*) body; the *Upaniṣads*, *Yogasūtras*, *Tantras*, and similar works pay greater attention to the ascetic body; the *Vedas* and *Purāṇas* spend more time with the divine body; the *itihāsa* literature (*Rāmāyaṇa* and *Mahābhārata*) contain more vivid narratives on the personal body in its social and

biographical contexts. For example, it must be a text like the *Rāmāyaṇa* that demonstrates that there is a correlation between virtue and beauty, that a perfect man has a perfect body, while a demon (or demoness) must be ugly (Pollock 1991: 258 fn. 5).

Perhaps no context better illustrates the way that the body mediates the cosmos-society-individual axis than a ritual that accounts for (illustrates and promotes) the way that the male seed becomes a human body (fetus) within the female body (womb). The Dharmasāstras allude to such rituals (as *Garbhādhāna*) in Manu 3.46–3.47 and Yājñavalkya 1.79 (where the rite is taken to be a *saṃskāra* for the son, not the mother).<sup>1</sup> However, for the signifying details one must turn to the *Gṛhyasūtras*. Kane (II: 201–7) has summarized a number of versions of the *Garbhādhāna*, which include the following key acts leading up to intercourse:

- \* Husband eats rice
- \* Husband feeds the wife
- \* Husband sprinkles wife with water
- \* Husband embraces his wife
- \* Intercourse
- \* In another version of the rite (*Śāṅkhayana Gṛhyasūtra*), the husband sprinkles the crushed root of the *Adhyaṇḍa* plant into the nostril of his wife.

All of these actions are accompanied by explicit cosmological mantras that identify the joining of sperm and womb with various gods, fire and earth, *Sāman* and *Rik*, sky and earth, etc. Kane feels compelled to apologize for the “religious halo” surrounding such ancient rituals (II: 203), but contemporary ritual and cultural theories mine these rites for meaningful semiotic facts.<sup>2</sup> Current Foucauldian theories may identify the performance with the power trajectories with which both the *garbha* (fetus and future child) and the mother’s body are imbued with meaning, that is, are reinforced as cultural products. While it is highly doubtful that the American Hindu couple performed any such ritual at the time of coitus, there is no doubt that they viewed the integrity of their infant boy’s body with the same enculturated eye.

As one surveys the conception of the body in a single pivotal text such as *Manu*, one easily discovers a strong isomorphism between cosmological spaces and the human body and perhaps an attempt to turn this relationship into a rationale for authoritative practice: purity–pollution, social (*varṇa*)

<sup>1</sup> Other rituals include *Garbhāḷambhana* (conceiving the child), *Pumsavana* (guaranteeing a male), and *Anavalobhana* (protecting the embryo).

<sup>2</sup> For example, one may seek to identify all the contexts in which the *Adhyaṇḍa* plant is mentioned (see *ŚB* 13.8.1.16 in a funerary context) and ascertain its semiotic-performative (magical) properties. One may note socially inverted aspects of the ritual, such as the feeding of the wife by her husband, the injection of material into the nose, which is ritually identified with the vagina, etc.

relations, stages of life, law and order, and other domains are predicated on that foundational homology. The evidence for this broad assertion comes from a staggering wealth of references to the body, including the following (incomplete) list (in Olivelle's translation): Arms, anus, beard, bladder, bone, breath, buttocks, ear, eye, fat, feet, finger, flesh, forehead, hair, hand, head, heart, heel, knee, lips, marrow, mouth, nails, navel, neck, palm, penis, pus, saliva, seed, semen, skin, spit, stomach, sweat, teeth, testicles, thigh, tongue, urine, waist, and womb.

Nonetheless, it must be clear that in discussing the body, we are addressing two distinct issues: the first is the body in the mind, that is, conceptions of the body as a locus of cosmological and social ideas. The second, in contrast, is the empirical body as the site of experience and knowledge. This distinction has emerged as an important agenda in the study of religion over the last quarter century. Lawrence Sullivan, who was then president of the American Academy of Religion, raised the issue in a *History of Religions* article in 1990: "How will we come to know, in a discursive, conceptual way the knowledge of the body?" (86) Doing so, he continued, would take us into the fields of neurophysiology, cognition and communication, perception, and so forth.

This chapter will cover both the metaphorical body—the socially constructed conception that tells us so much about the mind (and its social world)—and the experienced body that generates distinct (and perhaps resistant) knowledge. I shall show that the two domains closely overlap.

## THE METAPHORICAL BODY

The Man has a thousand heads, a thousand eyes, and a thousand feet.  
Having covered the earth on all sides he extended ten fingers' breadth  
beyond. (*Rig Veda* 10.90; Jamison and Brereton 2014)

This exceedingly famous quote shows, yet again, that ideological and conceptual agendas are fulfilled by explicit or implied relationships. For example, the repeating numbers in the entire text ("Puruṣa Sūkta") point to Agni or the sacrificial fire, with its many forms, and indeed, the text is explicitly about the sacrifice (Jamison and Brereton 2014: 1538). Puruṣa is the offering and the Puruṣa is the sacrifice itself, which, as an ordering event, produces both cosmological and social realities:

The Brahmin was his mouth. The ruler was made from his two arms. As to his  
thighs—that is what the freeman was. From his two feet the servant was born.  
(*RV* 10.90)

This correlation is so familiar that it not only repeats in *Manu*, or in every modern textbook about Hinduism, it has become a conservative Brahmanical

cliché to justify caste hierarchy (Stalin 2007). In that sense the *Puruṣa Sūkta* serves as an easy example for the body as a generative root metaphor—a cognitive tool used in a variety of domains in meaningful and influential ways (Pepper 1942; Turner 1974).

It is a relatively small leap from the late Rig Vedic text to Manu's tip of the hat to the reigning idea: "For the protection of this whole creation, that One of dazzling brilliance assigned separate activities for those born from the mouth, arms, thighs and feet" (*MDh* 1.87; tr. Olivelle). The brilliance in the verse almost nostalgically alludes to Agni or the sacrificial fire yet again. But more obvious is the social and functional justification, and several verses later (*MDh* 1.92), the text clinches the main point of it all: "A man is said to be purer above the navel. Therefore, the Self-existent One has declared, the mouth is his purest part." One comes to experience one's own body as reprising influential social and cosmological ideas.

While the *varṇa*-oriented social function (and extension to experience) of this metaphor seems obvious, there is a great deal more to learn about the body acting on behalf of intellectual agendas. The symbolizing potential of the root metaphor is extremely flexible as it ranges far beyond the social domain and extends to notions of interrelatedness, global hierarchy, monistic philosophies, and the normative value of structure and structuring acts such as rituals and even language. As additional symbolized domains emerge from the root metaphor, the obvious use of the human body becomes more complicated. However, this increasing complexity helps us link the metaphor to actual bodies in a richer manner than Manu's analogical exercise. For example, one may also (briefly) consider the use of the body in the *Agnicayana* ritual in the Brāhmaṇa texts, the ritual interpretation provided in the *Munḍaka Upaniṣad* 2.1 and the story of Indra, Virocana, and Prajāpati in the *Chāndogya Upaniṣad* (8.7).

The *Agnicayana*, laying of the brick altar for the Vedic sacrifice, was an immensely elaborate performance that Frits Staal (1989: 154) has analyzed as ritual rules without pragmatically validated meaning. At the heart of the early part of the ritual was a sequence of measurements in which the body of the *yajamāna* played a key role: his wife matching a brick to the size of his foot; the *vedi* measured with a rope that was twice his height; and others (*ŚB* 7.4.2). The symbolism of the *Agnicayana* involved the feeding of Prajāpati (time) or *Puruṣa* (that is, acquiring immortality)—but the correspondence with the sacrificer's body reveals a magical-homological rationality in which numerical correspondence pointed at the goal of the sacrifice. (Kane II: 1246).

The *Munḍaka Upaniṣad* (2.1.2–2.1.3) takes us back to *Puruṣa*, and to the fire sacrifice as well, as it thoroughly reimagines the relationship between the person and reality:

That Person, indeed, is divine,  
he has no visible form;

He is both within and without,  
 unborn, without breath or mind;  
 He is radiant, and farther than  
 the farthest imperishable.

From him issue breath and mind,  
 and all the organs... (Tr. Olivelle)

The narrative—myth really—of corporeality is here elevated to a dynamic monistic conception in which the person is all that exists and the body dissolves into ontological unintelligibility. This is consistent, if not identical, with that other Upanishadic narrative about the body and its relationship to ultimate truth: the story of Indra, Virocana, and Prajāpati (*Chāndogya Upaniṣad* 8.7). The Vedic Indra and the demon approach Prajāpati in order to learn the truth about the inner self (*ātman*). Virocana is content with the first lesson: “This person that one sees here in the eye—that is the self (*ātman*); that is the immortal... But then sir, who is the one that’s seen here in the water and here in the mirror? It is the same one who is seen in all these surfaces, replied Prajāpati.”

Indra, in contrast, obtains the final lesson, namely that “This body, Maghavan, is mortal; it is in the grip of death. So it is the abode of this immortal and non-bodily self...” (8.12.1; tr. Olivelle).

It is one of the chief characteristics of Manu’s synthesis that both corporeal and disembodied conceptions are integrated into the normative formulation of *dharma*. That is, the body is both a vehicle for socio-cosmological constructions that structure living bodies and, at the same time, the body serves as a symbol for its own transcendence. All of this can be seen in a variety of contexts in Manu:

The creator’s body (1.14 vss.)  
 The Brahmin’s body (1.92 vss.)  
 The consecrated body (2.26 vss.; 2.60)  
 The purified body (5.134 vss.)  
 The purified mind (5.107 vss.)  
 The ascetic body (6.30 vss.)  
 The punished (criminal) body (8.124 vss.; 8.270 vss.)  
 The penitent body (11.48 vss.; 11.74 vss.)

## THE TRANSGRESSING BODY

The logical place to begin in Manu is the body of the Creator (Chapter 1) and then to move to the Brahmin’s body (also in Chapter 1). These describe the ideal and establish normative implications such as social order, purity, and so forth. But, it may be more interesting to start elsewhere, unexpectedly, with the criminal and the sinner’s body. Here, ideal and norm emerge in their violation,

where the lived body (in pain or pollution) attests to the actual applicability of the ideal.

Manu, the son of the Self-existent One, has proclaimed ten places upon which punishment may be inflicted . . . They are: genitals, stomach, tongue, and hands, feet are fifth; and then, eyes, nose, ears, wealth, and body. (*MDh* 8.124–8.125; Olivelle)

The text, which notes that Brahmins are exempt from this, does not immediately explain which crime is punished on which part of the body, but this becomes clear a bit later in the same chapter (*MDh* 8.270–8.271):

If a once-born man hurls grossly abusive words at twice-born men, his tongue shall be cut off, for he originated from the lowest part. If he invokes their names and castes with disdain, a red-hot iron nail ten fingers long should be driven into his mouth . . .

It bears noting that this text does not correspond to 8.125 precisely—the tongue is mentioned in both, but not the mouth. What is more significant to the overall theme (of the idealized body) is the clear reference to the *Puruṣa Sūkta* in accounting for the judicial hierarchy (“he originated from the lowest part.”). Next, that same text (*RV* 10.90) is alluded to in a more subtle manner when the hot nail is specified as ten-fingers long—the same length by which *Puruṣa* extends beyond the cosmos. The myth/legal homology may be a coincidence or the mere reliance on some standard unit of measurement. But, it could also be expressive of what we saw in the *Agnicayana*: a recognition that numerical similarities invoked across distinct domains express a relationship that transcends mere analogy and establishes, if not identity, at least some metonymic bond. This sort of relationship is easier to predict and ascertain in the penitential body: the sinner who performs penance (*prāyaścitta*).

The correspondence between crime and punishment (*daṇḍa*) in Manu implies, or perhaps prevents, an equally certain, if more metaphysical, connection between act and consequence.

A man who steals gold gets rotten nails; a man who drinks liquor, black teeth; the murderer of a Brahmin, consumption; a man who has sex with his elder’s wife, skin disease; a slanderer, a smelly nose; an informant, a smelly mouth . . .

(*MDh* 11.49–11.50; tr. Olivelle)

Such considerations are usually reserved for discussions of sins (*pāpa*), karmic consequences, and penances, but are also considered legally relevant for evaluating legal subjects (witnesses and so forth).

The most precise and literal correspondence between an offending organ and the location and severity of punishment can be seen in rules that apply to the *Sūdra* transgressor (*MDh* 8.270–8.272; 280–3). Manu (8.279) makes this clear: “When a lowest-born man uses a particular limb to injure a superior



person, that very limb should be cut off—that is Manu’s decree.” Meanwhile, proportionality is still important in the case of twice-born offenders, but monetary calculation is applied as substitute in accordance with the pain or the damage to the body of the offender (*MDh* 8.285).

The legal status and ideological meaning of the offending body is implicitly given in Manu 8.374–8.385, which is a masterpiece of punitive proportionality. These rules deal with illicit sex with a woman (*strīsaṃgrahaṇa*) who is either guarded (subject to male relative) or unguarded. The punishments are significant, including vast fines and even imprisonment for a Vaiśya. But, three things stand out: First, sex with a guarded Brahmin woman induces the highest punishment, but, otherwise, the fines are higher for a twice-born man who commits such acts with a low-caste woman. Second, the Śūdra can lose a limb (castration) and all his property, or his life as well, for sex with a twice-born woman. Finally, a Kṣatriya has his head shaved with urine for sex with an unguarded Kṣatriya woman, while a Vaiśya only pays 500 (Glucklich 1982).

The careful punitive grid in this and similar sections (for example, verbal abuse) shows numerical values as metrics of social rank and, at the same time, it demonstrates that often the Śūdra’s body acts as his legal currency, while the twice-born can replace the body with money or time served in prison. In either case, numbers in Manu (and other *smṛtis*) act as a sort of validation of the cosmological foundation of social hierarchy, perhaps recapturing the metaphysical significance of numbers in Vedic rationality. And, as we shall see later on, the numerical consideration of length of impurity following birth and death function is a similar way.

The text explains all of this (and much more) as the product of deeds committed in this or a previous life and it prescribes—for those sins committed intentionally—a suitable penance (*MDh* 11.45, 11.48). The list occasionally appears to contain some sort of physio-moral balance (a man who steals a lamp is blind in one eye), but the relationship between the act and the body is not always clear. The blackening of nail or teeth look like the damage done to the offending limb (fingers, mouth)—but this is not always the case. Far more interesting than these karmic speculations are the actual manipulations of the body as one tries to prevent karmic consequences, or as one performs penances.

If a twice-born man in his folly drinks liquor, he should drink boiling hot-liquor; when his body is scalded by it, he will be released from that sin. (*MDh* 11.91)

The new element introduced by penance into what had been a theoretical homology between socio-cosmic disruption (sin) and the body is pain. The location of the punishment is significant, but it is the hot scolding sensation that releases one from sin. “The man who sleeps with his elder’s wife must proclaim his crime and lie down on a heated iron bed, or embrace a red-hot

metal cylinder; he is purified by death” (*MDh* 11.104). The correspondences (the cosmos, the body, and justice), is reinforced by sheer enormity of the topic (*prāyaścitta*) and by the exquisite detail with which the body is recruited to exact moral purification (Kane IV: 1–2).

It is not always the case that pain liberates from sin; there are other mechanisms, including magical and psychological elements (Glücklich 2003). Furthermore, it is far from obvious how bodily pain fits into the algorithm of sin-body-penance. It is easier to explain, for example, another dimension of the painful penance—public shaming: “Or, he may cut off his penis and testicles by himself, hold them in his cupped hands, and walk straight toward the south-west until he falls down dead” (*MDh* 11.105). Shaming exhibits the offending body part for all to see and ritually reinforces the desired normative lesson (Day 1982: 174, 181). It makes a private act (the sin) public and turns the sinner into the embodied exhibition of transgression. In fact, the integrity and health of the physical body play a significant role in the legal and, therefore, social status of the individual, and individuals who are congenitally ill or missing a limb are excluded from many legal transactions (*MDh* 8.64; 8.66; 8.71; 163; *YDh* 2.143–2.144).

Both characteristics—the body in pain and the body as the prism of legal and moral culpability—are visible in ordeals (*divya*). Not all ordeals are painful (balance, for example), but the more significant ones—Sitā underwent a variation on this—do involve subjecting the body to potential pain (*MDh* 8.114–8.116). According to *Yājñavalkya Smṛti* 2.104, *Viṣṇu Dharmaśāstra* 11.11–11.12, and other texts, the fire ordeal involves the heating of iron rods, which are placed on the open palms of the accused (*śodhya*), which are protected by leaves of the *Aśvattha* tree. The accused must show no hesitation during the elaborate ritual, and the hands must betray no physical sign of trauma. A variation involves heated gold coin (*taptamaṣa*) and plowshare (*phāla*)—both heated and placed into contact with the accused (Kane III: 371). While stoicism in the face of pain is critical: in all ordeals, the body reveals hidden truths (guilt or innocence) as the field of action for divine information, and hence the term *divya* (Lariviere 1981a).<sup>3</sup>

Vedic texts and rituals are famous for demonstrating magical relationships: between sound and meaning, ritual and result, ritual and performer, and so forth (Patton 2005). One might fit karmic reciprocity (act-consequence) in this scheme, as long as we set aside the moral consideration. However, the moral consideration is critical in the post-Vedic (e.g., Buddhist, late Upanishadic) way of thinking. We see this in Manu’s emphasis on intentionality (11.45). However, pain is another matter. Pain emerges as a factor within the

<sup>3</sup> Indeed, as Kane shows (III: 368) following Mitākṣarā on *YDh* 2.97, 2.99, the ordeal is a consciously designed religious procedure with strong sacrificial elements.

moral-karmic domain in which the body figures as sinner and penitent. Inasmuch as intention defines the motive, pain acts as the countermeasure to immoral intention. The motive (*kāmatah*) is abstract, or rather hidden—a mere psychological force. But pain too is hidden. It is the subjective way in which the body registers the punishment. That punishment (hugging a hot cylinder) is concrete and often highly public—but the pain is private.

One may still ask why pain? Why not swift death? The reason, possibly, is that pain in religious contexts is regarded as a constructive-transformative force (Glucklich 2001). There is evidence for this in contexts that do not deal with punishment and penance, for example, in the way that the ascetic (*saṃnyāsin*) manipulates his own body in pursuit of liberation.

### THE ASCETIC BODY

Manu's instructions for the fourth stage of life, translated by Olivelle as *the ascetic*, are detailed. They include highly symbolic gestures, but they also include acts that are extremely inconvenient, uncomfortable, and even painful:

He should roll on the ground or stand on tiptoes all day; spend the day standing and the night seated, bathing at dawn, midday, and dusk; surround himself with the five fires in the summer; live in the open air during the rainy season, and wear wet clothes in the winter—gradually intensifying his ascetic toil. Bathing at dawn, noon, and dusk, he should offer quenching libations to ancestors and gods, and engaging in even harsher ascetic toil, he should inflict punishment on his body.

(MDh 6.22–6.24)

The psychological mechanism that accounts for the perceived efficacy of the pain in gaining ultimate goals is yogic (MDh 6.61–6.86) and clearly dualistic. The ascetic meditates on embodied births in billions of wombs, linked with the pain of *adharma*. He must control his breath in order to burn away the faults of his organs (like the burning away of the impurities of metallic ore), he withdraws his organs from their attachments. And he meditates on the body:

Constructed with beams of bones, fastened with tendons, plastered with flesh and blood, covered with skin, foul-smelling, filled with urine and excrement, infested with old age and sorrow, the abode of sickness, full of pain, covered with dust, and impermanent—he must abandon this dwelling place of ghosts.

(MDh 6.76–6.77)

The voluntary pains of the ascetic are thus transformative, almost alchemical in effect. (Kaelber 1989: 5) The ascetic body—like those of the criminal and the sinner—is as useful in its ritual suppression as the Brahmin's body is useful in its ideological expression.

Indeed, while the Brahmin's body, as we shall see, is paradigmatic, the ascetic body represents a dynamic process: a transformation that includes penance, purification, and even internalization. Olivelle (2005a: 282) cites the rituals of *samnyāsa*, abandonment of the daily fires, as the ritual depositing of the fires within the body of the renouncer, where they become the five breaths. Elsewhere the dynamics of the ascetic body are described as a divinizing process (Davis 1991) or even as a sort of possession (Smith 2006).

### THE HOMOLOGICAL BODY (GOD AND BRAHMIN)

There is a strong correlation in the Dharmaśāstra between the body of the Brahmin and the body of God. More specifically, the direct link between the mouth of God and the mouth of the Brahmin helps to define the authority on which social hierarchy—indeed order itself—is based. It is important to note that from a theological perspective, divine embodiment represents a problem of limitation, even for Manu and his archaic cosmology (Clooney 2005).<sup>4</sup> Later Shaivite and Vaishnavite theologians would disagree on the nature of this problem, but Manu's focus was not on the nature of the divine itself, but on the relationship between cosmology and normative authority. Inasmuch as the divine body is limited to the mouth, authority is magnified and it extends to the empirical world. The correspondence between the divine mouth and that of the Brahmin builds on this theme: the birth (embodiment) of the Brahmin is the instantiation of *dharma*, which is the structure of God's body made manifest in the social realm.

A man is said to be purer above the navel. Therefore, the Self-existent One has declared, the mouth is his purest part. Because he arose from the loftiest part of the body, because he is the eldest, and because he retains the Veda, the Brahmin is the Law the lord of this whole creation (MDh 1.92–1.93)

It is interesting to note that the mythical origin of the Brahmin was in ascetic heat (*tapas*) rather than a birthing process. The product of the mouth (Veda, Brahmin) is both pure and authoritative, which is essential for the perpetuation of order and for the benefit of the divine as well:

What creature can surpass him through whose mouth the denizens of the triple heaven always eat their oblations, and the forefathers their offerings?  
(MDh 1.95)

<sup>4</sup> Rigvedic gods were often described as possessing bodily attributes (neck, belly, arms, hair, etc.) in RV 8.17.8 and 10.96.8, and many other places. While this appears to lend credence to Clooney's observation, this embodiment plays no role in Manu's description of the Creator. See Kane II: 706.

If one were to argue that the authority that *dharma* texts claim for their social order comes from Vedic revelation and divine origins, it is the Brahmin's body—pure but infinitely vulnerable to impurity—that turns authority into practice and perhaps even anxiety. Impurity is everywhere, and the battle against it unceasing—even around the Brahmin's own body. There are, most immediately, the twelve products of the body (excrement, urine, semen, blood, etc.) to be rid of and to purify the orifices (*MDh* 5.134). There are the foods to avoid and even the remnants of allowed food that cling to the lips and must be cleansed (*MDh* 2.56). Even the palm of the hand with which the purifying sipping of water takes place is divided into the pure or acceptable (corresponding to Brahṃā and Prajāpati) and unacceptable (corresponding to ancestors) (*MDh* 2.58–2.59). While in the state of impurity, the Brahmin must avoid touching pure objects such as the cow, a Brahmin, and fire—and if he does touch these, he purifies his limb with water (*MDh* 4.142). In fact, the entire day, consisting of proper ritual observance and proper moral conduct, is framed by a careful and extensive purification of the body and vigilance against coming into contact with anything that might defile the body. In a sense, the Brahmanical body acts as the living map of the social and natural order.

The Brahmin begins his day (after his toilet) with an elaborate series of purifications, which consist of carefully scripted physical manipulations, accompanied by the recitation of appropriate mantras. This includes:

- \* Pouring water on the ball of the right thumb
- \* Dribbling water on the head and breast
- \* Positioning the fingers and thumb in a specific manner during these procedures
- \* Standing in river water (where available) and dipping three times (*snāna*)
- \* Blocking the correct nostril while controlling the breath (*prāṇāyāma*)
- \* Washing of the mouth (*ācamana*)
- \* Pouring water onto the left hand
- \* Observing twenty-five hand figures (*mudrā*) (Michaels 2004: 238–40; Kane II: 1000).

It is important to note that while purity and impurity are closely related to the Brahmin's body, this is a conceptual and ultimately homological body. In other words, this is the body as root metaphor and a sign for broader social relationships. Hence, when impurity extends to birth and death and applies to individuals who have had no direct physical contact with polluting matter (corpses, birth fluids), the body is in the background as a conceptual foundation. The impure relative who then comes in contact with others will pollute the first: the first will pollute the second, the third, and up to the fourth person (Michaels 2004: 179–80). This is a perfect illustration of the way that the paradigm of the body as the index of social relationships actually shapes social conduct.

## THE TRANSITIONAL BODY

Arrival into and departure from the world is an area of profound interest in the *dharma* literature, and Manu devotes a great deal of space to discussion of the periods of impurity that accompany these events.<sup>5</sup>

Someone who has teethed, someone younger, or someone who has had his first cutting of hair—when any of these dies, all his relatives become impure; the same is prescribed after the birth of a child. A ten-day period of impurity following a death is prescribed for those who belong to the same ancestry; alternatively, that period may last until the collection of bones, or for three days, for a single day.

(*MDh* 5.58–5.59)<sup>6</sup>

However, the Dharmaśāstra texts, including Manu, do not provide as much detail on the death rites as they do on the periods of impurity. For data on the dead body and its manipulation that early authors might have consulted, one must turn (again) to sources such as the *Gr̥hyasūtras*. One example is *Āśvalāyana Gr̥hyasūtra* 4.1–4.5.<sup>7</sup>

The body of the deceased undergoes a gradual passage from living person to ancestor (via the ascetic body, etc.), and his physical body is instrumental in this process of perfection. The manipulations of the body in *ĀśGr̥* include the total shaving of the body and clipping of nails, placing the body on the hairy side of black antelope skin (in the manner of an ascetic), and placing various objects (of social and religious significance) in the hands or on the torso. For example, a sacrificial spoon goes in the right hand, and another type goes in the left; two wooden swords are placed on either side of the body (of a Kṣatriya); a ladle is placed on the chest; pressing stones on the teeth; and so forth. It appears that in order to achieve successful perfection of the released soul, the body is ritually connected to the paradigm of the sacrifice as an ordering mechanism that establishes caste identity and a dynamic relationship between society and broader cosmological themes.

In Manu, the careful ordering of periods of impurity may be understood not only in terms of the material aspects of death and corpses, but as links to the

<sup>5</sup> For considerations of space, this chapter will focus on death only. Furthermore, birth raises the topic of women's bodies, which requires a specialized and a semiotically more expansive approach; this is far beyond the purview of the present chapter. See, for example, Sarah Lamb, *White Saris and Sweet Mangoes: Aging, Gender, and Body in North India*. Berkeley: University of California Press, 2000.

<sup>6</sup> "The collection of bones" may refer to the fourth day after death, according to Olivelle, citing *ViDh* 19.10.

<sup>7</sup> The collection of bones in Manu 5.59 is described in *ĀśGr̥* 4.5.1. The latter refers to time units as *tithis*, which are one-thirtieth of a lunar month each. Detailed descriptions of contemporary death rites can be found in a wide range of works, nicely summarized by Axel Michaels (2004: 132–44). Most of these sources, including the *Garuḍa Purāṇa*, postdate the *dharma* texts under discussion here.

socio-cosmological values performed in the death rites as seen in the Gr̥hya-sūtras. The insistence on periods of impurity may be due to actual contact with the corpse or with the substances associated with delivery of a baby, but there are also conceptual considerations.<sup>8</sup> For instance, Manu distinguishes between those who handle the corpse—these are subject to ten days of impurity—from those who participate in the funeral by offering libations only. The latter are only subject to three days of impurity. This appears to suggest that the body itself is the polluter, even of death. However, another consideration, a social one, may be at work here. The following verse (*MDh* 5.66) states that a student who performs the funeral for his teacher is subject to ten days of pollution. This suggests, perhaps, that the previous rule was marking a distinction between close relatives who were expected to touch the corpse and the more distant relatives who were only expected to offer libation. In that case, the gradation in days of impurity reflects social proximity—not some property of the physical body.

Such an interpretation emerges from the reading of Manu 5.74–5.78, which discuss the death of a relative in a distant location. Indeed, Manu is both detailed and systematic in specifying the correlation between the social relationship (teacher, teacher's son, teacher's wife, Vedic scholar, officiating priest, etc.) and the term of impurity (5.80–5.84). While this material belongs in the discussion of impurity rather than the physical body, the occasion of death—the departure of physical substance of social individuals—marks this period a time of vulnerability for the social milieu vacated. The specific consideration of terms of impurity thus reflects the noetic—meaning giving—role of the body as a social nexus.

In conclusion, the numerous references to the human body in Dharmaśāstric texts like Manu display a deep and powerful rationale. The body—particularly the body of God and the body of the Brahmin—represent the deep relationship between cosmic and social order and the authority of *dharma* as the legitimate mechanism for upholding that order. But, the very same trope displays the tenuous nature of that order, its vulnerability to disruption by chaos, and, in a more subtle way, the anxiety induced by such threats. The power of these conceptions can be seen when this anxiety is perpetuated into the twenty-first century and as far away from the land of the black antelope as Ohio, USA.

<sup>8</sup> On the difference between contact and relational pollution and implications for Dharmaśāstra law, see Orenstein 1968.

## Emotions

*Maria Heim*

At all layers of textual development, the *dharma* literature proves unexpectedly rich in describing, evoking, and regulating what users of English call *emotions*. Although *emotion*, whose history even in English is only a few centuries old, has no ready counterpart in the Sanskrit material, reading the Dharmasūtras and Smṛtis in a manner alert to emotions provides a perspective useful for interpreting this material in fresh ways, as well as potential contributions of the dharma literature to the study of emotion more broadly. While we can hew closer to the texts when tracking particular phenomena such as anger, envy, fear, desire, grief, love, remorse, and other specific experiences mentioned in the texts, the heuristic use of the analytic category emotion gives us a tool to better understand this literature's treatment of social relations.

Once we begin to notice them, we find that emotions are seen everywhere to be *doing* things—sometimes they support, perform, and enact the normative social values promoted by the *dharma* authors, while at other times, they interrupt or threaten those norms. In this chapter, I chart two general ways of treating emotions in the *dharmasūtras* of Āpastamba, Gautama, Baudhāyana, and Vasiṣṭha, and the *smṛti* of Manu, all of which are early sources that largely establish the terms of discussion for the subsequent tradition. The first concerns a treatment of emotions in which they are seen to be—and cultivated to become—integrated harmoniously into the normative disciplinary, ritual, and legal order that the texts prescribe. Emotions in these contexts are *contiguous* features of a highly ordered construction of human experience and action. A second treatment of emotions available in the material is where they are depicted as *disruptive* to this very order. Emotions are here seen as threatening to the ritual norms and moral vision advanced by the texts. In both contexts, we learn how this body of highly explicit examination and regulation of social life comes to put forth a distinctive vision of human experience negotiating a complex social world.

I propose what I will call an ecological approach to the study of emotions in these texts, through which to observe what emotions do within the fields of



experience in which they are embedded. An ecological account of human experience that attends to the relationships between humans and their social and material environments can help undo some of the implicit and explicit dualistic assumptions that may yet underlie contemporary Western thinking on emotions and of which our Indian sources are refreshingly innocent (as might be suggested in such dualisms as mental and physical, inner and outer, private and public, e.g.). An ecological approach suggests that experience is a field of relationships of phenomena and processes that are mutually conditioning and constitutive, dynamic and subject to growth over time, and local and contextual.<sup>1</sup> A particular *ecosystem* may be interpreted as comprised of many features and relationships (a forest is made up of, e.g., plants, water, soil, sun, weather, animals, and insects, all of which are interacting, as well as larger contexts, narratives, and histories, such as weather and climate patterns, migration routes, watersheds, and so on). *Ecology* is the field of study that identifies those elements and their many intricate and complex relationships, often for the purposes of “management.” Similarly, we might say that a field of experience may be seen, upon critical reflection, to be comprised of bodily sensation, action and reaction, emotions, intentions, motivations, ritual and formal structures, material objects, persons, narratives, larger contexts, and so on. Śāstric discourse on *dharma* is a distinctive type of ecological reflection on human experience, in which certain features and their relationships are noticed and named. It has a *telos*—describing and constructing an ideal social order—that shapes what is noticed, analyzed, and subjected to regulation. What is important for us to notice is how frequently and to what purposes items that we call emotions occur in their accounts, where and how they occur with other noticed features, and the various ways they function and interact within them.

Thus, an ecological approach considers emotions as complex phenomena embedded in processes that can only be understood within the larger fields that they help constitute and which, in turn, allow us to identify them. It also attends to the processes behind selecting such phenomena and describing them, and asks about the aims and choices of those descriptions. This approach can help us consider emotional phenomena without assuming what they are or what they consist of. We need not presume or decide at the

<sup>1</sup> I have been working on this approach to emotion and bodily experience with Chakravarthi Ram-Prasad. Our notion of phenomenological ecology is broadly in sympathy with certain thinkers in a variety of fields, such as, for example, Alva Noë, who comments on a brain-centered view of consciousness in *Out of Our Heads: Why You are Not Your Brain, and Other Lessons from the Biology of Consciousness* (New York: Hill and Wang, 2009); Robert Kastor, who studies emotions in the context of the contextual “scripts” or narratives in which they are noticed in Roman texts (*Emotion, Restraint, and Community in Ancient Rome*, New York: Oxford University Press, 2005), and in the idea of “in-between-ness” in the introduction to Melissa Gregg and Gregory J. Seigworth, eds. *The Affect Theory Reader* (Durham: Duke University Press, 2010).

outset, for example, whether emotions are physical or mental phenomena, or (to mention other preoccupations in modern Western discussions of them) whether they are socially constructed or biological phenomena, culturally relative or universal. By not defining, in advance, rigid criteria for what is to count as “emotion,” we can be open to conceptual distinctions, analytical categories, and taxonomies that emerge from the texts themselves. For example, what we label as emotions may sometimes be listed with items not usually considered emotions in current Western taxonomies. Consider, for example, Manu’s enumeration of emotions among other phenomena in a listing of the motivations for perjury: greed (*lobha*), confusion (*moha*), fear (*bhaya*), friendship (*maitra*), desire (*kāma*), anger (*krodha*), ignorance (*ajñāna*), and immaturity (*bālabhāva*).<sup>2</sup> While we will look more carefully at this listing below, here we may note that the more “recognizable” (at least to modern English users) emotions of fear and anger function in this listing as promptings much like motivations of greed and desire, and alongside other existential conditions like confusion, ignorance, and immaturity. Here their shared *function* as motivations puts these various phenomena together in a single grouping, helping us to see how what we might call emotions can, in certain instances, share similar features with and act in similar ways as other phenomena. Such instances are opportunities to reexamine assumptions that would neatly separate cognitive, conative, and affective experience in light of different descriptions and analyses of experience.

To turn to a specific example, we can explore the rules for chaste studentship (*brahmacārya*) for the Brahmin male, which involve a highly specified and structured long-term relationship with a teacher. This training aims to make him a *śiṣṭa*, a cultured and learned man, defined at the outset by Baudhāyana in dispositional and emotional terms: a *śiṣṭa* is free of envy (*matsara*), pride (*ahaṃkāra*), deceit (*dambha*), arrogance (*darpa*), greed (*lobha*), folly (*moha*), anger (*krodha*), desire (*alolupa*), and he possesses just a jarful of grain.<sup>3</sup> This character is developed through an ecology of respect to the teacher, which is instilled and realized through ritual initiation and a code of conduct involving austerity, study, and service. The Dharmasūtra authorities give an exacting account of the student’s service, omitting no point of etiquette in this relationship in which he lives with his teacher, learns to greet him appropriately, gathers his water and firewood, seeks alms for him, sees to his meals, gets him ready for bed, washes and massages his feet, and so on.<sup>4</sup> The activities of seeking alms and providing physical care foster and display

<sup>2</sup> *MDh* 8.118; see Olivelle 2004c: 131. All translations are my own, but I include references to Olivelle’s translations as well.

<sup>3</sup> *BDh* 1.1.5 (my translation); see also, Olivelle 1999a: 132. Bowles points out and discusses the distinctive yogic values, promoted here alongside the traditional expectations of Vedic learning, of the *śiṣṭa* as Baudhāyana defines him in this passage (337–9).

<sup>4</sup> See the chapter on studentship in the present volume.

the virtues of modesty and humility highly valued for Brahmin males at this stage of life: he is to become full of shame or modesty (*hrī*) and free of pride (*ahamkāra*).<sup>5</sup> The whole program creates comportment—the student is to avoid boisterous and unfitting entertainments such as dancing, casinos, and fairs, and remain chaste; and it creates disposition—the student is to be at all times “gentle (*mṛdu*), calm (*śānta*), self-controlled (*dānta*), modest (*hrīmat*), firmly resolute (*dṛḍhadhṛti*), enthusiastic (*aglāna*), not given to anger (*akrodhana*), and free of envy (*anasūyu*).”<sup>6</sup>

What we might select and refer to as emotions are depicted quite organically within this idealized representation of experience as seamlessly generated, supported, and revealed by actions, constraints, dispositions, bodily states, and decorum. This idealized but also normative account is a flowing and successful integration of the duties of this station of life, fully realized not simply by following rules but by becoming a person “delighting” in the *dharma* (*dharma-rucci*).<sup>7</sup> The field of experience includes the teacher’s disposition toward him. For his part, the teacher is enjoined to “long for” (*anukāṅkṣa*) his pupil as his own son,<sup>8</sup> even while he is ever ready to correct him. He must not hesitate to instill fear (*abhitrāsa*) into his student when appropriate, and make him fast or bathe, or even banish him when such punishments are warranted.<sup>9</sup> Emotions are subject to injunction—the teacher should love him; they are also tools of a teacher’s pedagogy where frightening the student may sometimes prove useful. The student’s relationship with his teacher shows how emotions, actions, and physical states act upon and are acted upon by one another, represented organically. Later we shall consider examples in which emotions are not so neatly folded into the vision of social life valued by the *dharma* authorities, but through these prescriptions, we see an ecology in which norms, activities, and bodily and emotional experience mutually support, and indeed, help constitute, one another.

## EMOTIONS AND THE SOCIAL ORDER

As we watch what emotions do, we may examine other ways in which they are seen to be contiguous with the larger social order envisioned by the *dharma* texts’ meticulous erection and maintenance of social distinctions. This can be seen, for example, through the naturalization of an ideology of happiness. When Āpastamba, in a manner representative of similar claims in all the texts, asserts that, “highest and unmeasured happiness (*sukha*) belongs to those of all

<sup>5</sup> *BDh* 1.3.20; Olivelle 1999a: 136.

<sup>7</sup> *ĀpDh* 1.5.11; Olivelle 1999a: 13.

<sup>9</sup> *ĀpDh* 1.8.29; Olivelle 1999a: 17.

<sup>6</sup> *ĀpDh* 1.3.17–1.3.24; Olivelle 1999a: 10.

<sup>8</sup> *ĀpDh* 1.8.24; Olivelle 1999a: 17.

classes who carry out their own *dharma*,”<sup>10</sup> he is laying claim to a natural order in which human happiness is fulfilled by following highly stratified and marked social prescription. Similarly, contentment is also concurrent with the ways of life described as the four “stages” of a twice-born male: chaste student, householder, forest hermit, and renouncer; “one who abides properly in these will be contented (*kṣema*).”<sup>11</sup> Normative values can be expressed in terms of emotions that then index the evaluative features of an entire vision of life.

Emotions are deployed for revealing and constructing social distinctions and practices for the four classes: Brahmins, the ruling elite, the productive classes, and the menial class, each of whom has its own distinctive “*dharma*.” We have already seen something of the ideal emotional character of the Brahmin male, which is these texts’ principal concern, but they also inscribe the character of a Śūdra, a member of the servant class. Emotions are here conflated with vices: a Śūdra is envious (*asūya*), slanderous (*piśuna*), ungrateful (*kṛtaghna*), and bears grudges (*dirgharoṣaka*).<sup>12</sup> Śūdras’ debased nature and social condition are to be well marked through emotional terms: for instance, Manu prescribes that Śūdras be given names that elicit disgust (*jugūpsā*).<sup>13</sup> Emotional dispositions (along with other properties) also signal women’s nature: at creation, “women were assigned desire (*kāma*), anger (*krodha*), crookedness (*anārjava*), a hostile disposition (*drohabhāva*), bad conduct (*kucaryā*), and an [attachment to] beds, couches, and jewelry.”<sup>14</sup>

Yet while emotions are often deployed to mark social class, stage of life, and gender, they are sometimes put to the task of exploring what might be common to all humans. The texts sometimes generate lists of universal emotions and qualities: all creatures are “burned” (*dah*) by “anger (*krodho*), excitement (*harṣa*), rage (*roṣa*), greed (*lobha*), folly (*moha*), deceit (*dambha*), malice (*droha*), speaking falsely (*mṛṣodya*), gluttony (*atyāśa*), being accusatory (*parivāda*), envy (*asūya*), desire (*kāma*), wrath (*manyu*), lack of self-possession (*anātmya*), and lack of self discipline (*ayoga*), all of which can be ‘eradicated through yoga.’”<sup>15</sup> And all orders of social life can and should pursue the opposites of these.<sup>16</sup> Emotions can be a social leveler, at least for certain practices, and useful for moral exhortation. For all their differences, people from all classes should—and presumably can—abjure “slander (*paiśunya*), jealousy (*matsara*), arrogance (*abhimāna*), pride (*ahaṃkāra*), faithlessness (*aśraddhā*), crookedness (*anārjava*), praising oneself (*ātmastava*), abusing others (*paragarhā*), deceit (*dambha*), greed (*lobha*), folly (*moha*),

<sup>10</sup> *ĀpDh* 2.2.2; Olivelle 1999a: 44. Cf. Gautama 11.29–11.30.

<sup>11</sup> *ĀpDS* 1.21.2; Olivelle 1999a: 64. <sup>12</sup> *VaDh* 6.24; Olivelle 1999a: 268.

<sup>13</sup> *MDh* 2.31; Olivelle 2004c: 25. <sup>14</sup> *MDh* 9.17; Olivelle 2004c: 156.

<sup>15</sup> *ĀpDh* 1.23.4–5; Olivelle 1999a: 34. This is another place, as with the description of a *śiṣṭa* above, where tracking emotions allows us to see the imprint of yogic values in this genre.

<sup>16</sup> *ĀpDh* 1.23.6; see Olivelle 1999a: 34; cf. Vasiṣṭha 4.4 for a shorter list of shared traits and activities, which include refraining from anger, as common to all.

anger (*krodha*), and envy (*asūya*).<sup>17</sup> Anger and envy, mentioned frequently in these texts, seem to be particularly problematic emotions in whomever they occur.

## EMOTION IN RITUAL AND LAW

There are various ways in which emotions can be seen as crucial components of ritual practice, a field of experience of great concern to the *dharmā* authorities. Emotions are often listed among the other situational variables (people, actions, material objects, etc.) that constitute the description and teleology of particular ritual contexts. For example, Vasiṣṭha describes the ritual prescriptions of banishing those fallen from caste. These involve a low-ranking person taking a broken, unusable pot filled with water and turning it over with his left foot. The outcaste's relatives, with hair disheveled, should each touch the outcaste and then have no further ritual recourse with him. The possibilities for readmission are also specified through ritual penance that also involves a pot, this time a fine one (whole clay or golden), filled with water and poured over the readmitted person in a purifying lustration suggesting a new birth. Vasiṣṭha quotes an earlier authority:

One should walk in front of those being readmitted in the manner of reveling and laughing, and behind those who have fallen in the manner of grieving and weeping.<sup>18</sup>

In this small example, we see the performance of emotion as both display and experience of this breach and reconstitution of the community. Grieving and weeping are ritual features, along with the symbolic pots and water, disheveled hair, and parading through the village that make manifest and exhibit the rupture and loss to the group that excommunication entails. When readmitted, the newly regenerated person is preceded by laughter and revelry, through which the restoration of the group is felt and exhibited as the community is made whole.

Emotions sometimes operate as motivations and are the impetus for ritual activity. In the same section on readmitting an outcaste, Vasiṣṭha allows that even one who has abused a teacher, mother, or father may be readmitted through an expiation, owing to their graciousness (*prasāda*).<sup>19</sup> When we consider the profound reverence in which the teacher, mother, and father

<sup>17</sup> *VaDh* 10.30; Olivelle 1999a: 274.

<sup>18</sup> *agre 'bhyaddharatā gacchet krīdann iva hasann iva/pāścāt pātayatā gacchec chocann iva rudann iva* (*VaDh* 15.17; Olivelle 1999a: 289).

<sup>19</sup> *VaDh* 15.19; Olivelle 1999a: 289.

are held in these texts, and the seriousness of abusing them, we can note just how significant an intervention their kindness and graciousness are here.

When emotions are construed as motivations, they are sometimes relevant and even decisive features of the legal aspects of Dharmaśāstra. A king, when judging a legal case, is to set aside his own “likes (*priya*) and dislikes (*apriya*)” and learn to “master love (*kāma*) and anger (*krodha*)” in order to render judgment impartially (*samatā*) and to model justice for his subjects.<sup>20</sup> Emotions are relevant also in cases of perjury.<sup>21</sup> In a listing we considered above, Manu says that people can lie in court, motivated by greed (*lobha*), confusion (*moha*), fear (*bhaya*), friendship (*maitra*), desire (*kāma*), anger (*krodha*), ignorance (*ajñāna*), and immaturity (*bālabhāva*).<sup>22</sup> Not only is such testimony inadmissible in a legal case, but the false witness is to be subjected to financial penalty based on his motivation, with greed, friendship, desire, and anger more heavily penalized than lying out of confusion, fear, or immaturity.<sup>23</sup> In the context of law, emotions threaten the correct exercise of *dharma*, here configured as justice requiring impartiality. Moreover, as much as emotions might be similar to one another and to other phenomena listed here in their capacity to prompt action, they also differ one from the other, and can be treated axiologically through this scale of penalties corresponding to them.

Another field in which emotions are assumed to be operative in social practice and requiring careful management by categorizing and ranking is in the kinds of marriage that all the *dharma* authorities name and describe (though each adds subtle nuances within a shared schematic).<sup>24</sup> The best kinds of marriages, called “divine” (*Brahmā*), are matches between socially appropriate families, made on the basis of the good learning and character of the man and the promise of progeny, done according to the appropriate rituals, and involving jewelry bestowed on the bride. Marriages that are less admired are made through bride price, termed “demonic” (*āśura*) marriages, and lower still are marriages forged by mutual desire or sexual love (*kāma*) of the couple (these are “*gāndharva*” marriages). When a man abducts a woman through violence, it is a “fiendish” (*rākṣasa*) marriage, and when one rapes a girl who is asleep, intoxicated, or insane, it is a “ghoulish” (*paśāca*) marriage. These are ranked in a descending scale of value that prizes social respectability, ritual

<sup>20</sup> *MDh* 8.173, 175, 178; Olivelle 2004c: 135–6.

<sup>21</sup> Emotions are also relevant in law to deter crime and encourage penance: a medieval commentator, Vijnāneśvara, regards the enumeration of the ill effects of sin as useful for generating “urgent fear” (*udvega*) in Brahmin-murderers and other criminals, inducing them to practice penance (his commentary on YS 3.216, as cited in Davis 2010: 137). For more on the roles of emotions in law, see *The Passions of Law*, ed. Susan Bandes (New York: New York University Press, 1999), which treats shame, remorse, vengeance, disgust, and other “passions of justice.”

<sup>22</sup> *MDh* 8.118; Olivelle 2004c: 131.

<sup>23</sup> *MDh* 8.120–8.121; Olivelle 2004c: 132.

<sup>24</sup> See Chapter 9 in this volume, on marriages.

propriety, and fertility over love, although Gautama does mention “companionship” (*sahatva*) in his description of divine marriages. The types of marriage are variously inflected by caste considerations with Brahmins not practicing the lowest versions, and the quality of the sons issuing from these marriages is sometimes specified and scaled accordingly. And while Baudhāyana ranks marriages based on *kāma* in the usual order as lower than those transacted with bride price, he gets uncharacteristically romantic in allowing that “some praise *gāndhārva* marriages for everyone because these follow loving affection (*sneha*).”<sup>25</sup> He also finds practices entailing the selling of women into marriage by people befuddled with greed (*lobhamohita*) to be particularly craven.<sup>26</sup>

### UNRULY EMOTIONS

As much as they might prefer a perfect alignment of comportment, ritual order, and emotion, the dharma authorities recognize that human emotions sometimes lie orthogonal to the tidy social order they prescribe. (Even in the most flourishing and healthy ecosystems, clouds roll in, cyclones tear through, floodwaters deluge, and lightning strikes.) In some cases, this disquieting fact is simply acknowledged; at other times, it introduces an option or flexibility, as when Baudhāyana accommodates at least the *view* that love could be the chief driving factor in a marriage. Sexual love (*kāma*) between men and women is handled variously when it appears to challenge the tidiness of the ritually stipulated and socially respectable life. For example, Āpastamba prescribes that a man should really only sleep with his wife during her fertile season; however, if she desires sex at other times, he is to oblige her.<sup>27</sup> Women’s feelings appear to count. And while the texts give highly precise stipulations on how a Brahmin male is to greet each of his relations and teachers upon returning from a journey, they sometimes have the delicacy to step aside and allow a man to decide for himself how he may wish to greet his wife.<sup>28</sup> But, when it comes to the matter of who should be permitted to marry in the first place, *kāma* can make matters unruly. For their first marriage, twice-born men should marry women in their same social class, but in reality, some men may, as a result of *kāma*, be driven to marry women of lower social rank. Manu is willing to acknowledge, though not fully sanction these unions, but is obliged to mention various deleterious consequences for the

<sup>25</sup> *BDh* 1.20.16; Olivelle 1999a: 161–2. For similar passages on the types of marriages, see also *ĀpDh* 11.17–12.4; *GDh* 4.6–4.14; *MDh* 3.20–3.42.

<sup>26</sup> *BDh* 1.21.3; Olivelle 1999a: 162.

<sup>27</sup> *ĀpDh* 2.1.20; Olivelle 1999a : 44.

<sup>28</sup> *GDh* 6.6; Olivelle 1999a: 88.

descendants who will result from them as they slip in social distinction. And he simply refuses to admit of the possibility of a Brahmin male marrying a Śūdra woman, even in times of extremity, as no instances of this are known.<sup>29</sup>

Emotions allow us to track the flexibility of authorities and the mechanisms they deploy for accommodating the more troublesome elements of human experience. For example, suicide is immoral, and those who commit it should not be given funeral rites: however, Vasiṣṭha acknowledges that loved ones may, “out of loving affection (*snigdha*),” perform funeral rites for a suicide, and prescribes a penance for the deceased.<sup>30</sup> Love, like graciousness, is a recognized intervention that can, in the end, be accommodated ritually with the expedient remedy of penalties.

In these cases, emotions are relevant to the *dharma* authorities in their capacity to motivate actions of legal or ritual significance. In other cases, simply having certain emotional experiences is subject to śāstric censure. A man merely coveting (*abhimanyate*) another’s riches is in fact a thief;<sup>31</sup> a wife committing adultery in her heart or mind (*manas* can mean both) is to be penalized (though with a less severe penalty than if she said something adulterous or actually committed adultery).<sup>32</sup> Without assuming a Cartesian metaphysical dualism between mind and body, we notice that sometimes the texts see matters of the heart as relevant to the social and moral order they describe. In these instances, they are pressing beyond legal and ritual domains into the realm of morality. That theft and adultery committed with the mind come to be considered blameworthy actions suggests just how far ranging śāstric regulation conceives itself to be.

Further interest in the moral quality of emotional experience is developed in Manu’s use of a tripartite depiction of behavior, an analytic framework shared by his Buddhist contemporaries. Morally relevant action (i.e., karma producing good and bad [*śubha* and *aśubha*] results), can be divided into a list of ten immoral deeds, which are further divided into three categories: mental, verbal, and physical. The three mental actions are coveting another’s property, keeping in one’s mind what is undesirable, and holding what is untrue; the four verbal actions are speaking harshly, falsely, slanderously, and idly; and the three physical actions are taking what is not given, unsanctioned violence, and sleeping with another man’s wife. Moreover, the effects of mental actions are felt in the mind; those resulting from bad speech are experienced in speech; and bad physical actions redound on the body.<sup>33</sup>

<sup>29</sup> *MDh* 3.12–3.16; Olivelle 2004c: 44. This view, however, is contravened by Manu himself, in his description of the different kinds of sons a Brahmin might have, which include sons by a Śūdra wife (*MDh* 9.149–9.157).

<sup>30</sup> *VaDh* 23.16; Olivelle 1999a: 312.

<sup>31</sup> *ĀpDh* 1.28.1; Olivelle 1999a: 38.

<sup>32</sup> *VaDh* 21.6–21.8; Olivelle 1999a: 307.

<sup>33</sup> *MDh* 12.3–12.11; Olivelle 2004c: 211. This schema follows closely (but not exactly) a ten-fold Buddhist scheme of action that also finds it analytically useful to distinguish these varieties



These distinctions—mental, verbal, and physical—should be seen as analytical distinctions (rather than as metaphysical categories) deployed to suggest that a wide range of phenomena can count as action. They make possible a very formal way of organizing and rendering in moral terms disruptive emotion: both coveting and desiring what is wrongful are not only motivations but also actions in their own right, and as actions, they are subject to śāstric regulation and karmic culpability. In addition, some of the verbal and physical actions are shot through with emotion, whereby, for example, speaking harshly is the enactment of anger. (Manu specifically mentions anger [*krodha*] and desire [*kāma*] in reference to all three types of action.<sup>34</sup>) This account suggests that emotions are not conceived as matters of mind that find expression in physical action; rather, they *are* actions registering throughout the human organism.

Śāstric authors notice moral sensibility: they are sensitive to how moral experience is felt. We see this in their phenomenology of—and reparations for—remorse: Baudhāyana says, “a man constantly grieves in his mind when recalling his misdeeds, but austerity and vigilance will release him from evil.”<sup>35</sup> There is a painful grief in ruminating on one’s wrongdoing for which one may turn to *śāstric* advice to ameliorate. Their advice suggests that actions of austerity and fastidiousness will free the mind of such grief. Indeed, we see a visceral configuration of remorse when Baudhāyana elsewhere speaks of one being “weighed heavily upon by one’s own actions,” a heaviness from which one might release the self through ritual action.<sup>36</sup> But, Manu has it somewhat differently. He says that the body is free from wrongdoing when the mind hates the evil deed; by feeling remorse at having done the evil, one is free of it, and by resolving to do the action no more, one is purified.<sup>37</sup> Here the *mind*’s work of hating the deed and regretting it are deployed to liberate and purify the *body* from wrongdoing.

Moral regulation and sensibility are not the only occasions in which these texts draw analytic distinctions between what may be a matter of “inner” experience and what is observed in verbal or bodily expression. Manu enjoins kings to master the detection of inner states (*bhāvam antargatam*) by the

of behavior and assign them moral significance, as, for example, *Majjhima Nikāya* III.47–III.50; I discuss the psychology of these in *The Forerunner of All Things* (New York: Oxford University Press, 2014) pp. 65–76.

<sup>34</sup> MDh 12.10–12.11; Olivelle 2004c: 211.

<sup>35</sup> *socata manasā nityaṃ duṣkatānyanucintayan/tapasvo cāpamādo ca tataḥ pāpātamucyate* (BDh 1.10.33; see Olivelle 1999a: 149).

<sup>36</sup> *atha karmabhirātmakṛtaigurumivātmānaṃ manyetātmārthe prasṛtiyāvakaṃ śrapayeduditeṣu nakṣatreṣu* (BDh 3.6.6; Olivelle 1999a: 217).

<sup>37</sup> *Yathā yathā manas tasya duṣkatam karmam garhati/tathā tathā śarīram tat tenādharmena muchyate//katvā pāpam hi saṃtapyā tasmāt pāpāt pramuchyate/naivaṃ kuryām punar iti nivṛtīyā pyāte tu saḥ//* (MDh 11.229–11.30; Olivelle 2004c: 208).

voice, color, movement, expression, eyes, and gesture.<sup>38</sup> Inner experience can be detected through the shrewd discernment of a trained observer, and, thus, we need not assume that it is private. The management of social relations for the purposes of statecraft entails the premise of inner experience, which is yet observable by others.

In the end, it is perhaps an inevitable feature of human life that unruly emotions will not always comply with highly idealized representations of practice and will elude all attempts to accommodate, regulate, and manage them. Perhaps nowhere is this more evident than in the ritual expiations following a serious breach in code when the Brahmin student—whose optimistic alignment of disposition and conduct began our study—breaks his vows. Should he lapse by eating meat or having sex with a woman, he may take recourse in a ritual act of purification that involves, among other things, spreading *darbha* grass and pouring oblations of ghee into a sacred fire while uttering:

It was done by Desire (*kāma*). Desire does it. All of this belongs to Desire. To that one who makes me act, Svāhā!

It was done by Mind (*manas*). Mind does it. All of this belongs to Mind. To that one who makes me act, Svāhā!

It was done by Passion (*rajas*). Passion does it. All of this belongs to Passion. To that one who makes me act, Svāhā!

It was done by Dullness (*tamas*). Dullness does it. All of this belongs to Dullness. To that one who makes me act, Svāhā!

It was done by Evil (*pāpman*). Evil does it. All of this belongs to Evil. To that one who makes me act, Svāhā!

It was done by Wrath (*manyu*). Wrath does it. All of this belongs to Wrath. To that one who makes me act, Svāhā.<sup>39</sup>

There are several angles from which to approach this ritual obeisance. Phenomenologically, it does seem that often desire, mind, passion, dullness, evil, and wrath are the agents driving us. And so, conveniently, they may be assigned the blame in our breaches of conduct. Two of the drivers here, passion and dullness, evoke the ancient teaching of three *guṇas*—*sattva* (lucidity, truth, goodness), *rajas* (energy, passion, hate) and *tamas* (darkness, ignorance, gloom) mentioned also by Manu as pervasive qualities of the

<sup>38</sup> *MDh* 8.25–8.6; Olivelle 2004c: 124. Kauṭilya's *Arthaśāstra* describes a king's shrewdness in this capacity in detail, and the *Kāma Sūtra* (1.5.36) describes a "knowledge of gestures and expressions" (*iṅgitākārajñatā*) as useful in a go-between in a context of wanting to know what peoples' feelings and designs might be. The emotions of others, while ostensibly "interior," can be known by a skillful observer of gesture and expression.

<sup>39</sup> *BDh* 3.4.2; see Olivelle 1999a: 215–16; cf. *ĀpDh* 1.26.13, where *Kāma* and *Manyu* (wrath) are blamed as they receive oblations; *GDh* 25.4 and *BDh* 4.2.10, where oblations are addressed and offered to *Kāma*.

self.<sup>40</sup> Here they, along with other powerful forces, are deified as powerful agents that must be hailed—“*svāhā*”—in homage or appeasement (or both). Perhaps the emotional forces eluding śāstric stricture may only, in the end, simply be saluted.

## CONCLUSIONS

Manu reveals a cosmogony that depicts certain emotions as they were emitted at the time of creation; they are bigger than we are, and, indeed, were among the basic stuff generated at the beginning of time. Along with the constellations and the planets, the mountains, the rivers, and the rest of the universe, Brahmā, the Lord of Creation, emitted ascetic heat (*tapas*), speech (*vāc*), pleasure (*rati*), desire (*kāma*), and anger (*krodha*) in the making of creatures.<sup>41</sup> He also made distinctions and pairs of opposites: “to discern actions he distinguished *dharma* from non-*dharma*, and he yoked creatures with these pairs, such as pleasure (*sukha*) and suffering (*duḥkha*).”<sup>42</sup> Just as the moral, ritual, and legal norms of *dharma* are naturalized features of the cosmos from the beginning, so too the creatures of the world have their being in pleasure and pain. Moreover, Manu says, “whatever he gave out at creation—savagery or harmlessness, gentleness or cruelty, *dharma* or lack of *dharma*, truth or falseness—these take possession of one thereafter.”<sup>43</sup> While not exactly fixed features of created beings, emotional tendencies are consistently recurrent in us and they come to possess us periodically. They are not epiphenomena of social life but part of the organic ecology of being in the world.

Manu acknowledges the double bind in which we find ourselves: one should not act out of desire (*kāma*), yet desire impels all that we do, even when we do what is laudable, like studying the Veda and performing rituals.<sup>44</sup> Desire is the impulse driving us and while disapproved of, it must be accommodated in the rules of social life. And not just desire—the *dharma* texts take many emotions to be deeply pervasive and active in human life. Vasiṣṭha ends his treatise with the rueful observation that although as we age our hair and teeth wear out, our

<sup>40</sup> As for example, *MDh* 12.24–12.29; Olivelle 2004c: 212–13.

<sup>41</sup> *MDh* 1.25; Olivelle 2004c: 14.

<sup>42</sup> *karmanām tu vivekāya dharmādharmau vyaveccayat/dvandvair ayojayac cemāḥ sukhaduḥkhādibhiḥ prajāḥ* (*MDh* 1.26; Olivelle 2004c: 14).

<sup>43</sup> *himsrāhimsre mūdokrūre dharmādharme va ṛtānṛte/yad yasya so ‘dadhāt sarge tat tasya svayam āviśat* (*MDh* 1.29; Olivelle 2004c: 15).

<sup>44</sup> *MDh* 2.2–2.4; Olivelle 2004c: 23.

hopes (*āśā*) for life and wealth show no signs of waning; thirst (*tṛṣṇā*) is a lifelong disease, and only those who can give it up find happiness (*sukha*).<sup>45</sup>

Given the texts' assuming of the ubiquity of emotions in human experience, it should hardly surprise us that they try to negotiate their presence in social life, even in those spheres of practice like ritual and law, that modern scholars might see as unrelated to emotion. While the dharma texts may not share our category "emotion" (any more than they do "ritual" or "law"), bringing it to our readings of them has opened up ways to interpret their treatment of human experience, both in emotions' potential to reveal a harmonious and ordered conception of human social life, as well as to disrupt it. What emerges is just how sensitive to the emotional dimension of life and its relationship to their values the Dharma-sūtrakāras are.

<sup>45</sup> *VaDh* 30.9–30.10; Olivelle 1999a: 326.

## Ritual

*Axel Michaels*

In any religion, ritual is an essential part of life, but South Asia is probably special for various reasons: it covers three thousand years of ritual tradition, from Vedic rituals to Cyber rituals; it offers probably the largest corpus of historical ritual texts, including an indigenous ritual theory, the *Pūrvamīmāṃsā*; and it presents a very rich variety of rituals owing to the transcultural complexity of the subcontinent, its polytheism, and its many religions incorporating countless local folk traditions. However, South Asia did not develop a cover term for the many types of rituals such as sacrifice, life-cycle rituals, worship, festival, pilgrimage, vows, and the like. Sanskrit terms that can be considered equivalent to *ritual* are the following (see Michaels 2005b: 86–90 and 2016: 8–10):

- *Karma(n)*, *kriyā* (both from *kṛ-*, “to do, make”) denotes “action, work, religious rite, ceremony.” In early Vedic texts and in ritual (*karmakāṇḍa*) handbooks, *karma* predominantly signifies any religious action, especially “sacrifice.”
- The term for *life-cycle rituals*, with the occasional exception of death and ancestor rituals (*antyeṣṭi*, *śrāddha*), is *saṃskāra* (from *saṃ-kṛ-*, “to put something correctly together, to make something perfect”).
- *Pūjā* (probably from Skt. *pūj-*, “to honor,” possibly from Tamil *pūcu*, “to anoint somebody with something”) is the most popular term for *worship*, *adoration*, *respect*, *homage*.
- For *sacrifice*, Sanskrit offers many terms, the most widespread one is *yajña/yāga* (from *yaj-*, “to sacrifice”): “Sacrifice, sacrificial rite,” another being *homa* (from *hu-*, “to pour”) or *iṣṭi*.
- A common term for *festival* is often *utsava* (from *ud-sū*, “to rise”) or *melā* (from *mil-*, “to meet”), but if the festival is combined with pilgrimage, *yātrā* is even more popular, whereas performances have often been delineated by *līlā*, “play.”
- Many rituals such as a (religious) gift (*dāna*) or a vow (*vrata*) can range from short ritual acts to complex rituals.

- *Kalpa* (from *klp-*, “to bring something in proper order”) generally refers to a set of prescribed ritual rules or laws that one is obliged to follow, but also to procedures or manners of acting. It does not refer to a specific ritual or ceremony.

The last sense is important for the possibility of including nonreligious acts within the category of ritual, acts that were carried out in everyday behavior or included in legal procedures. The parallels between ritual and legal procedure have been noted by the Mīmāṃsakas, hermeneutical interpreters of Vedic rituals.

## DEFINING RITUAL

From a Euro-American point of view, rituals have mostly been understood as hierophantic events, or as events that help to overcome life crises, to build up identity and personhood, or to strengthen the solidarity of a social group. However, such functionalistic theories are insufficient to grasp the specific components of such events. Instead, it is better to concentrate on polyvalent and polythetic aspects and the specific elements of rituals. When so viewed, rituals appear to be structured by the following formal components (Michaels 2016: 32):

1. Framing: causal inducement, ceremonial decision (*intentio sollemnis*, e.g., *saṃkalpa*).
2. Formality: repetitiveness, publicity, variation (and performativity).
3. Modality: individual implications (*individualitas*), social implications (*societas*), transcending or elevating qualities (*religio*, Skt. *apūrva*).
4. Transformation and confirmation of identity, role, status, or authority.

Thus, rituals are framed, stereotypical, repetitive (therefore, imitable), public and irrevocable acts. Consequently, they cannot be spontaneous, private, revocable, singular, or optional for everyone. Ritual acts are not deliberately rational; they cannot simply be revised to achieve a better or more economical goal. Therefore, formalism constitutes a central criterion in most definitions of ritual. One important element of the ritual act is the formal, usually spoken, decision that is required to carry out the act, that is, the ritual declaration (*saṃkalpa*) that is found in almost every handbook for Sanskrit life-cycle rituals (see Michaels 2005a). Rituals cannot be private acts because they can be imitated. Being a public event, in this sense of intersubjectivity—even if it concerns only a small secret or tantric circle of initiated specialists—is thus another formal criterion. Moreover, rituals are often believed to be effective independent of their meaning: *ex opere operato*. This means that they cannot be reversed, for that requires a new ritual.

Along with these three strict, formal criteria, many rituals also contain another one, which Victor Turner has described as “liminality” (from the Latin, *limen*, “threshold”). He uses this term to refer to the non-every day and yet reversible, paradoxical, sometimes absurd, and playful parts of rituals, especially in performances or life-cycle border situations.

Almost every ritual act also takes place in an everyday context. But whether the act of “pouring water” is performed to clean or to consecrate a statue cannot be decided solely on the basis of these external and formal criteria; it also depends on “internal” criteria regarding intentions, which can relate to social aspects (*societas*), that is, solidarity, hierarchy, control, or establishment of norms; psychological and more individual aspects (*individualitas*) such as alleviating anxiety; experiences of enthusiasm, desire, and the like; or to transcendental aspects (*religio* or *apūrva*) concerning the other, higher, or sacred world. In the latter case, everyday acts acquire sublimity or elevation, and the immutable, non-individual, non-every day is staged. Although this criterion is particularly controversial, because it links religion with ritual, the majority of rituals, at least most life-cycle rituals, cannot do without it.

Finally, many rituals, especially life-cycle rituals, involve temporal or spatial changes; they refer to biological, physical, or age-related alterations or changes. Consequently, a tangible change is brought about by the ritual. For example, the participants must acquire an ability they did not previously have, or a new social status with new social repercussions: for example, the initiate becomes a marriageable twice born; the initiated girl a potential mother; the deceased a “departed one” (*preta*) or a forefather (*pitṛ*).

Most important, however, is that rituals are not limited to just one meaning or purpose, such as auspiciousness. They are complex events in which actions and words are constantly adapted to diverse situations and needs of the ritual specialists or other participants. Only in some cases do the priests or family members know what exactly they are doing and why exactly they are doing it in this or that way.

## RITUAL STRUCTURE AND “GRAMMAR”

In the absence of a cover term, Indian philosophers, theologians, and Dharmaśāstra specialists developed a number of classifications and typologies by which they demonstrated their view that there was unity behind the diversity of ritual acts. Basic distinctions are, for instance, the one between *laukika* (“wordly, secular”) and *vaidika* (“related to the Veda, religious”), or the one between acts that are “compulsory” (*nitya*), “occasional” (*naimittika*), and “optional” (*kāmya*). Other differentiations are acts performed externally (*bāhya*) or internally in

one's mind (*mānasa*); secretly (*gopya*) or in public; and for oneself (*ātmārtha*, *svārtha*) or for somebody else (*parārtha*). The Mīmāṃsā texts differentiate between prototypes (*prakṛti*) and subordinate rituals (*vikṛti*).

Sacrificial acts are further divided according to different words, repetitive acts, numbers, accessory details, contexts, and names.<sup>1</sup> Moreover, the Mīmāṃsakas defined (*śrauta*) sacrifices (*yāga*) by three constituents: *dravya* (material, substance), *devatā* (deity), and *tyāga* (abandonment),<sup>2</sup> implying that the sacrificer offers (and, thereby, abandons) substances to deities. Kane (II: 983) paraphrases it correctly: “*yāga* means abandonment of *dravya* intending it for a deity.” Western scholars classify rituals according to the main sacrificial oblations (vegetables or meat); the gifts (*dāna*, *bhikṣā*, *prasāda*, *dakṣiṇā*); the sacrificial techniques (fire); the place (domestic, in temples, on public places, diasporic); the forms of worship (*pūjā*, *arcana*, *darśana*); and other criteria.

Given this multitude of ritual forms, the question arises whether such events are held together by common structures or even a kind of ritual “grammar.” A close study of both texts and rituals reveals, indeed, a basic structure of Hindu rituals that includes:

1. Action elements such as a preparatory phase (*pūrvāṅga*)—ritual decision (*saṃkalpa*), fixing the auspicious moment, various purifications of the participants (e.g., *abhiṣeka*), the house (*grhaśāntipūjā*), the ancestors (*nāndī-* or *vṛddhiśrāddha*), and the sacred arena; a main phase with core rites; and concluding elements such as offerings to the priest (*dakṣiṇā*), blessings (*āśīrvāda*), the dismissal of the deities (*visarjana*), and a joint meal (*bhoja*).
2. Certain recurrent ritual items and objects—often called decorum—such as the fire, lamp (*dīpa*), water (*arghya*), flower (*puṣpa*), fragrant material (*dhūpa*), vermilion for the *ṭikā*, and husked, uncooked, and unbroken rice (*akṣata*).

The structure of the repetitive ritual action elements and the decorum make for a kind of “grammar” of the ritual. The parallel between ritual and grammar has been discussed for a long time,<sup>3</sup> especially since Frits Staal wrote his seminal article “The Meaninglessness of Ritual” (1979). Staal proposed that the entire ritual consists solely of the syntactical connection of the ritual elements. Only when ritual elements are related to one another does the ritual emerge as a whole. Each ritual element, each detail must, therefore, be understood as part of an entire ritual. He even claimed that ritual should be studied not as religion but as syntax without semantics and semiotics, which is to say, in purely formal terms. It can, indeed, be noticed that the formal structures of many rituals show

<sup>1</sup> PMS 2.1.1–2.1.2, 2.2.21–2.2.24; cf. Jha 1964: 235ff.

<sup>2</sup> See PMS 4.2.27.

<sup>3</sup> See Staal 1989; Seaquist 2004; Meshel 2014; Michaels/Mishra 2010; Michaels 2016: 74–111 (with more references).



certain semigrammatical patterns—among them are repetition or reduplication (the doubling of ritual elements), seriality (ritual elements recurring in sequences that can also spread to other rituals), substitution (the replacement of one ritual element by another viewed as equal in value), option (the optional or alternative employment of a number of ritual elements viewed as equal in value), transformation (the temporal staggering or interpolation of ritual elements), fusion (the merging of two or more different ritual elements), reduction (abbreviations of the combinations of ritual elements), omission (the elision of stipulated ritual elements, more the rule than the exception), transfer (transferring ritual elements to another ritual, e.g., as a ritual quote), or framing (the emphatic commencement and emphatic end of a ritual).

## RITUAL THEORY

Religious Studies and anthropological theories on ritual have been significantly influenced by philological and empirical studies of South Asian rituals.<sup>4</sup> They basically concentrate on sacrifice,<sup>5</sup> life-cycle rituals (*saṃskāra*),<sup>6</sup> worship (*pūjā*),<sup>7</sup> and the meaninglessness of ritual.

### Sacrifice

“The sacrifice is the highest and best work (of ritual),” says the *Śatapatha-brāhmaṇa*.<sup>8</sup> From a Brahmanical point of view, rituals are seen as constructions of a world with which man ritually identifies himself: “Man is born into a world made by himself” (*ŚB* 6.2.2.7). Only by ritual, and not by “normal” (*karma*) action, can he be liberated—or, conversely, by no action at all. Thus, ritual action has to be separated from non-ritual action, as the *Bhagavadgītā* clearly says: “This world is bound by the bonds of action (*karma*) except where that action is done sacrificially.”<sup>9</sup>

<sup>4</sup> See, for instance, Hermann Oldenberg’s (1919) “Vorwissenschaftliche Wissenschaft” (prescientific science); Marcel Mauss’s theory on the gift (1923–4); Stanley Tambiah’s (1979) and Bruce Kapferer’s (1979) performance theories; Frits Staal’s (1979) and Caroline Humphrey’s and James Laidlaw’s (1994) ideas on the meaninglessness of rituals. Michaels (2016) elaborates on indigenous (Hindu) theories of ritual and their significance for ritual theory in general.

<sup>5</sup> Biardeau/Malamoud 1976; Heesterman 1985 and 1993; Hubert and Mauss 1899; Malamoud 1996b; Thite 1975.

<sup>6</sup> Kapani 1992–3; Kane II; Olivelle 1993; Pandey 1969.

<sup>7</sup> Bühnemann 1988; Tripathi 2004.

<sup>8</sup> *yajño vai śreṣṭhamam karma* (*ŚB* 1.7.1.5).

<sup>9</sup> *yajñārthāt karmaṇo ’nyatra loko ’yaṃ karmabandhanaḥ* (*BhG* 3.9ab).

Particularly relevant in this context is the Pūrvamīmāṃsā theory of sacrificial efficacy, which can also be seen as a general indigenous theory of the ritual.<sup>10</sup> It holds that only normal actions can become ritual actions (see Clooney 1990: 134), and the Veda “is a particular arrangement of the ordinary according to injunctions found in the Vedic text” (Clooney 1990: 160). Thus, the starting point for the Pūrvamīmāṃsā is the Veda, which is declared to be absolute and eternal (*nitya*), so that it cannot be doubted or questioned by anyone. *Dharma*, which in the Pūrvamīmāṃsā is equated with sacrifice (*yāga*), the ritual par excellence, is defined as “an aim characterized by a [Vedic] injunction.”<sup>11</sup> The sacrifice/ritual needs such injunctions (*vidhi*, *codanā*); they predate the actions:<sup>12</sup> “‘Injunction’ is called a verbal expression that enjoins one to actions.”<sup>13</sup>

Pūrvamīmāṃsā also claims a relationship of the whole or primary (*pradhāna*, *mukhya*) ritual and its secondary (*guṇa*), subsidiary (*aṅga*), or accessory (*śeṣa*) parts. Ritual acts are, therefore, divided into primary acts (*pradhāna* or *arthakarma*) and (several) subsidiary acts (*kratvartha* or *guṇakarma*),<sup>14</sup> and “if it is not clear how to proceed, the basic form is valid.”<sup>15</sup> There is also an interdependence of rituals according to the archetype- and ectype-structure (*prakṛti-vikṛti*), because the relationship of the whole ritual and its parts had to be explained, as well as the interdependence of rituals. The Full Moon or Darśapūrṇamāsa rituals, for instance, functions as the archetypal *iṣṭi*, and the Jyotiṣoma ritual does so for the *soma* rites. Nevertheless, modification (*ūha*, *vikāra*) of Vedic injunctions and mantras is sometimes necessary. After all, the Vedic texts are full of variations within the rituals.

Rituals result in *apūrva*, “an impersonal and substrateless (*anāśrita*) potentiality, a kind of cosmic principle or power to be manifested or actualized by the ritual acts (*kriyāvvyāṅgya*; *yāgādikarmanirvartya*)” (Halbfass 1991: 302). According to Jaimini, there can only be one result of a sacrifice,<sup>16</sup> which basically only holds true for independent, archetypal rituals. Only these create something new (see *PMS* 8.1.5). According to Śabara (fifth century, on *PMS* 2.1.6–2.1.8 and 2.2.1), subsidiary acts alone, therefore, cannot produce and accumulate *apūrva*. However, Kumārila (seventh century) assumes that the subsidiary acts have their own *apūrva* and are combined in the ritual to a comprehensive *apūrva* of the complete ritual. The basic problem the Vedic ritualists and, in fact, all ritualists, face is the proof of the efficacy of ritual, and

<sup>10</sup> See Michaels (2016: 293–308) for a more elaborate summary on which this portion is based.

<sup>11</sup> *codanālakṣaṇo 'rtho dharmah* (*PMS* 1.1.2).

<sup>12</sup> *codanā punar ārambhaḥ* (*PMS* 1.1.5).

<sup>13</sup> *codanā iti kriyāyāḥ pravartakam vacanam āhuḥ* (*Śab ad* 1.1.2).

<sup>14</sup> *PMS* 2.1.6–2.1.8.

<sup>15</sup> See: *prasaṅgād apavādo baliyāḥ* (*ĀśŚr* 1.1.22; see Freschi and Pontillo 2013: 66ff.).

<sup>16</sup> *ekam vā codanaikatvāt* (*PMS* 4.3.14).

the notion of *apūrva* is designed to solve this problem. The standard example of the Mīmāṃsā is that of the sacrifice burning down to ashes without any immediate result. The standard, post-Jamini “*apūrvic*” answer to this problem is that the result is unseen (*adr̥ṣṭa*), or it will come into effect later, in heaven (*svarga*) or the next life.

Mīmāṃsā is also important for the development of Hindu jurisprudence. As Jonardon Ganeri (2004) rightly argues, Vedic rituals are a source of moral action. The Mīmāṃsakas had to decide which action is permitted in a sacrifice and which is not. For this they developed a rational method of ritual reason, which was extended into the moral realm—*dharma* or more specifically (see Davis 2010: 47) *vaṇāśramadharma*—where one also has to decide what to do and what not to do. Like sacrificial action, dharmic action is rooted in the belief of the transcendental consequences of action. Both are based on the authority of the Veda, and sacrifice and *dharma*—“in Mīmāṃsā . . . merely the ritual act” (Lingat 1973: 149)—are both based on the concept of *karman* (see Francavilla 2006: 25).

The relationship between Mīmāṃsā and Dharmaśāstra is thus based on two principles: the concept of *dharma* and the application of hermeneutical and exegetical rules. Davis (2010: Chapter 2) has demonstrated how the Dharmaśāstric concept of *dharma* differs from the Mīmāṃsā concept. Whereas in the Mīmāṃsā, *dharma* is equivalent to the Veda, and the sacrifice is the source for the injunctions to lead a good life in this world and beyond, the Dharmaśāstra is based on the norms of the good (*śiṣṭācāra*), which lead to a good life within the *vaṇāśramadharma*. Thus, the authority for the ritual injunctions of the non-human (*apauruṣeya*), revealed (*śruta*) Veda is given through the “absolute denial of any human capacity for direct awareness of the truths the Veda is taken to convey” (McCrea 2010:124). In contrast, the authority of the Dharmaśāstra depends on remembered (*smṛta*) “products of human authors” (McCrea 2010: 125). As regards the application of Mīmāṃsā exegetic rules in Dharmaśāstra, they often are simply general rules of good sense and maxims (*nyāya*), which, however, are taken from the ritual context the Mīmāṃsakas dealt with. To underpin this proposition, Lingat refers to the maxim of the black beans (*māṣamugdanyāya*):

A Vedic text declares that black beans and some other cereals are unsuitable for sacrifices. Another text prescribes that on certain occasions offerings must be made with green beans (*mugda*). If green beans are unobtainable can they be replaced with black ones? . . . The conclusion (*siddhānta*) is that since the black kind have been expressly forbidden, one must avoid them even when they are mixed with the green variety and even when it would be difficult to distinguish the one from the other. When carried over into usage of the *śāstric* interpreters, the rule means that every act contrary to the law is forbidden (cf. *contra legem facit qui id facit quod lex prohibet*, he breaks the law who does that which the law prohibits). (Lingat 1973: 151; see PMS 6.3.20)

### Life-Cycle Rituals (*saṃskāra*)

In Western ritual theory, life-cycle rituals are often regarded as paradigmatic. This is partly due to Arnold Van Gennep's (1909) and, even more, Victor Turner's (1969) path-breaking studies. Both have introduced key terms for the discussion of rituals: "*rites de passage*," "*rites de séparation*," "*rites de marge*" and "*rites de agrégation*," or "liminality," "communitas," "social drama," and "anti-structure." The Indian term *saṃskāra* for life-cycle rituals is usually translated as "transition rite," "rite of passage," or "sacrament," but these terms can only partially grasp its significance. For, as Brian K. Smith (1989: 86) has emphasized, with the *saṃskāras* someone or something is made suitable, appropriate, or fit (*yogya*) for a holy purpose, for example, as a sacrificial offering. The gods accept only what is appropriate for them, that is, something correctly composed and perfect. Similarly, Jan Gonda (1980: 364) defined *saṃskāra* as "composing, making perfect, preparing properly and correctly with a view to a definite purpose."

From a traditional Indian perspective, a *saṃskāra* is, therefore, not a divine punctuation, or an esoteric *mysterium* as the Greek *mysterion* (lit., secret) or the Latin *sacramentum* (originally "oath of allegiance"). Nor is it just the celebration of a phase of life. It is rather a ritual identification with the absolute or the Veda. In the initiation rite, for instance, the son is equated with the father, the Veda, the sacrifice and the fire; and only through such an identification can he achieve immortality. If this substitution is perfect (*saṃskṛta*), the rite *works ex opere operato*, through the action itself and the power of the ritual equivalence, independent of the mental state of the adept.

### Worship (*pūjā*)

The *pūjā* has been analyzed as honoring a deity like a respected guest (Thieme 1939), a deliberated subordination under the power of the deity (Babb 1975), or a commensal act, which shows the union between worshiper and god (Fuller 1992). In the center of such theories are the items (*prasāda*, *dāna*) given to the deity or the priest and returned to the devotee. By eating what the devotee offers the deity, a relationship is created between him or her and the god, which corresponds to the social position and the rules of commensality. In the process, it is not altogether clear whether the deity has eaten food from the point of view of the devotee or only consecrated it. The distinction is quite important. If the deity took the food and "ate" it, the devotee eats (impure) leftovers. The devotee thus expresses his submission to the god.

Christopher J. Fuller (1992: 78), however, thinks that the *prasāda* is not a return gift but a transmuted food. Moreover, in social life, it is a sign of higher

rank to reject food, especially cooked rice. So, if the gods take food, they basically behave contrary to the fundamentals of the social hierarchy. Instead, the relationship between god and devotee reflects the relationship between man and wife. The wife cooks for the man and explicitly eats his leftovers, thus demonstrating her subordination. So, what is expressed in the *prasāda* is not social caste hierarchy—for then the gods might not take anything, not even cooked rice—but rather marriage.

Lawrence A. Babb (1975: 310), however, thinks that the devotee basically identifies himself with the supernatural form of the deity. He points out that the god's leftovers are no longer impure but, on the contrary, the purest substances. Babb has seen correctly that, in essential parts, the *pūjā* is also an identificatory process: by taking the *prasāda* of the god into himself, the devotee has an equal share of the highest substance and overcomes all worldly caste and kinship limits: "The result is the closest possible intimacy, tending toward identity, and any analysis not taking this into account is incomplete" (Babb 1975: 307).

### The Meaninglessness of Ritual

Theories of the meaninglessness of rituals (see Michaels 2006) mostly concern the invariability of prescribed actions and the polysemy of rituals (i.e., the multiplicity of meanings). They stress the idea that rituals are not only formal actions but that the forms of actions are basically independent and that the symbols in rituals do not refer to anything; rather they are context independent and thus meaningless. It was Frits Staal (1979) who most radically proposed such a theory of the meaninglessness of rituals. For him "ritual has no meaning, goal or aim" (1979: 8); it is "primary" and "pure activity... without function, aim or goal" (Staal 1989: 131). Staal denies that rituals are translations of myths or stories into acts (the myth-and-ritual school), or that they are communicative or symbolic activity. For him orthopraxis, not orthodoxy, is decisive in the analysis of rituals. However, he does not deny that rituals can have more or less useful side effects, but these side effects should not be mistaken as the functions or aims of rituals (Staal 1979: 11). In rituals, thus, means are not clearly related to ends (see Goody 1961: 159). If there would be a specific purpose to rituals (within rituals), other (or better) means could also—and sometimes more effectively—achieve the same purpose. Thus, no ritual is limited to just one such function, since then one could use other means, which also would achieve the desired purpose. Since rituals are in this sense meaningless, many meanings can be attached to them: "The meaninglessness of it explains the variety of meaning attached to it" (Staal 1979: 12).

Staal's syntactical theory of rituals is based on the theory of their meaninglessness and is influenced by generative transformational grammar. His point

of departure is that rituals do not reflect meanings and point to something, just as words do not simply reproduce reality. Hans H. Penner (1985) has shown, however, that Staal's understanding of language and ritual is unsatisfactory. He quite rightly points out that "language as we all know is composed of signs, and all linguistic signs have phonological, syntactic and semantic components" (1985: 9). So if rituals are supposed to have a syntax, they must also have semantics because the two cannot be separated from one another. *Syntax* means the combination of signs, and signs are always pointers to something; that is what gives them their meaning. "Staal . . . does not argue that rituals are not semiological systems. On the contrary, he argues that rituals have a syntax, but they are meaningless. Given the . . . evidence from linguistics, Staal's position is simply wrong" (1985: 11).

What is controversial is precisely the intentionality of ritual acts. This was also brought up by Caroline Humphrey and James Laidlaw (1994), whose starting point is the actor's ritual "commitment, a particular stance with respect to his or her actions" (1994: 88). Asking what differentiates acting in a ritualized way from acting in a non-ritualized way, they speak of rituals as always being nonintentional but not necessarily unintentional. They can be performed with a variety of motives, but whatever they are, these wishes or motives do not change the ritual acts and, more importantly, they are not at all necessary for recognizing ritual acts as such. Whereas in the case of normal actions the intention is necessary to distinguish them from other actions or to perceive them as such, ritualized actions are not characterized by the intentions accompanying them.

Alexis Sanderson (1995) has given a detailed example of an indigenous theory of meaninglessness. In Kashmiri Śaivism, rituals are performed in explicit opposition to the Vedic prescriptions of the meaning of these rituals. To be true, certain Śaiva texts mention aims of specific rituals: liberation (*mokṣa*) from the bondage of transmigration (*saṃsāra*) or desire for supernatural powers and effects (*siddhi*) to enjoy rewards (*bhoga*) in this world or after death. For the seekers (*sādhaka*) of liberation, however, a problem of purpose and meaning arises: if rituals were performed in order to reach a liberated state, why then should these rituals continue to be performed after reaching liberation? If all the impurity (*mala*) of the soul has been destroyed, rituals having the "meaning" of destroying impurity seem to be obsolete. The answer given to this problem by the so-called left-hand Tantrism is consistent: rituals must continue to be performed because the bondage of *māyā* (illusion) remains, but one should no longer attach any meaning to them. Thus, perfect knowledge, which does not have any object any more, itself becomes ritualized, losing all meaning. Such examples make clear that the meaning of rituals is more often hidden (unconscious) or esoteric than self-evident, even for insiders. Rituals must be performed consciously, and, at the same time, the consciousness should not affect the rituals too much.

## Self and Subjectivity

### The Wandering Ascetic and the Manifest World

*Jonardon Ganeri*

#### THE WANDERING ASCETIC'S INATTENTIONAL AWARENESS

“When a tree falls from a river bank, the bird leaves the tree; when he abandons this body in like manner, the ascetic escapes the alligator’s painful grasp” (*MDh* 6.78). In Manu’s description of the four stages or modes of life that constitute “the *āśrama* system” (Olivelle 1993)—the student, the householder, the forest dweller, and the wandering ascetic (*yati*)—the first three are said to comprise debts that must be paid off before one may enter the fourth, incurred obligations to study the Vedas, have a family, and offer sacrifices (6.35–6.37). He (or she, for at 8.363 Manu explicitly considers that wandering ascetics may be of either gender) has studied the Veda, run a household to raise a family, and, in the forest, has offered sacrifices in order to purify or perfect the self (6.29). If for a forest dweller the emphasis is on “controlling the self and mastering the organs” (6.1), the wandering ascetic, as someone who has paid three debts, has “his mind set on renunciation (*mokṣa*)” (6.35). The aim is to avoid being brought down by the collapse of the body as one nears death; it is not, however, to avoid death, for “he should long neither for death nor for life, but simply await his appointed time, as a servant his wages” (6.45). Now, “with himself as his only companion” (6.49), in solitude “he pulls his organs back as they are being drawn away by sensory objects” (6.59), “withdrawing the organs from their attachments” (6.75), and while immersing in a practice of meditation, “he should reflect on the subtle nature of the highest self and on its appearance in the highest and lowest of bodies” (6.65; cf. 6.73).

The form this reflection takes consists of what the Greco-Roman ancients had called “techniques of the self” or “spiritual exercises” (*askesis*), practices

not just of normal philosophical study such as reading, debating, listening, and inquiry, but also activities that as part of a “way of life” require repetition, practices of attention (*prosoche*), meditation (*meletai*), memorization of doctrine, self-mastery (*enkrateia*), the therapy of the passions, the remembrance of good things, the accomplishment of duties, and the cultivation of indifference toward indifferent things (Hadot 1995: 84). Manu notes two spiritual exercises. There is first an exercise of imagined disembodiment:

He should reflect on the diverse paths humans take as a result of their evil deeds; on how they fall into hell; on the tortures they endure in the abode of Yama; on how they are separated from the ones they love and united with the ones they hate; on how they are overcome by old age and tormented by diseases; on how the inner self departs from this body, takes birth again in a womb, and migrates through tens of billions of wombs; and on how embodied beings become linked with pain as a result of pursuing what is against the Law and with imperishable happiness as a result of pursuing the Law as one’s goal. (MDh 6.61–6.64)

That is, one imagines the collapse and the fall into the alligator’s jaws, being brought down by old age and disease, how it is the very nature of embodiment to be in pain. One thinks too that one can “depart from” the body, at least in imagination, and take up again in an extended act of renewal. Manu’s second technique of the self aims to engender a sense of disgust in and alienation from the body:

Constructed with beams of bones, fastened with tendons, plastered with flesh and blood, covered with skin, foul-smelling, filled with urine and excrement, infested with old age and sorrow, the abode of sickness, full of pain, covered with dust, and impermanent—he must abandon this dwelling place of ghosts. (MDh 6.76–6.77)

One will certainly not want to identify oneself with anything so repulsive, and the purpose of the exercises is to dismantle an embodied sense of self. One technique shows that it is conceivable, or at least, imaginable, that one is distinct from one’s body; the other technique shows that it is desirable that this should be so. Yet however powerful these reflections are, they remain essentially intellectual exercises; that is to say, they show *that* detachment is conceivable and desirable, but not *how* to make it actual. Manu, therefore, refers to the wandering ascetic as someone who “pulls his organs back as they are being drawn away by sensory objects,” echoing no doubt that famous verse from the *Bhāgavad-gītā* where the action is likened to a tortoise withdrawing its limbs: “And when he draws in on every side his senses from their proper objects, as a tortoise its limbs,—firm-established is the wisdom of such a man” (BhG 2.58). What is important is that this is an act of what we might call “attentional retraction,” in which one desists from attending to the perceived world without ceasing to perceive it. Perceptual attention is a focusing on something in the perceptual field, something that might have captured one’s



attention or to which one's attention is directed. Conscious perceptual attention is what is controlled and mastered by those with learning, whose "perfecting" or "purifying" of self consists in the training of attention: "As his organs meander amidst the alluring sense objects, a learned man should strive hard to control them, like a charioteer his horses" (*MDh* 2.88). Having one's perceptual attention under conscious control means that one is not at the mercy of the sensory field, as one would be if one's mind is pulled here and there by whatever catches the attention, and Manu claims that this significantly alters the affective or phenomenological relation one has to the world: "When a man feels neither elation nor revulsion at hearing, touching, seeing, eating, or smelling anything, he should be recognised as a man who has mastered his organs" (*MDh* 2.98). A practice of attention becomes in this way a therapy of the passions. Having made his mind dispassionate by controlling the attention, the ascetic now strives to desist from attentional tasks altogether. The aim of "pulling back" the sense organs is not to bring about a state of total sensory deprivation but to suspend *grounded* attention, that is, attention grounded in the five sense faculties, attention to the world outside through the body and the bodily sense organs. The transition from forest dweller to wandering ascetic is thus a move from attentional control to attentional retraction.

Notice here what Manu does not say. He does not say that attentional retraction consists in a redirection of the attention from the outer to the inner; he does not say that the ascetic "looks within," nor does he employ any similar metaphor of inwardness. He says only that the ascetic is "with himself as his only companion": the suspension of attention leaves one alone with oneself. Manu's ascetic does not enter a quest to find "the truth within" (Flood 2013), but seeks so to transform what is within as to be free in his commerce with the world. The effect of attentional retraction is to leave the ascetic in a state we might describe as inattentional awareness, not to be confused with any idea of inner perception or introspection or interiority. Inattentional awareness differs from attended perceptual awareness, whether that be in the uncontrolled modality of the householder or the controlled manner of the forest dweller. Yet it is still a form of perceptual engagement with the world around.

It is for this reason that the tortoise wins when pitched against the alligator. Awareness that is grounded in perceptual attention is embodied, it is individuated or at least influenced by the body, and as the body collapses, so too must this kind of awareness. According to the so-called embodied-mind thesis, the nature of one's appetites and other dimensions of one's experience are subject to bodily criteria (Lakoff and Johnson 1999; Shapiro 2004; Gallagher 2005). Here the thesis is affirmed of perceptual attention. Along with the decay of the body, there is a corresponding decay in one's cognitive relationship to the world, and, as long as one identifies oneself with the sum or center of one's states of attentional perceptual awareness, one falls with the body into the alligator's toothy clutch. The alligator is a metaphor for the

phenomenology of such disintegration: it is a phenomenology of grasping and of being grasped, a phenomenology of worldliness. Inattentional awareness, the claim seems to be, is not a kind of embodied cognition but rather an experiential relation that is immune to bodily decay. One's phenomenological state will then not be subject to bodily criteria of individuation. When—motivated by reflection and spiritual askesis and practicing attentional retraction—the ascetic comes to identify with the inhabitation of this other kind of phenomenological state, the ascetic self is no longer threatened with a collapse. This is not an insurance policy against death, a form of immortality through disembodiment, but a phenomenological autonomy from the ravages inflicted upon the body. Such, for Manu, is renunciation (*mokṣa*), and Olivelle (1993: 140) notes that Manu uses the term *mokṣa* to refer to the life of a renouncer rather than to some imagined state of liberation after death. I would add only that the term refers to a specific aspect of the renouncer's *experiential* life, namely that it consists in an inattentional phenomenology. To have one's mind set on renunciation is thus to engage in spiritual exercises whose effect is to replace an embodied awareness, grounded in perceptual attention, with an inattentional mode of postreflective awareness. This is, to repeat, not because the mind is turned in upon itself, thinking only about itself, aware only of itself, but rather a distinct ascetic cognitive relationship with the world. Ascetic awareness is not a sort of introspection. It is not introspection because the self features in the reflective task as a *companion*, not as an *object*. The argument is rather that attention is associated with affect, and attentional retraction is, therefore, the method by which to bring into being a dispassionate state of awareness.

Does the conjecture that there exists an ascetic phenomenology that consists of inattentional awareness have any empirical support? Some contemporary psychologists have used evidence from experiments in so-called inattentional blindness, to argue that awareness requires attention. Mack and Rock presented subjects with the image of a crosshair, and tasked them to judge which of the crossing lines is longer, meanwhile flashing up a word or shape. When asked if they had seen anything other than the crosshair many responded that they had not. Mack and Rock conclude that “the single most important lesson is that there seems to be no conscious perception without attention” (1998: ix). In another famous experiment, Simons and Chabris (1999) asked subjects to watch a video of a basketball being passed between players and asked them to count the number of times. Also in the video, unmentioned by the experimenter, a man in a gorilla suit walked by in full view, something many subjects reported no awareness of when probed. What these inattentional blindness experiments show is that when a subject is fully taken up in a demanding attentional task, they are not aware of unattended objects in the perceptual field. Other results, however, point to two areas where an immunity to inattentional blindness is displayed: gist perception

and salience. When a natural scene flashed briefly and unexpectedly, observers will accurately report the overall gist of the scene, and, when a salient target is searched for in the visual field, the accuracy of the search seems uncompromised by absence of attention. In summary, the current state of contemporary research into attention and awareness indicates:

visual awareness of stimuli well outside the current attention focus (i.e. in the near absence of attention) appears to be considerable. It includes simple attributes of salient stimuli and suffices to extract scene gist and to identify certain object classes . . . Not included in this “ambient” awareness are non-salient objects and more complex attributes of salient objects. The latter type of information requires attention in order to reach awareness. (Braun 2009: 70)

Ascetic subjectivity, I conjecture, consists in the ambience of awareness without attention.

## MANU’S GENESIS NARRATIVE AS PHENOMENOLOGICAL GENEALOGY

As we now have the text, *Manu’s Code of Law* begins with a remarkable narrative about the beginning of the world:

There was this world—pitch-black, indiscernible, without distinguishing marks, unthinkable, incomprehensible, in a kind of deep sleep all over. Then the self-existent (*svayambhū*) Lord appeared—the Unmanifest manifesting this world beginning with the elements, projecting his might, and dispelling the darkness. That One—who is beyond the range of the senses; who cannot be grasped; who is subtle, unmanifest, and eternal; who contains all beings; and who transcends thought—it is he who shone forth on his own. (*MDh* 1.5–1.7)

The Self-existent One, having shone forth on his own, then “focused his thought with the desire of bringing forth diverse creatures from his own body” (1.8), and having created the world, he draws out from his body first mind (*manas*), then “I-making” (*ahamkāra*), then self (*ātman*), and finally the five senses:

From his body, moreover, he drew out the mind having the nature of both the existent and the non-existent; and from the mind, the ego (*ahamkāra* ‘I-making’)—producer of self-awareness (*abhimānī*) and ruler (*īśvara*)—as also the great self, all things composed of the three attributes, and gradually the five sensory organs that grasp the sensory objects. (1.14–1.15; Tr. Olivelle)

Mind is that which belongs to organs both of perception and action (2.92); it is that cognitive module that engages with the world through sentience and agency. I-making, as a capacity for self-consciousness, is what gives rise to a

sense or notion of “I”: “The term for the feeling that ‘I am,’ especially the sense that I have of being an individual through time who has a unique first-person perspective and who is a thinker of thoughts and a doer of deeds, literally means ‘I-making’ (*ahamkāra*)” (Thompson 2015: 325).

I read this narrative not as a creation myth but as a phenomenological genealogy, a genealogy of phenomenal experience. A genealogy is a causal story, a history, whether actual or imagined, about the origin of a doctrine, idea, or practice. While Nietzsche used genealogy to subvert the dogmas of Christian morality (ironically drawing much inspiration from Manu: Doniger and Smith 1991: xx–xxi), a genealogy can also be vindicatory, explaining and justifying the practice whose ancestry it pretends to tell. Thus:

[Genealogies] can be subversive, or vindicatory, of the doctrines or practices whose origins (factual, imaginary, and conjectural) they claim to describe. They may at the same time be explanatory, accounting for the existence of whatever it is that they vindicate or subvert. In theory, at least, they may be merely explanatory, evaluatively neutral... They can remind us of the contingency of our institutions and standards, communicating a sense of how easily they might have been different, and of how different they might have been. Or they can have the opposite tendency, implying a kind of necessity: given a few basic facts about human nature and our conditions of life, this was the only way things could have turned out.... Some genealogies are vindicatory: the story they tell is in one way or another a recommendation of whatever it is they tell us the story of. [...] The genealogies—by which I mean the causal stories—of many of our beliefs are intrinsically justificatory in a very strong sense: they give an essential place to the very facts believed in, so if *that* is how they came about they must be true.

(Craig 2007: 182–3)

Read genealogically, what Manu’s account of creation is providing is an explanation of perceptual awareness, of the world as manifest. It does so by telling a story about the origins of the manifest world as coming into being of the sort that implies a kind of necessity. There can be no experience of a world, first of all, unless there is individual mind, self, and self-consciousness; and there can be no individual mind, self and self-consciousness unless there is a non-egological self-subsisting (*svambhū*) consciousness consisting simply in a “shining forth.” An explanatory causal story about the origins of that too can be told, one that depicts it as emerging from a darkness that is yet not a nothingness. The overall significance of this genealogy of phenomenal experience, I venture, lies with its demonstration that a rival claim, that experience must have the phenomenology of illusion (*māyā*), is false: it vindicates experience and in doing so subverts the Advaita Vedāntic exegesis of the Upaniṣads.

Let me say something about each of the steps in Manu’s phenomenological genealogy. What of the claim, first of all, that experience, “having a world in view,” requires self, mind, and self-consciousness? Kant famously defends one version of this claim. Kant argued that it is not possible to have a conception of

an objective world without thinking of that world as spatial, and of oneself as located within it and following a spatiotemporal route through it. A self-conscious subject is one who is in a position to think of their experience as including perceptions of objects in what Strawson calls “the weighty sense,” that is, as being particular items that are capable of being perceived *and of existing unperceived* (1966: 28). In order to make sense of the idea that one can perceive what can also exist unperceived, one must think of perception as having certain spatiotemporal *enabling conditions*, such that, in order to perceive something, one must be appropriately located—both spatially and temporally—with respect to it. One can then make sense of the fact that a perceivable object is not actually perceived by thinking that the enabling conditions for its perception are not satisfied. Grasping the idea that perception is subject to spatiotemporal enabling conditions requires that one think of perceiver and thing perceived as standing in a suitable spatiotemporal relation, and so of oneself as having a location in the world. Likewise, grasping the idea that a temporal sequence of perceptions are of one and the same object requires that one think of the thing perceived and the perceiver as standing in a more or less stable spatial relation over a period of time, and so of oneself as following a continuous path through space. For Kant there is consequently an “I think” that accompanies all experience.

This Kantian reasoning does have a resonance in certain Nyāya arguments about the self (Ganeri 2012: 283–303), but it seems remote from anything in the Dharmaśāstra. There is, however, a second, more modest way to defend the claim. Phenomenologists like Sartre, Merleau-Ponty, and Henry have argued that there must be a mode of prereflective self-awareness in the background to all experience, a “for-me-ness” that is prior to any thematic awareness I might have of myself. We might call it a sense of “mineness,” or simply the subjectivity or subjective aspect of experience. Sartre puts the idea as follows:

It is not reflection which reveals the consciousness reflected-on to itself. Quite the contrary, it is the non-reflective consciousness which renders the reflection possible; there is a pre-reflective cogito which is the cognition of the Cartesian *cogito* . . . The self-consciousness we ought to consider not as a new consciousness, but as the only mode of existence which is possible for a consciousness of something . . . Pre-reflective consciousness is self-consciousness. It is this same notion of self which must be studied, for it defines the very being of consciousness. (2003: 9, 10, 100)

Dan Zahavi has expressed the view felicitously as being that self-consciousness or subjectivity is the dative of manifestation, the *how* rather than the *what* of experience (2014: 19, 22). What it is like to enjoy a certain experience is always a matter of what it is like for me to enjoy it, and “when I have experiences, I, so to speak, have them minely” (2014: 22). What Sartre describes as prereflective

self-consciousness and Zahavi calls the first-personal dative of manifestation is perhaps a good way to understand the concept of “I-making” (*ahamkāra*) in Manu, where his “self” is then reflective self-consciousness or the “I” conceived thematically.

Experiential mineness, the sense of “I,” is itself given a genealogical explanation in Manu’s narrative of origins. There is something without which prereflective self-consciousness could not arise at all, namely a nonegological form of awareness that “shines forth on its own” and is inaccessible to cognition. This nonegological awareness consists in impersonal illumination, a simple power to dispel the darkness of insentience. It is clear here that light is being called on to provide an analogy with consciousness, an endorsement of the conception according to which “consciousness is that which is luminous [ . . . and . . . ] self-appearing” (Thompson 2015: 18), light illuminating itself in the course of illuminating other things. This impersonal luminosity, “Self-existent One,” the enabling condition for egological self-awareness, is, to draw on a distinction of Block (1995), a form of phenomenal consciousness that is cognitively inaccessible. It is “subtle” insofar as its content is nonconceptual, and it is “unmanifest” insofar as it is that in virtue of which world-manifesting experience comes to be. As for the claim that it “contains all beings,” I suggest that this, too, can be understood by appeal to Block’s distinction between phenomenal character and cognitive availability. Is perceptual consciousness richer than cognitive access? That is to say, is the capacity of experience greater than that which gets globally broadcast to centers of deliberation and report? Block (2011) describes this question as “one of the most important issues concerning the foundations of conscious perception” and he appeals to an experimental paradigm developed by George Sperling to propose what he calls “the overflow argument.” In Sperling’s experiment, subjects are briefly shown an array of three rows of four letters. Afterward, they are able to report only three or four items from the array; yet if a particular row is cued, they could report all nor nearly all the letters along it. The conclusion Block draws is that “according to the overflow argument, all or almost all of the 12 items are consciously represented . . . However, only 3 to 4 of these items can be cognitively accessed, indicating a larger capacity in conscious phenomenology than in cognitive access.” Let us imagine next that Sperling’s experiment is scaled up, so that the content of the grid is not merely a four-by-three grid but the entire cosmos. Then, applying the same reasoning, one arrives at a state of phenomenal consciousness that “contains all beings and transcends thought.” The impersonal luminosity that is the Self-existent One is a phenomenal consciousness whose capacity is the entire cosmos and whose content is inaccessible to cognition.

The claim that self and other must originate from something egologically neutral can be contested. Zahavi, for example, rejects the hypothesis: “Some have claimed that the only way to solve the problem of intersubjectivity and

avoid a threatened solipsism is by conceiving of the difference between self and other as a founded and derived difference, a difference arising out of an undifferentiated anonymous life" (2014: 189). He obviously is not referring explicitly to the cosmology in *Manu's Code of Law*, but his comment is nevertheless very apt. He continues:

However, ... this "solution" does not solve the problem of intersubjectivity, it dissolves it. To speak of a fundamental anonymity prior to any distinction between self and other obscures that which has to be clarified, namely, intersubjectivity understood as the relation between subjectivities. On the level of this fundamental anonymity there is neither individuation nor selfhood, but nor is there any differentiation, otherness, or transcendence, and there is consequently room for neither subjectivity nor intersubjectivity. To put it differently, the fundamental anonymity thesis threatens not only our concept of a self-given subject; it also threatens our notion of an irreducible other. (2014: 189)

Yet the distinction between self and other can hardly itself be fundamental: there must surely be some account to be had of its emergence from something not intrinsically subjective.

According to the genealogical story, this single luminosity, out of which self and other arise, itself arises from something, something that is "pitch-black, indiscernible, without distinguishing marks, unthinkable, incomprehensible, in a kind of deep sleep all over." It is cognitively closed: not merely inaccessible to cognition, but quite beyond the reach of the powers of conceptualization. It lies outside the limits of thought. It is pitch-black because it is the enabling condition for illumination, and it is featureless. Most tellingly, perhaps it is "in a kind of deep sleep." Vedānta thinkers claim that deep sleep is itself a mode of consciousness, and indeed, they characterize it in terms very similar to the illuminating consciousness we have just described. But for that very reason this cannot be the Dharmaśāstra view: the state is that from which illumination comes and so cannot itself consist of luminosity. Medhātithi provides an intriguing explanation (1886: 10). He says that the reference to deep sleep is by way of analogy. For what happens is that, in dreamless sleep there is no consciousness, yet one can infer on waking, that one was in a state of dreamless sleep, and indeed that one existed at that earlier time, because one feels on waking, that "I slept soundly" (on the general form of this argument, see Murti 1933; Thompson 2015: 237–46). So too we can infer that the cosmos existed in a prior state, which, although pitch-black, unilluminated, is known to have been present because of the state of impersonal luminosity to which it gave rise. The constructed genealogy of this latter state is as it were an inference to the best explanation of the possibility of its existence. For Medhātithi stresses that nothing can come into existence out of nothing, and, therefore, there must have been some prior state, even though there can be no conception of it other than this.

The phenomenological genealogy with which *Manu's Code of Law* begins has distinguished four primary modes of being: let me call them pitch blackness, impersonal luminosity, subjective phenomenality, and world-manifesting experience. It is a causal story about the way each comes into being through an effect of the one before. This story is not intended as a contribution to the science of developmental psychology, however; it is a type of explanation that shows how a state is possible and what its requirements are, by providing an imaginary account of origins. Notice that when each mode of being “gives rise” to the next, it does not thereby itself disappear. The Self-existent One does not vanish, having brought forth the world from his body. In other words, each one of these four modes of consciousness is present in the conscious attentive, grounded perceptual experience of a student, a householder, and even a forest dweller. What is the effect of attentional retraction on that complex state of consciousness? What can this phenomenological genealogy of experience help us to see about the ambient awareness of the wandering ascetic?

#### ASCETIC AWARENESS: A CULTIVATED COGNITIVE SKILL

Gavin Flood has noted that there is “a kind of correlation between psychology and cosmology in the Indian systems” in which “psychology recapitulates cosmology” (2004: 78). He provides an astute analysis of the correlation at work in the *Yogaśāstra* of Patañjali, where four cosmological levels are also distinguished: the undifferentiated, the differentiated (*liṅga-mātra*), the unparticularized (*aviśeṣa*), and the particularized (*viśeṣa*). The undifferentiated corresponds to the Sāṃkhya category of unmanifest or potential matter (*avyakta-prakṛti*), the differentiated to the Sāṃkhya notion of *buddhi* or higher mind, the unparticularized to the sense of I (*asmitā*) and the five potentialities that form the manifest world, and the particularized to the mind (*manas*). This cosmology is roughly equivalent to the one incorporated into the opening chapter of *Manu*, for *buddhi* is “effulgent light . . . linked to the absorption of the mind in pure subjectivity or I-ness” (Flood 2004: 78), and, thus, after all, something like a notion of impersonal luminosity. Flood comments, “these levels of the cosmos are levels of experience” and he sees in Patañjali’s account of asceticism a process of return:

Refining consciousness, as described by Patañjali, through the levels of *samādhi* is to retrace cosmogony through the levels of emanation described in the Sāṃkhya tradition, until a critical break is reached and the self realises its non-attachment to matter. The spiritual path is therefore both a journey into the self and a journey



through the hierarchical cosmos to its unmanifest (*avyakta*) or undifferentiated source (*aliṅga*), [so that] to delve into the heart of the self is also to delve into the heart of the universe. (2004: 77)

This is said of Patañjali, and I will make a somewhat different claim about Manu, namely, that the phenomenological genealogy genetically explains the structure of the self in just such a way that the transformation engendered in the ascetic mind is made intelligible. This is not correctly described as a “retracing,” but rather as progress, and, while I can agree with Flood’s final remark that for Indians “progress is linked to cognitive skill rather than to the development of virtue, as it is in the Christian systems” (2004: 78), the cognitive skill in question here is the cultivation of inattentional awareness. Let us remember that Manu’s wandering ascetics have both obligations and entitlements (*MDh* 5.137; 8.407; 11.219). They are not otherworldly or depersonalized: the wandering ascetic still wanders and, therefore, experiences and acts. The outcome of reflective spiritual practices and cultivated attentional retraction cannot, therefore, be to return the ascetic to a nonegological state of impersonal luminosity. Following attentional retraction, the “experiential self” of the wandering ascetic, the for-me-ness, which is the dative of experiential manifestation, remains intact. What has been withdrawn is the attention, not the subject. For it is said that ascetics have themselves as their only companions; so ascetic consciousness is an ambient *subjective* awareness. Not quite analogously, when Manu says that “by the passion of his spirit (*bhāvena*) he frees himself from attachment to every object of passion (*sarvabhāveṣu*)” (6.80), the clear implication is that what is declined in the instrumental case does not fall within the scope of the locative. The ascetic’s inattentive state is not the collapse of first-personal awareness into a state unmarked by “I” or “you,” a state of fundamental anonymity.

The inattentional awareness of the wandering ascetic in the *Mānava-Dharmaśāstra*, we have seen, is not incompatible with the claim that an ascetic way of life carries its own duties and responsibilities. Insofar as the wandering ascetic practices detachment, it is a detachment of attention not of action. Contrast this with the idea of renunciation in the *Bhāgavad-gītā*, where Kṛṣṇa famously advises detachment from the *fruits* of action. As Olivelle puts it,

The argument of the *Gītā* . . . seeks to show that true renunciation does not consist in physical abstention from activity but in the proper mental attitude towards action. Abandonment of desire for the results of one’s actions is true renunciation, which the *Gītā* sees as an inner virtue rather than an external life style.

(1993: 105)

An epic detachment of concern now contrasts with Dharmaśāstric detachment of attention. Yet these two conceptions of detachment have something nevertheless in common, for in both, the ascetic continues to engage with the world and, indeed, to experience the world; detachment is seen as a cognitive

rather than a practical achievement. There seems in Vedānta to be dissatisfaction with the adequacy of any such cognitive conception of detachment, a dissatisfaction most vividly on display in the extraordinary claim that a fifth *āśrama* should be identified. The unique *Pañcamāśramavidhāna* (twice edited and translated by Olivelle), reaffirms the point that the wandering ascetic still has duties, and has this to say:

As there is no bliss of renunciation and detachment in the householder's *āśrama*, so there is no non-corporeal bliss (*videha-sukha*) in the fourth *āśrama*, because permanent and occasional activities, such as the staff *tarpaṇa*, are present in it. For the sake of bliss without activity, therefore, one accepts the fifth *āśrama*. The same is called the path of an Avadhūta. Furthermore, as after abandoning the topknot, sacrificial cord and so forth, and (entering) the fourth *āśrama* one immediately takes possession of the staff and the rest, so after abandoning the staff and the like and (entering) the fifth *āśrama* one takes possession of nothing at all. On the contrary, the very abandonment of everything constitutes the principal state of a Paramahansa. (Tr. Olivelle 1993: 233)

Responding to the claim of the *Gītā* that one should act if only for the sake of the welfare of the world (*BhG* 3.20), the author of this treatise reveals an Advaitic affiliation in opining that "The welfare of the world (has relevance) only to those who consider the world as real. What does the world's welfare mean to those who regard the world as unreal? It is of no concern to one whose self is pure consciousness" (Olivelle 1993: 233). For the Advaitic ascetic, who, indeed, seeks a return to a state of undifferentiated luminosity, detachment is not from attention to the world nor is it from concern about the results of one's acts, but rather it is an "abandonment of everything" in order to remain in a state of disincarnate contentment.

Manu takes the Upaniṣadic episteme (to which he refers in *MDh* 6.83) in a direction different from that of Vedānta, because individuality is preserved in some form and neither it nor the world is held to be merely an illusion. Indeed, he leaves us in no doubt which of the *āśramas* he prefers: "Yet, as the Veda and the Smṛtis state, the householder is the best of all these, for he supports the other three" (*MDh* 6.89). For Manu, one can reach the highest state from any of the four *āśramas*: one does not need to progress through them as through a series of stages. As Olivelle remarks, "It is clear, therefore, that for Manu the passage through the four *āśramas* was one among several paradigms for leading a religious life. Although Manu presents the classical system, it is neither as central nor as normative in this law book as it is in later Brāhminical literature" (1993: 142). The function of the *āśrama* system in the early period was to legitimate various styles of living, including that of the ascetic, rather than, as later, to present a sequence of stages within a single life.

The life of the wandering ascetic is accorded legitimacy as one of several possible ways to live, a life devoted to the cultivation of a particular cognitive

skill, the skill of attentional retraction. Attentional retraction does not imply a “retracing” to some more primal mode of consciousness in the genealogical narrative. It is instead a form of development. Attention “is the selective or contrastive aspect of the mind: when you are attending to something you are contrasting what you pick out with what remains in the background” (Watzl 2011: 843); attention “allows us to selectively process the vast amount of information with which we are confronted, prioritizing some aspects of information while ignoring others by focusing on a certain location or aspect of the visual scene” (Carrasco 2014: 183). Without selective attention, there remains an ambient awareness of the surroundings. There is no longer in the visual field something that stands out against a background or as prioritized; rather, everything in the visual field is of equal weight in the content of experience. There is now no foreground and background, but an equal degree of perceptual engagement with all. Attention, let us recall, is associated with affect: bringing something into focus, channeling cognitive resources toward it, is itself a form of emotional investment.

The best clue to the ascetic’s cultivated state of mind is perhaps contained in the verse that concludes the whole treatise: “When a man thus sees by the self all beings as self, he becomes equal towards all and reaches Brahman, the highest state” (*MDh* 12.125). This is not a contraction or dissolution of selfhood but rather an expansion. One achieves equanimity by letting nothing gain greater or lesser experiential significance, but instead, one is impartial as to all that is presented. All that is experienced is experienced as for-me: the dative of manifestation, a companion not an object, is ever present. The gaze of the ascetic fixes on nothing, yet their eyes are not closed.

## Material Culture and Society

### The Ancient Indian Alestake

*James McHugh*

Texts on Dharmaśāstra are often quite concerned, both directly and indirectly, with material things. People wear or avoid garlands, carry bedposts and skulls, and even count (or in fact, fail to count) rhinoceros toes.<sup>1</sup> Scholars who have worked on these texts will know that in many cases these things, which are in many ways the most concrete referents of the texts, have become rather elusive over the years—it is often difficult to establish what the things *are* (bedpost? skull on a stick? something else?), and why one thing as opposed to another is used in a certain context, especially in a tradition that covers such a large geographical area and long period of time. In this chapter, I wish to explore what we can do about studying these material things—how we can go about studying these nebulous objects, and why trying to do so can be useful and productive.

It will be easier to discuss this topic if we deal with an actual thing. A suitably remote yet quite fascinating “dharmaśāstric object” is the ancient Indian alehouse sign, namely the object called the *surādhvaja* (“*surā* banner,” “*surā* flag”) or sometimes simply a *dhvaja* (“banner,” “flag”). As far as I am aware, all the surviving references to this interesting object are found in texts on Dharmaśāstra or in texts of an ethical and didactic nature, such as certain parts of the *Mahābhārata* and the *Arthaśāstra*. On first sight, this seems a straightforward object, some sort of sign displayed by a person who sells some sort of alcoholic drink. It actually seems quite like a lot of objects we know today. But on closer inspection, both the banner and the drink advertised are more complex than might at first seem. As we shall see from exploring the case of this material object—a thing we only know about via written texts—the

<sup>1</sup> I allude to Brick 2012a and Jamison 1998.

study of Dharmaśāstra is often one of our better sources for learning about the material culture of early South Asia, about the usage and significance of certain material things. Further, the study of material culture through sources *other* than those on *dharma* is often very enlightening about what is going on in Dharmaśāstra, not just materially, but also socially and ritually. This background knowledge can help us appreciate what is peculiar, innovative, or reactionary in Dharmaśāstra. And considered together, the study of material culture and texts on *dharma* make an invaluable source for the study of the *social history* of early South Asia—something that is often overlooked, or at least understated, in the study of material culture.

Of course, all these texts are of an elite nature, often Brahmanical, and one would think this limits what one can learn about society from them. Yet reading between the lines, and reflecting on what is possibly implied by these surviving sources, especially when they are dealing with a topic like alehouses and getting drunk, can give us some small but important glimpses into the lived world of ancient India. And more directly, these texts furnish a wealth of data regarding the categories that the educated and/or powerful may have used, promoted, resisted, or reinterpreted in dealing with the matter of alcohol, and many other such topics. In exploring this particular question, Kane's magisterial *History of Dharmaśāstra* remains by far the most valuable resource for navigating the considerable traditional scholarship on the matter.<sup>2</sup>

Let us start, however, with the drink associated with the sign we are discussing, a drink called *surā*, a word that is relatively familiar to all scholars of Sanskrit. As noted, one major methodological challenge in studying ancient material culture from texts is how to understand what exactly these lost things were, and in this case, what sort of drink *surā* was (and its exact nature does matter to the tradition). Also, translation is important here, and we need to decide how to talk about this drink in English. And we need to deal with the fact that the words and ideas associated with the traditions of Dharmaśāstra circulated for extremely long periods, during which the material culture and society changed greatly.

In discussing the regulation of drinking alcohol in Dharmaśāstra, Kane uses a variety of words. He does not always translate the term *surā* into English, and for other drinks, he uses such words as “wine” or “rum” and quite often “liquor.”<sup>3</sup> The range of words for alcoholic drinks in Sanskrit is quite impressive (and very confusing). Drinks were normally differentiated in terms of

<sup>2</sup> Note that in this chapter, I am not attempting to produce an exhaustive study of the *surā* banner, nor of *surā*, or drinking more generally, but rather, I use the topic to reflect on the ways in which even seemingly minor aspects of Dharmaśāstra can be read as informative on a number of topics relating to material culture and society.

<sup>3</sup> Kane II: 791–9.

what they were made of; so, for example, *sīdhu* was made from sugar cane and its products though, as it was not a distilled drink, “rum” is not the best translation for this word. There are no closely analogous beverage words in the English language for many of these drinks. For the Sanskrit word that concerns us, here, however—*surā*—Monier Williams in his dictionary gives: “spirituous liquor, wine (in ancient times ‘a kind of beer’).” All these options for translating the word have a certain value or validity. In a study of the history of fermentation in ancient China, H. T. Huang chose to translate the Chinese term for a type of alcoholic drink made from grains as “wine,” in order to convey in English the antiquity of this drink, mentioned in the ancient classics, and associated with ritual and religious usage—for which the English word “wine” seems a good fit (2001:149–50). However, this ancient Chinese drink was made from grains, so something quite important is lost as well as gained here. In the case of *surā*, which was basically made from grains and was often considered to be a lower-class drink, perhaps “ale” is a good translation—somewhat archaic, and associated with the lower-class “alehouse,” which makes a good translation for various establishments that serve *surā*. Yet the word *surā* has other senses, both in common usage and by legal definition, as we shall shortly see. Also, from surviving recipes, it seems *surā* might often have been more like Japanese *sake* than European beer—or at the very least, the drink was made both in the manner of a malted-grain drink and a mold-fermented drink (*sake* does not involve the malt enzymes that turn starch into sugar, but instead uses molds to achieve this process). And what do we do with Monier Williams’s translation “spirituous liquor”? I am far from convinced that distillation was present in South Asia in the period when many of the texts I shall discuss here were composed, for example the *Mānava Dharmaśāstra*.<sup>4</sup> Despite this, to call *surā* a “spirituous drink” in English is by no means entirely incorrect. For consider the following comment about *surā* from an eighteenth-century Tantric text, the *Haṃsavilāsa*, where the flammable nature of distilled alcoholic drinks is explained in terms of traditional Indian theory of the elements during a scholarly discussion of the morality of drinking in ritual contexts: “It is not made of the element water but rather made of the element fire because it burns in a lamp like oil does.”<sup>5</sup> Evidently, the *surā* in this text is a distilled drink, and yet the same text refers to far older *tantras* and Dharmaśāstric sources that mention *surā*. So, for a highly educated eighteenth-century Indian writing in Sanskrit, *surā* was a “distilled liquor,” and this is how he retroactively understood the classical, canonical references too, for he added this quite fascinating reference to *surā* as made

<sup>4</sup> See McHugh 2013: 31–3. I shall be exploring this issue in far more detail in future publications.

<sup>5</sup> *sā jalamayī na bhavati kintu tejomayī tailavad dīpake jvalati. Haṃsavilāsa* of Haṃsamīṭṭhu: 314. On this interesting text, see Vasudeva 2012.

from fire! And no doubt the *paṇḍits* consulted by early European scholars likewise frequently understood *surā* to be a distilled drink, which means Monier Williams's definition is quite correct, at least for a certain time and place. Thus not only does the word *surā* have a number of senses in ancient India, but the referents of the word change over time. Now, if readers are at this point a little overwhelmed by the many meanings of *surā*, I might note that one feature of the history of alcohol in India is that there were a vast number of types of drinks available, arguably far more types than in, say, medieval France, and the names of all of them present translation challenges. This is only the tip of an ever-melting, slippery, philological alcohol iceberg. And I should add, there was no concept of "alcohol" in ancient India, yet these drinks were conceptually united by the fact that a transformation takes place that renders the raw materials intoxicating.

Now, all the above might seem rather arcane and even pedantic, possibly irrelevant to the study of Dharmaśāstra, material culture, and social history in India. But, let us pause and imagine if in a non-English-speaking country in two thousand years' time, the principal intoxicating substance was a new type of musk called "gavagai secretion." Then imagine that a scholar living in that world, working on the legislation of drugs and intoxicants in twenty-first-century America were to translate whiskey, cannabis, coffee, and cocaine using the phrase "gavagai secretion" as that was the most familiar drug, all others having fallen out of use. This would obscure extremely important aspects of both law and social practice, both legal and illegal, and economics, not to mention the significance of these substances and their consumption as depicted in literary texts, cinema, and other media. Yet this is exactly what we see in ancient India: a simple village *surā* shop was no doubt an utterly different affair, both legally and socially, to a cellar stocked with imported wine, not to mention the paraphernalia of a betel seller or betel servant, and we should strive to tease out the nature of this complexity.

Religiously, legally, and economically, *surā* is such a distinctive drink in ancient India that I shall not translate this word in this chapter—if we can cope with "*sake*" and "*pulque*," we can probably manage "*surā*," too, at least in more academic contexts.<sup>6</sup> But, what exactly was *surā*? The word has a number of usages. As a particular type of drink, the earliest recipes we possess from Vedic sources<sup>7</sup> and in the *Arthaśāstra*<sup>8</sup> list the ingredients as various grains, sometimes malted, plus herbs and a ferment starter called *kiṇva*.<sup>9</sup> The word *surā* is also used as a generic term for all alcoholic drinks, as we see in the

<sup>6</sup> Though in other less technical contexts, translating would be wise—possibly either as "ale" or "liquor," depending on the usage.

<sup>7</sup> For example *BŚr* 17.31–17.32.

<sup>8</sup> *AS* 2.25.16–2.25.18. *Medaka* and *prasannā* are varieties of grain *surā*, complicating the nature of *surā* even more.

<sup>9</sup> I shall explore the exact nature of *surā* in a future study of alcohol in India.

*Arthaśāstra* chapter on the duties of the “Superintendent of *surā*,” who oversees a great many types of drinks, and the commentator Medhātithi notes this usage of *surā* too.<sup>10</sup> Drinks such as this, made from grains, have certain characteristics. They are frequently made from the same material as the staple diet, so the raw materials are commonly, locally available. They require more effort to produce. A drink such as grape wine that begins with sugars ferments spontaneously from the juice, so juice left alone, can *accidentally* become intoxicating. Whereas to make a beer, one needs to thresh, dehusk, and cook the grains, as well as transform the starches into sugars, before a careful alcoholic fermentation, using yeasts and bacteria. So while beer is potentially available all year around, made from easily available materials, it nevertheless requires some skill, and certain additives, and it condenses a lot of human labor in its manufacture—all local labor, much like the labor of farming and cooking, and not the labor of shipping wines from abroad.

If we compare *surā* with ale in premodern England, about which we know far more than ancient India, we can imagine that to set oneself up as a *surā* trader one only required relatively simple common equipment: various jars, strainers, pestle and mortar, firewood, grains, herbs, and fermentation starters—many of which would already be available for the preparation of food.<sup>11</sup> And as with the people who ran alehouses in England, this was probably an easy way for poor people to transform their staple food into a commodity, largely obtained by means of extra labor, such that they could supplement whatever they obtained from other sources. Making *surā* would have been an easy way to get into commerce. Yet making *surā* on a small scale cannot have been enormously profitable, and, no doubt, the business of serving alcoholic drinks to a poorer section of society had its obvious risks. Manu states that a son is not responsible for his father’s drinking debts (*MDh.* 8.158). This small point is important, as it suggests that drink, and no doubt *surā*, was sometimes available on some sort of credit. Again, for ancient India, we only have such small hints as to the economy of small-scale *surā* trading, and, yet again, a comparison with ale in England is enlightening. There, bad debts were a major problem for tipplers (ale sellers). As Peter Clark explained for Canterbury between 1560 and 1640, “Of the 61 alehouse-keepers’ inventories surviving from this period 15 record debts outstanding to the deceased...

<sup>10</sup> See *MDh.* 8.159, when discussing inherited debt relating to drinking. Medhātithi explains the *saūrika*, or *surā* related [debt] as follows: “‘*Saūrika*’ means caused by drinking *surā*, and this usage of *surā* has the generic sense of intoxicating beverage.” (*surāpānanimittam saūrikam surāgrahaṇam madyopalakṣaṇārtham*).

<sup>11</sup> The *Arthaśāstra* contains much information on drinking, on making *surā* and other drinks, and about what seem to be larger-scale inns of some sort. I cannot explore this material in this chapter, where I wish to focus above all on the *surā* sign and reflect on the small-scale village *surā* maker. On the conditions of poor, small-scale brewers in premodern England see Clark (1983: 80–2).



among poorer victuallers...uncleared debts amounted to half their personal estate" (1983: 80–2). Of course, ancient India and early modern England were very different places. Nevertheless, we can tentatively imagine that for the lower-class *surā* trader, sometimes using credit but preferring cash,<sup>12</sup> and unable to recover the debts of the deceased, life could be very hard. A line in the *Mānava Dharmaśāstra* that might only seem interesting for what it tells us about legal responsibility is in fact a small window into a system that created a way of life for people who labored to turn everyday rice into alcohol, and received nothing but social stigma for doing so.

For *surā* was evidently considered a very-low-class drink in ancient India. Ritual reasons aside, perhaps this was in part because of its potential ubiquity and low cost when compared with more prestigious intoxicants, from imported soma at very early periods, to foreign wines and exotically perfumed betel—all of which were the subject of quite-respectful discourse at various times.<sup>13</sup> Indeed, distancing yourself from *surā* culture was a mark of the "upper" *Varnas*. Drinking *surā* was forbidden to all three twice-born *Varnas*, such that only *Śūdras* and other communities could drink *surā*.<sup>14</sup>

Another key word in legal texts on alcohol is *madya*, "intoxicating beverage," which covered many more types of drinks, and non-*surā* *madya* was indeed permitted to *kṣatriyas* and *vaiśyas*, but forbidden to Brahmins, who can take no alcoholic drinks of any variety. And it is in this context that we can understand the rather dramatic intervention in Manu (*MDh.* 11.95), where *surā* is legally defined as three fold, made from ground grains (*paiṣṭī*), jaggery (*gauḍī*), and wine/honey/*mahua* flowers (*mādhvī*), the third, rather ambiguous term being subject to considerable commentarial discussion in the following centuries. Where in early texts *surā*, the sole drink forbidden to *Kṣatriyas* and *Vaiśyas*, was only one among many other practically available choices of drink, Manu attempts to restrict drinking for these communities by this aggressively expanded redefinition of *surā*. Later texts and commentaries, however, manage to salvage the situation for *Kṣatriyas*, and *Vaiśyas*, producing rather extensive lists of non-*surā* drinks that are acceptable, and indeed these lists constitute some of our most detailed information on drinks in the medieval period.<sup>15</sup> And no doubt these later lists reflect, support, or justify cultures among the Hindu elite that were at times quite tolerant of drinking, so

<sup>12</sup> In the *Vāruṇi Jātaka* (no. 47), the Pali text specifies that the landlord sells the drink for gold and money, and when he has to leave the shop alone, he very specifically instructs his (subsequently incompetent) apprentice to serve the *surā* (here called *vāruṇi*), when he has taken the cash for it.

<sup>13</sup> See *AS* 2.25.25 on these foreign grape wines, *madhu* being a very common word for grape wine.

<sup>14</sup> For a masterful survey of these extremely complex regulations, see Kane II: 791–9.

<sup>15</sup> See, for example, *ViDh.* 22.83–22.84; the verses are added to Manu's expanded definition of *surā* and largely attenuate Manu's earlier, more restrictive statement.

long as Brahmins did not drink—*surā* is what other people drink. And possibly further work on drinking in South Asian society might permit us to historicize these developments in the *dharma* of drinking, bearing in mind such difficulties as the fact that the material culture described in Sanskrit literary texts is often frozen as an expression of the high culture of the mid to late first millennium CE.

To conclude this extremely superficial survey, *surā* was most commonly a grain-based drink, for the lower classes. It was cheap and relatively easy to make, and the upper classes, the three twice-born *varṇas*, were strictly forbidden to drink it. A range of sources, including references in Dharmaśāstra can help us imagine the life of the *surā* seller, the person who would have displayed the *surā* banner we started with—and closer reflection on the nature of these people's lives makes us see Dharmaśāstra in a new light too.

Let us return to the *surā* banner. This banner was either carried as a penance or branded onto the forehead as a punishment. It is important to understand that punishment and penance in ancient India were public acts, so the visibility and self-evident meaning of these marks really mattered (Olivelle 2011: 28). The older sources that mention this object do not tell us anything about what it was or what it looked like. Although the practice of branding with the *surā* banner is not mentioned in the earliest text on *dharma* we possess, the *Āpastamba Dharmasūtra*, nevertheless, we do see in that text the notion of carrying a distinctive identifying banner as part of the penance (*prāyaścitta*) for killing a Brahmin (*ĀpDh.* 1.24.11: *śavaśirodhvaja*).<sup>16</sup> The *surādhvaja* appears for the first time in the *dharma* literature in the *Baudhāyana Dharmasūtra*, dating from some time after the middle of the second century BCE and the turn of the Common Era, where we are told that the king, who cannot apply capital punishment to a Brahmin, should instead apply punishment (*daṇḍa*), branding the forehead of a Brahmin who has drunk *surā* (*surāpāna*) with [the image of] a *surādhvaja*, using a heated iron (*taptenāyasā*) and banishing him from the kingdom (*BDh.* 1.8.17–1.8.18).<sup>17</sup> Manu also mentions this banner, both as penance and punishment, and it is mentioned in the *Arthaśāstra*.<sup>18</sup>

When the king has the image of a headless corpse branded onto the forehead of a murderer in the same circumstances, we know that the image was a headless body, and it is clear that heads separated from bodies were emblematic of murder and killing.<sup>19</sup> But for the crime or sin (which was very

<sup>16</sup> For an interesting analysis of this object and the related “bedpost” staff see Brick 2012a.

<sup>17</sup> On the dating of this text, I rely on Olivelle 2000: 4–10.

<sup>18</sup> *MDh.* 9.237; *AŚ* 4.8.28. On the *Arthaśāstra* passage, most likely a commentarial or editorial addition, see McClish 2009: 291–5. Note that the *Arthaśāstra* has “intoxicating drink banner” (*madyadhvaja*), possibly to indicate a wider range of drinking establishments than the *surā* one, or at the very least explicitly aligning the text with the more unambiguously generic concept of *madya*, as opposed to the older *surā* and more Brahmanical terminology.

<sup>19</sup> As implied by the carrying of skulls for murder—See Brick 2012a.

*varṇa* specific) of drinking *surā*, the older texts do not say that one is branded with a more obvious symbol such as a cup or jar, but rather with the evidently familiar sign or banner of a seller of *surā*. Later commentators do explain the banner. When discussing the penance of *carrying* an actual banner, the ninth-century-CE commentator Medhātithi, as well as other commentators, clarify that the banner is a jar for intoxicating drink. Yet when discussing the banner-mark branded on the forehead as a punishment, commentators state only that a *surā* banner is the “banner of a *surā* shop.”<sup>20</sup> Also, these texts are considerably later than the older texts that mention the banner.<sup>21</sup>

This uncertainty as to the exact form of the banner does not, however, diminish the interest of this object for us, as whatever the exact nature of the banner, the *surā*-drinking offender is branded with an *image of a sign*, of a commercial sign. Effectively the body of the offender with its *surā*-banner appendage is visually transformed into a permanent *surā* shop—one is reminded of the Summoner in Chaucer’s *Canterbury Tales*, whose garland transforms his head into an alestake, “A gerland hadde he set upon his heed, As greet as it were for an ale-stake.”<sup>22</sup> But why would a *surā* shop have a sign or flag? This might seem a strange question when we live in a world so full of advertising and signs, but we should consider why a retail establishment would be so marked in early India. In medieval and early modern England, alehouses also had signs, as did taverns and inns. Chaucer’s alestake was a pole with a bush at the end that did not so much indicate the location of an alehouse as advertise that a brewing had taken place and that ale, very perishable in those days, was available (Clark 1983: 29, 67). In a small village or town with few visitors, presumably everyone would know where the *surā* shop was, so the use of a sign might imply intermittent availability of the drink—this is one possibility for the purpose of the *surādhvaja*. Yet this was not the only use of beer signage in premodern England. Smaller London alehouses often had a red lattice or checkers pattern painted on the wall, as one sees, for example, on the wall of the “Sun” tavern in Hogarth’s famous engraving of “Beer Street”

<sup>20</sup> On MDh. 11.93, where the penitent carries an actual banner, Medhātithi has “with a banner means with pot for intoxicating drink” (*dhvajī madyaghaṭikādineti*). Nārāyaṇa has “Displaying a *surā*-vessel banner” (*surābhāṇḍadhvajam puraskṛtvā*). Rāghavānanda has “With a banner” means someone who has a jar for intoxicating drink for a banner” (*dhvajī madyaghaṭikā dhvajarūpā yasya saḥ*). Nandana glosses the word as “Possessing the sign of a *surā* jar” (*surākalaśacihnayuktaś*). For MDh. 9.237, where a man is branded on the forehead with the image of a *surādhvaja*, the commentaries do not specify the nature of the banner, but, then again, maybe a banner alone did, indeed, indicate a *surā* shop—for example, Nārāyaṇa says of this brand that it “has the form of the banner of a brewer’s house” (*śaundīkagrhadhvajākṛti*), and Rāghavānanda notes this is a heated-line (brand) that is long and has the form of a banner (*taptā tu dīrghā dhvajākārā rekḥā*).

<sup>21</sup> A possible early reference to the advertising of drinking places is AŚ 2.25.11, where Olivelle in his translation (p. 565, note) suggests the term *pānoddeśāni* might refer to signs advertising drinking places.

<sup>22</sup> Chaucer, *Canterbury Tales*, I (A) 666–7.

(Clark 1983: 68). In a large city with many new arrivals and travelers, such a sign indicated where to buy ale. And the *surā* sign could be this sort of sign, which would, therefore, imply that *surā* shops were frequented by newcomers and travelers in a populous urban setting, as is, indeed, indicated in the description of inns in the *Arthaśāstra*.<sup>23</sup>

There is another, more detailed description of this sign. In the *Yajñavalkyasmṛti*, in the section on the *dharma* of the *snātaka* Brahmin, the “bath graduate,” it is stated that he should not accept a gift from a butcher (*sūnin*), an oil presser (*cakrin*), a *surā* seller (*dhvajin*), a prostitute (*veśyā*), or a king (*narādhipa*) (YDh. I. 139). Viśvarūpa’s commentary on this passage, probably from the early ninth century (Olivelle 2010b: 52), quotes a verse to explain why the word *banner possessor* means a *surā* seller:

He should make a banner (*dhvaja*) for a sign (*cihna*) and dwell in the middle of the village, and should not give *surā* to low class people (*antāvāsāyin*) when there is no calamity.<sup>24</sup>

The original context and date of this intriguing verse are, as far as I am aware, not known.<sup>25</sup> The word *dhvajin* is quite striking too. Where an oil presser is characterized by his stone rolling wheel, the *surā* seller is simply characterized by a banner. In the town or village the “banner-possessing person,” the one with a sign, is the *surā* merchant, suggesting that this was the only retail sign commonly used in early India. (We might now also look for visual representations in early art.) Commentaries on a similar verse in Manu suggest the person with the sign might sell, trade, or make the drink.<sup>26</sup> The meaning of the verse seems a little odd, and maybe the verse originally stated, “he should not give *surā* to people who are *not* low class when there is no calamity.” It seems strange to stipulate that the *surā* seller cannot sell to these communities, as who else would he provide with the drink?<sup>27</sup> Or, possibly what is at stake here is *giving* *surā* to people, as opposed to selling it. Or, maybe this is just a very unrealistic text written from a very high-class point of view, and the *surā* seller should simply exist and sell almost no *surā*? This latter idea leads us to another possibility regarding the purpose of the *surā* sign—that it functioned as a warning of the presence of a highly defiling substance, and a structure that should not be approached by those forbidden to drink *surā*. Even if that was not why *surā* sellers actually possessed signs (though maybe the quote above reflects a high-class tradition of enforcing warning-signage), nevertheless, this

<sup>23</sup> See footnote 21.

<sup>24</sup> Viś on YDh. I.140, as mentioned by Kane II: 798.

*dhvajam ca kuryāc cihnārtham samayā grāmaṃ ca saṃvaset |  
na caivāntāvāsāyibhyaḥ surāṃ dadyād anāpadi ||*

<sup>25</sup> Viśvarūpa states from “another *smṛti*.”

<sup>26</sup> MDh. 4.84. For example, Medhātithi: *krayavikraya*. Rāmacandra: *madyakartā*.

<sup>27</sup> So: *na cānantāvāsāyibhyaḥ...*

could well be how the signs were viewed by those for whom the consequences of drinking *surā*, especially in public, were theoretically quite harsh. Thus the meager data on *surā* signs in texts on *dharma* can be read from a Brahmanical point of view, or, rather hypothetically, from the point of view of those who produced and drank *surā*—communities quite divided over access to this nourishing, easily made drink, yet an almost necessary material counterpoint to Brahmanical life.

There is also a proverbial reference to the *surā* sign in the *Mahābhārata*. Possibly the verse below implies that these signs were constantly displayed, and probably prominently, too, since the verse concerns ostentatious, hypocritical piety:

He who has a banner of righteousness forever raised-up like a *surā* banner, but whose evil deeds are hidden follows the cat-observance.<sup>28</sup>

After this verse, the story of the “cat observance” is explained. A cat once posed as a holy man to impress some mice he was then able to eat, but, eventually, they saw through this disguise and escaped his pious trap. Thus, the “cat observance” is hypocritical conspicuous behavior of some variety (charmingly depicted in a relief at Mahabalipuram).<sup>29</sup> As to why the banner of righteousness is compared with a *surā* sign, possibly, this is because, in the case of *surā* shops, an innocent outward sign corresponds to an interior where sinful drinking takes place, both a warning and a mark of shame.<sup>30</sup> Certainly this object was well known and highly conspicuous in ancient India, and any reference, visual or textual, to this distinctive retail sign would have evoked participation in a practice, economy, and social class that, while evidently thriving, is not typically celebrated by our surviving sources.

Penances such as that mentioned in this chapter—carrying a *surā* banner among other observances—had the power to repair the soteriological, karmic harm created by sinning, as well as the social exclusion resulting from certain sins.<sup>31</sup> Some sins were said to be marked on the body in future births in a manner that, in at least some cases, correlated to the body parts associated with the sin; thus, drinkers are born with black teeth (Olivelle 2011: 36). As Olivelle notes, by extending the system of bodily marking for sins beyond the human practices of penance and punishment into a realm of cosmic retribution “the upholders of the established order are able to anchor the moral and legal systems in the very working of the cosmos; they become

<sup>28</sup> *yasya dharmadhvajo nityam surādhvaja ivocchritah |  
pracchannāni ca pāpāni baiḍālam nāma tadvrataṃ* || *MBh.* 5 App. 1, no 9, 11.8–11.9.

<sup>29</sup> On this episode, the similar Buddhist *jātaka*, related verses, and the cat-observance in general, see Söhnen-Thieme 2005.

<sup>30</sup> Note that neither the Pali version of this verse nor that at *MDh.* 4.195 mention the *surā* sign. See also Olivelle 2005a: 275, n. 4.195.

<sup>31</sup> On the nature of this dual function of penances, see Brick 2012 b.

naturalized” (ibid.) Here it is notable that what gets naturalized in future births are the more corporeal parts of penance and punishment, the more basic mutilations of the body—and the flag of the *surā* seller, purely a product of social convention, is not somehow reproduced on the cosmic level. This object belongs to an almost secular realm of material culture that cannot penetrate to the cosmic level—whereas the forbidden drink *surā* itself (and “herself”—*Surā* being also a goddess) is well established in the Vedic and mythical realm.

To conclude, though a rather elusive object, the *surā* banner was the product and focus of a complex network of factors, both in practice and as represented in surviving sources: hard-working brewers, financially insecure lower-class traders, and drunk customers (with everything that implies). The *surā* banner as we know it today is also, ironically, more closely associated with the well-documented Brahmins who shunned these *surā* houses and produced texts and prescribed rituals that reproduced the ancient Indian alestake in order to indicate the social exclusion of twice borns who dared to consume *surā*—a drink so forbidden, yet so tantalizingly similar to the simple barley gruels that were the very stuff of certain penances. We see in this case how the well-defined and relatively well-recorded boundaries of high-class respectability also demarcate parts of a mostly undocumented world of lower-class drinking culture in ancient India. Also, though an aspect of the ancient Indian *material culture* of drinking (and penance/punishment), this type of “alestake” is primarily of social interest. This sign, whatever exactly it was, helps us understand hierarchies of matter and social exclusion, and these insights can then enrich our reading of other texts, not just Dharmaśāstra (e.g., drinking features frequently in Sanskrit drama). The material culture of ancient India as revealed through Dharmaśāstra means nothing unless we also imagine the communities and individuals who interacted with it.

In moving beyond a simple enumeration of textual data, we can tentatively compare aspects of Dharmaśāstra (here, the *surā* banner) with other evidence from ancient India (here, narratives of drinking, *surā* recipes, etc.), as well as with scholarship on other times and places (here, premodern English drinking), in order to produce hypothetical models of social history and material culture that are revealing for scholars of law, cultural history, and religion. We will never write the sorts of richly detailed histories possible when working with some other types of archives, yet it is still possible to historicize and animate our meager data by cautiously applying such a wide-ranging methodology.

## Embodiment of *Dharma* in Animals

Andrea Gutiérrez

The body that is the *all in all* (the only source) of *dharma* must be protected with efforts; just as water oozes down from the mountain, so *dharma* springs from the body.

*śarīraṃ dharmasarvasvaṃ rakṣaṇīyaṃ prayatnataḥ |*  
*śarīrātsravate dharmāḥ parvatātsalilāṃ yathā |*  
*Śaṅkhalikhita* 17.63cd (Kane IV: 127)

Early Brahmanical religious life was not possible without the nexus of humans and animals. Humans and non-humans co-constructed the religious world. My focus for this chapter is on the ways in which animal bodies articulated and altered humans' religious, legal, and social statuses.<sup>1</sup> Previous studies on animals and religion have emphasized vegetarianism, the moral treatment of animals, and whether animals have souls (Rosen 1987; Singer 1975; Francis and Norman 1978; Jaini 1987; Badham 1998; Waldau 2000). Building on this research, I address animal bodies' direct involvement in Hindu ritual, animals' effect on ritual purity, and the ontological status of humans and non-humans as expressed in religious texts. One of animal studies' most frequent questions concerns the human–animal distinction, which philosophers have historically explored using anthropocentric criteria. Inquiry into this distinction was not a priority for religious authors in ancient India, yet animals regularly appear in Dharmaśāstra and other religious texts from South Asia. Examining Dharmaśāstra can illuminate ideologies and social realities of animals and people in Hindu religious history, in part because Dharmaśāstra writers detailed rules and specifications for actions involving animals alongside or in lieu of humans.

<sup>1</sup> I use the conventional terms *animal* and *human* despite the fact that humans are fully animal. Repeated usage of the expressions *human animal* and *non-human animal* throughout a chapter is, sadly, cumbersome.

Giorgio Agamben's work on animals and humans asserts that our relations with the divine depend on the darker relations that "separate" us from the animal, meaning our anthropocentrizing notions and behavior (2004: 16). Conversely, I suggest that our relations with other animals depend on our relations with the divine. People in Brahmanical societies performed ritual practices—often utilizing animals or their bodies—to negotiate their statuses in relation to the divine and deceased. Some Hindu rites and practices made use of animal bodies in order to purify humans and their spaces, to link the human sphere to otherworldly or divine realms, and to mitigate negative karma before rebirth, to name a few examples. Hindu legal literature details these ritual practices and draws the mutual constitution of humans and animals as religious, legal, and social bodies. The epigram from *Saṅkhalikhita* above points to the body as the primary locus of *dharma*'s enactment (in this context, *dharma* encompasses both normative duties and the more abstract virtue and religious merit resulting from the performance of practices and the execution of one's duties). Therefore, a study of the embodiment of *dharma* can reveal the related roles of non-human and human animal bodies. I focus on domestic cattle and Indian antelopes, both significant species in India's socio-religious history. Cows frequently appear in the same passages as Brahmins (e.g., *gobrāhmaṇāḥ*, "cows and Brahmins"), the bull is a recurring symbol of *dharma*, and the blackbuck (antelope), utilized in Brahmanical ritual, is a symbol of *yajña*, sacrifice.

In this chapter, I incorporate theory from recent continental philosophers (some posthumanist) who reject anthropocentric priorities and have considered the question of the animal. I bring these insights to bear on India-specific material and particularly *dharma* literature. I discuss four topics, starting with (i) animals' utility in early Hindu ritual and in conceiving of ideologies. (ii) I address how animal bodies constitute rituals and ritual space, as well as the dharmic status of some animals and their products. (iii) I highlight that animals are an extension of the human body according to some legal texts. This facet of animal embodiment leads to an understanding of (iv) human and animal bodies as co-constituted in Dharmaśāstra ideology. Both types of beings are moral and soteriological constructs, and Dharmaśāstra texts describe practices involving shared human/animal socio-religious bodies.

Especially noteworthy for animal studies is the permeability of species in Indian ideologies of karma and rebirth, existing since ca. mid first millennium BCE. In this context, species distinction concerns the category formation of beings as moral or soteriological entities, not the Linnaean understanding of species. This permeability of types of being from birth to birth (animal to human and sometimes to divine) contrasts with the impermeable categories familiar in the West, which separate gods from humans from other animals, and so on.



Analyzing *dharma* in animal terms might surprise some, especially in light of the *Hitopadeśa*'s statement: "Eating, sleeping, fear, and sex are the same for humans as for animals; human's chief distinction is *dharma*. Without *dharma*, humans are no different from animals."<sup>2</sup> The *Hitopadeśa* contrasts "animals" with "humans" in order to explore whether animals can acquire merit (*punya*) as well as humans can or can only expend it. The *Hitopadeśa*'s distinction of animal versus human concords with the standard anthropocentric legal theory of past and present, which traditionally considers only humans as legal subjects. As Joanna Bourke has described the phenomenon, "[i]t is law that distinguishes between the most basic existence shared by people and animals ([basic] life or *zoe*) and full personhood within the polis or political community (meaning[ful] life or *bios*)" (2011: 131). Like Bourke, I take issue with structures that categorically grant legal personhood only to select groups of humans. Such legal structures ignore liminal beings with other sorts of participation in the legal world and social community. Classical Indian texts complicate the dichotomy implicit in the *Hitopadeśa* verse. Padmanabh Jaini rejects the notion of humans as homologous with *dharma* and animals as lacking *dharma* (1987: 176). He acknowledges that the modern Indian mind-set might differentiate humans from animals, using man's moral conscience of *dharma*, but Jaini argues that early Buddhist, Jain, and Brahmanical narrative texts belie this moral distinction. These texts instead suggest that non-human animals, at times, embody *dharma* better than human animals can (Jaini 1987: 169). Furthermore, the prescriptive legal literature often presents rules for humans to realize the performance of *dharma* by means of animals.

## IN ANIMAL TERMS

The legal authors often chose to frame *dharma* in animal terms, and not only because of the metaphorical potential of animals, which Lévi-Strauss termed "*bonnes à penser*" (1963: 89). Animals are "good to think (with)" because the variety of relationships and characteristics in the animal world aids our understanding of social structures and other associative frameworks, what Lévi-Strauss termed "external analogies" (1963: 78). For an Indic example of such an association, a dharmic king is like a bull in that both king and bull preside, watch over, and protect the "herd," whether human or bovine (Couture 2006: 73–4). Animals also materialize our "internal homologues"; ideas and relations conceived in the mind take animal form, manifesting in

<sup>2</sup> *āhāranidrābhayamaithunañ ca samānam etat paśubhir narāṇām | dharmo hi teṣām adhiko viśeṣo dharmeṇa hīnāḥ paśubhiḥ samānāḥ || 25 || Hitopadeśa-Mitralābha* 1962: 14; my translation.

empirically observable ways (Lévi-Strauss 1963: 89). In this latter sense, animals are especially useful in giving body to religious abstractions such as sin and atonement, transmigration, or *dharma*. In a *śrāddha* ritual (see Chapter 16) that involves the release of a bull following a man's death, the bull embodies the mental construct of *dharma*, giving it physical form. The bull also transports the deceased's *dharma* from his human body after cremation, allowing it to release or "spring" from his material body.

But animals do not only give physical presence to human speculations of the mind; humans and animals share a common world. The authors of Dharmaśāstra described their own territory of Āryāvarta, where proper *dharma* was practiced and followed (*sadācāra*), as coterminous with the Indian antelope's natural habitat (Kane II: 15). Human practitioners of *dharma* and the blackbuck cohabited a shared world. Why would this dharmically perfect realm of ritual practice be the same as the blackbuck's range? The animal became equated with the perfect enactment of *dharma* owing to the antelope's bodily role in ritual sacrifice and hence proper *dharma*.<sup>3</sup> Viśvarūpa, commenting Yājñavalkya's *Dharmaśāstra* 1.2, expressed the homology of the antelope with the sacrifice and *dharma* using a Śvetāśvatara prose passage: "Sacrifice became a black antelope and wandered over the earth; *dharma* followed it in its wanderings" (Kane II: 15).<sup>4</sup> Various Brahmanical rituals utilized antelope skin, including the *upanayana* initiation rite (see Chapters 6 and 7), in which a strip of antelope skin is attached to the sacred thread tied around the initiate, and the *darśapūrṇamāsa* sacrifice, the twice-monthly *śrāddha* in which the *adhvaryu* priest uses the skin to husk and bruise the ritual grain (Kane II: 1026–7). The *dhenudāna* rite also made use of antelope skins as simulacra of an actual mother cow and calf, illustrating the antelope's fungibility in the ritual economy. In this rite, a small antelope skin placed over a larger one holds monetary, material, or food gifts (Kane II: 880). The skins represent the cow and her calf, which were originally gifted in such acts; they physically stand in for other animal bodies in the rite. In all of these cases, the antelope body facilitated ritual enactment. So, the animal took on symbolic representations useful to humans by bodily representing sacrifice and *dharma*. The antelope was also the literal embodiment of sacrifice: the animal's body physically contained dharmic practitioners (held to ritual by their *upanayana* thread) and it contained ritual offerings.

Other animals embodied *dharma* in its ideological framing. At one extreme, the perfect embodiment of *dharma* was conceived as a four-legged bull, while,

<sup>3</sup> If asked to speculate on how the antelope's body gained such ritual prominence, I would suggest reasons including the animal's distinctive appearance (starkly contrasting coloring and ringed horns that spiral dramatically) and its natural terrain, the grasslands that also provided the grasses necessary for ritual performance.

<sup>4</sup> A similar passage appears at ŚB 1.1.4.1–1.1.4.2, cited in Kane II: 15.

at the other extreme, the vision of dharmic chaos was the anarchic ocean of fish in the “big fish eats little fish” scenario, the *matsyanyāya*, “law of the fish.”<sup>5</sup> *The Law Code of Manu* (MDh 8.16), the *Mahābhārata* (Vanaparvan 3.188.10–3.188.12), the *Viṣṇupurāṇa*, and the *Matsyapurāṇa* (Couture 2006: 72) all express the ideal embodiment of *dharma* as a bull. The emphasis on the whole body, with all four legs, assures the maintenance of stability in *dharma*’s structure, which in turn structured Brahmanical society. Interestingly, while the bull embodies *dharma* and the body produces *dharma* (which springs from it, per Śaṅkha’s opening citation), *dharma* actually survives the body after death: “*Dharma* is truly the bull . . . *Dharma* is the only friend who follows a man even in death; for all else perishes along with the body” (MDh 8.16–8.17).<sup>6</sup> During life, the body is the vessel for *dharma* (in the sense of proper religious performance and behavior), as the medium for the physical enactment of *dharma*. After death, this *dharma* entirely converts into non-tangible religious merit that does not require a body. Nonetheless, the performance and maintenance of *dharma* during life entail a physical body. As a result, bodily performativity creates dharmic products, including soteriological products like religious merit.

Evidence also suggests that Dharmaśāstra writers understood their world, as well as what needed to be done, by means of animal standards. Some measurements are expressed in animal terms, such as making grain *piṇḍa* balls for *śrāddhas* (remembrance rituals that “feed” deceased family members) that could fit in a two-year-old calf’s mouth or that are the size of a hen’s egg (in *Skandapurāṇa* 7.1.206.41 and elsewhere; Kane IV: 478). Here, animal terms aided ritual practitioners’ application of dharmic rules and social practices.

## RELIGIOUS HISTORY AS BODY HISTORY: HUMAN AND ANIMAL BODIES

Dharmaśāstra writers found animals necessary for contextualizing *dharma* because they considered that humans and animals *together* formed the overall social structure. Consider the *gobrāhmaṇa*, the social construct of both cows and Brahmins, as constituents of society. Harm done to either was a serious crime, and acts involving either often possessed similar structural and legal

<sup>5</sup> “Like fish eating each other” appears in *Śāntiparvan* 12.67.17, and the “law of the fish” is explained as improper ruling in the *Arthaśāstra*’s section “The Enunciation of Government” (AŚ 1.5.13–1.5.15): “When one fails to dispense it [= punishment], on the other hand, it gives rise to the law of the fish—for in the absence of the dispenser of punishment, a weak man is devoured by a stronger man, and, protected by him, he prevails” (Olivelle 2013: 69). Related passages at AŚ 1.13.5 and MDh 7.20.

<sup>6</sup> Olivelle’s translation reads “Lord Justice” for the original Sanskrit “*dharma*” (2004c: 124).

value in Brahmanical society. Texts suggest that animals and humans were co-constitutive in socio-religious practices such as penances for dharmic benefit: for example, drinking *pañcagavya* (the five products of the cow) in order to absolve a person of petty theft (*MDh* 11.166). Some rituals involved both human and non-human bodies, such as the release of a bull at a *śrāddha* for a deceased family member. Such ritual performances created other productions over time, sometimes soteriological products, such as residual *dharma* after bodily death.

Per Pascal Eitler, approaching history as *body* history, including animals' constitutive part in it, entails studying the changing production of bodies—how bodies are produced and what is produced by bodies that are socially constructed in certain ways (2014: 271–4). Eitler has suggested that we include not only “what humans do with and make out of animals, but also what they do with and make out of themselves in the context of human-animal relations” (2014: 273). In ancient India, a human criminal's body underwent modification when punished for theft; the criminal's forehead was branded with the image of a dog's foot (*MDh* 9.237). In this case, the dog's figurative body aided the production of an altered human body, a socially corrected body.

Animal products such as the cow's *pañcagavya* also modify human bodies when ritually consumed. One consumes *pañcagavya*, a concoction of cow's milk, ghee or butter, yogurt, urine, and dung, either for medicinal or ritual purposes, as well as it being utilized for purification and for the consecration of structures or deities. The cow's bodily products bring about the production of socially and soteriologically altered human bodies, sites, and divine images. The cow's purificatory role extends beyond her bodily products and includes her acts and mere presence. Whereas the presence of other animals (dogs, camels, pigs, etc.) can be polluting, one can purify an area of land by smearing it with cow dung (*BDh* 1.9.11) or by “letting cows stay in it” (*MDh* 5.124).<sup>7</sup> Clearly, the cow does affect the bodies of individuals and the ritual purity of social and religious spaces.

One might also consider animals as social products themselves, produced according to societal and religious needs and demands.<sup>8</sup> The cow is a prime lens through which to observe this religio-social construction of animals in South Asia—by examining the changing appreciation of her bodily acts and her social role over time. The cow's development as part of Brahmanical ideology shifted toward a progressively more “sacred” organism. This was brought about by the societal and ritual demands placed on the cow's body, by the effects produced by the cow's body, and by late modern Hindu discourses

<sup>7</sup> Other legal texts (*VaDh* 3.57; *YDh* 1.188; etc.) mention virtually the same bodily processes and products of the cow as purifying (Kane IV: 317).

<sup>8</sup> This continues the trajectory of discourses developed by Douglas (1970); Foucault (1980) and (1995); and Bourdieu (1984).

(D.N. Jha 2002). Such discourses and the cow's own performativity gradually resulted in the animal's "reconstruction" (Eitler 2014: 271) as an ideal, socially constructed animal—the proverbial "sacred cow."

The cow offers an illustration of humans' social alteration of an animal, yet there are other ways to explore historically shifting priorities of human and non-human bodies and their production(s). In Vedic and post-Vedic religious practices, animal bodies were sometimes subjected to societal demands in animal sacrifice. Before the Common Era, this typically meant the sacrifice of a male goat (in the *paśubandha*) but also of a barren cow (in the *anubandhyā*). Human priests and patrons (*yajamānas*) and animals to be slaughtered co-constituted these bodily performances (Kane II: 1116–31 and 1200–1). Animal sacrifice eventually fell out of practice, owing to religio-social pressures from both within and without the Brahmanical religious structure. These pressures resulted in the development of nonviolent modes of sacrifice and religious practice—other modes of gifting, *japa*, *pūjā*, expressions of *bhakti*, and meditation as interiorized sacrifice. All of these placed heightened emphasis on the human individual's body or mind/body organism. These later practices became new ritual productions involving the human body as the locus.

The shift away from animal sacrifice is one example of *kalivarjya*, something that was previously practiced and that is no longer followed in the present Hindu epoch, the *Kaliyuga* (Kane V: 1267–9). Some *kalivarjya* practices are historically significant for animal studies in that we can observe changing attitudes regarding the moral status of animals and shifting human–animal relations. Regardless, most bodily practices described in this section are also karmic processes that an individual performs in order to carry out one's *dharma* or to create or restore dharmic merit of the sort that "springs from the body."

## ANIMALS AS EXTENSION OF THE DHARMIC BODY

There is another way to envision animal bodies alongside human bodies in Dharmaśāstra, since the liminality of bodies does not always follow species boundaries. In the core text of Hindu law, Manu designates wealth, including non-monetized property (i.e., house, land, cattle), as one more locus of the body for inflicting punishment: "Manu...has proclaimed ten places upon which punishment may be inflicted...They are: genitals, stomach, tongue, and hands; feet are the fifth; and then, eyes, nose, ears, wealth, and body" (*MDh* 8.124–8.125). One's possessions (wealth, cattle, etc.) are part of the closed set of body parts upon which dharmic correction could be inflicted, meaning property was an extension of the body, as suggested by Olivelle (2011: 33). Punishment inflicted on one's wealth could affect one's sheep, goats, or work oxen as part of

one's own body. A human who performed illegal actions (often through the medium of the body) and who chose not to perform penance might end up bearing the marks of his bodily acts on his own body, as the visible, social dimension of his punishment (e.g., branding; Olivelle 2011: 34). But punishment could also be carried out using an animal that was the criminal's property. Seizing non-fixed assets such as cattle, in varying numbers according to the severity of a crime, was more convenient than taking a portion of a house as a fine. Such punishment effectively transferred the site of enactment from the criminal's body onto the animal's body. The body's boundaries do not occur where one species ends and another begins, but instead overlap.

This larger view of embodiment within Dharmaśāstra means that animals ideologically formed part of many humans' bodies, or at least humans who were wealthy enough to possess cattle. This notion is not so farfetched, as, until recently, domestic cattle sometimes virtually shared living spaces with families in India, either below or in front of the living quarters. Livestock were frequently considered members of the family, owing to their being the family's means of welfare. One philosophical ramification of this broader idea of embodiment is that the historical Hindu conception of human embodiment encompassed (a human's) *animal* embodiment, making the animal-human distinction even less metaphysically relevant. In any case, the animal-human distinction was blurred in Hindu ideology, in which human animals and non-human animals alike passed into other animal or human species in subsequent births, dependent on karmic acts performed in a lifetime.

In addition to executing punishment using an animal in lieu of the human agent of the crime, the inverse occurred in cases in which foraging cattle—one man's property or extended body—destroyed agricultural land belonging to another. If the legal stipulations specifying the terrain's fencing had been met, the bodily acts of *animal* consumers, extensions of the primarily human legal body, resulted in punishments inflicted on *human* bodies, with the livestock owner or herder bodily responsible for animal bodily acts (Kane III: 500–1).<sup>9</sup> Dharmaśāstra texts specified the social burdens placed on various parts of shared human-animal legal bodies. The type of crime and its severity determined where the burden would fall on a shared legal social body, whether on the “animal” part or the “human” part of it, just as some crimes were punishable on a certain body part, with the loss of a thumb or an ear. In cases affecting animals instead of humans (and vice versa), the religio-social status of humans and animals intermingled.

<sup>9</sup> *ĀpDh* 2.11.28.5; *MDh* 8.240; and other texts record that if cattle enter fields, parks, or pastures enclosed by a hedge, the animals could be seized or beaten off, and the herdsman was fined. *YDh* 2.159–2.161; *MDh* 8.241, etc. specify that if cattle enter fields and cause loss, the herdsman would be fined or whipped, and the cattle owner would also have to pay a prescribed fine (Kane III: 500–1).

## FRACTURED CONSTRUCTIONS OF BEINGS AND CO-CONSTITUTED BODIES

A legal body shared between human and animal(s) links to Donald Davis's (2010: 89) description of the Hindu social self as "fractured" because of people's multiple relations to things. This fracturing also expresses the complexities of embodied beings' participation in karmic life. Interactions with the external world (other humans, animals, the environment, etc.) always have social, legal, and soteriological implications. A person's bodily actions (as well as thoughts and speech, according to Manu's ideology) create numerous fractured results—on body parts and parts of beings—as bodily productions and produced bodies. To illustrate this contingent, fragmented aspect of karma, consider when someone kills another person. The social, moral, and legal implications (i.e., the dharmic effect) of this act depend on many elements. If someone killed another person *in order to protect cattle*, this murderous act was not a criminal killing but rather a religio-legally permissible act, illustrating that the animals' involvement changed the dharmic status of a human killer and his production.<sup>10</sup> Had the killing been intended to protect a different creature, the killer's karma would have produced other fractured results of his involvement with the external world.

This fractured being appears in Manu's final chapter—his discussion of karma—where he describes *bhūtātman*, the "elemental self" that performs action and engages in the external, physical world (*MDh* 12.12–12.15 and 5.109). The *bhūtātman* is the self (*ātman*) constructed of *bhūta* (the gross elements [ether, air, water, fire, and earth], at times including the subtle elements of touch, taste, smell, sound, and sight). This suggests that *bhūtātman* encompasses the perceptual self that reacts and experiences, in other words, the living self or *embodied* life. This is not exclusively human. After all, all living beings, whether vegetable, animal, human, or divine, are called *bhūta*. Manu describes this active embodied self (*MDh* 12.12–12.15) just before his discussion of criminal actions and sins with corresponding rebirths in certain animal bodies (*MDh* 12.54–12.69), meaning that there are animal-embodied implications resulting from the fractured array of *bhūtātman*'s human-embodied acts. In effect, it is a human's elemental embodiment that experiences the tangible effects of karma.

Two points need highlighting in order to further our understanding of how human–animal embodiment is karmically constituted. First, souls embodied as humans may later be embodied as animals and vice versa, along with the physical fact that, after death, "another firm body [animal or otherwise] is

<sup>10</sup> A man incurs no sin if he kills while protecting himself, women, or Brahmins, or when protecting from an attacker intending to steal cows or other wealth (*MDh* 8.348–8.349 and similar at *BDh* 2.2.80).

produced for them from the *same* five elemental particles (*mātra*)” (emphasis added; *MDh* 12.16). Second, Manu explains the metaphysical redistribution of *material* elements at death and rebirth as *co-constitutive* with the *psycho-spiritual* elements of *Mahat* (=the Great, referring either to the intellect or to consciousness) and *Kṣetrajña* (the self) (Olivelle 2004c: 291–2). “These two—*Mahat* . . . and *Kṣetrajña*, . . . united with the elements (*bhūta*), remain pervading the one who abides in creatures (*bhūta*) both great and small. From his body innumerable forms stream forth, which constantly set in motion the creatures both great and small” (*MDh* 12.14–12.15). The same “material” and “spiritual” components are set in motion in an active karmic being, whether human or non-human. This explains some of the malleability of being, from human animal to non-human and so on. It also signals that the human–animal distinction is less germane, owing to the same co-constitution of all embodied beings.

Because of this fractured nature of dharmic bodies that perform different acts over time, social stratifications do not necessarily fall on clean divides between “animal” and “human.” These disjuncts do not separate the “animal” from the “human,”<sup>11</sup> but instead reveal the common composition, actions, and statuses of human and animal, what I call humans’ and animals’ co-constitution in karmic society. This is evident in legal texts’ categorization of beings, which does not correspond to Western species, genus, and family lines. Lower-caste peoples frequently appear in dharmic groups with “lesser” or smaller animals, such as dogs, crows, and insects. The penance for killing animals like crows or dogs was the same as for killing a human Śūdra, the lowest of the four classes (*ĀpDh* 1.25.13). If a dog died in a Brahmin’s house, it carried the same level of pollution and required the same kind of ritual purification as if a human Śūdra, *patita* (one who has fallen in caste), *mleccha* (an outcaste or foreigner), or *caṇḍāla* (an outcaste or mixed-caste person, perhaps) had died there (Kane IV: 321). If the dog is often equated with outcastes (White 1992), Brahmins’ ontological grouping with cows is equally prevalent. One must observe the same purity rules for someone who died while protecting a Brahmin or a cow (Kane IV: 305).<sup>12</sup>

Both groupings—lesser animal with outcastes/low castes and cattle with Brahmins—are animal–human homologies based on ideological alliances. These animal–human equivalences are examples of Lévi-Strauss’ external

<sup>11</sup> See Agamben 2004, Chapter 4, “*Mysterium disiunctionis*,” and Chapter 9, “Anthropological Machine,” for discussions of Western man’s “anthropological machine” and the human fashioning of disjuncts and fractures—what Agamben calls “the aporias of the body”—that separate the “human” from the “animal” that humans actually are.

<sup>12</sup> Brian K. Smith (1991) established the homology of Brahmins with goats and Vaiśyas with cows in accordance with certain *Brāhmaṇas*, but Dharmaśāstra does not link Brahmins with goats. Cows are ubiquitous throughout the corpus, not only in the compound *gobrahmaṇa* (cows and Brahmins).



analogies, as well as internal homologies. Vertical species stratification can indicate caste or class hierarchy (external analogy). Ideological species difference marks putative qualitative difference, as perceived within the historical Brahmanical structure (internal homology). Lévi-Strauss considered the latter to be observable, but these differences might only be discernable as praxis-based, designated social roles in Brahmanical society. I have no desire to reify any purported species or class-based differences, but Brahmanical speciesism and hierarchies of animal species certainly betrayed human social stratification (Smith 1994).

Regardless, the workings of karma and *dharma* meant that humans' constitutive elements were the same as and often transferable into animals' constitutive elements (Manu's *bhūta* and *mātra*). Further, Brahmanical social stratification equated at least some animals with certain groups of humans in ideologically serving homologies. The practical realities of these homologies translated into social, religious, and legal practices that intermingled animal and human, as, for example, purification rites to complete after a dog's death. Rituals—the practical, social iterations of religious ideology—often expressed socio-religious ways of dealing with embodiment. These rituals frequently utilized animal bodies as a medium for expressing religiosity, integrating different types of beings.

The *vṛṣotsarga*, the release of a bull at the end of a *śrāddha*, exemplifies the ritual co-constitution of bodies in socio-religious performances, as described in *ViDh* 86.1–86.20 (Kane IV: 539–42). On the eleventh or twelfth day following a human male's death, after his body has departed, a bull's body is released from a cow pen, possibly symbolic of the soul's successful release from the body. The bull is released with cows, and none is to be restrained or seized at any time. The two tropes—of the bull as embodiment of *dharma* and *dharma* as springing from the body—coalesce in this death rite. *Dharma* (the bull) springs from the body of the deceased human, since *dharma* is the only thing that survives one after death, per Manu's declaration that "*Dharma* is truly the bull . . . *Dharma* is the only friend who follows a man even in death; for all else perishes along with the body" (*MDh* 8.16–8.17). Of course, *dharma* is not the only thing that survives one after death. One's progeny—required in order to perform the *śrāddha* ritual—should survive as well. The use of a virile bull and multiple healthy young cows symbolizes the guarantee of future progeny, who are necessary for the repeated performance of *śrāddhas* that must follow this rite in order to ritually feed the deceased ancestors. The bull's body links to the feeding of deceased ancestors in *Viṣṇudharmottara* 1.147.1–1.147.19: "Wherever a bull (let loose) exulting in his strength scratches (or digs up) the earth, that earth, becoming abundant food and water, waits upon the manes" (Kane IV: 541). A *mantra* recited into the bull's ear, "the father of *vatsas* . . ." (originally from *TS* 3.3.9.2; Kane IV: 540), confirms the implication of progeny in this rite as well as the correlation of

the deceased human male with the bull. *Vatsa* means “offspring, son, child,” as well as “calf,” a lexical merging of human and animal in this ritual enactment.

In the *vr̥ṣotsarga*, the animal body performs what the human no longer can in order to facilitate the human soul’s successful future in the semi-divine realm of deceased ancestors. While the bull is set free to go where he pleases, there are religio-social demands placed on him: before release, his flanks are branded with divine symbols of *triśūla* and conch, linking the spheres of animal, human, and divine on the animal body. This ritual production utilizes an animal body as the embodied perpetuation of *dharma* surviving a no-longer-embodied soul.<sup>13</sup> Animals and humans thus co-create the ritual performance. The rite’s products include an altered bull’s body and the creation of dharmic benefit and food for the deceased in the afterlife. All of these are the bull’s bodily production. The bull’s ritual participation and products help construct the human religious world.

## CONCLUSION: BECOMING ANIMAL

While a human might easily become an animal in rebirth, there are also instances in the legal literature in which humans “became animals” during life (of course, humans are already animals!). After committing a crime or sin, a person’s dharmic status might temporarily shift to a grouping with certain animals, and one might have to “become” the animal. A male adulterer who cheated on his wife had to perform penance by begging for alms from his neighbors with an ass’s skin on his back (hairy coat facing out) for six months, socially marking his contingent status so that the community would recognize his past act(s) (*ĀpDh* 1.28.19). Such a bodily performance absolved his human-embodied sin using animal body parts. This co-created human–animal performance eliminated karmic accrual. Moreover, ritually “becoming animal” within one’s lifetime averted karmic rebirth as an animal in the next life, so the animal bodily performance affected one’s future bodies.<sup>14</sup>

Humans in ancient India did not only “become animals” while performing penance. As I detailed above, legal texts often described practices that resulted in shared socio-religious bodies: for example, one’s property—animals—as part of one’s own body. Since the physical body was the locus of *dharma*, embodiment was the karmic medium through which to articulate *dharma*, often through the performance of religious rites. These rites brought about

<sup>13</sup> The *mantra* recited into the bull’s ear, “(t)he holy *dharma* is a bull and is declared to have four feet . . .,” reiterates in discourse the animal’s material embodiment as *dharma* (Kane IV: 540).

<sup>14</sup> For lists of sins with corresponding animal rebirth, see *MDh* 12.54–12.69 and Rocher 1980.

*dharma* as bodily productions: for example, ritual purification that utilized animal bodies or products. Both animals and humans performed these rites together. In other contexts, thinking in animal terms facilitated measurements for and logistics of ritual practices that modified and constructed one's *dharma*. Animals also aided in expressing the hierarchies and qualities of Brahmanical socio-religious strata, allowing humans to conceptualize and reassert their social structures. Finally, animals like the bull gave physical embodiment to abstract religious constructs for prescriptive, didactic, and ritual purposes. Overall, enactments of *dharma* required animal bodies and formed a nexus of animals and humans.

Given these many connections, are animals "*weltarm*," poor in their ability to "form the world," as Martin Heidegger suggested?<sup>15</sup> Dharmaśāstra writers indicate that both human and non-human animals are "*co-world-forming*" and world sharing, sharing physical space (expressed by the blackbuck's range), as well as social (living) and religious (ritual) space. The animal becomes human, or rather, is *part* of humans, in shared bodies of legal and socio-religious responsibility. Both also form the religio-social structure, partly constructed through ritual performance. Humans' dharmic interaction with the world occurs in fractured arrays of animal and human involvements, often with human religious action responding to animal incidence, such as the death of a dog or the protection of cattle. Manu's theoretical description of *bhūtātman* as "embodied being" confirms the joined nature that humans share with other animals; *bhūtātman* engages with the external world by means of his *bhūtas*, which are common with other animals' *bhūtas*. Karmic fractures enacted in life do not separate human from animal<sup>16</sup> but rather karmically establish small components of an individual, sometimes with repercussions linking different bodies. *The Law Code of Manu* expresses one such repercussion as karmic rebirth into animal and human bodies.

In summary, socially determined dharmic groupings, observable in ritual practice and classical Hindu ideology, do not fall along human/non-human divides. Combinations of humans and animals in legal and religious practices substantiate the permeability of "animal" and "human" in the Brahmanical social world of the past. The fractured nature of a person's karmic body (*bhūtātman*) allows for porous, nondichotomous intersections of animal and human. The body, in general, expresses and articulates *dharma*, and animal bodies, in particular, distinguish and alter humans as religious, legal, and

<sup>15</sup> Heidegger considered that animal behavior lacked meaning and exhibited a "deficiency of having to do with the world and taking care of it" (1996: 57). This is partly expressed by Heidegger with animals not "addressing [themselves] ... to the 'world' and discussing it" (1996: 59 and surrounding), i.e., not "relating" to our world.

<sup>16</sup> Agamben described the Western "anthropologic machine" with "the aporias of this body that is irreducibly drawn and divided between animality and humanity." Agamben adopted the term *aporia* (fractures) from Heidegger (Agamben 2004: 12).

social beings. Animal embodiment has played a role in Brahmanical religious life that would not have been conceivable without this ritual nexus of humans and animals co-constructing the religious world.

Our ideas of Hindu ritual have traditionally not accounted for the presence of animals or their bodies, because we have mistakenly considered these animal components to be at most accessorial to human ritual actors. Yet Hindu conceptions of ritual sacrifice and religious ideals manifest as animals—*yajña* as the antelope and *dharma* as the bull. Moreover, without animal skins, fluids, and other forms of participation, there would oftentimes be no means through which to carry out the Hindu rituals that facilitate human relations with the divine. Animal involvement in ritual and ideology is significant in altering humans' religio-legal (dharmic) status and in mediating human relations to the divine and to other worlds after death. Humans strive to maintain a certain position with the divine through the correct performance of each person's *dharma*, often via ritual; animals or their bodies become participants in such ritual. Because animals facilitate ritual enactment, they establish and ensure humans' relations with the gods, which, in turn, sustains the relationship of humans to animals, these vital creators and restorers of human religious merit. Ultimately, we humans have utilized animal bodies religiously in order to address our own embodiment and to address other beings around us, both embodied and divine.

## Vernacularization

*Christian Lee Novetzke*

### INTRODUCTION

The term *dharmaśāstra* denotes a vast historical intellectual tradition in South Asia, as both Kane's volumes and this one make clear. I think of this as an intellectual field that expanded in India over millennia. I consider it a field of Indian social science, rather than a set of laws or legal texts in Sanskrit. Certainly, laws and legal texts are embedded within this field of social science, but Dharmaśāstra has always been about much more than legal codes. It has also included the general consideration of social order represented in diverse texts, from the epics to the Purāṇas to the local articulations of ideal and actual social order in regional literatures. As a set of texts about social order, Dharmaśāstra is an intellectual history of ideas about human organization in relation to soteriological concepts and goals, and these goals are engaged with transhistorical ideas as much as quotidian human ends. And though this literature is surely a grand intellectual field, it is still but a fraction of the intellectual traditions of South Asia that engage with *dharma* as a category of normative social order, much less of transcendental cosmic order. Within the field of Dharmaśāstra, we also have social critique, an immanent appraisal of normativity itself. That is to say, the broad intellectual engagement with *dharma* as a kind of indigenous Indian social science is not entirely or solely premised on articulating normative social orders, but also contains a critical relationship to normative social order. Buddhism, for example, was certainly a critique of *dharma* and so a Dharmaśāstra of a heterodox sort. Though Buddhism may provide the most well-known example of a critique of normative social order within the Sanskritic tradition, there are many other places to look for such critique, such as the epics, the Purāṇas, and the many literary traditions that intersect with *bhakti*. Texts in Sanskrit tend to dominate our understanding of Dharmaśāstra, as this volume and Kane's work shows. But the engagement of *dharma* in conversation with the

Sanskritic traditions of Dharmaśāstra is also a feature of the broad range of literary vernacularization on the subcontinent. In many cases, when Indians began creating literature in regional languages, they were not merely transferring norms of kingship (*rājya*) or literary aesthetic (*kāvya*), but they were also articulating intellectual and ethical positions on social order (*dharma*).

In the history of literary vernacularization in Maharashtra with the emergence of Marathi, critique of normative social order of the kind epitomized by the Sanskritic Dharmaśāstra tradition is a central issue of debate. Literary vernacularization occurred in Marathi during the Yadava Dynasty, a period when a non-Brahmin royal family buttressed their rule with a complex system of state entitlements to Brahmins. And these entitlements were given, in the main, to support the production of Dharmaśāstra discourse in Sanskrit. The first literary works in Marathi engage a prevailing Brahmanical and Sanskritic intellectual world that proposed normative social orders and offer a critical appraisal of that very Brahmanical and Sanskritic intellectual world. The historical record of Marathi as a literary language is also a record of Marathi as a language of social critique that is self-consciously set alongside Sanskrit and debates about social difference in that language. Vernacularization, in Marathi in any case, was in part a critique of Dharmaśāstra, or perhaps an extension of it into a heterodox realm, both heterodox in terms of language (Marathi) and subject (a redress of social inequity to a degree). Indeed, even today, in the context of new kinds of vernacularization, like the vernacularization of democracy traced by political anthropologists of India,<sup>1</sup> we can still see that a critique of *dharma* as normative social order, of the regulation of human bodies in political and religious worlds, is a subject very much in the center of public debate.

In this chapter, I will take Marathi literary vernacularization in the thirteenth century as an opportunity to think through one possible relationship between the rise of vernacular intellectual worlds and the enduring questions of Dharmaśāstra. I do not argue that Marathi literary history is emblematic of all other regional literary histories—such a generalization would ignore far too much history. But I do suggest that the kinds of problems that were engaged by the earliest Marathi literary works are problems that still endure with later and even contemporary vernacular publics, both literary and religious ones, as well as political ones. I argue that Dharmaśāstra's enduring claim to systematically represent normative social and legal orders represented one kind of sociocultural politics; vernacularization presents another, and sometimes competing, social politics. The limits and new possibilities for this emergent vernacular sociocultural politics in the name of *dharma* is perhaps nowhere clearer than when the normativities of the Sanskritic social sciences touch the

<sup>1</sup> Hansen 1996, 1999, 2001; Michelutti 2007, 2008.

vernacular world and its emergent literary sphere, where the “sacred canopy” of Sanskrit contacts the earthly ground of regional cultures. My argument is that vernacularization involves a reassessment of social relations because it, perforce, enlarges the scope of intelligible discourse to the widest sphere isolated to a region with a shared language. In other words, the lateral breadth of a cosmopolitan language like Sanskrit is replaced by the vertical depth of a regional language. A literary language that reaches a thin layer of society spread over a vast territory (Sanskrit) is replaced by a literary language that is confined by geography but spreads deeply among social strata—from elite to non-elite, among women and men, high caste and low. Given the relationship between social order and literary language here, it is natural to see also that this “paradigm shift” implies changes to shared concepts of social order fundamentally. This important demographic innovation compels a significant change of subject, a reconfiguration of discourse from elite registers to the context of everyday life, from the politics of the elite to the politics of the quotidian. My essay discusses what happens when the normative discourse of *dharma* and social order is rearticulated in the vernacular, the language of everyday life. My source for this discussion is the earliest extant work of Marathi literature, the *Līlācaritra* (c. 1278 CE), a text that remembers the life of Chakradhar (b. circa twelfth century), the founder of the Mahanubhav religious order. As we will see, the *Līlācaritra* and the concerns of Chakradhar and the early Mahanubhavs are deeply engaged with regnant ideologies of social organization, and actual texts and discourses around Dharmaśāstra formed an important part of this text and the tradition it marks, including the tradition of literary vernacularization in Marathi.

## DHARMAŚĀSTRA IN THE BRAHMANICAL ECUMENE OF THE YADAVA CENTURY

There is a very good reason that the earliest layer of Marathi literary vernacularization engaged with the idea of *dharma* and with social critique in general. In the period in which literary Marathi arose, the Yadava Dynasty controlled most of the political territory called “Maharashtra.” From 1187–1317 CE, the Yadavas ruled a region that is coterminous, roughly, with the modern state of Maharashtra and that was called “Maharashtra” even in their time. Though the Yadavas were not Brahmins, they patronized Brahmins and Brahmanical institutions, proliferating a socioeconomic system around such royal entitlements as *agrahāras* (land grants), *brāhmaṇapuris* (village grants) *vedaśālas* (schools for Vedic and ritual instruction), *maṭhas* (institutions for Sanskrit and ritual learning), and so on. These were all forms of state

endowment to fund Brahmanical activities of one kind or another. The non-Brahmin Yadavas and their royal patrons (many of whom were Brahmin) liberally endowed many such institutions that generally supported Brahmins, and sometimes literary castes such as Kayasthas and non-Brahmin temple priests, such as Guravs, to do things deemed “Brahmanical”: maintain temples and temple worship, teach Sanskrit, enact Sanskritic rituals, create genealogies, and produce Sanskrit literary texts. The single most common literary activity supported by the Yadavas and their royal patrons was the production of Dharmaśāstra materials by Brahmin authors and institutions of learning. The first figures of Marathi literary vernacularization were drawn from this sphere of Brahmanical elite clientalist culture. Chakradhar was the Brahmin son of a *pradhān* to the Gujarati king of Baruch, and the other major innovator of early Marathi literature, Jnandev, purported author of the *Jñāneśvarī* (c. 1290 CE), was a Deshastha Brahmin of high Sanskrit learning from the very hub of Yadava-era Brahmanical culture, Paithan.<sup>2</sup>

I refer to the general field of literary production, supported by a routinized system of endowments and entitlements, as a “Brahmanical ecumene,” borrowing a term of Rosalind O’Hanlon.<sup>3</sup> Chakradhar and Jnandev, as well as other figures associated with Marathi literary vernacularization, were all Brahmin, mostly male, and all associated, in one way or another, with the Brahmanical ecumene of the Yadava period and, hence, also with its focus on Dharmaśāstra. To understand how and why Dharmaśāstra mattered in the earliest layer of Marathi vernacularization requires a snapshot of the broad cultural, religious, and political field of Yadava rule in the territory of Maharashtra.

Though the Yadava kings, like many kings, were often referred to as “patrons of the arts,” the literary work of the Yadava period in Sanskrit appeared to come primarily in one flavor: the study and reification of an ideal social order around an analysis of Dharmaśāstra.<sup>4</sup> The fact that Dharmaśāstra eclipsed all other literary endeavors of the age may be suggestive. As Romila Thapar says of the original creation of this literary canon on social orthodoxy, “The severity of the Dharma–Shastras was doubtless a commentary arising from the

<sup>2</sup> Though I do not discuss Jnandev (also known as Jnaneshwar) and his text, the *Jñāneśvarī*, in this article, Jnandev and his text is worth noting. The text is a commentary in Marathi on the Sanskrit *Bhagavad-Gītā*, that is intended to “break the levees of Sanskrit” for the sake of “women, low castes, and others.” Though the text does not propose a racial social reorganization, it is a text that comments on the exclusion of non-Brahmins and women from the salvational opportunities of the *Gītā*. I discuss this issue at length in *The Quotidian Revolution* (New York: Columbia University Press, 2016).

<sup>3</sup> I borrow this term from the exemplary work of Rosalind O’Hanlon, though I apply it to a context several centuries earlier, but in a direct genealogical relationship to her subject. See O’Hanlon and Washbrook 2011: 121–45.

<sup>4</sup> See Panse 1963: 102ff; P. P. Apte in R. N. Dandekar, ed., 1972: 30–5. See also Verma 1970: 262–3, 297.



insecurity of the orthodox in an age of flux.”<sup>5</sup> While Thapar is discussing a period around the beginning of the first millennium CE, we might assume that the recurring dominance of this literary genre within the restricted literary sphere of Sanskrit in the Yadava century implies just such a rising “insecurity” within an orthodox Sanskritic establishment. Though there are a few exceptions,<sup>6</sup> under Yadava reign, the vast majority of Sanskrit literary production took the form of commentaries and *nibandhas* or “essays,” based upon Dharmaśāstra texts, even though we also find a few commentaries and distillations of the *Bhagavad-Gītā*, such as Bopadeva’s *Harilīlā*.

By the end of the Yadava century, one figure in particular stood out as emblematic of the meeting point of the non-Brahmin royal court and the Brahmanical ecumene. This was the figure of Hemādri, who lived from the middle of the thirteenth century until the first decade of the fourteenth century. He served as a vital minister of state and war for at least two Yadava kings (Mahadev and Ramchandra), and sat at the apex of a vast system that reified the power of orthodox social Brahmanism. If Dharmaśāstra commentary was the subject that dominated the literary sphere of Sanskrit in the Yadava period, Hemādri was also the literary star of this sphere. He epitomized the ascendancy of Brahmins who served royal political interests in multiple ways, as minister or advisor and as the author of Dharmaśāstra commentary. The Sanskrit compositions of Hemādri are also among the primary resources for all Yadava dynastic histories—fully linking a text on elite and everyday *dharma* prescriptions with the historiography of dynastic politics. In the Yadava era, the social science of *dharma* interlocked symbolic capital with the actual administration of royal power—a common feature of the Indian political sphere from the premodern period, through the colonial era, and even enduring, to some extent, in the contemporary age.<sup>7</sup>

Hemādri stands as the Yadava’s chief archivist, having supplied an extensive genealogy of the dynasty in his *Caturvarga Cintāmaṇi* and throughout his works, recording the affairs of the Yadava state in his time and before. He is regularly credited, dubiously, with being the figure who formalized the records of state in Marathi in *moḍi* script.<sup>8</sup> Indeed, Hemādri composed or oversaw the composition of nothing in Marathi other than perhaps simple state records

<sup>5</sup> Thapar 2003: 279.

<sup>6</sup> These exceptions would include the works of mathematics and astrology ascribed to the famous scholar Bhaskaracharya (1114–85), as well as work attributed to his father, son, and grandson. A work on music, the *Saṅgītaratnākara* attributed to Sarangadeva at the court of Simhana, and the *Suktimuktāvalī*, an anthology of Sanskrit verses by a Brahmin mister Jalhana (c. 1250), also stand out, as does the *Harilīlā* attributed to Bopadeva.

<sup>7</sup> The role of Dharmaśāstra in the construction of Indian legal codes of the colonial era is well known. For recent imbrications of politics and Dharmaśāstra, see: <http://timesofindia.indiatimes.com/city/delhi/Modi-not-India-RSS-not-Parl-Manusmriti-not-Constitution/articleshow/51833566.cms>.

<sup>8</sup> Guha 2010.

and inscriptions, for which we have no record in any case, and thus no basis for speculation. The many works, around thirteen extensive treatises, for which Hemādri is well known, were all composed in Sanskrit, and the Yadava court records no patronization of literary work other than work in Sanskrit. Hemādri wrote no “literature” of any kind, no poetry or drama or commentary on poetics. Though he also wrote about astrology, astronomy, mathematics, architecture, and Ayurvedic medicine, his primary subject was Dharmaśāstra and, in particular, a study of how to sustain proper social relations among *varṇas*.<sup>9</sup>

Hemādri’s voluminous Sanskrit *Caturvarga Cintāmaṇi* is considered his greatest work. The text is multifaceted and is a response to the emergent social order of the Yadava realm—just as he provided the Yadavas a genealogy linking their line to that of Krishna and other Yadava luminaries, so, too, he provided a genealogy for Yadava-era social order, linking the Yadava present to the idealized theories of social order contained in orthodox Dharmaśāstra. Hemādri appears to direct his text to the common person, in particular, when discussing “vows” or *vratas* appropriate for everyday life, ritual, and special occasions—thus, a version of vernacularization, one might say, rooting his Sanskrit text in the practices of the region of Maharashtra.<sup>10</sup> As a text concerned with prescribing norms of society in the quotidian world, it stands above most others in this period, not only because of its extensive erudition but also because of the considerable political power wielded by its author, and, thus, the influence, though brief, the text had on Yadava royal thinking about social and legal policy. So influential was this text in the later Yadava century that it is often simply referred to as *Hemādriśāstra*, “Hemādri’s [social] science.” This Sanskrit compendium detailed the scope of orthodox rites, rituals, observances, and social mores incumbent upon each of the four *varṇas* in the *varṇāśramadharmā* system, and so it was a text, at least in intention, for all classes and segments of society, a quotidian social science, articulated in a language of elite Brahmanical discourse that was inaccessible to its purported subjects.

Thus, in the figure of Hemādri, several spheres of power intersect. His position as a chief advisor to the Yadava king Mahadev and as prime minister to the Yadava ruler Ramachandra provided the opportunity to further buttress this nexus of interests through patronizing Brahmanical literary work around Dharmaśāstra and, perhaps, to turn the socially conservative philosophical perspectives epitomized by the *Caturvarga Cintāmaṇi* into state legal practice

<sup>9</sup> Dandekar, ed. 1972: 30–1, 55.

<sup>10</sup> Murthy, for example, refers to Hemadri’s *Caturvarga Cintāmaṇi* this way: “Hemadri, the champion of Brahminism tried to check the rebellion against the caste system and other orthodox social practices” by compiling his text. Murthy 1971:167. My thanks to Jason Schwartz for helpful conversations on this subject.

and norm. Several sets of evidence suggest that the Yadava period, particularly the later years under Hemādri's tenure, was a time when the state and its agents strictly enforced caste and other social rules derived from a particular reading of Dharmasāstra. The *Līlācaritra* portrays the era as one of significant caste segregation and caste-based punishment. We hear of Shudras suffering tortures for transgressing their caste-based social location; "Untouchables" living outside of villages and undertaking ritually impure, arduous tasks. The text conveys stories of bitter caste rivalries between Kayasthas, Guravs, and Brahmins, and among Brahmins of different *jāti* groups arguing about the propriety of specific rituals. We learn that Shudras could worship only at the drainage ditch of temples, and "Untouchables" were not allowed to view the deity even at a great distance.<sup>11</sup> Yet we also learn from this text other interesting and perhaps unexpected things: widows were not treated as impure nor were they ostracized, at least Brahmin widows were not, and Islam was deeply integrated into civil society in the era, as *masjids* and *madrassas* were common in the Yadava region.

The overall image of the core nexus of entitlements that made up the Brahmanical ecumene reveal that a sphere of self-replication was firmly set, producing texts and experts on social order and segregation, in a social environment in which Dharmasāstra norms of caste and gender were upheld. The state commitment to lavishly fund traditional Brahmanical occupations is clear evidence of a caste-based political order of privilege. Furthermore, the fact that the chief subject of these funded endeavors was the production of texts and ritual instruments for the maintenance of traditional *varṇa* social norms in the form of Dharmasāstra intellectual-literary production further emphasizes the degree of caste and gender enforcement dominating a particular view of society, as well as a theory of state-society relations in this period.

In addition, several state inscriptions reiterate the demands of traditional social order. Ramachandra is described as the protector of the *varṇa* system and a figure who would extol the virtue of Sanskrit learning.<sup>12</sup> Thus, it is common to find donors referred to as *vedārthāda* or "expounder of the Vedas," and *sarvajñasārasvati*, "one omniscient like the [Vedic Goddess of learning] Saraswati," or *daśagranthī*, "one who knows the ten books [of Vedic learning]," and so forth. Plates that record a land grant by Ramachandra to the Brahmin minister Purushottama, which Purushottama in turn donated as an *agrahāra* to a group of Brahmins, praise Purushottama for his commitment to maintaining dharmic order and for making his subjects "conform to the rules of conduct as laid down in the *varṇas* and *āśramas*."<sup>13</sup> Another inscription, from the era of Yadava ruler Krishna, cited by S. Ritti, states that the primary

<sup>11</sup> See Verma 1970: 226–31.

<sup>12</sup> *Epigraphia Carnatica*, Vol. 2, in Narasimhachar 1923 (Illus. 59).

<sup>13</sup> *Epigraphia Indica* 1939: 208; Verma 1970: 226.

role of the Yadava ministers was to maintain the “four legs of *dharma*,” which indicates the *varṇa* social system conceived through Dharmaśāstra.<sup>14</sup>

This social world in which Dharmaśāstra held high cultural capital within Sanskrit and courtly circles, spheres that intersected in the Brahmanical ecumene, is the environment in which Marathi vernacularization occurred. The two key figures of this process—Chakradhar and Jnandev—were both highly literate male Brahmins who existed within the Brahmanical ecumene of the Yadava period. The texts associated with them show that they both well-understood Dharmaśāstra, and knew it to be the normative social science of their age. Yet both figures articulate a critique of Dharmaśāstra and the prevailing normativities of *dharma* in general in their time. I think this critique, as I have argued above, is the result of a reconfiguration of discourse from elite circles in Sanskrit to everyday contexts in Marathi. The lofty concerns of the Brahmanical ecumene around Dharmaśāstra and proper social order are brought down into the quotidian world. And so we see a corresponding concern about *dharma* and social order among the elite Brahmin males who are at the forefront of Marathi literary vernacularization. It is the “baggage” so to speak of their social ontology, a concern with *dharmic* order, that follows them into a new discursive realm, that of the regional language of everyday life. It is to this particular story of the vernacularization of *dharma* and the creation of a new sense of dharmic social ethics that we now turn with a closer look at the *Līlācaritra*, Chakradhar, and the early Mahanubhavs.

## DHARMA AND SOCIAL ETHICS IN THE LĪLĀCARITRA

The *Līlācaritra* is considered the first work of Marathi literature. It is remembered to have been composed in 1278 CE, by a group of mostly Brahmin devotees of a spiritual leader named Chakradhar (c. 1194), who left Maharashtra, and human history, around 1273 CE.<sup>15</sup> The people who formed a community around Chakradhar called themselves the Mahanubhavs, the people of “the great experience.” They believed Chakradhar was both God and man, a figure who represented five distinct yet ultimately singular divine entities they called the Five Krishnas (*pañcakṛṣṇa*): the Hindu deities Krishna and Dattatreya, and three human incarnations, Changadev, Gundam Raul, and Chakradhar. These five aspects of divinity they believed were all expressions of a singular divine form, Parameshwar. The *Līlācaritra* conveys some of

<sup>14</sup> Ritti 1973: 213.

<sup>15</sup> Many Mahanubhavs believe that Chakradhar did not die when he left Maharashtra, but is still alive in the Himalayas.

the life of the other two human divine figures, but it is the life of Chakradhar that occupies the vast majority of this compendium of *līlās*, or playful episodes in the divine life of Chakradhar. The earliest Mahanubhavs gathered after their guru left the region of Maharashtra. Collectively, they recalled their memories of him and his teachings and produced the first work of Marathi literature, a text without a single author, but a remembrance of a single luminous life.

The social context for the creation of the *Līlācaritra* is the cultural and political world of the Yadavas outlined above. All of the key figures of the early Mahanubhav community were Brahmin men and women, though most of the latter were widows. While Chakradhar is remembered to have had non-Brahmin followers, the text of the *Līlācaritra* is dominated by the voice of his Brahmin followers and it shows Chakradhar and the early Mahanubhavs in constant contact with the Brahmanical ecumene of the Yadava era, interacting with Yadava kings, Brahmin officials, temple priests, and Dharmaśāstra scholars. Indeed, the *Līlācaritra* concludes with a confrontation between Chakradhar and the doyen of the Brahmanical ecumene and author of its most famous dharmic text in the Yadava period, Hemādri—an episode we will examine below. The caste-status of Chakradhar himself is ironically uncertain in the text. I have argued elsewhere that the *Līlācaritra* appears to understand that Chakradhar was a Brahmin, a Lād Brahmin of Gujarat, an émigré to Maharashtra, but at home within the Brahmanical ecumene.<sup>16</sup> Aside from several references to Chakradhar's caste as Lād or Lāt Sāmavedi Brahmin, we also see Chakradhar's expertise in Sanskrit and Sanskritic learning displayed throughout the *Līlācaritra*. He wins debates in Marathi, Sanskrit, and Gujarati with equal finesse. Whether or not he was a Brahmin, there is no doubt he was habituated to the Brahmanical ecumene of the Yadava period and self-consciously challenged the normative orders of Dharmaśāstra within his own community, commenting upon and critiquing dharmic social order in many other contexts. And members of this Brahmanical ecumene, with a desire to preserve the social and political capital of Sanskritic Dharmaśāstra, turned their attention to Chakradhar and the Mahanubhavs. Many episodes from the *Līlācaritra* show Chakradhar in contact with highest echelons of Brahmanical and royal power in the region.

The *Līlācaritra* is a “Brahmanical text,” in that its key preoccupation, aside from communicating the life of Chakradhar, is to comment upon social relations from the point of view of a group of heterodox Brahmins, Chakradhar and his followers, observing a world of orthodox social order. Yet it is not a “pro-Brahmin” text. Quite the opposite. The text registers a consistent critique of Brahmins and Brahmanism, referred to as *brāhmaṇya* and *brāhmaṇatva* at various points in the text, and associating this with *adhamatva* and

<sup>16</sup> See Novetzke 2016.

*adharmatva*, vileness and “a-dharmic” behavior. As a text about this key aspect of social order, being Brahmin, it is also a text about proper social behavior, and so it is in line with the dominant subject of the age within the Sanskrit Brahmanical ecumene of the Yadava century, Dharmaśāstra. It is remembered as an antithesis to a text like Hemādri’s *Caturvarga Cintāmani*. Rather than a prescription of normative social order composed in Sanskrit that valorizes Brahmins and social orders of purity, and prescribes punishments for transgression, the *Līlācaritra* is a Marathi text that rejects Sanskrit, observes injustices of social inequity, disavows rules of purity within the circle of the Mahanubhavs, and rewards acts of caste transgression or even of socio-religious inversion. For example, in one famous episode, Chakradhar receives a half-eaten piece of food from an “Untouchable” of the Mang caste and redistributes it to his Brahmin followers as *prasād*, his divine grace—forcing his nonplussed Brahmin followers to choose between their caste prejudice or their devotion to Chakradhar.<sup>17</sup> A moment like this reveals the normative influence of dharmic ideals, Dharmaśāstra distilled to the level of habitus—but the story’s preservation helps draw out of the *Līlācaritra* a competing vernacular Dharmaśāstra, one localized, set in the quotidian sphere, articulated in Marathi, and critical of traditional social injunctions.

When actual scholars or references to Dharmaśāstra appear in the *Līlācaritra*, they are usually antagonistic to the ethics of the Mahanubhavs. In one episode, early in the life of Chakradhar, a Chambhar, a member of what was considered an “Untouchable” *jāti*, comes to follow Chakradhar in the region of Beed.<sup>18</sup> When Chakradhar departs, the Chambhar continues to preach the teachings of Chakradhar in the town square. The villagers are enraged and they call an expert in Dharmaśāstra, a *nibandhakār brāhmaṇa*, to decide what to do. The legal expert consults the Dharmaśāstra *nibandhas* and determines that he should be covered in a water-limestone pit that will slowly eat away his flesh. The story ends when the Chambhar man miraculously appears, fully intact, in the village square again. The Brahmins of the village who persecuted the Chambhar man then bow to him, and call themselves Chandals, a stylistic term for “Untouchable” in Sanskritic contexts. The story, in metaphor, impeaches the moral order of Dharmaśāstra and the social system that replicated these ideas in the Yadava period, with a particular caste and class association.

Yet there are one or two times that the Dharmaśāstras are positively invoked in the *Līlācaritra*. In one place, Chakradhar instructs his followers “You should beg from all four castes as the Dharmaśāstra instructs. Do not be selective among the houses you visit, and do not visit the home of someone you know.”<sup>19</sup> Indeed, all

<sup>17</sup> Kolte 1978: 381–2, verse 72.

<sup>18</sup> Ibid., verse 27.

<sup>19</sup> Kolte 1978: 161 verse 223. The reference to Dharmaśāstra may be to Chapter 2, Verse 185, of the *Laws of Manu*, or a reference to Chapter 6, on the life of the sannyasi. See Kane II: 934. The actual reference cited here seems a common quotation, though the exact origin I could not trace.

of his instructions to his renunciate followers seem to follow all the prescriptions of the *sannyāsi* articulated in Chapter 6 of the *Laws of Manu*.<sup>20</sup> The Dharmaśāstra does not appear to orient Chakradhar's social critique, even if they are usually on the receiving end of that critique. Instead, it is the normative social order of caste and gender injustice that compels Chakradhar—if the Dharmaśāstra serves this end at some point, he will cite them, as we can see. He is not opposed to texts on ideological grounds, but opposed to a stratum of social ideology within the text, or rather, within society around him.

The texts of the Dharmaśāstra are less visible in the *Līlācaritra* than are the human figures who represent Dharmaśāstra and its ideals, the human capital at the heart of the Brahmanical ecumene. In this category, a cast of characters populate the *Līlācaritra*, and they seem to lead Chakradhar toward a public (and let me emphasize, *purported*) trial in which he is accused of transgressing rules of *dharma*. While many Mahanubhavs dispute the stories of Chakradhar's trial—and they may indeed be apocryphal—these stories do exist in most versions of the *Līlācaritra* and suggest something interesting about the culture of Dharmaśāstra as it is portrayed in this first, earliest text of Marathi literature. I read this event not as historical fact but as an artifact of history that tells us something about the past and how Dharmaśāstra was conceived of as a cultural form in the period of Marathi vernacularization.

The events that will lead to Chakradhar's trial begin with a chance encounter with a Yadava minister of *dharma*, a figure named Mahadashram, a Sanskrit master who runs an endowed *śāstramaṭha* or monastery that teaches Dharmaśāstra and serves as a *rājapurohit*, a Brahmin advisor to the king Ramachandra.<sup>21</sup> Chakradhar is himself traveling to a *śāstramaṭha* to give lectures on *dharma* in Marathi, a suggestion that Chakradhar's ideas may have had influence reaching back upon the Brahmanical ecumene itself. Unable to match Chakradhar in the battle of verbal debate, Mahadashram tries several times to kill Chakradhar—once with poison and once with a booby-trapped throne. These attempts on his life foreshadow the full fury of the Yadava-supported Brahmanical ecumene and its disapproval of Chakradhar's transgressions of *dharma* that will be expressed through the story of the purported trial he will undergo.

Late in the *Līlācaritra*, following on these encounters with Mahadashram and other members of the Brahmanical ecumene loyal to the Yadava court, we find our titular figure of the influence of Dharmaśāstra in Yadava society emerges: Hemādri summons Chakradhar to this public trial.<sup>22</sup> Here is a

My thanks to Don Davis and Patrick Olivelle, who locate this passage in the *Pañcārthabhāṣya* on the *Pāṣupatasūtra* (1, 9, 279.1) and in the *Mitākṣarā* of Vijñāneśvara, a twelfth-century commentary on the *Yājñavalkyasmṛiti* (Verse 1.29).

<sup>20</sup> See Olivelle 2005a: 151.

<sup>21</sup> Kolte 1978: 147–8, Verse 203.

<sup>22</sup> Ibid: 669–70, Verse 536.

translation of the *līlā* or account of the trial (which, let me reiterate, *many Mahanubhavs believe did not happen*):

Then Chakradhar, having crossed the Godavari River, went to Paithan, where a tribunal (*sabhā*) gathered at the Aditi temple of Mudha. Hemādri, Sarang Pandit, Mayata Hari, Prajnasagar;<sup>23</sup> the major leaders of the village, the Brahmin elites [*mahājan*], scholars, historians, holymen, celibates, Jain ascetics, members of the Natha sect—they all assembled. Chakradhar was brought into the Mudha Aditi temple. Chakradhar took a seat in the middle of the assembly hall.

They said to him, “Who are you?”

Chakradhar said, “I am an ascetic, a Mahatma.”

[They said,] “There is nothing more you’d like to say?”

[Chakradhar] said, “All of you gathered here are eminent people. Scholars, students, renunciates, milk fasters, legal scholars, historians.”

And then his gaze fell upon Sarang Pandit, and Sarang Pandit looked aside.

[Chakradhar continued,] “You who have assembled are the leaders of all eighteen families [of Paithan], Jain ascetics, Natha yogis. You would not drink unknown water.<sup>24</sup> Then you ask yourself what it is that I am.”

[They said,] “The women are attracted to you, no? Isn’t this the way it is? And you are similarly attracted to the women, isn’t that the case?”

Those gathered said, “Yes!”

Someone among the tribunal clapped, and they all began to quietly conspire (i.e., “whisper”) with one another.

Then two people, Mayata Hari and Prajnasagar, stood up [and addressed the tribunal]: “That you conspire [against Chakradhar] is wrong.”

The conspiring talk ended.

Mayata Hari and Prajnasagar said, “You [tribunal members] are bring ruin upon this country (*rāṣṭra*) and you are acting like Chandals.” Then Mayata Hari and Prajnasagar left.

Chakradhar said [to the tribunal], “You each are religious experts (*agāmika*). Each of you holds a position of political importance (*pradhān*). Please consider what it is you’d like to do.”

“No need, we’ve decided already,” they said.

“Is it so? Then whatever it is you’ve decided, just do it,” [Chakradhar said.]

Then they took [Chakradhar] to the temple courtyard. There he voluntarily offered his nose.<sup>25</sup>

This episode conveys at least two resonances with Dharmaśāstra that suggest the trial is a reaction on the part of an orthodox Brahmanical ecumene to a

<sup>23</sup> These are names of key Brahmin officials and scholars of the Brahmanical ecumene and Yadava court; Sarang Pandit, in particular, is an erstwhile follower of Chakradhar.

<sup>24</sup> This figure of speech indicates to “stomach” something, to bear something offensive in silence, or simply to keep silent. Chakradhar is saying that they are not the kind of people to keep quiet because they have already made up their minds.

<sup>25</sup> The term here is *pūjā svikarīlī nākācī*, which means, “he voluntarily offered his nose,” implying they cut or otherwise disfigured his nose as punishment.



threat to the social status quo, articulated as violations of Dharmaśāstra itself. Both of these threats seem to be related to social and religious prescriptions around gender. There is also perhaps a more general critique here related to the process of justice in the adjudication of a *dharma sabhā* such as this one.

Chapter 8 of the *Laws of Manu* provides a set of eighteen types of offenses that can be adjudicated by a court, and one of these is “sexual misconduct with women.”<sup>26</sup> At *MDh* 8.352, we find that under “grounds for litigation” one subject of litigation by trial occurs “when men violate the wives of others” and for those found guilty, “the king should disfigure his body.”<sup>27</sup> One key disfigurement involves “cutting off the nose.”<sup>28</sup> This is the grounds for his trial and the punishment in relation to Dharmaśāstra prescriptions in such cases of guilt. The *dharma sabhā* that has gathered here to judge one of their own—a Brahmin male with high social capital in the Brahmanical ecumene—brings the text of the Dharmaśāstra to bear on the body of Chakradhar. They accuse him of “attracting” women to his order and to himself, and in turn, being attracted to them. However, the word here, *vedhane*, implies pious or spiritual devotion rather than sexual attraction; the word suggests a person drawn to another, but not necessarily, or even primarily, in a sexual way. There is no sense in the *Līlācaritra* of sexual attraction between Chakradhar and his followers—they are all celibate renunciates in any case. In other words, this is a baseless accusation. The purported mutilation of Chakradhar’s nose implies the explicit law cited here was violated, but for reasons that are clear regarding the selection of words (carefully modulated language is a universal feature of legal arguments it seems), Chakradhar’s prosecutors are searching for a legal way to punish Chakradhar for an offense that is not illegal, but rather threatening to orthodox social order. In modern legal terminology, this might be the “fallacy of equivocation,” using a term of legal importance in a deliberately ambiguous way in order to reach a favorable decision.<sup>29</sup>

Ironically, the only relevant story that explicitly conveys sexual attraction in the *Līlācaritra* indirectly involves Chakradhar, but directly involves Hemādri, his chief persecutor in this trial story. A *līlā* recalls that Demati, Hemādri’s wife, was a devotee of Chakradhar and returned one day from seeing him. During that *darśan*, Chakradhar had applied some sandalwood paste to Demati’s forehead. When Hemādri saw this, he became aroused, which was apparently unusual for Hemādri in Demati’s presence. Curious as to why he felt this way, Hemādri inquired with Demati, and Demati confessed that his feelings likely were the result of a blessing from Chakradhar, in the form of the sandalwood upon her forehead. Chakradhar, in that *līlā*, predicted that Hemādri would not take this news well. This episode is related shortly before the story of the trial

<sup>26</sup> *MDh* 8.6. See Olivelle 2005a: 167.

<sup>27</sup> See Olivelle 2005a: 186.

<sup>28</sup> See Olivelle 2005a: 321; see the note on *MDh* 8.352.

<sup>29</sup> My thanks to Stephanie Morris and Mat Harrington for this point.

transpires, implying a connection between the two events, particularly in that they both share a focus on “attraction,” though of two different kinds. I believe the *Līlācaritra* implies that Hemādri was jealous, perhaps also sexually embarrassed, and so this key charge against Chakradhar was a false accusation carefully worded to convey multiple meanings. He did attract female followers, but not in a way that contravenes the rule given in the *Laws of Manu* above. Clearly, there is an implication of impropriety of some kind. But, if it is not what is stated explicitly, then of what kind is it?

This may suggest a second contravention of a Dharmaśāstra injunction. Chapter 5 of the *Laws of Manu* concludes with prescriptions for women’s conduct, including the proscription of women performing sacrifice or undertaking vows or fasts independently (i.e., without their husbands/fathers/sons, or without their permission).<sup>30</sup> This would have been an injunction against women’s independent religious vows that would have been contravened by Chakradhar accepting into his fold Brahmin widows who take vows and undertake fasts as part of their practice as Mahanubhav renunciates. To understand why gender is important here, we might note a few things about the early Mahanubhavs. A majority of Chakradhar’s followers—and perhaps his oldest and most trusted—were all women, and many were high caste or Brahmin widows. When the early Mahanubhavs, following Chakradhar’s departure from Maharashtra, met to debate how to preserve his teachings, a discussion arose around what language to use—should it be Sanskrit, the language of the Brahmanical ecumene, or Marathi, the language Chakradhar actually used in everyday life. In the end, the debate was settled by Bhatobas, Chakradhar’s key male devotee and de facto leader of the Mahanubhavs after Chakradhar’s departure. He is remembered to have declared that Chakradhar’s life story should be preserved in Marathi, for if it were preserved in Sanskrit it would “deprive the elderly women” of his message.<sup>31</sup>

The point I make here is that gender, power, and the use of Marathi were all intertwined, in both Chakradhar’s teaching and how his teaching, through his life, would be preserved. The idea that teaching women was essential to the Mahanubhav social ethic is, I think, a key factor in understanding the nature of the “offense” of which Chakradhar is accused. In this sense, we can see that the trial is based upon at least two principles of Dharmaśāstra—the accusation of inappropriate relations with another man’s wife and abetting women who take

<sup>30</sup> See Olivelle 2005a: 146, MDh 5.155.

<sup>31</sup> See Deshpande 1969: 7, 23 [*Smṛtisthāla* 15, 73]. At another point in the *Smṛtisthāla* we hear that women “cannot retain a whole sermon” and so they must be instructed in a way different from men (Deshpande 1969: 126 [*Smṛtisthāla* 171]). This passage is odd, considering that fact that it appears as if women, such as Hiraśa and Mahadaśa, were understood to have the best memories of all the followers; Hiraśa, for example, is said to have memorized the entire *Līlācaritra* and thus saved the “text” from extinction when all copies were lost in the early thirteenth century. On Hiraśa and the edition attributed to her, see Kolte 1978: 69.

vows outside the confines of patriarchal assent. This seems to be the basis of the trial against Chakradhar on technical grounds. However, Chakradhar's actual "crime" appears to be something deeper—teaching the complete rejection of orthodox social norms in favor of an ethics of social equality, at least configured around his small group of devotees. Here Sanskrit, gender, and caste are all braided, for a view of social order (*dharma*) articulated in Marathi rather than Sanskrit creates a discourse out of the control of the Brahmanical ecumene. We saw earlier what happened with an "Untouchable" began emulate Chakradhar in the public square; here we see the retribution of the Brahmanical ecumene brought down upon one of its own, Chakradhar himself.

We can see a third injunction related to Dharmaśāstra that involves how two Brahmin figures, Mayata Hari and Prajnasagar, reject the proceedings as unfair, essentially proposing that the trial was "rigged." Chapter 8 of the *Laws of Manu* begins with a set of general ideals related to the fairness and due process of a trial. Verse 14, in particular, warns that an unfair trial is an example, as Patrick Olivelle translates it, of "Justice struck by Injustice, and Truth by Untruth, while the court officials remain idle onlookers, then they are themselves struck down." Verse 16 declares that anyone who impedes justice this way is a "low born" (*vr̥śala*), a word related to "Shudra," a word that conveys the same effect as Chandala.<sup>32</sup> It seems clear that the protest Mayata Hari and Prajnasagar offer is based on this Dharmaśāstra understanding of justice—a fissure opens here in the Brahmanical ecumene itself, between those who see Dharmaśāstra as inviolate and those that see it as an arbitrary means to attain extra-judicial ends. Mayata Hari and Prajnasagar do not oppose the charges leveled against Chakradhar, but rather the injustice of the proceeding itself, its deviation from the Dharmaśāstra rule of law.

The presence of Mayata Hari and Prajnasagar at this trial—and their appearance elsewhere in the *Līlācaritra*—suggest they are figures of high standing in the Yadava's Brahmanical ecumene. And so their protest to the trial's proceedings is significant. When they observe whispering and conspiring—presumably among Sarang Pandit and Hemādri—they know this not a "fair trial," that justice has been pierced by injustice, and one of their own, a Brahmin male, is being treated unjustly. Mayata Hari and Prajnasagar denounce their colleagues, telling them they will ruin the "country" and that they are acting like *Chandals*—this latter term appears most often as an insult from one Brahmin to another, equivalent to calling the other person an "outcaste." Mayata Hari and Prajnasagar leave the area of the trial before its conclusion, thus depriving the tribunal of a *samaya* or unanimous decision. So disgusted are they with the trial's unethical procedure that they immediately pack their belongings, gather their families, and leave

<sup>32</sup> See Olivelle 2005a: 168.

Maharashtra entirely. It appears that Mayata Hari and Prajnasagar resolve that they cannot live in a country (*rāṣṭra*) without a fair legal system. And we might presume that this sense of a just process was also part and parcel of the Brahmanical ecumene's discourse around Dharmaśāstra, a text that gave laws but also implied legal and ethical structure. And so Mayata Hari and Prajnasagar must leave the legal state-government entity entirely, turning their backs on a corrupt judicial system, one that has lost its connection to the ideals of social order (Dharmaśāstra). Just as Chakradhar rejects a world where salvation is denied to all people, Mayata Hari and Prajnasagar reject a world that does not faithfully conform to the Dharmaśāstra. And so this trial contains an ironic alliance of otherwise opposed perspectives at this moment of literary vernacular creation.

## CONCLUSION

As we have seen, Chakradhar represents a vernacularization of *dharma*, and his text then gives some contours to a new Dharmaśāstra, a new social theory, one grounded in the realities of everyday life, and in the language of that quotidian world. Chakradhar's trial, guided as it is by general principles and laws of Dharmaśāstra, reflects back upon the real threat Chakradhar poses, which is also posed by vernacularization itself. A reconfiguration of public discourse in a regional language about issues of the common good, of social justice, gender inequity, caste prejudice, and so on, all suggest a challenge to the Brahmanical ecumene and its location in the field of royal power. This is a challenge not just of language (Marathi rather than Sanskrit) or of social location (women, low castes, and others are now able to hear and participate), but it is also a challenge pitched at the same systems of social order that Dharmaśāstra exists to comment upon and even perhaps regulate. Chakradhar's trial places the personification of orthodox Brahmanical Dharmaśāstra at the apex of a *dharma* tribunal, set against a fellow male Brahmin member of the Brahmanical ecumene who disavows all that world entails. The *Līlācaritra* is a heterodox Dharmaśāstra in this sense for it records the life and teachings of a person who challenged an orthodox social order in his day. The trial, though it may be apocryphal, conveys by metonym the social order that is itself *on trial* at the moment of vernacularization. And in this moment, Dharmaśāstra typified literary production in the Yadava era, supported by state finances, populated by an elite male Brahmin clientalist sphere, represented even now by the figure of Hemādri. A new, even "modern" Dharmaśāstra, one deeply invested in everyday life and the linguistic-cultural world of the vernacular, would emerge in this period and carry forward through the centuries and into the present.

## Economics and Business as *Vaiśya-Dharma*

*Donald R. Davis, Jr.*

One of the minor mysteries in the history of Dharmaśāstra concerns the relatively small number of rules and discussions of the laws for the Vaiśya class, the third of the four ideal classes and the last of the upper-three “twice-born” classes.<sup>1</sup> In the Dharmasūtras, rules for many domestic ritual practices are explained for the “twice-born” classes, and the special rule for Vaiśyas is duly listed just after those for Brahmins and Kṣatriyas. This structure impresses upon us the idea that Vaiśyas mostly do what the other higher classes do, just a little differently. For example, Āpastamba states, “The occupations specific to a Vaiśya are the same as those of a Kṣatriya, with the exception of meting out punishment and warfare, and the addition of agriculture, cattle herding, and trade” (*ĀpDh* 2.10.7). These early texts are structured much more around difference between the orders of life rather than between the classes.

Manu changes all of that, as Olivelle (2005: 7–18) has shown. At that moment, class becomes the basic structure for the exposition of *dharma*. Manu devotes a mere eight verses (*MDh* 9.326–9.333) to the specifically identified dharmas of Vaiśyas (and only two to Śūdras). Given that the textual structure of Manu is organized around the classes, we would expect that the Vaiśya class would have received greater attention, since it is a “twice-born” class.

### WHERE IS VAIŚYA DHARMA?

In this chapter, I want to suggest a possible explanation, by arguing that Vaiśya *dharma* is not missing, but rather woven into other topics of Dharmaśāstra.

<sup>1</sup> The present chapter both condenses and expands upon arguments I make in a longer study of Dharmaśāstra and business (Davis 2017).

To do this, however, I need to start with a broader look at how Dharmaśāstra texts viewed the economy and commerce within the larger context of *dharma*. The economy and economics were not isolated in Europe as categories of sociological and political thought until the eighteenth century, with the publication of Adam Smith's *Wealth of Nations* (1776). In classical India, by contrast, we find that a general category for the economy and economics did exist as early as the *Arthaśāstra* (ca. first century CE). Then it went away.

The word for *economy* in Kauṭilya's great work is *vārttā*, sometimes *vartā*. Of course, it is no direct translation and has a completely different etymology, but the kinds of human activities discussed under the heading mirror those classed under *economy*. The *Arthaśāstra* 1.2.1 instructs kings to learn about several things in order to efficiently and effectively run their kingdoms. The economy is one, but the king should also learn "critical thinking, the three Vedas, and government." Economy and economics then formed a part of *artha*, "statecraft and kingship." For Kauṭilya, economics was a vital part, one of four major subjects, of a powerful king's education.

Trautmann (2012) has recently provided a clear and concise portrait of the economy according to the *Arthaśāstra*.<sup>2</sup> According to Kauṭilya, the king's primary interest in *vārttā* lay in the predictable and sufficient provisioning of his court, the wider nobility, and the army. For that purpose, farmers and farmlands had to be safe and productive. Food provisioning was the basic economic concern of course, and the ideal king had to find ways to ensure that food supplies were adequate, diversified, and stable. Therefore, the state had to employ scores of overseers or superintendents to monitor and manage agricultural production in the name of the king. Healthy agriculture, including forest products, filled granaries and enabled other forms of business, from artisanal labor, mining, and manufacturing to short- and long-distance trade. These industries, too, required supervision, and the *Arthaśāstra* presents the economy as a scrupulously supervised institution. Without supervision and necessary interventions, prices may skyrocket or collapse, markets may disappear, and tax revenues may dry up. In addition to a royal bureaucracy, a legal framework helped to shape business expectations and to resolve disputes that arose. As a co-sharer in the landed property of his subjects, the king had both obligations and interests in the production and distribution of goods throughout his realm. In this idealized analysis of the economy and business, Kauṭilya's text provided a thoughtful, promising baseline for later studies of economics and business.

As with most economies of the ancient world, the driving concern of the *Arthaśāstra* was production and productivity, especially as it pertained to the health and provisioning of the royal family, the royal forts, and the

<sup>2</sup> See also Chapter 3 in Olivelle and McClish 2012.

government. The scores of superintendents and lesser officials appointed to oversee production of diverse resources only occasionally had responsibilities involving questions of the distribution of those resources. Perhaps, more than one would expect, concerns about production extended beyond supplying the government to assuring fairness and profitability to subjects generally. The Superintendent of Commodities, for example, “should forgo a large profit [on the sale of commodities on his own land] if it will cause hardship to his subjects” and he “should not create either a time restriction or the evil of crowds with respect to essential commodities” (*Arthaśāstra* 2.16.6–2.16.7, Olivelle’s translation). The “evil of crowds,” *saṃkuladoṣa*, might be likened to a fear of the mob. The basic idea, repeated a few times in the text, is that governmental actions that spur collective resentment and resistance should be avoided at all cost. The overriding concern of economic governance, therefore, is fairness in the production and sale of goods. Although equitable distribution finds little space in the text, we do at least see an early effort to mark out the economy in need of both political and legal protection.

Given the detail and scope of interest in *vārttā* within the *Arthaśāstra*, we might expect that the subject would have attracted continuing interest, perhaps developing into a field of its own, an independent subject of study. As many scholars have shown, however, that didn’t happen (Gokhale 1977; Dasgupta 1993). The second book of the *Arthaśāstra* contains an impressive analysis of economic matters as seen from the perspective of governance and state regulation through officials and superintendents. Such an analysis might have formed the basis for an entire science of economics or political economy. The ingredients for a *vārttā-śāstra* were certainly present. The broad idea of the economy had been conceptually isolated in the category of *vārttā* and that idea had been scrutinized within the larger category of *artha*. More importantly, various polities of ancient India had vibrant and complex economies involving agriculture, trade, manufacturing, and commerce within regular markets. Of course, those economies differed from modern market economies, but several key issues from profits and productivity to wages and prices had already struck Kautilya and other authors of the *artha* tradition as worthy of analysis.

So, how could a concept like the economy, so entrenched in modern minds, have appeared once upon a time in India, only to have been demoted or relegated to the margins of intellectual life? The answer lies in the particular form of legalism, namely Dharmaśāstra, that came to swallow up considerations of the economy. Economists always fight about how much abstraction is useful in understanding wealth and business, and some question whether we should abstract at all. Real economies, vibrant and fragile, existed in India quite apart from texts that analyzed them in abstract terms, but it is crucial for us to understand that commerce and economics as academic subjects might have had a very different look, if the legal approach of Dharmaśāstra had not

dominated most analyses of the economy. Stated simply, *artha* was converted into *dharma*. The science of wealth became part of the science of law and righteousness.

Brahmin authors of Dharmaśāstra converted statecraft and kingship, called *nīti* in the *Arthaśāstra*, into Kṣatriya *dharma*, the *dharma* of kings and royalty. In the same way, business and the economy, *vārttā*, became Vaiśya *dharma* instead.<sup>3</sup> What is amazing to us, almost incredible in fact, is that it worked. Economics and the economy were no longer studied as part of the political power and strategy of a king. Rather, the economy was slotted into third position as the social domain of a particular class of people, the Vaiśyas. The third position of the economy was an important, but hierarchically less important, area of human activities. Unlike the *Arthaśāstra*, which presents four areas of mutually interdependent activity as essential to a state, the economy or Vaiśya *dharma* of the Dharmaśāstra plays a supportive role.

Time and again, the Dharmaśāstras explicitly state that commerce and business are the *dharma* of Vaiśyas. Manu (*MDh* 11.235) says it as clearly as anywhere, “Commerce (*vārttā*) is the religious work (*tapas*) of a Vaiśya.” The sections of Manu, Yājñavalkya, and Viṣṇu that deal directly with this *dharma* by name are, however, rather small—and nonexistent in other basic texts. What I think has been underappreciated, even missed, is the fact that many of the laws to be found in the Dharmaśāstra sections on legal procedure (*vyavahāra*) are really substantive laws for commerce, agriculture, and trade—and, therefore, Vaiśya *dharma*. In effect, then, the eight titles of law dealing with commerce are an expansion of what Vaiśya *dharma* really is. The first reason this identification matters is that it is a good example of how Dharmaśāstra converts ordinary work into religious work.

As in nearly all traditions, business is not the most important kind of human activity from the religious perspective. Nevertheless, it is still a form of religious work, of doing *dharma*, for the appropriate social class, the Vaiśyas. I do not defend the caste-based social system envisioned by the Dharmaśāstras or its obvious oppressive effects. However, if we want to understand the legal approach to business in Dharmaśāstra texts, then we must acknowledge that these authors saw business and economics as affairs to be controlled and practiced by a middle class of merchants, traders, artisans, farmers, herders, and skilled professionals. In theory, everyone else reaped the material benefits of their economic organization and business activity or

<sup>3</sup> In his discussion of the education of a king, Manu (*MDh* 7.43, similar to *YDh* 1.311) echoes the *Arthaśāstra* by saying that while a ruler should learn religion, statecraft, philosophy, and the highest knowledge of the self from Brahmins, he should learn about commercial enterprises (*vārttā*) from ordinary people. Compare also *MDh* 9.326: “A Vaiśya should always be bound to commerce (*vārttā*) or the tending of farm animals”; *MDh* 10.80: “Commerce alone for Vaiśyas”; and *NSm* 19.69: “The business/commerce/livelihood of his subjects depends on the king.” The term *vārttā* does not occur in the *dharma* texts of Viṣṇu, Bṛhaspati, or Kātyāyana.



served their interests as a basic labor force, namely the Śūdras and other lower classes. Remember that we are talking here about legal thought, not historical fact, but that thought dominated the educated classes so far as we know and certainly had a lasting impact on way business matters were conceived and carried out.

## FROM ECONOMICS TO DHARMA: THE COMMERCIAL TITLES OF LAW

Business was not only a way to make and increase wealth but also a religious duty. The shape of that religious obligation was a set of laws that gave secular business dealings religious significance. The whole point of Dharmaśāstra was to convert ordinary activities into sacred duties by prescribing particular ways of doing them. In other words, if you followed the rules for making loans, for paying employees, for securing partnerships, and so on, you were not just conducting fair business you were also building religious merit, good karma. The connection between ordinary and sacred work is rarely made explicit in the texts, rather only in the framing, but some hints of the link may be found.

It is telling, for example, that the twelfth-century author Devaṇṇabhaṭṭa opens his discussion of the title of law called Partnerships with the word *vāṇijya*, meaning “business, commerce, and trade” (*SmṛC*, Vyavahāra, 429). Typically, Sanskrit texts will describe the paradigmatic case of a given topic first and in the greatest detail, providing details for other cases with implicit reference to the “archetypal” case (*prakṛti*). Of the six types of partnership examined, business heads the list with the joint work of priests (*ṛtvij*) described fourth.<sup>4</sup> *Vāṇijya* is a synonym of *vārttā* and of Vaiśya *dharma*. For most subjects, Brahmin concerns will be the paradigm. In this case, however, Devaṇṇabhaṭṭa recognizes that the archetypal partner (*sambhūya-kārin*) is the merchant or trader. Similarly, Vijñāneśvara concludes his discussion of partnerships with the explicit statement, “The author Yājñavalkya transfers (*atidiśati*) the law of business partners (*vaṇigdharmam*) just explained to that of sacrificial priests and other partnerships” (Vij at *YDh* 2.265).<sup>5</sup> The use of the word *dharma* here need not come with a strong religious sense, but it is, nevertheless, indicative of the religious framework within which business

<sup>4</sup> It must be acknowledged that most early *dharma* texts put the priests first as the paradigm. Most medieval texts, by contrast, use businesspeople as the model partners. I would suggest that the shift signals growing acceptance of commercial activities as dharmic actions.

<sup>5</sup> *prāgūpadiṣṭaṃ vaṇigdharmam ṛtvigādiṣv atidiśati*. Rule transference (*atideśa*) is precisely the Mīmāṃsā procedure, by which elements of an archetypal rule are transferred to similar ectypal situations and practices. See Jha 1964: 289–99.

matters fall. In short, partnerships are the religious duty of business people in the same way that they are the religious duty of priests who cooperate to perform the various specialist functions of a sponsored ritual.

In the title of law called Non-delivery after Sale, Yājñavalkya provides the following rule: “A merchant (*vaṇijā*) who is unaware of the decreased or increased value of commodities may not cancel a purchase after it is completed. If he does, he should pay a penalty of one-sixth of the purchase price” (YDh 2.258). Vijñāneśvara introduces this rule too as a *dharma* that applies to both to the cancellation of a sale (*vikrayānuśaya*) and to the cancellation of a purchase (*kritānuśaya*). He clarifies that there are short time limits stated in other legal sources within which one may cancel a transaction, if one becomes aware of a change in market value, and longer periods for a commodity or trade-good that is defective. Otherwise, changes in market value may not be used to rescind a purchase. In this context, we again see that the frame places a secular rule in a religious context through the label *dharma*. As before, it would be wrong to push the religious aspect too hard, since no stark division between religion and law or religious and secular is made in any *dharma* text. All I want to suggest is that the labeling of obviously worldly, business-related transactions as *dharma* draws a big semantic circle around seemingly disparate domains such as the religious rites of households, the responsibilities of a king, and the transactions of business and trade.<sup>6</sup>

From these brief examples, we can see that the religious framework set around the economy and business is rather loose. It is not a front-and-center kind of ideology—that good business was good for the Vaiśya soul—but rather a background to justify the inclusion of business in these texts on religious law in the first place. At the same time, an interesting assumption at work in both the religious and legal framing of business in Dharmaśāstras concerns the priority or privileging of the social world over the economic domain. The reason I bring this privileging up here is that our current assumptions tend instead to elevate the economic over the social. A second reason the identification of business and Vaiśya *dharma* matters, therefore, is the opportunity it gives us to explore the implications of asking, which comes first, economy or society?

The title of law dealing with the nonpayment of wages describes the relations between owners and their workers as mediated through the wages paid to the workers. The title is brief and it consists of a few common rules

<sup>6</sup> The discussion at YDh 2.67cd is virtually the same. Vijñāneśvara says, “The author transfers (*atidiśati*) the laws (*dharmān*) of deposit to cases of items that are solicited as gifts, etc.” The *dharman*s of the law of deposit are thus applied to similar instances where one entrusts an item of value to someone else for specified purpose. Failure to use the item for the specified purpose or, in some cases, using it all, makes one liable to penalty and punishment. The rule concerns more than merchants; however, merchants are often in the position of needing to make deposits, safeguard items, etc.

outlining the owner's rights followed by the worker's rights. It is in the back and forth of first, a rule protecting the owner's interests, and second, a rule guaranteeing the worker's wages that we find an economic relationship undergirded by social connections and moral considerations.

For example, at *YDh* 2.193, we see the owner's general interest secured: "One who receives a wage but fails to perform the work shall be made to pay double the wage to the owner. If he does not receive it but fails to perform the work agreed upon, he should pay an amount equal to the wage. Workers must also take good care of the instruments of their labor." Here, the owner seems to control everything. In the succeeding rule (*YDh* 2.194), however, the worker's right to a wage or a share of the profit is guaranteed. The commentator Vijñāneśvara puts it like this: "If an owner, merchant, cattle owner, or owner of a field makes a worker perform a job without fixing his wage, then the king should make him pay to the worker a tenth of what was received from the commercial, husbandry, or agricultural enterprise." Workers were thus protected against an owner's failure to pay the appropriate or agreed upon wages.

The next two rules also establish reasonable legal expectations in the relationship between an owner and a worker. According to Vijñāneśvara's explanation of *YDh* 2.195, if a worker misses an opportunity to sell something at the best market or on the best day or if he causes the overall profits to diminish because of his laziness or out of spite, then an owner has the discretion (*yāvad icchati*) to dock his wages, but not withhold them entirely. Conversely, if a worker's industriousness or special effort yields particularly strong profits, the owner must then pay a bonus (*adhikaṃ dhanam*) to the worker. *YDh* 2.196 then makes a rule for the equitable distribution of wages for general work, but, especially, work that may require more than one laborer. When a worker is unable to finish a job because of illness or other interruption, he should still be paid "according to the work he has done as determined by an arbitrator" (*Vij* 2.196).<sup>7</sup> While this provision falls short of modern disability protections, it still signals that the law expects owners and workers to work out the economic exchange between them through a measure of flexibility and mutual consideration. The legal rules provide for sanctions to enforce the minimum expectations and even require a third-party arbitrator to determine equitable resolutions in uncertain cases. Supporting each rule, however, is an assumption of social connection and mutual benefit between owners and workers. In other words, the payment of wages occurs within a social bond that the law expects and encourages as a part of *dharma*.

Another part of Vaiśya *dharma* that relies on bonds of trust is the title of law dealing with sale by a non-owner. In this title, intricate considerations of trust

<sup>7</sup> *tatkṛtakarmānusāreṇa madhyasthakalpitam.*

influence the legally required vigilance to ensure that a seller is the owner of what he is selling. Perhaps the most familiar modern parallel arises in the context of pawnshops. When accepting a pawned item, the pawnbroker must inquire as to how the item came into the seller's or pawnor's possession. Failure to establish or inquire about ownership makes the pawnshop liable for criminal and civil penalties, if the item is later discovered to have been stolen. The complexity of rules surrounding similar scenarios described in Dharmaśāstra tells us that both fraudulent sales and fraudulent claims to ownership were contrived in many ways in classical and medieval India. Personal connection protects against the dangers of impersonal transactions.

In Devaṇṇabhaṭṭa's exposition of the topic, the first concern, however, is for the true owner of something that has been lost or stolen (*vinaṣṭam apahr̥tam vā*). The owner's right to reclaim his property is proclaimed in general terms, relying on rules from Nārada and Manu (*SmṛC*, *Vyavahāra*, 498). Of interest, though, is the fact that Bṛhaspati defines a *non-owner* (*asvāmin*) primarily with reference to situations in which one person has purposely entrusted something to another through legal deposit, pledge, collateral, or simple borrowing. The trustee violates his fiduciary obligation by selling the item in question, although he is not the owner. Straightforward instances of theft and resale are also discussed, but as a secondary (because obvious) matter. Following Nārada, "A sale made by a non-owner, and also that purchase, always fall among transaction types into the category of not made (*akṛta*) at all" (*SmṛC*, *Vyavahāra*, 498). The legal invalidity is linked to the legal status of the seller at the time, namely "non-owner." To be a non-owner is already to have violated a social trust in one way or another. Since a non-owner cannot legally do anything with another's property, any transaction of that property never actually happened in the eyes of the law. The economic failure begins as a social failure.

The complications ensue when a fraudulent seller meets a devious buyer. In such cases, criminal and civil liability may attach to both. According to Viṣṇu, if a buyer purchases something out of ignorance (*ajñānatas*) and publicly (*prakāśam*) then he commits no crime. On the other hand, "If the sale occurs privately or at a discounted price, then the buyer too should be punished as a thief" (*SmṛC*, *Vyavahāra*, 500). Here the collusion or appearance of collusion between seller and buyer is treated as a double betrayal of the social expectations of the law. Business and commerce should occur openly, in public. Moreover, buyers bear some responsibility for ensuring that the material goods they buy come from a trusted source.

In some cases, the source itself may be difficult to establish. An owner may need to prove his ownership over his property or a potential buyer may need to confirm the provenance of the goods he is buying. In such cases, the testimony of relatives (*jñāti*) may be called upon to establish or confirm ownership (*SmṛC*, *Vyavahāra*, 501–2). Documents (*lekhyā*) may also serve

as proof of ownership as well. The presence of witnesses or signed documents implies that the transaction occurred in public, but Devaṇṇabhaṭṭa dismisses arguments that merely conducting a transaction in public or with the knowledge of state officials is a legal guarantee of clear title. He states, “Not even a hundred texts are enough to prove that a buyer owns something sold by a non-owner” (*SmrC*, *Vyavahāra*, 506). The twisting of legal rules should not overwhelm the basic moral principle. That ideal does not mean, however, that negligent buyers or owners may not suffer loss. Several cited texts point to the legally expected practices that help to protect against fraud and loss. For the buyer, purchasing from someone from an unknown area is a mistake (*apacāra*), while for the owner, failing to safeguard one’s property is also blameworthy. Both forms of negligence tend to produce a material loss (*dravyahānikāra*) that the law may not restore in full.

As with workers’ wages, so also with commercial sales, social bonds are the foundation of successful and moral economic exchanges. A fraudulent seller who breaks the trust inherent in a deposit, loan, or pledge forfeits under the law not only the material advantage gained but also, and more importantly, the reputation needed to conduct business at all. Owners, sellers, and buyers all have minimum legal obligations, respectively, to monitor and protect their property, to sell only items that they own outright, and to ensure the legitimate provenance of whatever they buy. At the same time, the law also expects more in social terms from those who engage in commerce. Sales should be conducted publicly, probably in an open market, and in the presence of kinsmen, whom the law recognizes as natural support for an individual. Deviations from this norm entail risk for owner, seller, and buyer alike. As a result, the legal protections diminish for any sale, legal or not, that does not conform to the higher expectations encoded in the law. An ideal social setting bolsters the stable exchange of goods, as the social group expects or demands fair and familiar terms of exchange.

A final contrastive example concerns the title of law called Failure to Perform Indentured Service. In addition to a range of indentured servants such as a student-disciple, an apprentice, a household servant, and an overseer, this title also includes slaves. In these relationships, a contrived legal bond that connects people in restricted ways replaces any social bond that might exist between them. The economic benefit, namely labor itself, is disproportionately in favor of the “master” in every case. The apprentice may learn a skill or the disciple may gain knowledge of a subject, but the services rendered by them yield a direct economic reward for the master. Thus, the relationship is essentially extractive, pulling work out of the subordinate for the benefit of the master. As with the previous examples, the artificial “sociality” created between the master and his servants or slaves is the root of the economic production that emerges from the relationship. The difference in this case is that all “indentured servants or slaves share a common duty based on the fact

that they are not legally free” (*SmṛC*, *Vyavahāra*, 455).<sup>8</sup> Unlike voluntary economic transactions (*vyavahāra*), therefore, the forced or indentured nature of the labor creates its own “social” matrix as part of the economic production process. Nevertheless, without the artificial social bond, no economic exchange or extractive benefit happens at all. In a sad and deplorable way, even this side of the law promotes a “social” bond as the basis of economic production.

I have emphasized the social foundations of business, commerce, and economic production within several titles of law in order to make a point about the frequent modern assumption that economic realities automatically and always shape everything else. One reason that the *dharma* authors stopped talking much about *vārttā* and started talking more about Vaiśya *dharma* may be their desire to keep the economy in a socially and theologically subordinate role. Although an academic truism at this point, what we learn from the *Dharmaśāstras* is, first of all, that the economy is—like most categories—socially constructed. The peculiar history of the early appearance of *vārttā* as a category close to “economy” and its rapid disappearance tells us that it is an intellectual and cultural choice to hold on to the idea as useful. For the authors of this tradition, social status and relationship, specifically the Vaiśya status and its social roles, took precedence over economic production and even the state’s political interests. We should doubt whether that theoretical precedence was real in practice and we may doubt whether it was a good idea at all. Still, the texts repeatedly emphasize the social connections that shape various business and commercial enterprises from partnerships to workers’ compensation to the regulation of sales. We detect, therefore, more than mere lip service or high theory in the notion that economic matters occupied a second or third position in the cultural priorities of classical and medieval India. The contemporary focus on economics at the expense of society reveals its one-sidedness by comparison.

<sup>8</sup> *eṣāṃ karmakarāṇāṃ dāsānāṃ cāsvatantratvalakṣaṇaṃ dharmam sādharmaṇam.*



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