Hindu Law has the oldest pedigree of any known system of jurisprudence, and even now it shows no sign of decrepitude (J. D. Mayne).¹

The genealogy of ‘Hindu law’ is a complicated matter itself. Hindu law so understood in modern times is arguably an heir to the bifurcated system instigated during the British colonial period in the form of Anglo–Hindu law that preserved basically family law and certain other ‘private’, i.e. community, mores which presumably governed the Hindus. Was there any awareness on the part of the colonial masters that the parent law from which personal law of the Hindus had been split off could have had a longer and more substantive history? Apparently there was. The term ‘Hindu law’ was, in Davis’ words, ‘coined by British Orientalists and administrators in the later eighteenth century to refer to the general system of law prevailing among the Hindu majority before the British colonial encroachments, as opposed to the “Muhammadan law” of India’s politically dominant Mughal dynasty’.² Hindu legal history accordingly comprises three general periods: classical Hindu law (ca 500 BCE–1772 CE), Anglo–Hindu law (1772–1947) and modern Hindu law (1947–present).³ For the purposes of the present paper, Hindu law will be taken to fall within the pre-colonial, that is, classical or traditional, period and the discussion here will be confined to gaining an understanding of what this idea of Hindu law might look like today and whether it is deserving of the descriptor ‘law’ as it is understood in the modern and postmodern era. Is there such a thing as Hindu law? Or might we need to introduce a broader nuance, marked by difference, and a strongly sustainable variant to the currently privileged concept of ‘law’: thus Hindu law. We shall begin without the latter presumption but argue toward its desirability.

In pre-colonial traditional India, what could be referred to as the legal process of the Hindus is said to have been functioning in much the same way as it had done for millennia but, unlike post-Enlightenment European law, it was not a centralised institutional apparatus, formulated and administered by a ‘state’ independently of spiritual or religious and cultural practices. Rather, law was a concept inclusive of tradition, custom and religion, and represented a transcendental obedience to morality. Hindus have never been governed by a central church structure and hierarchy as Christians and Muslims have in their respective histories, or by a Pope who ‘lays down the law’ for all Hindus. Galanter observed that in ‘traditional India, many groups (castes, guilds, villages, sects) enjoyed a broad sphere of legal autonomy, and where disputes involving them came before public authorities, the latter were obliged to apply the rules of that group. That is, the groups generated and carried their own law and enjoyed some assurance that it would be applied to them.’⁴ There is some truth perhaps to this

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3. I would have thought 1950 with the adoption of the Constitution, but I defer to Davis and Menski on this.
4. Marc Galanter, *Law and Society in Modern India* (Delhi: Oxford University Press, 1989, 1992), 237; however, Galanter has been criticised, by Menski among others, for seeing a gap, in his overall thesis, between law and society, between legal system and its historical rootedness in a society, and its possible incongruence with its
generalisation, but it does not tell us from where the groups obtained the legal principles that determined the rules, and how did they evolve new laws? In other words, what has been the source of law for the Hindus, whether in disparate groups or collectively?

The common belief is that traditional (and for that matter its heir in the colonial and modern personal law system) Hindu law is informed by three originary sources. The first of these is Śruti (or shruti), the ‘divinely revealed’ or, better, ‘heard word’ (being apauruṣeya or ‘authorless’) which forms the central Vedic corpus. The Vedas (or Veda) are a collection of ritual and liturgical hymns, sanshitās, ceremonial guides, brāhmanas, forest-treatises, Āryanyakas and philosophical expositions, Upaniṣads. These are collated under four canons: Ṛgveda, Sāma-veda, Atharva-veda and Yajur-veda. They can be dated anywhere between 1500 BCE to 600 BCE. One of the preeminent themes that motivates much of Vedic thinking is the consideration of a higher cosmic order (dharma), or transcendence, that regulates the universe and provides the basis for the growth, flourishing and sustenance of all the worlds—be that of the gods, human beings, animals and eco-formations. So conceived, dharma could be seen as ‘law’—the law of the natural world and of human beings. Hence, Satyajeet A. Desai in his reworking of Mulla’s Principles of Hindu Law emphasises that for the ancient Hindu his ‘law was revelation, immutable and eternal . . . Shruti [as Vedas] was the fountainhead of his law’.6

Next is śruti (smṛti), the immemorialised or ‘memorised’ tradition—which includes the commentaries and digests (nibandhas)—which as a corpus is transmitted through the sages and scribes and as such forms Hinduism’s literary and religious canonical texts with implications for social and cultural, also political, practices.8 The śruti texts comprise, in particular, the six Vedāngas (the auxiliary sciences in the Vedas), the epics of the Mahābhārata and Rāmāyaṇa, the Dharmanāśtras and Dharmashāstras (or Smṛtiśāstras), Arthashastraśtras, the Purāṇas and kāvyas or poetical literature, which regulate Hindu social order. The third source is the unwritten sadācāra, meaning ‘good conduct of the conscientious (ātmatasūti)’, or the exemplary behavior of those who understand and execute in their own lives the moral—legal teachings of the sāstras. Sādācāra only marginally includes the customs and practices of the people.9 Sāstras are, in Pollock’s words, ‘cultural grammars’ that both reflect and regulate practice (prayoga).10

Now, these three foundational elements—scriptural authority, tradition, ‘exemplary conduct’ and only marginally custom—are said to underwrite the central principle of Hindu life, known as dharma (righteous order and obligations).11 And it is further added that the legendary ‘lawgivers’, such as Manu and, after him, Yājñavalkya, formalised and codified the laws in Manusmṛti (also known as Manuṣamhitā or Mānava-dharmaśāstra), and in Yājñavalkyasmṛti (third–fourth centuries CE) and the

social and cultural settings, lacking as it may also in an integrated purposiveness. See Davis, ‘Traditional Hindu Law’, n. 7.


7. Flavia Agnes describes the smṛti as ‘the memorised word’, in her magnum opus Women and Law in India I with an introduction (Delhi: Oxford University Press, 1999), 12, while Robert Lingat’s seminal work The Classical Law of India (New Delhi: Oxford University Press, 1998), 7–8, simply describes smṛti (or śruti) as ‘tradition’.

8. A. M. Bhattacharjee, Hindu Law and Constitution (Delhi: Eastern Law House, 1994) cites several modern scholars and writers on Hindu Law who appear to be committed to this characterisation, notably Mulla’s Principles, 77; Mayne, Treatise, 19. Werner F. Menski also takes them and a few others to task on this score. And Asaf A. A. Fzyee repeats the stereotype, introducing God in connection with dharma for the Hindus, in Outlines of Muhammadan Law, 4th edn (Delhi: Oxford University Press, 1998), 15.

9. Mulla for his part lists ‘Custom’ as the third source; Mayne offers (1) the smṛti ‘or the Dharmaśāstras’; (2) Commentaries and Digests, and (3) Custom.


11. See also Lingat, Classical Law, 7–8. Derrett includes śrutī and smṛtī under Dharmaśāstras, which is the only category he otherwise notes as the sources of ‘Anglo–Hindu Law’. Paras Diwan lists (1) śrutī, (2) smṛtī (3) Digests and Commentaries and (4) Custom, whereas Tahir Mahmood describes Hindu Law as ‘that body of law in its entirety which originated from religious scriptures of various indigenous communities of this century’. All cited in Bhattacharjee, Hindu Law, 13. There are thus permutations and variations to the same theme.
thought towards a fusion of horizons

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patrick olivelle (oxford university press, 2005), 94, 405. ii.12 is to be read in conjunction with surrounding

version—which is anathema and a misnomer that is best discarded in the interest of a more nuanced

much later development of the idea of ‘law’—from the natural law tradition and the roman secular

model the legal positivism and european (beginning with roman) system of the ‘rule of law’, among

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14. This position is discussed in relation to general theory of morality or ethics in the indian context within

which the practices of law, jurisprudence as legal hermeneutics, the role of precedence, natural law dispositions

and judicial decision making were included: see p. bilimoria, renuka sharma and j. prabhu, eds. indian ethics,

vol. 1: classical and contemporary challenges (aldershot: ashgate, 2006; new delhi: oxford university press,

2008), especially ‘general introduction: thinking ethics, india and the west’, introduction to part a, ‘vedas to

the gītā: dharma, rites to rights’, chapter 1, j. n. mohanty, ‘dharma. imperatives and tradition: toward an

indian theory of moral action’ (esp. 75–77, under ‘law’). also p. bilimoria, ‘being and text: dialogic

fecdulation of western hermeneutics and hindu mīmāṃsā in the critical era,’ in hermeneutics and hindu

thought towards a fusion of horizons, ed. r. sharma and a. sharma (dordrecht: springer), 43–76.

15. See roger scruton, the west and the rest: globalization and the terrorist threat (new york: continuum,

2002), 21; also discussed by galanter, law and society.

16. personal communication and his review of menski.

purushottama bilimoria, ‘the idea of hindu law’

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\begin{align*}
\text{various nibhandas, which gradually became the dominant sources of hindu law and governance of all aspects of hindu life under the patronage of brahmins and kṣatriya rulers in cohort. manu himself endorsed the three foundational sources, adding ‘conscience’ as the fourth source, as this verse (12) states:} \\
\text{the four marks of dharma, they say, are (1) the vedas, (2) the smṛti (tradition) (3) the conduct of good people} \\
\text{and (4) what is pleasing to oneself (vedāḥ smṛti sadaçāra svasya ca priyātmānaḥ); (the good people know} \\
\text{the veda): ‘scriptures’ should be recognised as veda, smṛti and dharmaśāstras. these two (as the highest} \\
\text{authority) should never be called into question.12} \\
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the view represented above, however, is probably a product of medieval scholasticism and is testable.

It has recently come under severe criticism and qualification by scholars of hindu legal history and certain indian feminist writers also, as we shall discuss in developing an understanding of the complexity and variegated pastiche that is often characterised to be a homogenous or univocal structure under the rubric of hindu law.

there are doubtless a good number of scholars who have written on hindu law—mulla, j. d. mayne, paras diwan, j. duncan m. derrett, p. v. kane, robert lingat, a. m. bhattacharjee, donald davis, jr, werner f. menski. menski’s work is interesting, as he challenges several distortions in the conceptualisation of hindu law in modernist (colonial, western and post-colonial) representations in respect of the origins and the development of the formalist legal system, that has as its background model the legal positivism and european (beginning with roman) system of the ‘rule of law’, among other legalistic presuppositions, culminating in the code napoleon and (british) black letter law.

While we may not share all the assertions and scholastic reworking that Menski offers, for the purposes

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15. See roger scruton, the west and the rest: globalization and the terrorist threat (new york: continuum,

2002), 21; also discussed by galanter, law and society.

16. personal communication and his review of menski.
pervasive principle of justice, without needing to trace or reduce the ideal to some prior redaction of texts and extant scholastic formulations—though perhaps this much is arguably presupposed.\textsuperscript{17}

So what is contestable about the view we started with in the second paragraph that has unleashed the controversy? First let us elaborate on what exactly are the view and the claim that it underpins. It is that, in the first instance, the Scriptures are the source of dharma. We shall begin with the first of the institutes or sources that supposedly prescribes dharma, namely, the Vedas, for in principle every rule of dharma must indeed locate its authority in the Vedas.

But before that a word on the conception of dharma in this juxtaposition. The common understanding equates dharma with duties and precepts or prescriptions. Dharma, however, is not simply a set of duties for it encompasses the moral law, not unlike the concept of natural law (but without the excessive transcendental or theological element).\textsuperscript{18} This all-embracing conception is derived from the root dhr, meaning ‘to form’, ‘uphold’, ‘support’, ‘sustain’ or ‘hold together’. More concretely, dharma may denote ‘fixed principles’, ‘order’, ‘righteousness’ and ‘truth’. It connotes the idea of that which maintains, gives order and cohesion to any given reality, and ultimately to nature, society and the individual; and it is inclusive of the respective obligations, duties including social and individual duties, ethical living and discharging of debts needed to ground the human community and allow it to flourish, etc. It would seem to follow that on the basis of this rather abstract principle Hindu lawmakers and ethicists devised comprehensive systems of social and moral regulations for each of the different groups, subgroups (caste, rulers, monarchs, etc) within the Hindu social order. Certain universal virtues, duties and norms also come to be specified, such as non-injury or non-violence, non-coveting and not lying. Thus the end of dharma has to be fulfilled in terms of one’s place in society and in nature, supplemented with the practice of the universal norms. Mohanty sums up the broader reach of dharma most aptly. Thus:

According to the Hindu tradition, dharma in the strict sense (i.e., excluding the law codes and rules of policy) are expressed by injunctive (prohibitive) sentences of the Vedas. The later dharmaśāstras clarify, expound and explain them. These injunctions embody rules that are of various sorts: they may be obligatory or occasional; they may pertain to one’s varṇa (rendered ‘caste’) or to one as a number of a family (kula), or they may be for all humans (sādhārana). Of many of them, it is true to say that they pertain to a person’s role and status in society—but this is not true of all of them: the so-called sādhārana or common dharmas are not so. What is common to them all is that they are all expressed in imperatives.\textsuperscript{19}

So far so good. But here is the rub, as we wish to argue.

\textbf{Vedamūlatva: Are Vedas the Touchstone of Hindu Law?}

The Vedas certainly ordain injunctions and moral responsibility toward performance of sacrifice (yajña); and rules are set down for the correct recitations and incantation of mantras accompanying this performative act. There are even exhortations to certain ‘alterity’ virtues, such as gift giving (dāna), welcoming the guest (ātithi) and care for the ancestors.\textsuperscript{20} Disregarding the distinction between mandatory (deontological) and optional or hypothetical (consequentialist) imperatives, the question arises could injunctions or imperatives possibly exhaust the scope of dharma where Dharma is to serve as ‘law’ and rules in matters of policy? Secondly, what we have is a seemingly motley collection of codes, but no attempt is made to unify them in a system or under a single moral theory, or deduce them from a principle. Without such a process, the function of law is not feasible. Third, they appear not to be grounded in matters of fact, but are rather about what ought to be the case (‘ought’ is conflated with ‘is’ or the distinction is not clearly made).\textsuperscript{21} By and large, the ‘ought’ precepts or prescriptions seem

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hardly to go beyond the immediate calling to the sacrificial pit and the eulogies to the gods. So understood, dharma fits uncomfortably into the rubric of law contrary to the received wisdom, although it may provide a ‘limit concept’ for such a legal trajectory were the society to avail itself of this. As Lingat also acknowledges, there is little in the way of rules of dharma in the Vedic texts. ‘Strictly speaking, the Vedas (sāṃhitās) do not even include a single positive precept which could be used directly as a rule of conduct. By contrast the brähmaṇas, the āranyakas and the upaṇiṣads contain numerous precepts which propound rules governing behaviour.’22 And as Rocher reminds us there are even fewer rules of law in the śruti.23 Laurie Patton too comments that ‘[A]s compendia of explicit statements about dharma, early Vedic texts are woefully inadequate. The Vedic world is usually placed low on the list of sources for Hindu ethics for similar reasons.’24

So why does a Hindu affirm that dharma rests entirely upon the Veda? Lingat has a persuasive explanation, which is worth citing at some length:

[T]he word Veda does not mean in that connection the Vedic texts, but rather the totality of Knowledge, the sum of all understanding, of all religious and moral truths, whether revealed or not. These truths are not human entities; they are imposed upon man [sic] who must simply submit to them; they exist by themselves and have always existed. They form a kind of code with infinite prescriptions of which only the Supreme Being can have perfect knowledge. The eternal code was revealed by him to certain chosen ones, and that is what is called śruti. But only part of that Revelation could be communicated to mankind; a good deal of it has been lost, moreover, due to the weakness of human memory. Therefore the Vedic texts are far from representing all the Veda. When a rule of dharma has no source we must conclude that it rests upon a part of the Veda which is lost or somehow hidden from our view. It is this hypothetical or symbolic code, rather than the surviving Vedic texts, which the most ancient authors, the writers of the dharmasūtras, have in mind when they proclaim that the Veda is the primary source of dharma. They hardly do more thereby than express their adherence to common belief, without attaching any particular value to that source.25

The point is taken. Apart from the qualm one may have about the postulation of a Supreme Being (God) in the Vedic worldview—which the Mimāṃsaka and possibly an Advaitin also will be inclined to vehemently take exception to—as well as the claim about the ‘lost, or hidden, Vedas’, or that even the Abrahamic term ‘Revelation’ is appropriate here,26 Lingat is basically correct in his assessment that the Vedas are only in a perfunctory sense regarded as the inexorable foundation and source of the rules of dharma. Furthermore, it is because śruti has exhibited—contrary to the later smṛti and the law books—a plasticity of meaning, an inexhaustible reservoir of meaning which is not exhausted by any system, that it enables variable interpretations and appropriation.27 Mayne was even more emphatic, disregarding the devotional sentiment with which Hindus look upon the Vedas as the paramount source of knowledge in all aspects of their lives, by declaring that the ‘Śruti, however, has little, or no, legal value. It contains no statements of law as such, though its statements of facts are occasionally referred to in the Smṛgis and the Commentaries as conclusive evidence of a legal usage.’28 Other scholars such as Olivelle and Wezler reinforce the marginality of the term dharma in the Vedas, which in any case comes to mean something quite different in the Dharmāstāra.29 Training in the Vedas might at best

22. Lingat, Classical Law, 8.
25. Lingat, Classical Law, 8.
27. Mohanty, ‘Dharma, Imperatives and Tradition’, 13; while what Mohanty goes on to say may well be true to ethics or morality, this insight cannot be extended to dharma as law. Thus: ‘The Hindu understanding of dharma as embodied in the imperatives laid down in the śruti preserves the idea of ethics as rooted solidly in that tradition which was founded by those texts, but which those texts have permitted us to reinterpret ever anew.’ Mohanty, ‘Dharma, Imperatives and Tradition’, 13.
invest in the individual the *adhisthā*, that is to say, the entitlement to pronounce on the constitutive formalism of *dharma*, and thereby proffer decisions on a matter at law, without recourse necessarily to the substantive contents of the Vedas at the risk of transgressing the orthodoxy as well. The theological connection of the Vedas and Hindu law is primarily a distant backdrop against which legal philosophy develops and the actual business of law is conducted.\(^{30}\)

Reflecting here from a different quarter, the famous Lacanian political theorist Slavoj Žižek would suspiciously discern in the erstwhile discourse that underscores the Vedas as the founding source of Hindu law (*vedamūlatva*) an implicit and unstated *underside*. He would argue that, not unlike most ‘mega-legal’ and superstructure discourses in other major traditions, it is a product of an ‘ideological fantasy’. What Žižek means is that each system has its own defining story in terms of its foundations that gets re-narrated retrospectively, even as it conceals or ‘represses’ the *violence* of these foundations; further to that, it is this ideological frame as *doxa* (*received wisdom*) that determines how the subject ought to interpret the laws’ frozen and forbidding letters.\(^{31}\) The Mīmāṁsā’s ahistoricisation of the Vedas (through its doctrine of *apūrvāpaurseyatva* of *śruti*) is charged by Pollock to underpin just such a move, its immense contribution to the growth of Hindu jurisprudence notwithstanding (which is a separate philosophical function of the Mīmāṁsā).\(^{32}\) That hermeneutic of postmodern suspicion and an echo of the Žižekian tone is certainly detectable in current scholarly dismissal of the discourse that is being contested here.

**Are Smṛtis the Source?**

As described above, the *smṛtis* represent a variegated assortment of literary corpus whose knowledge base is said to have been derived from or inspired by the *memory* of the rules of *dharma*: a sort of consensual recollection to which Tradition commits its adherence. But this suggests at best a kind of temporal imaginary: long back there was this pristine and perfect knowledge about the moral order and rules governing the same, but we seem to have become distanced from the source; however, we are still able to recollect the traces and rudimentary principles for deriving rules that are incumbent upon us in our present situation. (It is not unlike Plato’s use of *mimesis* in the *Theaetetus*.)\(^{33}\) The precise relation between *śruti* and *smṛti* has been a matter of much scholastic debate, and we need not go into that here for our purposes, suffice it to say that for ‘daily practices’ (*grhyā*), and in the extra-sacrificial context, *smṛti* are no less authoritative than *śruti* (because *smṛti* simply immemorialise the precepts already inscribed in the Vedas,\(^{34}\) or they iterate in lieu of the Vedas where the Vedas are silent).

If we take *dharma-sūtras* to belong to the corpus of *smṛti* as well, as Manu for one would urge us to, then the *dharma-sūtras* have to be taken seriously as the next likely candidate for the source of Hindu law.

Robert Lingat begins with a focus on certain major *dharma-sūtras*, such as Baudhayāna, Āpastamba and Vasiṣṭha, and argues for their importance in tracing the ‘birth of law’ in Indian antiquity because of their reworking of the rules of ritual performance into an appreciation of *dharma* as ‘duty’ underlying all that liturgical formality. Particularly in the post-Vedic period, the *ācāryas* of the Brāhmaṇical schools ‘completed their teaching of rituals by speculations which brought out the moral and religious aspects of the rite, and explained its significance and obligations which flowed from it’.\(^{35}\) And so one finds in tandem ‘numerous rules tending to define social relationships and to regulate man’s activities within their group—and from this time onwards there is the appearance of something resembling

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**Notes:**


33. Where x tells us that knowledge of the truth of 5 + 7 = 12 is not something we gain from the world (‘facts’) but through a recollection of what we have known in our previous celestial lives.

34. This is the view of the Mīmāṁsāsākās, Śābara and Kumārila. Various exegetical devices were formulated to make this strong connection.

And this processual move clinched an emergent bond between dharma and law. The theories of varṇa (caste) and āśrama (stages of life) are given as examples of the ways in which the dharmaśūtras avail themselves of a framework or two within which to lay down duties of individuals according to their caste and ‘station’ in life. And, of course, much energetic ink is expanded by the authors of these texts in reasoning through and providing justification for the hierarchical ordering of the caste (genea, mer-) and the diverse ‘mixed caste’ groups (jātis, to be more specific) in more temporal terms than upon the sacramental basis afforded in the Veda (with its tri-varṇa arrangement), however irrational and discriminatory this might all appear to be in hindsight. The intricacies and complexity of the caste system and particularly the question of its origins are matters that should not distract us here, but it needs to be said, as Lingat reminds us, that neither the priestly-aspiring Brahmmins nor the authors of the sūtras ‘invented’ the caste classification, much less the system itself. They were confronted by a society that through various historical permutations (partly due to the contact of Ārya-Brahmanic tradition with non-Āryan cultures) had come to be splintered and diversified into a plethora of groupings and racial mixtures and classes of which caste (jāti) was just one practising the most diverse range of customs. They needed a theory to help simplify and reduce the innumerable castes, etc. of their day into a more workable system: the schematics of varṇa, the four main groups known to the tradition, provided such a ‘handy’ conduit and prototype of the castes. Apart from codifying custom, their major task was to articulate the rules of living that would help secure the individual’s destiny; and they take care to ensure that these rules are not repugnant to dharma. Here the edict of Gautama is invoked: ‘The customs of countries, of caste (jāti), and of families, are equally authoritative, provided they are not contrary to the [sacred] texts’ [XI.20].37 Even the monarch—who is not invested with any power to make laws as such—is cautioned to restrain the four varṇas and take into account the customs of his citizens in administering law and due justice.38 It is because laws in the ancient period, as Altekar points out, were either sacred or secular: ‘if the former, they were based upon the sacred texts; if the latter, upon the customs and traditions.’39 A state that attempted to engender change in custom forcibly faced the danger of being overthrown. It did, however, change over time, but not by moving the noisy wand of legislation, but rather imperceptibly by the silent shifts within custom itself. With the development of administrative systems and growing complexity of society, the state assumed increasing onus for enacting rules and regulations, and the king could now decree administrative and normative ordinances which it was the duty of the subject to obey at the risk of being questioned or arrested by order of the royal court. But still these powers were not as extensive and enforceable as those of the modern power of legislation.

The other mark of the linking of law to the margins of dharma in the dharma-sūtra period is their move toward furnishing principles for determining punishments and penalties for a range of misdemeanors. A separation is made between religious and penal sanctions (although the language continues to be one of ‘expiation of sin’ upon undergoing the decreed punishment, etc.). The process is rather secular; the rules of procedure, however, appear not to have made a clear distinction between the civil and criminal, except in areas such as the admission of witnesses and whose counsel the king should take before making a decision on the case before him. Their preoccupation is mostly with family (marriage, in particular) and succession law.

Coming to the dharmaśāstras proper, proximately attached to smṛti as to the dharmaśūtras,40 we find that they are more extensive, expansive in scope and mandate a much larger role to rules of a judicial character, which bring them close to the ‘legislative’ function.41 The methodically classified rules in the dharmaśāstras are intended to guide the king in his sovereign functions as well as to assist in the administration of justice. ‘There we find a branch of science of dharma which is tending to disengage itself from others [notably the ritual predilections of the Veda], and to be envisaged as an

36. Ibid.
37. Ibid., 38.
38. Ibid., and Mohanty, ‘Dharma, Imperatives and Tradition’.
40. The distinction is not so clear-cut, and the dharmaśāstras in some accounts encompass the sūtras, since both are concerned with discipline in dharma.
41. Lingat, Classical Law, 73.
autonomous discipline."42 The preeminent authority is enjoyed by the oldest among these, namely, Manu, Kautilya, Yājñavalkya and Nārada; the commentaries on these continue into the ninth century CE. The Mānava-dharmāsāstras (ca second century CE) is perhaps the most celebrated among these, but equally infamous in view of its excessive bias towards the Brahmanic and ruling elites and its oppressive injunctions in respect of women and the śūdas, who are considered in much of the dharmāsāstras to belong to the lower rungs of the caste hierarchy. The rules and regulations that Manu tries to embrace comprise many ‘paths’ (mārgas) that people live by in their private and public lives, be that of relation between partners, commercial transactions, disputes related to property and disposition towards animals as well as inhabitants and rulers in neighbouring territories. And a caveat was issued, namely that of janagananamana: scripturally sanctioned acts are to be set aside if they appear to be offensive or abhorrent to the people; whereas Kātyāyanadecreed that the accepted customs of a country should not run counter to the rules of śruti and smṛti and that customs repugnant to reason should be abolished forthwith (Śrāuta-sūtra, III.7; 42); and Nārada would agree that unreasonable laws should be reformed (Nāradasmrī, XVIII.9).

Likewise, if one looks at the Arthaśāstra, there Kautilya (ca 321–296 BCE) is quite conscious of the diversity from ancient days of the Indian regions and accordingly allows for a degree of flexibility in matters of law and justice (dharmaśthya). Kautilya, at a superficial reading, appears to justify the rigid reign of the ‘rod’ (daṇḍa) wielded by the king. One plausible ground for this edict is that, unless there are calculated controls, the (natural) law of the small fish being swallowed by the big fish would prevail. Jurisprudence, ordinances for regulating civil life and the governance and security of the state are the monarch’s chief objectives.43 Indeed, the king is expected to attend each morning to pleads and petitions from subjects who may come from all walks of life and different caste or subregional groups, including women, the sick, aged and handicapped. When meting out justice, the king or the state is not in a position to make laws; rather the sovereign court’s jurisdiction is to negotiate between dharma (law), custom or settled community law (vyavahāra), transactions or commercial and personal practices and written edicts (śāstras). The king may overrule the latter two sources of law, but he cannot put himself above dharma, in accordance with which all instances of disputes and contradictory judgments are to be decided (3.1.40–44). This precept entails that the king maintains detailed codes of law and precedents and judges each case by its merit or otherwise in law, and he metes out punishment proportionate to the offence of violation of the codes, but not in whimsical excess. His ministers (amāras or mantrins), the purohitas, the ascetics, even the queen and prince, the gods and above all dharma maintain a check and are witness to any possible deviation.44 Kautilya is also credited with having been among the first to set down codes of law (which comes close to the secular codification towards which Hindu Code Bills have been moving this century), as distinct from re-inscribing desirable prescriptions and diverse customary rules, regardless of their moral or philosophical merits, etc.

Thus law compilers such as Manu and Kautilya bring the notion of dharma down to earth, as it were, by devising a comprehensive system of social and moral regulations for each of the different groups, sub-groups (caste, rulers, etc.) within the Hindu social system, as well as specifying certain universal duties incumbent on all. Vocational niches, duties, norms and even punishments are differently arranged for different groups, and the roles and requirements also vary in the different āśrama stages for the different groups. Before the advent of the śāstras (Artha- Dharma- and the Smrīs) these normative tracts, or law if you will, were preserved in the respective customs of the groups and in the cumulative tradition. Dharmāsāstra describe them as samayācārika dharmas, customary rules. The law

42. Ibid.
44. The king’s obligation to administer justice in accordance with the principles of legal science (dharmaśāstrasāsa; also in Manu’s Code of Law, VII.128) is the very first verse on injunction in the Second Book (on vyavahāra, translated here as ‘positive law’) in Yājñavalkyasāṛti reinforced in the commentary Mitāṅka arā. Yājñavalkya maintains that ‘a custom which is not opposed to law should be carefully maintained, as also the precedent established by the king’s judgments. The learned that assist the king should be versed in the scriptures and study Mīmāṃsā, knowing dharma (religion) as well, and dispansionate toward friends and foes alike.’
courts under the control of the chief justice (*prādvivāka*) were responsible for administering such of these rules as pertained to family and social life and personal laws, and created civil and criminal rights, which were enforceable. In time, particularly *varṇāśrama* or caste rules and rules of personal and family law were inscribed into the Smṛtis in which the chief justice therefore had to be well versed. Guided by these rules the judges (*dharmaśyakṣas*, *nyāyakaranikas*) sitting in these civil courts enforced *jātīdharma* (sub-caste rules), *śreṇīdharma* (by-laws of guilds), *kuladharma* (family traditions) and *desadhharma* (customs of the country, or *jānapadadhharma*, as well as *svadharmas* (cf. Manu I.118 and VIII.14) insofar as they engendered civil and legal rights which may come into dispute or contestation. Liberal allowances were made for changes in the civil, criminal and customary law, as sanctioned by popular usage and moulded by state guilds. Altekar goes on to observe that ‘[I]t was the duty of one of the ministers, *viz* the *paṇḍita* [the minister in charge of religion and morality], to find out which practices had become antiquated and to discourage and not enforce them. He was also to advise the government about suitable changes that could be introduced in consonance with the spirit of *dharma* and culture.’

P. V. Kane’s monumental work the *History of Dharmaśāstras* has been deemed by scholars to be unhelpful on this problematic as also on the sorts of questions I have been addressing in this paper. Rajeev Dhavan complains that Kane’s gigantic work failed to develop sociological insights into the development of Hindu law and questions his motive of wishing to raise the stakes of classical India’s jurisprudence on a par with that of any system that may bear comparison. But to his immense credit, Kane has provided an unsurpassable compendia of the wide-ranging textual tapestry, records of codification and the internal (inter-textual as well) *śāstric* reasoning and disputes that informed the moral, social and juridical reiteration of the extant normative structures of the society of those times. The *śāstras* were making every attempt to hold together an otherwise self-regulating social order that periodically came under threat of fissure and challenges due to its sheer diversity and changes that historians are only too well aware of. Kane looks, albeit uncritically, for sanguine intentions in the *śāstras* and their defined purpose of bringing happiness to the members of the society who submit to the governance of their edicts and regulative norms.

Likewise, underscoring the ‘purposive approach’ as against the ‘literal approach’ (in modern jurisprudence), A. M. Bhattacharjee suggests that the *dharmaśāstras*, realised that unless one performs one’s duties there can be no protection for corresponding rights vested in another; thus if everyone performs his rightful obligations, ‘the rights of everyone else would also be secured thereby and that without any acrimony of friction.’

For all its apparent effort to distance itself from the overwhelming religious and ritual imperatives of the earlier Vedic worldview, and instill a more juridical character to the rules, the collective spirit of the *dharmaśāstras* are never too far off from that soteriological and cosmic end to which the Scriptural tradition harks back, time and again. The king likewise is all too conscious of the risk of committing sin or de-merit if he applies a rule improperly. Juridical consequences aside, the institution of marriage too is fraught with warnings about the dangers of slighting a god if one marries into a wrong or forbidden caste and fails to fulfil the obligations (ritual, family and social) incumbent upon the

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46. Ibid., 124.
47. Ibid., 123.
householder. If the regulation is ‘sacred’ in its originary character, then the law expressed by that rule is vyāvahākarika (worldly, profane) only in a derivative sense.

So this leads even one such as Lingat who tried to anchor the origins of Hindu law in the (dharma-)sāstras to pause and wonder ‘in what measure the rules of law, which we meet in the dharma-sāstras—presuming that they do really belong to dharma—actually express juridical solutions?[?]’. They are enunciated in order that spiritual merit may be gained or secured. It is unquestionably a religious duty to conform to them, and in this respect they are certainly amongst the origins of law.’ Given that legal sources would comprise, at the least, codified rules, legislation, precedent, custom and agreement or equity, this then is the critical question:

But what is their [the sāstras] exact significance? Are they the direct sources of law (fons juris), i.e., have they quality of legislation, the authority of which bears directly upon the judge? Or are they sources of law only in the sense that religion and morality and prudence are amongst the sources of law in Europe—that is, have they managed to exert an influence upon the law development of social institutions as an historical or explanatory cause of law rather than a true source?51

Lingat does not really provide a decisive answer to his own quandary. For a somewhat different perspective or approach to this question it is time to turn elsewhere. First, a qualification from A. M. Bhattacharjee may pave the way for this direction. Bhattacharjee rejects the views of Mayne, Mulla, Derrett and others and argues instead that well before the arrival of the British in India . . . the Śrutis and the Smṛtis ceased to be the principal sources of Hindu Law having been replaced by the Nibandha, i.e. the Commentaries and Digests[,] and it was not at all necessary or even permissible to enquire as to whether a particular principle of law enunciated in the Nibandha was in fact supported by the Smṛtis and it was binding without their support and even in spite of their contrary mandate.52

Hence, Bhattacharjee sets aside the lex scripta of smṛti also as a viable source, or even one amongst the sources, of Hindu law. But whether he is right in turning our gaze almost exclusively toward the nibandhas may itself be open to question, for the bulk of evidence that Bhattacharjee brings to his own contentions is based on the proceedings of the Privy Council, from as far back as 1868, where the judges deferred to the Commentaries (most especially the Mitākṣara) prevalent in a particular province as the authority that has been given due recognition and not any other texts.53 Nevertheless, what is common to both the smṛti texts and the nibhandas or Commentaries and Digests is that they are records of usages and customs commonly accepted by the people. While smṛti recorded these as imperative precepts without elucidating reasons for their justification (except for the desirable practices of more recent origin which awaited acceptance by society), the smṛtikāras (commentators on smṛti) and the nibandhas (Digests) are more forthcoming in explaining, consolidating, modifying and even enlarging their rules in actual usage and customs then prevalent among the different groups, often with utter disregard for the totalising rules in the smṛti itself.54 This is tension that has inflected itself to the present-day debate on the basis of the authority of personal law and the codification of Hindu law in the statutory Acts of 1955–56.

Menski’s Forays

Menski begins by rejecting three suppositions that have bedeviled much of modern scholarship on the question of Hindu law. First of these is that ancient Indians did not have anything that we would nowadays recognise as ‘law’. For if indeed all human societies have law, ‘why should ancient Hindus be any different?’55 This retort may not cut much ice. H. L. A. Hart (whose lectures the present author

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54. Derrett also notes this; cited in Bhattacharjee, *Hindu Law*, 36.
once had the privilege of attending at a law school) for one might relegate Hindu law under the rubric of those ‘primitive societies’ whose ‘laws’ or customary ways bear no comparison to either the natural law tradition or positive law as it has evolved in the past few centuries in the modern West. Nevertheless, Menski questions, on the one hand, the classical positivist theories and Austinian notions of formalistic, state-made ‘rule of law’ (or positive law as command of the sovereign) or Western ‘model jurisprudence’, as the only ways to conceive of law, and on the other hand what he calls ‘the loaded assumption of the basic “revelation” of Hindu law from some divine authority.’ His simple answer is that ‘the ancient Hindus conceived of law differently from Western cultures.’ Hindu law for him ‘represents a culture-specific form of natural law. In that sense, too, it is an ancient chthonic legal system.’ Menski’s strategy is to underscore the traditional relativity of dharma—what scholars find in the notion of adhikāra-bheda—and its constant emphasis on situational specificity, which allows for difference in accordance with circumstances. To that end he dismisses the representation of Hindu law by fundamentalist Hindutva types and by Orientalists who believe that, for example, Manu had the last word on Hindu law! Rather, he argues that Hindu law is a branch of dharma but that its contours cannot be reconstructed from mere textual sources, much less the sruti and smṛtis. This was the mistake made by European Orientalist scholars and an emerging literate Hindu elite, who, while welcoming the recognition of their moral system as embedding a ‘legal’ process, were blinded by the equation of dharma with law, which in fact ‘secularised the understanding of Hindu legal processes and marginalised the inherent link of all individual actions with the “cosmic” system of righteousness as the ultimate arbiter of what was “the right thing to do” at any given moment.’ (Menski is referring to the rta/dharma complex embodied in the concept of the macrocosmic order as the ‘the higher power’ and therefore the foreground for any discourse to ensue on human ends and positive human rule making.) The British administrators and judges missed seeing the connection and thus exacerbated this process in the reconstruction of Anglo–Hindu law.

The story that Menski provides is a rather complicated, and in some ways convoluted, one, as it moves through various stages, each stage accounting for the peculiarity of its handling and development of Hindu law as it shuttles through the lanes and by-ways of history. While rejecting the prominent view that we began with—which all too readily locates the source of Hindu law in the classical period which is marked by the śruti, smṛti and sadācāra—he takes as his own starting point for pre-classical law the Vedic concept (though not necessarily the written word) of cosmic order (rta) which metamorphosed into dharma (microcosmic order or duty). Similarly, when he turns attention to the next phase of the development of Hindu law—the classical period which is marked by the dharmaśāstras, or smṛti more generally (along with the commentaries and digests)—he is less interested in what the texts have to say than in the broader anthropology of the differently nuanced and lived realities and people’s customs and local ways of doing things that enabled Hindus to negotiate, modify and retain control over their religious, moral and legal processes. The four stages of development within ‘traditional’ Hindu law is summarised by Menski in his own words, starting from the macrocosmic universal order system (rta) of the pre-classical Vedic age:

This gradually metamorphosed (but we do not quite know when) into properly ‘classical’ Hindu law, the idealised system of self-controlled order (dharma), focused on microcosmic order and encompassing every Hindu individual. Third, because of the admitted limits of self-controlled order, we soon find the deterrence-based stage of punishment (danda), which is a typically Hindu form of ‘assisted self-control,’ still relying on the individual’s sense of dharma, but now explicitly recognizing that some external pressure is necessary to

57. Menski, Hindu Law, 44.
58. Ibid. Menski rejects all theological definitions that dwell on the law being something revealed, presumably including the Mimāṃsā qualification of authorless revelation. Note 18 on page 43 seems to suggest this qualification.
59. This doctrine within orthodox Hinduism gives recognition to differences, eligibility appropriate to an individual’s and group’s identity and constitution, as well as capabilities and preferences that are marked for fulfillment. It applies at all levels: spiritual, social, political, educational, and in the administration of rights, duties and justice.
60. Menski, Hindu Law, 73.
61. Ibid., 75.
ensure that cosmic order is being maintained as much as possible. Here we find evidence of greater importance given to the Hindu ruler (rāja) who operates at various levels, from head of family to clan chief, village head, and real King. Fourth, the more or less formal methods of negotiation or dispute processing (vyāvahāra) should also be counted as a separate stage of Hindu legal development now recognizing the scope for formal settlement of contested matters, which may culminate in a royal pronouncement as some kind of final word. A Hindu royal edict does not represent positive law, but constitutes a visible manifestation of the superiority of the rta/dharma complex, according to which the Hindu ruler is supposed to position himself and his activities. 62

If there are texts that are aligned to these shifts and changes, and present accounts of the same rather than deviate into some abstractions of their own (possibly for elite consumption), then Menski is all too happy to consider their wisdom, as when he turns to a claim made by some scholars that the Mitākṣarā (probably the most extensive commentary on the Yājñavalkyasūtra) marks the fountainhead of the secularisation of Hindu law.

Summing up this discussion of ancient Hindu law, when all is said and done, the sāstras have not been able to survive, sustain and flourish as anchoring Hindu law simpliciter in as authoritative a manner as believed, and certainly not effectively into the modern century, as indeed the turmoil experienced in the area of family law since 1955 manifests. 63 The unreformed Hindu law has proved resistant to change in the area least imagined, not unlike Islamic and Jewish law. The nineteenth century evinced some remnants of sāstric law in penal and contract laws, but not as effectively applied in respect of civil law, and the courts experienced difficulties in discerning the correct rules and application of sāstric codes. In their quest for uniformity and certainty the British administrators gave vent to the sāstrī (especially of Bengal) to re-fashion the formerly (per)suasive authority as self-consciously normative and positive law of the Hindus. But in effect, as time would tell, it wasn’t so much that Hindu law was being restructured, but rather that aspects of modern law that were considered germane to a civil society, such as (for our purposes) family law, were being reformulated along traditional Hindu lines: there lies the difference. That dialectic and the tensions therein is neither a curse nor a gift of the modern (or postmodern), as Derrett, cited approvingly by Menski, points out:

In tackling Hindu law the first thing to remember is the tension between the past and present, the desire to be traditional and the desire to be up-to-date. It is too readily forgotten that the tensions to which we allude were present centuries ago, though not always in the same form, and the conflict between ‘foreign’ manners and ancient ways is endemic in India and has been going on since the Vedic age. Far too few critics of the present order realise that their ancestors were engaged in corresponding if not actually similar complaints centuries ago. 64

Hence, again in Derrett’s astute words, ‘[H]istorians of law are at a disadvantage in that neither the smṛtis, nor digests or commentaries, undertake to give a full picture of law-in-action, since their work—as that of Kane’s—is devoid of anthropological or sociological awareness.” 65 Hindu law is then a textualised form of customary law, dispensed by religious elders in interaction with royal rulers, from what have earlier been established customs in that society, built up through precedents, digests of rulings and intellectual re-workings, such as those of Kautilya and to an extent Manu. This is not unlike the common law tradition that developed over a number of centuries in Britain, which is one reason why the British legates in the nineteenth century could recognise elements of their own system of law in Hindu law, but were overwhelmed by the diversity of practices—customs as well as jurisprudence—and representations across Hindu society in the subcontinent.

Nevertheless, a Mimāṃsaka cannot fully countenance the suggestion that Indian jurisprudence itself, particularly during the medieval period, had no deep connections with the textual or scholastic tradition. The Mimāṃsā has had a long history of influence precisely via its interpretative intervention—for this is the reasoning skill the Mimāṃsakas brought from their ritual hermeneutics to resolve apparently

62. Ibid., 81.
63. J. D. M. Derrett makes this observation in Dharmaśāstras and Juridical Literature (Wiesbaden: Otto Harrossowitz, 1973), 7.
65. Derrett, Dharmaśāstra, 63–64.
conflicting injunctions or other textual prescription on the performance of yajñas or sacrifices. Their source is mostly the Brähmanaṣ. Scholastic forays have therefore always inflected themselves in what could be regarded as the domain of customary law. In a similar vein, the jurisprudence of Dharmaśāstra recognises that all rules of dharma, at the more abstract level, are derived from the Vedas; however, in the more practical context another discourse advertsing to ‘the related concepts of ācāra, caritra, maryādā, samaya, samvid, etc. all referring to rules of a particular locality, community, merchant group, etc.’ come into focus. Donald R. Davis, Jr, demonstrates through the use of the concept of paribhāṣā, technical or supplementary law that reflects and shapes the discourses (including the ‘meta-discourse’ of the Dharmaśāstra) and ‘actual practices of community or group rules in great variety of local contexts.’ These conventional rules refine rather than revise rules of the sāstra: they specify how primary rules of Dharmaśāstra will or will not apply to a particular group’s legal affairs; and they provide a device by means of which two rules of recognition can be legally reconciled, even as they continue to function in largely separate domains. Through a long and complicated analysis that involves recourse to medieval (including South Indian digests of Dharmaśāstra, such as Smṛticandrika (SC) of Devannabhatṭa), contemporaneous insessional and epigraphical sources and commentaries, Davis develops what he calls a ‘realist theory of Hindu law’, which exudes strong elements of positive law (in H. L. A. Hart’s non-Austinian sense) precisely through the pārībhāṣic-explanatory gloss, or reconciliatory stratagem, on legislated dharma where conflict between rules might arise, or conventions are violated, or the sāstras remain silent) that cumulates towards Hindu jurisprudence, and which is also mitigated by the prevailing discourses of theology, philosophy and politics even as the winds of change sweep through social and political realities. In another forceful submission, lamenting that the ‘legal side of Hindu dharma has been lost’ (which echoes my own lament in regard to the legal-jurisprudential side of the Mīmāṃsā), Davis has gone as far as to suggest that Hinduism at large could be viewed as ‘a Legal Tradition’; that its theology (perhaps we might correct this to ‘metaphysic’) lends itself in more ways than one to the extraction of a robust legal ideology. Of course, some of us have been deeply concerned to free perceptions of Hinduism as a religion overlaid with rituals, mythologies, sexo-tantric indulgences and other remnants of Orientalist biases, and argue instead for its deeply ethical or moral philosophical basis (as those familiar with the project Indian Ethics: Classical and Contemporary Challenges would be aware). Law and ethics are intricately connected, as in Islamic Law—and Davis has indeed acknowledged as much:

A relationship of connection and semantic concomitance exists between dharma and law, and not merely a relationship of encompassment, in which dharma equals law plus religion plus morality, each of the subcategories isolatable from the other. In this way, law is not merely an isolatable subset of dharma in Dharmaśāstra, but rather an integral and essential part of all dharma, even when part of the point of invoking dharma is to remake it along new theological lines.


68. Ibid., 99; ‘meta-discourse’ is taken from Olivelle, ‘The Semantic History of Dharma’.


70. This is not to accord preeminence to the functionally autonomous power of legislations, though Davis is quite partial to the legislative power of Hindu kings over and above the administrative governance via royal decrees and directives. See also Bilimoria, ‘Being and Text’.


73. Davis, ‘Hinduism as a Legal Tradition’, 244.
Davis, unlike his Indological counterparts, comes to his own novel theory not from a scholarly concern as such with Dharmaśāstra texts specializing in a scholarly theology as from his substantive quest for a concept of Hindu law in or through the texts.74

So our respective projects could be seen as complementary rather than at odds; either way, the immense intellectual fabric of the Hindu tradition, and its intermingling discourses of morality and prudence and ethics that finds a common denominator or connecting link in the limit concept of dharma, represented in the texts from the Upaṇiṣads to Yājñavalkyasmrți to various redactions in the Dharmaśāstras, cannot be more forcefully underscored. On the legal side, Davis approaches the thesis he puts forward through a deep exploration of the scholastic nuances of dharma, which he argues yields—besides its earlier ritualistic rules (vidhi, codanā)—empirical sources for rules that differentiate ordinary acts (karma) from legal acts (karaṇatva, itikartavyatā), and the ‘means for effecting’ the same (kārakahetu). And this is the argument:

The concern for correct or proper procedure also takes into account the inevitability of mistakes, intentional or not, that might nullify a mortgage, unfairly distribute an inheritance, or make an ancestral rite ineffective. Dharma in Dharmaśāstra provides for both punishment (danda) and penances (prāyaścitā) that ameliorate or rectify legal mistakes or transgressions. Punishment and penance, although conceptually distinct, nevertheless overlap in, for example, descriptions of thieves begging rulers for punishment (as a form of penance) or judges declaring both a punishment and a penance for adultery (Jolly 1928: 263–267).75

Davis’ is a refreshingly new voice in the debate and I believe, until shown otherwise by critics, it is rather more persuasive than any of the views considered above, and it supplements—some significant qualifications notwithstanding and incorporation of certain of Derrett, Lingat and Menski’s invaluable insights—the position towards which I have been moving in this paper, which I summarise now.

Pivotal to the emergence of a new theory of Hindu law is a careful review of methodological shifts in approaching the Dharmaśāstra texts and the historiography of law in India: pari pasu this desiderata can be extended to and applied to the whole debate over the textual sources versus non-textual residually local customs and practices as the basis of Hindu law. The emergent theory eschews the historiography of law that relies heavily, on the one hand, on technical, often overly legalistic, readings of Dharmaśāstra and, on the other hand, on supposed village customs bequeathed for court records by British officials during the late nineteenth and early twentieth centuries. There is a middle or intermediate ground that remains unexamined in the study of Hindu law, but for the passing acknowledgements of the validity of rules governing corporate associations in the Dharmaśāstra. What the corporate conventions in the Smṛticandrika provide are a standardised digest of śāstric ideas regarding this title of law. But a further argument can be made that in medieval India the rules of Dharmaśāstra influenced levels of law from the regional and community-based conventions to special localised standards.

However, the task of teasing out the various levels is hampered by the lack of adequate historical data and deficiencies in the available materials for study. Nevertheless, invoking a phrase introduced in this discourse by Olivelle,76 Dharmaśāstra could be said to be a ‘meta-discourse’ (what Derrida elsewhere has called the ‘meta-narrative’ of the Force of Law). While the Dharmaśāstras contain some legal codes, they are nowhere near what we in modern times understand as ‘legislations’ or legalistic regulative statutes or episteme of substantive law; rather the śāstras are predominantly manuals utilised in the training on the operative dimensions of legal discourse, and in the dissemination of helpful resources or what Davis terms ‘theologically motivated jurisprudence’.77 As we have observed in the various critiques offered in this paper, dharma was understood as substantive law when it relied for its sources on local culture (certain preeminent customary practices), alongside the normative ethos of


Purushottama Bilimoria, ‘The idea of Hindu law’
good people (sadācārā) and the voice of conscience of Dasein (authentic personal being), rather than on some transcendent Divine Being (atmatusṭī).