

# Hindu Law and Society

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*Hindu Law* is the first comprehensive study of the Sanskrit-language literatures on *dharma* since the publication of P. V. Kane's five-volume *History of Dharmasāstra*. The present essay offers a detailed review of this significant new work's contents and its contributions to the study of the Dharmasāstras. Particular attention is paid to the various places where *Hindu Law* revises the historical record or furnishes new insight into religious and other practices, symbols, and social institutions defined by dharmasāstric works. This essay concludes with a suggestion for future research, which is made possible in no small part by the contributions of the volume here under review.

“Why,” Donald R. Davis Jr. rhetorically asks in the introduction to the present volume, “do we need a *new* history of Dharmasāstra” (p. 1)? After all, the study of Hindu law has long been guided by the monumental contributions of P. V. Kane. Indeed, his five-volume *History of Dharmasāstra* is so thorough and far-reaching as to have led Richard Lariviere to suggest, as Davis notes (*ibid.*), that scholars in the field cannot but “make [their] living from [that work's] footnotes.” Davis suggests (pp. 1–2) three reasons to explain the production of the present book: It is meant to be more compact and organized than Kane's “unwieldy and somewhat chaotic” volumes, which were written over a long period of time; it is meant to be more accessible to nonspecialists; and, finally, it is meant to update Kane's *tour de force*, because “several” of his arguments are “wrong or presented in an outmoded framework that obscures the real significance of certain ideas, texts, and institutions,” in particular “the historical context of textually expressed ideas.”

There can be no doubt that *Hindu Law* makes a substantive contribution to our understanding of the history of Dharmasāstra and the communication of the same with and to wider religious and social contexts. The most significant items are those in which the authors deploy long-established philological methods to uncover previously unnoticed dimensions of textual production and, consequently, social thought and practice. Some chapters are also significant for examining materials that had not before received due attention in the scholarly literature.

Taken together, the book's thirty-seven essays stitch together a palpable reflection on the lived experiences of those who developed and utilized the canon of texts under study. This is to say that an examination of texts and textual histories here indirectly renders a sense of contemporaneous social life. Patrick Olivelle and Davis, the editors of this volume, clearly also wished to elucidate the ways in which a single literary genre—or, more precisely, a single family of genres—influenced and were in turn shaped by proximate literary and religious traditions, which is a major desideratum for such a work, given that the subcontinent is regularly linguistically polysemic and culturally complex in the periods under study.

The present review essay seeks to represent in some detail the discoveries documented in *Hindu Law*, as well critically to review the thematic, historical, and interpretive summaries

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printed therein. Generally in doing so I follow the order and structure of the work under consideration, which is organized into four parts. After the introduction, part I of *Hindu Law* is entitled “History” and includes two chapters that examine the textual and social histories of the relevant literatures. The first maps the history of “The Foundational Texts,” the second that of the “Commentaries and Legal Digests.” This section of the book amounts to a *précis*, updated by a significant new historical insight, of volume one of Kane’s *History of Dharmasāstra*. Part II, “Topics,” is organized thematically and, being comprised of twenty-five chapters, makes up the bulk of the book. The contributions included there mirror many of the thematic studies Kane offered in vols. 2–4 and in a part of vol. 5, pt. 1 of his *History of Dharmasāstra*.

Part III of *Hindu Law*, entitled “Influences,” includes but two items: first, a chapter by Davis entitled “History of the Reception of Dharmasāstra,” second, a chapter by Gregory Schopen entitled “A Buddhist Monastic Code as a Source for Indian Law.” There are to be found, *mutatis mutandis*, corresponding sections in Kane’s vol. 5, pt. 2, which deal with the interface of Dharmasāstric traditions with other (Hindu) schools of thought. Part IV of *Hindu Law*, in turn, is entitled “Interpretive Approaches” and is comprised of the remaining eight chapters of the volume. The stated goal of this section is to “provide interpretive views of Dharmasāstra that start from hermeneutic and social concerns today” (p. 11). These essays, by and large, present what are intended as novel ways of thinking through Dharmasāstric concerns with etically conceived intellectual categories or on terms not explicitly deployed in the Sanskrit texts—“the body,” “emotions,” and “self and subjectivity,” for example. No correspondence to these chapters is found in Kane’s *oeuvre*. Finally, it is regrettable, for reasons given below, that the editors offer no general conclusion to the book.

It is in the first chapter of part I that this volume introduces a fundamental revision to our understanding of the history of Dharmasāstra. Based on the stunning discovery of Stephanie Jamison, which also precipitated the recent publication of another edited volume,<sup>1</sup> Olivelle here recasts his answer to the foundational questions, “[h]ow and why did the genre of literature called Dharmasāstra come into being? Who invented it and for what reasons?” (p. 15). Previously he had argued that Brahmanical works on *dharma* were “devoted to the definition and explication of the Brahmanical *dharma* in opposition to the various *dharmas* underlying the doctrines and lifestyles of non-Brahmanical ascetic communities such as Buddhism and Jainism” (ibid.).<sup>2</sup> In light of Jamison’s philological breakthrough, Olivelle rightly judges this position to be “still valid” but “incomplete” (p. 16). Jamison summarizes her discovery by observing that (p. 126),<sup>3</sup>

the word *grhastha*, 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 *grhapati*—“household.” The term *grhastha* only begins to appear in the *dharma* texts and from then on is the standard term of art, while *grhapati* never appears in *dharma* texts. This terminological demarcation hints at a conceptual discontinuity as well, and the linguistic history of the term *grhastha* illuminates the conceptual renewal.

The “conceptual renewal” in question is this, that while the *grhapati* in Vedic texts was the family head who performed the ritual, the *grhastha* occupied a social role largely defined by the contrastive pairing of the term with *pravrajita*, as is in evidence in Middle Indo-Aryan

1. See Olivelle 2019.

2. This argument is presented in greater detail in Olivelle 2010.

3. Jamison (op. cit., n. 2) refers readers to a forthcoming article in which this philological insight is elaborated in greater detail. This article has now been published, for which see Jamison 2019.

sources, including several Aśokan inscriptions and in other Middle Indic languages such as Gāndhārī Prākṛit, Pāli, and Buddhist Hybrid Sanskrit. From this may be deduced the existence of two social institutions, the *gṛhastha* or “stay-at-home” and the *pravrajita* or the one “gone forth” with which it was paired. In other words, the *gṛhastha* “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” (ibid.).

This contrastive pairing thus signals, she concludes, that the householder of the *dharma* texts was not simply a married man, a ritualist, and a follower of Vedic strictures “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” (ibid.). So much, moreover, required the householder to engage a quotidian life characterized, in Jamison’s terms (ibid.), as “the sacralization of the everyday,” whereby an “extraordinary nimbus of ritualized behavior ... envelops every petty act of daily life—excreting, dressing, sleeping, having sex, and so on—by consciously employing the verbal and physical behaviors characteristic of ritual.”<sup>4</sup>

With this insight in mind, Olivelle suggests a more complete story to explain the origins of the Dharmaśāstras. It was more than merely a Brahmanical response to the centrality of *dharma* “both in Buddhism and in the imperial ethics propagated by Aśoka in the middle of the third century BCE” (p. 15). It was, he suggests, more precisely that there were two Brahmanical systems of thought that emerged in this context, one based on the āśrama system, the other on the notion that a sole āśrama could be accepted, that of the household life, of which the primary religious agent was the *gṛhastha* (p. 17). In dialogue with non-Brahmanical traditions, principally Buddhism, then, this “*gṛhastha* theology” (p. 18) facilitated the emergence of the Dharmaśāstras.

While several others are reported in this volume, which I will highlight below, this is a foundational discovery and probably constitutes the most significant contribution of the present book to our understanding of the *history* of *dharma* literatures. Indeed, it is one that serves fundamentally to transform our understanding of Hinduism in its post-Vedic formation. And the balance of the book’s chapters may largely be understood to serve to flesh out the textual history, social institutions, influences, and quotidian practices of those who occupied for well more than a millennium the social institution of the *gṛhastha*, or interacted with it.

Chapter 2 rounds out the abridged textual history of Dharmaśāstra that was opened in chapter 1.<sup>5</sup> In doing so, I suggest, it implicitly offers justification for the largely thematic organization of this book, which after all is meant to be a *history* of the texts and traditions in question. Its authors, David Brick and Davis, adeptly brief readers on nearly a millennium of commentarial literatures by framing this history around the question of why their authors took to writing learned commentaries and digests (*nibandhas*) at all. Scholastic explanation of the source texts was probably not new to Dharmaśāstra in the seventh century CE, they

4. This description of the life of the *gṛhastha* resembles closely the view that organizes the presentation of “Hindu Law” in Davis 2010: 1, namely: “Law is the theology of ordinary life.”

5. What gets abridged from Kane’s fuller history can be important. For example, as far as I can tell the Dharmaśāstra contribution of Hiranyakeśin goes entirely without mention in the present volume, though it is given somewhat more than a cursory treatment in Kane’s *History*, vol. 1: 46–50. While the abridgments handily serve the dual purposes of rendering the present volume both more “compact and organized” and “more accessible to non-specialists” than Kane’s *oeuvre*, scholars might want to cross-reference pt. 1 of *Hindu Law* with vol. 1 of *History of Dharmaśāstra*. Indeed, Davis and Brick (p. 38) explicitly suggest the facility of just this.

note, this being the time when the first written exemplars thereof become available (p. 31). Brick and Davis go on to consider the question of whether the commentarial works were produced to “update” the tradition or to “legitimate” it (p. 32). Their conclusion, following Ludo Rocher,<sup>6</sup> is decidedly not that commentaries update tradition, but rather that they engage in a specialized discourse concerning only the texts themselves.<sup>7</sup> It is for this reason that the information furnished by Dharmaśāstra works on contemporaneous social life may be culled only secondarily, a caveat to be borne in mind while reading all the chapters of this volume.

The balance of chapter 2 is dedicated to a concise review of the contributions of some of the major commentators and composers of digests—Medhātīthi, Vijñāneśvara, Lakṣmīdhara, Devaṇabhaṭṭa, and Nīlakaṇṭha. Particular attention is paid to the general differences between the digests and the straight-line commentaries. Specifically, the digests of *dharma* (p. 35) “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.” This facilitated the introduction of (p. 36) “a discursive and theological presence for a host of religious practices and ideas that had been peripheral or absent from earlier Dharmaśāstra,” including pilgrimages (*yātrās*), vows (*vratas*), and acts of devotion or *bhakti*, all of which are often connected with a Hindu temple culture that emerged in the second half of the first millennium. One senses, then, that it is the thematic organization of the digests themselves that both inspired and largely set the terms of inclusion for the thematic items elected for inclusion in the present volume (and so, too, in Kane’s *History*).

The themes under study in part II are therefore those one would rightly expect, because they represent emic concerns of the tradition. The twenty-five chapters included herein, moreover, are on the whole very competently executed. The first among them (chap. 3), by Olivelle, engages the question of *dharmapramāṇa*, or (p. 49) “[t]he explicit discussion of how we come to know *dharma*, [and] about the sources of *dharma*,” which, he suggests, “is a unique and unprecedented feature of Dharmaśāstras; no text of parallel expert traditions deals with this core issue.”<sup>8</sup> Following this, Michael Aktor’s treatment of *varṇa* (chap. 4)

6. They cite Rocher 2012: 427: “The commentators did not aim at introducing any novelties. Their sole purpose was a correct interpretation of the ancient texts as such.”

7. See p. 33: “Dharmaśāstra commentaries are direct witnesses only to the legal and religious thought of their own tradition—an influential, perhaps hegemonic, discourse.” Whether Davis and Brick understand the commentarial literature therefore to “legitimize” the works they gloss is not entirely clear to me. I suspect, however, that they do not fully subscribe to any legitimation theory even if scholastic discourse might sometimes have served to accomplish just this.

I must also admit to some confusion regarding this view of Dharmaśāstra works, a confusion stemming from an apparent inconsistency recorded in this book regarding the same. Olivelle, for example, suggests what might be taken to contradict Davis and Brick when he says that (p. 59) “[t]he 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.”

Similarly, it is unclear to me how to reconcile the views of Brick and Davis, that the texts were not written to update tradition, but that *nibandhas* were composed to incorporate contemporaneous practices associated with temple culture.

8. The chapter is sensitive for noting the links of such questions to the philosophy of law, which, following H. L. A. Hart, Olivelle divides into primary and secondary rules, the latter of which may be subdivided into rules of recognition, change, and adjudication (p. 50). Olivelle here distinguishes three phases in the epistemology of *dharma*: first (p. 50), the view that the Veda is the root of *dharma* (as cited first in *Gautamadharmasūtra*); second (pp. 54–57), as indicated in the *smṛtis* of Manu and Yājñavalkya, that to what is claimed as the source of *dharma* in the first phase may be added (not without complications) the notion that the *smṛtis*, too, are authoritative sources of *dharma*; and, finally, a third phase (pp. 57–59), articulated in commentaries and legal digests, which seeks (though this is somewhat less clear to me in its particulars) to allow for changes in what counts as *dharma*.

properly situates this social institution in hierarchies of power.<sup>9</sup> Next, Olivelle's historically sensitive treatment of the āśrama system in chapter 5, itself informed by his well-known study of the same,<sup>10</sup> notes that this social institution (p. 78) "unlike the *varṇa* system ... was very much the creation of the Dharmaśāstric tradition," the genesis of which is datable to the "third century BCE or a bit earlier" (p. 81).<sup>11</sup> Axel Michaels' summary of the *saṃskāras* (chap. 6) similarly covers the bases thoroughly, if somewhat overly synchronically, by accessing the relevant Gṛhyasūtra and Dharmaśāstra sources, and further furnishes an exemplar of the institution in question in the form of Newari rites, both Hindu and Buddhist, of the Kathmandu Valley.

Timothy Lubin's reviews of the *brahmacārin* and the *snātaka* (chaps. 7 and 8), in turn, are historically sensitive, the former most notably for convincingly positing *brahmacarya* as an institution originally meant for Brahmins alone, one only subsequently extended to all three "twice-born" *varṇas*, the latter for mapping the institution of the *snātaka* as it appeared both before and after the Dharmasūtras canonized a system of four āśramas into which the institution was only inorganically incorporated. Next, Jamison's treatment of marriage and the householder (in chap. 9), while it has been reviewed above, is, like her contribution entitled "women: *strīdharmā*" that follows it (chap. 10), further noteworthy for its comprehensiveness despite concision, so too for mapping with philological sensitivity the limited social roles permitted of women in the classical sources.<sup>12</sup> And Davis (in chap. 11) adeptly treats the social construction of childhood as generally being associated with "carefree, unregulated behavior and with unpleasant foolishness" (p. 162).

Other contributions particularly stand out. Ludo Rocher's chapter on *dāya*, for one (chap. 12), masterfully surveys the treatment of inheritance in three periods, including those of "the *smṛtis*, that is the Sanskrit Dharmasūtras and Dharmaśāstras," "the time of the commentaries on singular *smṛtis* and of encyclopedic works (*nibandhas*)," and finally "the period when disputes on inheritance among Hindus were settled by British ... judges" (p. 165). An appendix to the article reviews "the abrogation, in independent India, of the traditional Sanskrit Hindu law of inheritance by a modern *Hindu Succession Act*, written in English," the chapter thus offering a concise but complete *précis* of the issue, which clearly builds on an entire career of original work in the subject.<sup>13</sup> Olivelle's study (in chap. 18) of institutions of asceticism in the *dharma* literatures similarly presents the topic with the weight of a scholar steeped in a subject over the course of a career. Surveying the well-known classification of the āśrama system that set ascetics into two categories—those of the sedentary forest-dweller (*vānaprastha*) and wandering mendicant (*pravrajita*)—this contribution is commendable for its detailed treatment of such practices across the textual corpus and for the attention it gives to the places for women and individuals of varied caste-statuses in renunciationism.

9. As Aktor sums it up (p. 65), "the articulation and promotion of the *varṇa* system were primarily part of a priestly ideological strategy motivated by the specific interests of this class."

10. See Olivelle 1993.

11. This date constitutes a revision forward in time, Olivelle's prior estimate having been set to the fifth century BCE, for which see Olivelle 1993: 102, cited in the present volume at p. 81 n. 3.

12. On Jamison's philological sensitivity see, e.g., p 140, where the meaning of *guptā* as a descriptor of *viprā* is rendered with precision.

13. Of particular note, here, is Rocher 2002, which examines one of two sources on inheritance law recognized by the British: Jīmūtavāhana's *Dāyabhāga*. The other source, as Rocher reports in the present volume (p. 174), was the *dāya* section of Vijñāneśvara's *Mitākṣarā* commentary on the *Yājñavalkyasmṛti*. For the British the *Dāyabhāga* was to be followed in adjudicating questions of inheritance in Bengal. The *Mitākṣarā* was to govern matters of inheritance in the rest of India, though with recourse, too, to what the British understood as four "sub-Schools" of that work.

An additional five chapters of part II add texture to our understanding of the (possible) lived experiences of the *grhastha* and his close associates. To this end Lubin offers a comprehensive, thematic review of the daily duties (chap. 13)—morning ablutions and the like—while Olivelle (in chap. 14) examines with philological discrimination various food prohibitions articulated in the texts, noting in particular the distinction of food items that are permitted or prohibited (*bhakṣya/abhakṣya*), on the one hand, from those that are deemed fit or unfit (*bhojyalabhojya*) to eat, on the other.<sup>14</sup> Brick, in turn, handily summarizes (in chap. 15) the practice of gifting (*dāna*) by differentiating conceptions of the same in the four Dharmasūtras and the Dharmaśāstras of Manu, Yājñavalkya, and Viṣṇu from what is subsequently innovated.<sup>15</sup> In chapter 16 Matthew R. Sayers next reviews funerary and ancestral practices (with an emphasis on the latter), while Aktor (chap. 17) surveys in notable detail the views of impurity and purification found in the *dharma* texts, offering along the way the (admittedly somewhat speculative) 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” (p. 222).<sup>16</sup>

Chapters 19–23 discuss various elements of what could be described as political law. In the first among them, Adam Bowles offers a thoroughly documented treatment of *āpaddharma* (or “law during emergencies”) that succinctly explains its “core principle,” namely, that “when prevailing circumstances render the pursuit of one’s normal activities impossible . . . one may adopt the activities of a lower social class for the duration of the problematic circumstances” (p. 246). Mark McClish surveys the two textual traditions of *rājadharma* (chap. 20), viz., that of works on governance (*nīti*) and the *Arthaśāstra* in particular, on the one hand, and the tradition of royal duty as articulated in Dharmaśāstric works, on the other. In doing so, he directly and convincingly challenges Kane’s understanding of the textual history that defines the influences of the one tradition on the other.<sup>17</sup>

14. The former prohibitions involve foods always proscribed or not. (Consumption of the milk of single-hooved animals or animals with parted hooves such as sheep and deer is always prohibited, for example [p. 192].) The latter involve proscriptions of food items that are (p. 193) “normally permitted but owing to some supervening circumstances, ha[ve] become unfit to be eaten.” The supervening circumstances include, for example, contamination by hair or insects, food that has turned stale or sour, or food items that have been touched by someone impure.

One wonders, however, whether any *change* of dietary regimen could be found documented in the texts, this essay being on the whole a synchronic study of the matter.

15. Of the earlier phase he says the following (p. 204): “To summarize, then, in agreement with [Marcel] 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 [latter] 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. The main reason for this lack of reciprocity is that, according to the *pātra* principle . . . wealth is supposed to be gifted upward to more and more virtuous recipients.” Later developments in *dāna* include the notions that gifting yields “soteriological rewards” for the giver and that gifting is only to be done without any motive, “free from a visible purpose” (p. 207).

Brick’s essay reflects his immersion in the subject, his PhD dissertation, now published as a book (Brick 2015), having treated *dāna* as represented in the *Kṛtyakalpataru*.

16. If I could be permitted one quibble it is over the treatment of the consumption of alcohol and meat, including beef, found at pp. 230–32. The synchronic tone of the narrative there obscures well-known moments in the history of these consumables, which were not always prohibited in Hindu traditions.

17. While Kane, McClish notes, “essentially denies that the *nīti* tradition existed apart from Dharmaśāstra” (p. 257), arguing instead that the former is “properly speaking a part of dharmaśāstra,” McClish directly challenges this position. He instead argues that, “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” (p. 258). In prosecuting this argument McClish fleshes out the fascinating details of royal duty as articulated in the Dharmasūtras and Dharmaśāstras, and with them the ways in which the emphasis in *nīti* on successful statecraft is worked into

Chapter 21 offers a textured study of penology (*daṇḍa*) in the relevant sources. McClish there details both the complex ways in which “the king’s power to adjudicate disputes was routinely delegated to appointed judges” (p. 276) and—what is the more striking—the ways in which “non-state legal forums” such as the family, the guild, or assemblies held authority to try and punish (within limits) their memberships.<sup>18</sup> This survey of the “heterogeneous record” (p. 282) on *daṇḍa* constitutes one of the most compelling contributions of this book, because it subtly explores the ways in which royal power “never fully effaced the self determination of all groups in the realm” and in doing so illustrates precisely the very sophistication of the premodern Indian polity. Olivelle’s adjacent survey of *vyavahāra* or legal procedure (chap. 22), along with McClish’s review of “titles of law” (*vyavahārapadas*) (chap. 23), illustrates the very same, by putting into evidence just how impressively complex were the systems of legal adjudication in the Dharmasūtras and Dharmasāstras.<sup>19</sup> For, indeed, the texts elaborate sophisticated legal processes and a rich legal terminology that practically match those of modern courts. Theirs was a sophistication, I hasten to add, however, that did not ensure a modern civility or equality under the law.<sup>20</sup>

The final four chapters of Part II directly address religious practices. Brick surveys acts of penance (*prāyaścitta*) in chap. 24, this being a well-documented synopsis that illustrates the parallels between the respective strictures intended by *prāyaścitta* and *daṇḍa*, one perhaps most notable for illustrating so clearly what is often evident in the *dharma* traditions, namely, that caste does much to guide one’s fate in social and religious affairs.<sup>21</sup> Davis’s survey of *vratas* (chap. 25) next outlines the history of the term in early Vedic texts and the origins of the mature formation of these practices in the Purāṇas, and in doing so he chalks out an influence that women (who today frequently engage in the practices of keeping vows, as is well known) had on a tradition historically dominated by men.<sup>22</sup>

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the soteriological frame of the *dharma* tradition, which is based on the notion that it is the “whole duty of the king” that counts, not merely his political success. This approach might be fruitfully compared with Doniger 2016, which explores the directions of influence evinced in the *Kāmasūtra*, the *Arthasāstra*, and *Manusmṛti*.

18. See also Davis 2005. My own view is that this phenomenon, one of “intermediate realms of law,” is vital to our understanding of the lived experience in premodern South Asia, and it merits greater attention than it has received to date.

19. Among the innumerable nuggets of cultural information made available in this book is one found in Olivelle’s chapter on legal procedure (p. 289): autopsies were evidently commissioned at least on occasion, as the *Arthasāstra* (at 4.9) describes how a corpse coated in oil can reveal different causes of death by murder, including strangulation hanging, drowning, and poisoning.

20. Torture, for example, remained a live option for judges under particular circumstances, even if women, children, and “the insane” were exempted therefrom (pp. 288–89).

The more systematic and fundamental problem lies with the fact that the penology of the *dharma* traditions was “characterized by differential punishment based on status” (p. 273), meaning, of course, that caste bias tilted legal proceedings and procedures in favor of those of privilege, particularly Brahmins. So much is plainly evident in the “titles of law,” where “the categories of private transactions that can be litigated in royal courts” (p. 299) are determined in no small part by caste hierarchies.

21. This is so even as “in laying down rules for the performance of public penances Dharmasāstra texts repeatedly show a deep concern with the creation of social consensus” (p. 323); for, as Brick himself mentions, the “social consensus” in question is reflective of a “Brahmanical social order” (p. 324).

22. Pace Davis (p. 331): “Historically, women were practicing vows all along and probably to a greater extent than men were. Did that social reality overwhelm the Dharmasāstra 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 Dharmasāstra authors had embraced the Purāṇas, it must have become increasingly hard or unnecessary to reject some parts of the Purāṇas and not others.” And (pp. 331–32): “When it comes to women’s vows, my guess is that a theological innovation of the Purāṇas gradually gained full acceptance, after an

Knut A. Jacobsen (chap. 26) surveys yet another Purāṇa-based practice that was incorporated into the Dharmaśāstra literatures (most notably into *nibandha* works), that of pilgrimage or *tīrthayātrā*, a practice also attested in the *Māhātmyas* and the *Mahābhārata*, the evidence of the latter being the earliest extant textual testimony of the same.<sup>23</sup> He also properly notes the economic dimension of pilgrimage: the *Tīrthayātrāparvan* of the *Mahābhārata* specifies it as a practice particularly available to “poor persons” unable to pay for the Vedic sacrifice (p. 337). Finally (chap. 27), Richard H. Davis offers a compact and useful review of what he labels “temple Hinduism,”<sup>24</sup> a review that emphasizes the emergence of theistic traditions in Dharmaśāstric and other textual sources (most notably Śaiva tantric ones).

With this the present volume closes its thorough survey of the contents of the canon of Dharmaśāstric texts. What follows, in parts III and IV, exemplifies two general modes of engaging these materials beyond the sort of historical mapping and content surveys that respectively constitute the ambitions of parts I and II of *Hindu Law*. That is, one may choose either more deeply to examine the ways in which the writings on *dharma* influenced other cultural, intellectual, and textual traditions in South Asia, and vice versa; or, one may seek to think about or with the *dharma* texts on etic terms. Part III takes up the first endeavor, part IV the second.

Part III, including as it does only two chapters, is unfortunately short, given the possibilities. In it Donald Davis (chap. 28) offers a synoptic and—indeed—rather thorough treatment of the reception of the Dharmaśāstras in other traditions, including those of Sanskrit works of technical learning and the *Mahābhārata*; influences of the Dharmaśāstras as evidenced in epigraphic and other documentary sources; influences on colonial law; and the reception of the *dharma* tradition in post-Independence India. Gregory Schopen, in turn, provides (in chap. 29) a focused study of the possible influences of Buddhist works on the *dharma* literatures and vice versa, convincingly making the case that Kane was wrong in issuing his blanket assertion that “Buddhists had hardly any independent set of juristic ideas or works different from those of the brahmanical jurists.”<sup>25</sup> Both of these are fine contributions, but as I shall discuss below, they represent only the proverbial tip of the iceberg, with much more work along the lines they pursue being today both possible and necessary.

The essays of the fourth and last part of this volume proceed in various ways along the second path identified above for further study of the relevant textual materials. Some engage Dharmaśāstra works on etic terms, others deal with what is implicit but not explicitly stated therein. The results are, in my view, mixed, which perhaps is to be expected, given that the authors’ approaches are often somewhat experimental in nature. Ariel Glucklich (chap. 30) offers a speculative interpretation of “the body” in the source texts, one that concludes that “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

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initial period of critical and skeptical adoption of Purāṇic material. Full acceptance textually was bolstered by the social reality of women performing *vratas* as a key part of their religious lives.”

23. Jacobsen also rightly notes (pp. 342–45) that the *Tristhalisetu* is one of the most authoritative and significant works on pilgrimage in Sanskrit; it has been the subject of a full monograph (see Salomon 1985).

24. “Temple Hinduism,” as he notes on p. 347 of the present volume, was first described in Davis 1995: 27–31.

25. The quotation is found in Kane’s *History*, vol. 3: 640 and is cited by Schopen in the present volume at p. 383. The chapter deals with such concerns as the innovation of legal precedents (pp. 398–400), the elaboration of particular guild-style rules regarding the placement of the inheritance of sonless members of the community (pp. 386–90) (interestingly positing that the Buddhist Saṅgha might itself have been treated as a guild), and (what shows a clear precedence in Buddhist sources) the formation of permanent endowments and terms of monetary lending (pp. 390–91).

mechanism for upholding that order” (p. 418). Maria Heim (chap. 31) elaborates an “ecological approach to the study of the emotions” (p. 419), one that 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” (p. 420). Michaels (chap. 32) examines ritual in the context of the Dharmasāstras by considering their “polyvalent and polythetic aspects and specific elements” (p. 433), paying particular attention to (and dissenting from) Frits Staal’s theory of ritual as (semantically) “meaningless” in doing so. Andrea Gutiérrez (chap. 35) maps the “Embodiment of *Dharma* in Animals,” in particular the various ways in which *dharma* texts identify agents with particular animals or animal products in the course of engaging *dharmic* obligations. And Davis (chap. 37) seeks to excavate from between the lines the “Vaiśya *dharma*” that is disproportionately under-represented in the literature.

Two essays stand out among those printed in part IV. First, Jonardon Ganeri (chap. 33) offers an interpretive reading of the *Manusmṛti* to elicit from it the nature of the ascetic subject’s inattentive awareness as elaborated therein. The chapter is notable for bringing to life analytic philosophical categories of concern through this reading of Manu’s text. James McHugh, in turn, offers (chap. 34) an excellent and markedly learned study of material culture as presented in and beyond the Dharmasāstras. In particular, his study of (p. 455) “a suitably remote yet quite fascinating ‘dharmasāstric object’,” the *surādhvaja* or “*surā* banner,” surveys not only Dharmasāstric sources but also the *Mahābhārata*, the *Arthasāstra*, Jātaka stories, and a tantric textual source, all to determine what the banner could have represented in its day. The answer remains just somewhat inchoate, given the distance between research and object of study, but what can be known is fascinating. As McHugh sums up his study (p. 465), “a rather obscure 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) ... 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.”

McHugh concludes his essay as follows (p. 465):

In moving beyond a simple enumeration of textual data, we can tentatively compare aspects of Dharmasāstra (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, pre-modern 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.

One should bear this methodological suggestion in mind, I would like to suggest, in weighing the contributions of the present volume, as well the possibilities for the study of *dharma* texts in South Asian premodernity. For while one possibly could quibble here or there with one or another of the editorial practices that shaped this volume—the absence of an author index, for example, or the sometimes inconsistent use of abbreviations,<sup>26</sup> the

26. The most conspicuous example comes with various references to the *Mānavadharmasāstra* as Manu (chap. 1), *MDh* (chap. 9), *The Laws of Manu* and *MDh* (chap. 11), *MDh* and *Manusmṛti* (chap. 12), the *Mānava* (chap. 13), and the *Law Codes of Manu* (chap. 16). Of course, all serve their purpose, the only point being consistency in the convention is lacking.

sometimes haphazard application of editorial conventions,<sup>27</sup> or the occasional repetitions of content without cross-referencing<sup>28</sup>—these are, of course, very minor concerns.

There is, however, one area where this book could be supplemented, an area that McHugh's methodological recommendation points to. One way of stating the problem is to suggest that part III of this book should have been much longer than it has turned out to be, given the possibilities; or the approach McHugh suggests could have been integrated more uniformly into the various contributions of the present volume, particularly in part II. For, despite notable exceptions,<sup>29</sup> a number of the essays found in *Hindu Law* are defined by a tapering scope: the various texts on *dharma* are taken as their primary, and too often exclusive, area of focus (though attention is often paid also to the epics, particularly the *Mahābhārata*, along with a handful of other premodern sources). In a word, much more could have been done to develop our understanding of the *history* of the *dharma* traditions if the authors of the present volume had read more consistently across genres and with an historical eye so informed. To furnish but one example: the practice of gifting in *dharma* traditions raises the natural question of how the well-known custom of making donations to Buddhist institutions might have squared with the same.<sup>30</sup>

Elsewhere, it may be observed that the contributions to this volume generally tend to emphasize historical periods leading up to, but not extending much beyond, the fifth century CE. The essays in the present volume sometimes stop short of covering closely the contributions of the *nibandhas*, for example, which were composed beginning perhaps in the tenth century. Preference instead is given to the early periods of the formation of the Dharmasūtras and the canonical Dharmasāstric works, with substantial but somewhat lesser emphasis also placed on late-Vedic textual sources.<sup>31</sup> This, which I think is only an implicit bias for the earlier phases of the tradition, has, however, apparently led to a major lacuna in the present volume, namely, the absence of any substantial treatment of Buddhist or Hindu tantrism, the latter of which, at least, was examined in detail in Kane's *History*.<sup>32</sup>

Similarly, and as Davis notes (p. 375), the Śivadharmā corpus elicits in its contents obvious comparison with Dharmasāstric sources, and yet, apart from Davis having noted the existence of such works, little is said of them in the present volume.<sup>33</sup> Numismatic and

27. For example, authors sometimes cite the original text of their Sanskrit sources in block quotations printed prior to their translations, sometimes only in footnotes to the English translations appearing in the main body of text, and sometimes not at all.

28. See, e.g., reference to *Manusmṛti* 9.3 at both p. 137 and p. 159. Elsewhere, chap. 23 on titles of law repeats parts of what is found in chap. 22, for example. On the other hand, a book of this nature is not really meant to be read cover-to-cover, and some repetition is therefore necessary.

29. These include McHugh's essay, of course, but also Schopen's, and one must not forget the chapters of the book that traced the implications of Jamison's fascinating discovery, itself uncovered by way of access to a range of non-Sanskritic, non-Dharmasāstric sources such as the Aśokan inscriptions.

30. It bears repeating, however, that this book *is*, in fact, historically sensitive in the manner here recommended; it is only that the contributions are not uniformly so ordered. A certain degree of such inconsistency of methodological approach is, of course, all but unavoidable, given the sheer number of contributors to whom the editors have turned in preparing this book.

31. See for example the otherwise very strong chapter on legal procedure, which stops short (p. 298) at the cusp of an analysis of the *nibandha* literatures.

32. See Kane's *History*, vol. 5, pt. 2: 1031–51.

33. This is so even as recent scholarship into this pre-tantric Śaiva tradition at least promises the possibility of establishing new points of intersection in the history of religious practices of South Asia's premodernity—though in pursuing this end one must face the obstacle of the tentative dating of the works of the *dharma* literature, which was famously described by Lariviere as being constituted of a “chronological house of cards” (quoted by Schopen in the present volume, p. 384).

archaeological sources similarly are hardly mentioned or accessed in this volume. And while Davis is careful to note the importance of inscriptional sources of evidence in his review of the reception of the Dharmaśāstras (pp. 375–77), they are not dealt with at any great length anywhere in *Hindu Law*. Finally, a similar point could be made about the narrative literatures, which Davis is again careful to identify as a significant resource (pp. 374–75) even while it is one underexplored in the other chapters of *Hindu Law*.<sup>34</sup>

And yet, perhaps this line of criticism is better stated positively. After all, if McHugh's essay chalks out how cultural and social historians could and should engage the full panoply of textual and other sources in tandem—including by working across instead of largely within the boundaries of the emically defined genres of premodern textual production—then the present volume, in making accessible and *comprehensible* the contents, concerns, and relative chronology of the *dharma* literatures, would handily serve further to facilitate just this endeavor. That is, this volume furnishes in a compact and *usable* form all the vital data necessary to pursue an increasingly intersectional study of Dharmaśāstric traditions as they stand in relation to other South Asian religious and cultural movements of the relevant historical periods.

It is for this reason that I regret the absence of a proper conclusion to this book. Such a summary statement could have helped to make explicit what it is that I think the disparate chapters of this volume ultimately offer, namely, a history in the *longue durée* of a social institution—that of the *gṛhastha*—embedded as it is in a web of social (and political) institutions, an institution that while always changing here and there perdured in several of its particulars for well more than a millennium. It would have been particularly helpful, moreover, if such a conclusion could have included a summary of the editors' understanding of the periodization of particular doctrines and practices as might be culled from the various contributions to this volume, however provisional it might be. For indeed this important and valuable book makes abundantly clear the fact that the *dharma* traditions fundamentally shaped Hinduism and the political and social structures of South Asia, from the late Vedic period to at least the time of the British.<sup>35</sup> And a concise summary of what this book has established would have further facilitated what I hope and expect will inevitably come to be: a new, truly intersectional history (or, more precisely, histories) of premodern South Asian social, legal, cultural, and political institutions, one sensitive to the mutually constitutive formation of the same, often by and in the many various streams of premodern and early modern South Asian religions. Summed up in a word, *Hindu Law* has done nothing less than to wrench wide open the doors to groundbreaking avenues of new historical research into the laws, cultures, and religions of South Asia.

## Errata

p. xiii	<i>Yājñavalkya Dharmaśāstra</i>	→	<i>Yājñavalkya Dharmaśāstra</i>
p. 18	<i>dharmaparmāṇa</i>	→	<i>dharmapramāṇa</i>
p. 21	ritual sutras	→	ritual <i>sūtras</i>
p. 26	twentieth-century	→	twelfth-century
p. 27	assording	→	according
p. 28	DHARMAŚĀSTRIC	→	DHARMAŚĀSTRIC

34. For an example of engagement of Dharmaśāstric concerns in the narrative literatures, see Davis and Nemeć 2016.

35. And there can be no doubt that the editors are aware of the same. See, for example, Davis 2007, which makes the case for the pervasive cultural influence of the Dharmaśāstric tradition on Hinduism more generally.

p. 74	Dharmaśūtra	→	Dharmasūtra
p. 89	inasmuch they mark	→	inasmuch as they mark
p. 89	Devanabhaṭṭa	→	Devanabhaṭṭa
p. 100	asks asking	→	asking
p. 102	ubiquitous the	→	ubiquitous in the
p. 118	“However, whatever idea...”		[What is printed is a sentence fragment.]
p. 118	in the midst of section	→	in the midst of a section
p. 145	<i>evādahnāḥ</i>	→	<i>evāḍhanāḥ</i>
p. 147	in the Chapter 9	→	in Chapter 9
p. 163	[Footnote 39 is incomplete.]		
p. 189	Douglas (1966, 200)	→	Douglas (1966: 200)
p. 193	<i>bojya</i>	→	<i>bhojya</i>
p. 210	<i>samskāras</i>	→	<i>samskāras</i>
p. 215	<i>Māhabhārata</i> [x2]	→	<i>Mahābhārata</i> [x2]
p. 217	<i>Māhabhārata</i> [x3]	→	<i>Mahābhārata</i> [x3]
p. 218	<i>Māhabhārata</i>	→	<i>Mahābhārata</i>
p. 292	was	→	were
p. 351	Many	→	Manu
p. 351	<i>papa</i>	→	<i>pāpa</i>
p. 354	<i>Baudhāyagr̥hya°</i>	→	<i>Baudhāyanagr̥hya°</i>
p. 362	ṣmīdhara	→	Lakṣmīdhara
p. 375	<i>Rājatarāṅgaṇī</i>	→	<i>Rājatarāṅgiṇī</i>
p. 463	<i>Yājñavalkyasmṛti</i>	→	<i>Yājñavalkyasmṛti</i>
p. 489	<i>Caturvarga Cintāmaṇi</i>	→	<i>Caturvarga Cintāmaṇi</i>

## REFERENCES

- Brick, David. 2015. *Brahmanical Theories of the Gift: A Critical Edition and Annotated Translation of the Dānakāṇḍa of the Kṛtyakalpataru*. Harvard Oriental Series, vol. 77. Cambridge, MA: Harvard Univ. Press.
- Davis, Donald R., Jr. 2005. Intermediate Realms of Law: Corporate Groups and Rulers in Medieval India. *Journal of the Economic and Social History of the Orient* 48.1: 92–117.
- . 2007. Hinduism as a Legal Tradition. *Journal of the American Academy of Religion* 75.2: 241–67.
- . 2010. *The Spirit of Hindu Law*. Cambridge: Cambridge Univ. Press.
- , and John Nemeč. 2016. Legal Consciousness in Premodern Indian Narratives. *Law, Culture, and the Humanities* 12.1: 106–31.
- Davis, Richard H. 1995. Introduction: A Brief History of Religions in India. In *Religions of India in Practice*, ed. Donald S. Lopez Jr. Pp. 3–52. Princeton: Princeton Univ. Press.
- Doniger, Wendy. 2016. *Redeeming the Kāmasūtra*. New York: Oxford Univ. Press.
- Jamison, Stephanie W. 2019. The Term Gr̥hasṭha and the (Pre)history of the Householder. In Olivelle 2019. Pp. 3–19. New York: Oxford Univ. Press.
- Kane, Pandurang Varman. 1930–1962. *History of Dharmaśāstra: Ancient and Medieval Religious and Civil Law*. 5 vols. Poona: Bhandarkar Oriental Research Institute.
- Olivelle, Patrick. 1993. *The Āśrama System: The History and Hermeneutics of a Religious Institution*. New York: Oxford Univ. Press.
- . 2010. Dharmaśāstra: A Textual History. In *Hinduism and Law: An Introduction*, ed. Timothy Lubin, Donald R. Davis Jr., and Jayanth K. Krishnan. Pp. 28–57. Cambridge: Cambridge Univ. Press.

- , ed. 2019. *Gṛhastha: The Householder in Ancient Indian Religious Culture*. New York: Oxford Univ. Press.
- Rocher, Ludo, ed. and tr. 2002. *Jīmūtavāhana's Dāyabhāga: The Hindu Law of Inheritance in Bengal*. New York: Oxford Univ. Press.
- . 2012. *Studies in Hindu Law and Dharmaśāstra*. Edited by Donald R. Davis Jr. London: Anthem Books.
- Salomon, Richard. 1985. *The Bridge to the Three Holy Cities: The Sāmānya-Praghaṭṭaka of Nārāyaṇa Bhaṭṭa's Tristhalīsetu*. Delhi: Motilal Banarsidass.