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ARTICLE

FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA

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ABSTRACT

The legal treatises of ancient India, called *Dharmaśāstras*, are often read as records of the initial emergence of law from religion in South Asia. The *Dharmaśāstra*s teach the *dharma*, or "sacred duty," of different members of society. It is one of the *dharma*s of the king to adjudicate disputes that come before his courts, and it is widely accepted that a need to articulate the king's *dharma* led the composers of the *Dharmaśāstra*s over time to fashion rules for state courts, a body of law called *vyavahāra*. Scholars such as Henry Sumner Maine and Max Weber saw in the *Dharmaśāstra*s evidence of the disentanglement and rationalization of law, respectively. A close examination of our sources, however, shows that the law of royal courts emerged not within the *Dharmaśāstra* tradition, but within an adjacent and decidedly more secular tradition of statecraft. It was gradually absorbed into *Dharmaśāstra* texts, where it was reconfigured as sacred duty and its historical origins were obscured. This article argues that the early history of state law in India is best described, therefore, not as a transition from *dharma* to law, but as a transition from law to *dharma*.

KEYWORDS: *vyavahāra*, law, *nīti*, statecraft, Hindu law, *dharmaśāstra*, ancient India

INTRODUCTION

In 1967, Robert Lingat published *Les sources du droit dans le système traditionnel de l'Inde*.[1] It would become perhaps the most important monograph on *dharmaśāstra*, the expert tradition on Hindu law. Lingat titled the second half of his book, *Du dharma au droit*, in English, "From Dharma to Law." There he offers an account of how *la droit positif* developed in South Asia out of reflection on sacred duty: how "the rule of *dharma*, which possesses *authority* for society, could receive from it that constraining force which turned it into a rule of law."[2]

According to Lingat, the origin of law in South Asia can be traced in the early *dharmaśāstra* literature, a genre of texts that gives expression to the Brāhmaṇical orthodoxy and orthopraxy of the period. The first *dharmaśāstra* texts are conventionally known as *Dharmasūtra*s, and Lingat argues

1 An English translation of the work titles it *The Classical Law of India*. Robert Lingat, *The Classical Law of India*, trans. J. Duncan M. Derrett (Delhi: Oxford University Press, 1998). All references in this article are to this Oxford University Press edition of Derrett's translation.

2 Lingat, "Author's Preface," in *The Classical Law of India*, xiii (emphasis in original).

that their Brāhmaṇa composers were interested in teaching the *dharma*, or "sacred duty," of individuals in society.[3] Infractions of *dharma* were considered violations of divine command and cosmic order to be remediated through penance.[4] One also finds in the *Dharmasūtra*s, however, "precepts of a juridical character,"[5] which is to say "rules which people may be constrained by an external or physical sanction to observe and which amount to specifically juridical duties."[6] For Lingat, these represent, at least in form, the "rules of law"[7] within the *dharmaśāstra* corpus. Infractions of them are violations of the "temporal order, which derived from the king's power."[8] Such rules were not included in the *Dharmasūtra*s because of any independent interest in state law or the temporal order, but only insofar as a rule of this kind might also happen to express a sacred duty, "to certify the *virtue* of the act in question."[9]

Nevertheless, "[t]hough fairly scanty in the *dharma-sūtras*, precepts of a juridical character took a more and more important place in the *dharma-śāstras*. At the same time, they were expressed in a more and more certain and scientific form."[10] Indeed, the later *Dharmaśāstra*s of Nārada, Bṛhaspati, and Kātyāyana are almost wholly concerned with such rules. Lingat accounts for their articulation as part of the unfolding obligation of Brāhmaṇas to instruct on the *dharma* of kings:

> Their intervention seems to have been a consequence, a natural prolongation of the teaching of *dharma*; it was imperceptibly and almost by force of circumstances that spiritual preceptors had to emerge as jurisconsults. Having to teach the duties of the four *varṇas* [i.e., social classes], they could not fail to specify those which were particular to the Kṣatriyas [i.e., nobles and warriors]. . . . To the Kṣatriyas, and especially to him amongst them who is chosen to be king, belong equally the cares of government and the mission to ensure peace amongst the subjects by a good administration of justice.[11]

Motivated by an obligation to teach the king's *dharma* and spurred on by the increasing service of Brāhmaṇas as royal counselors and jurisconsults, *dharmaśāstra* authors gradually gathered various secular customs and forged them into tracts meant to advise judges in state courts.[12] Hence, the first stages of a protracted journey "from *dharma* to law."[13]

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3 Lingat, *The Classical Law of India*, 65.

4 Lingat, 65.

5 Lingat, 135.

6 Lingat, "Author's Preface," x.

7 Lingat, "Author's Preface," x.

8 Lingat, *The Classical Law of India*, 65.

9 Lingat, 135 (emphasis in original). Compensation for wrongs, as well as "all private disputes which could arise between individuals," were salient to the temporal order and the king's authority. Their "solution did not interest Brahmins in their capacity as *gurus*, since it was to be found, not in the *ācāra* or religious usage, but in practice, in custom as we understand it." Lingat, 65.

10 Lingat, 135.

11 Lingat, 65.

12 Lingat, 71–72, 76.

13 Lingat, 133. In Lingat's account, the *Dharmasūtra*s and *Dharmaśāstra*s record the initial appearance in South Asia of rules that "could have been taken as rules of law by society," Lingat, "Author's Preface," xi. Whether they were, in fact, taken as rules of law cannot be determined based on existing evidence according to Lingat. We have the rules themselves, but "no legal instruments such as legislative documents and reports of judicial decision" that might demonstrate their use: "we are in a position to grasp the machinery, but not its end-product," Lingat, "Author's Preface," xi. This only comes, according to Lingat, in the form of the medieval commentaries composed on the *Dharmasūtra*s and *Dharmaśāstra*s. For it is in the commentaries, he argues, that we witness "[a] technique of interpretation" that demonstrates the actual application of these rules and gave birth to "[t]he law which was effectively in force [until the British period]." Lingat, *The Classical Law of India*, 143. The final stage of the

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Lingat's model relies on a number of assumptions that have come under critique, not least of which is the exclusive association of law with the state.[14] Few, however, have questioned what I see as one of his core assumptions, namely that the law of state courts, called *vyavahāra*, emerged within the *dharmaśāstra* tradition, motivated by expanding reflection on *dharma*. We might refer to as an *orthogenetic* model[15] of state law in South Asia, according to which it emerged as an "internal development of Vedic thought."[16] The Vedic tradition coalesced around the beginning of the first millennium BCE in the form of various Brāhmaṇical lineages that developed methods for transmitting the sacred scriptures called the Vedas and the elaborate sacrificial cult to which they were attached. In the middle and latter half of the first millennium, these Brāhmaṇical lineages composed ancillary texts called Vedāṅgas (limbs of the Veda) that focused on disciplines such as grammar, lexicography, and astronomy, which were necessary to support the study of the Vedas and the proper performance of the sacrifice. Among these Vedāṅgas were the first *Dharmaśāstra*s, texts instructing on the education of Vedic students, the conduct of Brāhmaṇas and other classes, and the practice of statecraft, including state law.

The *dharmaśāstra* tradition was active for around two millennia in South Asia, roughly the third century BCE to the eighteenth century CE.[17] The early *dharmaśāstra* texts encode Brāhmaṇical orthodoxy and orthopraxy as they had developed within the lineages of the Vedic tradition. They are eclectic collections of rules covering a broad array of social practices, such as diet, hospitality, purity, ritual, education, vocation, dispute resolution, and statecraft. Rules for the state are given under the rubric of *rājadharma* (the sacred duties of kings or the sacred laws for kings). The principal component of *rājadharma* across the early *dharmaśāstra* texts is *vyavahāra*, rules for the adjudication of disputes between private parties in royal courts. Over the first thousand years of the *dharmaśāstra* tradition, *vyavahāra* went from a minor, even ancillary, topic to the main focus of the most important *dharma* texts. In the earliest phase of the tradition (ca. third century BCE to first century CE), *vyavahāra* is treated only cursorily, although interest in it does seem to grow during this time. In the mature phase of the tradition (ca. second–eighth centuries CE), *vyavahāra* becomes one of the main topics of *dharmaśāstra*. By the fifth century it had become the most important *dharmaśāstra* topic, with texts such as that of Nārada (ca. fifth–sixth centuries

journey "from *dharma* to law" occurred when British officials misunderstood the *dharmaśāstra* literature to have "the status of legislation" and sought to apply it as such. Lingat, 136.

14 One of the more sustained critiques has come from Rocher, who argues "that Dharmaśāstra is first and foremost a scholarly and scholastic tradition, not a practical legal tradition," Donald R. Davis, Jr., introduction to *Studies in Hindu Law and Dharmaśāstra: Ludo Rocher*, ed. Donald. R. Davis, Jr. (London: Anthem, 2012), 17–36, at 18–19. It was "divorced from the practical administration of justice," Ludo Rocher, "Law Books in an Oral Culture: The Indian Dharmaśāstras," in Rocher, *Studies in Hindu Law and Dharmaśāstra*, 103–118, at 117. It follows that the commentaries are not attempts to "codify the laws of their respective provinces," Ludo Rocher, "Hindu Conceptions of Law," in Rocher, *Studies in Hindu Law and Dharmaśāstra*, 39–57, at 55, and cannot be taken as reflecting law as practiced. Another major critique is given by Davis, building upon arguments made by Rocher, that "law is not merely an isolatable subset of *dharma* in Dharmaśāstra, but rather an integral and essential part of all *dharma*," Donald R. Davis, Jr., "Hinduism as a Legal Tradition," *Journal of the American Academy of Religion* 75, no. 2 (2007): 241–67, at 244. Hence, there can be no transition "from *dharma* to law."

15 To borrow the term from Jan Heesterman, *The Inner Conflict of Tradition: Essays in Indian Ritual, Kingship, and Society* (Chicago: University of Chicago Press, 1985), 40, who uses it to explain the emergence of renunciation within the Vedic tradition. Note that this is not a term of self-identification among scholars of Hindu law.

16 Heesterman, *The Inner Conflict of Tradition*, 40.

17 The dates used in this essay follow Patrick Olivelle, "Social and Literary History of Dharmaśāstra: The Foundational Texts," in *Hindu Law: A New History of Dharmaśāstra*, ed. Patrick Olivelle and Donald R. Davis, Jr. (Oxford: Oxford University Press, 2018), 15–29, at 21; Patrick Olivelle, "Dharmaśāstra: A Textual History," in *Hinduism and Law: An Introduction*, ed. Timothy Lubin, Donald R. Davis, Jr., and Jayanth K. Krishnan (Cambridge: Cambridge University Press, 2010), 28–57, at 56–57.

CE) and Kātyāyana (ca. seventh–eighth centuries CE) devoted almost exclusively to *vyavahāra* and Bṛhaspati (ca. seventh–eighth centuries CE) concerned preponderantly with it.[18]

An orthogenetic model proposes that the waxing of *vyavahāra* within *dharmaśāstra* is itself a record of the emergence of state law in South Asia and that the impetus behind the codification and development of rules on *vyavahāra* was to support the social conditions necessary for the flourishing of the Vedic tradition.[19] Such a reading conforms with influential theories of the origin of law offered by scholars like Henry Sumner Maine and Max Weber. Maine argued that law emerged historically as it disentangled itself from religion and morality.[20] Weber posited a process of "rationalization" by which law emerged from out of "charismatic legal revelation through 'law prophets.'"[21] Both scholars saw proof of their theories in the early *dharmaśāstra*s, even though both believed that the full development of law in South Asia had been attenuated under the influence of a dominant priestly class.[22] The view persisted among most British scholars that *dharmaśāstra* was "representative of an early phase of legal evolution in which law and religion were originally confused, then began to be separated."[23] Some have dissented from this position because they do

18 In the words of Olivelle, "After Yājñāvalkya [ca. fourth–fifth centuries CE], there appears to have been a focus within the expert tradition of Dharmaśāstra on law and legal procedure," Olivelle, "Dharmaśāstra: A Textual History," 47. Derrett notes also in this period that "[t]he law can be seen progressing in two paths," namely between the texts focused on *vyavahāra* and those with a devotional bent, such as the *Viṣṇusmṛti*, J. Duncan M. Derrett, *Dharmaśāstra and Juridical Literature* (Weisbaden: Otto Harrassowitz, 1973), 37. Texts of the former type "seem to adopt a 'secular' tone," while the *Viṣṇusmṛti* is "a bridge between the philosophical Hinduism of Manu … and the epics on the one hand, and the sectarian Purāṇas on the other," Derrett, *Dharmaśāstra and Juridical Literature*, 37. The second millennium of the *dharmaśāstra* tradition is characterized by the production of commentaries on the earlier texts and digests of them called *nibandha*s. Rocher, "Hindu Conceptions of Law," 55–56, tells us that "[t]he commentaries *stricto sensu* do not in any way attach greater importance to the legal sections of the ancient texts than they do to any other section of the *dharma*, nor do they treat them in any different way."

19 Lingat held that the substance of state law found in the *dharmaśāstra*s had its origin in custom or some non-Vedic source, but that its codification and formalization belonged to the composers of the *Dharmaśāstra*s. See Lingat, *The Classical Law of India*, 76; Derrett, *Dharmaśāstra and Juridical Literature*, 21–22; J. Duncan M. Derrett, "Sir Henry Maine and Law in India: 1858–1958," in *Essays in Classical and Modern Hindu Law*, vol. 2, *Consequences of the Intellectual Exchange with the Foreign Powers* (Leiden: Brill, 1977), 260–75, at 267–68. Derrett is preceded in this by Nares Chandra Sen-Gupta, *Evolution of Ancient Indian Law* (London: Arthur Probsthain, 1953), 13, who recognized that custom and usage were the ultimate sources of law, even if "customs which were studied by the scholars of the community assembled in pariṣads tended to crystalize into definite rules which were embodied in the manuals of law in these schools. These manuals became the Dharmasūtras of the particular schools."

20 Henry Sumner Maine, *Ancient Law, Its Connection with the Early History of Society, and Its Relation to Modern Ideas* (New York: Charles Scribner, 1864), 15, 74; Henry Sumner Maine, *Dissertations on Early Law and Custom* (New York: Holt, 1883), 5. Maine, working in an era in which access to quality Sanskrit translations of the *dharmaśāstra* was comparatively lacking, offered a more general orthogenetic account of the birth of "true civil law" in South Asia: "[g]radually there arose in these schools [of *dharmaśāstra*] the conviction that, for the purpose of regulating Conduct by uniform rules, it was a simpler course to act upon the rulers of men then on men themselves, and thus the King was called in to help the Brahman and to be consecrated by him. The beginning of this alliance with the King was the beginning of true civil law," Maine, *Dissertations on Early Law and Custom*, 44.

21 Max Weber, "Economy and the Law," in *Economy and Society: An Outline of an Interpretive Sociology*, ed. Guenther Roth and Claus Wittich, 2 vols. (Berkeley: University of California Press, 1978), 2:641–900, at 882.

22 Weber, "Economy and the Law," 816–17; see also Maine, *Dissertations on Early Law and Custom*, 263–64.

23 Robert Yelle, *The Language of Disenchantment: Protestant Literalism and Colonial Discourse in British India* (New York: Oxford University Press, 2013), 147. One of the more eloquent dissenters to this position is J. Duncan M. Derrett, who called this argument "naïve" in his *Religion, Law and the State in India* (Toronto: Collier-Macmillan Canada, 1968), 96, 97. See also J. Duncan M. Derrett, "Sir Henry Maine and Law in

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not consider law and religion to have been confused originally in *dharmaśāstra*[24] and others because they find that dividing *dharmaśāstra* into "law" and "religion" distorts the tradition.[25] But few have questioned whether the law of royal courts evolved within *dharmaśāstra* at all.

This essay does not aim to establish the nature of law, its relation to religion, or its ultimate origin in South Asia. Instead, I will present historical evidence that *vyavahāra*, the law of royal courts, did not emerge within the tradition of *dharmaśāstra* nor within the Vedic tradition more generally. Moving forward arguments made by Meyer,[26] Vigasin and Samozvantsev,[27] and Olivelle and McClish,[28] among others, I argue that *vyavahāra* emerged as part of a broad but coherent expert tradition of statecraft, called, variously, *kṣatravidyā* (the discipline of rule), *daṇḍanīti* (leading by the staff), *rājaśāstra* (the royal science), or *arthaśāstra* (the science of success). The formalization of rules of *vyavahāra* was prompted not by a need to articulate the sacred duties of kings or preserve the social conditions necessary for the flourishing of the Vedic tradition, but by the needs of political leaders to process disputes over everyday transactions arising among their subjects. The appearance of rules related to *vyavahāra* in the early *dharmaśāstra* texts should not, I argue, be read as a process of emergence, disentanglement, or rationalization, but instead as a process of appropriation. As part of this appropriation, the rules of *vyavahāra* were borrowed from a more or less secular context within the statecraft tradition and provided with a fictional origin (the Vedas) and embedded in a new normative framework (*dharma*), both of which obscured their early history and particular normative characteristics. It is this early history of *vyavahāra* that I hope to reclaim in this essay, demonstrating that the development of *vyavahāra* in ancient India was characterized not by a transition from *dharma* to law, but by a transition from law to *dharma*.

VYAVAHĀRA, *DHARMAŚĀSTRA*, AND LAW

The term *vyavahāra* itself has many meanings, which are explored throughout this article, but as a technical legal term its general semantic range is captured best by the term *litigation*.[29] As a body of law, *vyavahāra* contains rules to be used by royal judges when reaching a decision in a dispute

India," 270–71. Even though he argued that the rules of *vyavahāra* "did not derive from the Veda," Derrett still argues that the *dharmaśāstra* jurists made them into "a cogent, coherent, and plausible corpus," J. Duncan M. Derrett, *Dharmaśāstra and Juridical Literature*, 21; see also Derrett, "Sir Henry Maine," 47–48.

24 Derrett, *Religion, Law and Society*, 96, 97; Derrett, "Sir Henry Maine," 270–71.

25 See Rocher, "Hindu Conceptions" and "Law Books"; Davis, introduction to Rocher, *Studies in Hindu Law and Dharmaśāstra*, and Yelle, *Language of Disenchantment*.

26 Johann Jakob Meyer, *Über das Wesen der altindischen Rechtsschriften und ihr Verhältnis zu einander und zu Kauṭilya* [On the nature of the ancient Indian legal texts and their relationship with each other and with Kauṭilya] (Leipzig: Otto Harrassowitz, 1927), 34–39.

27 A. A. Vigasin and A. M. Samozvantsev,. *Society, State and Law in Ancient India* (New Delhi: Sterling Publishers, 1985), 27–59.

28 Patrick Olivelle and Mark McClish, "The Four Feet of Legal Procedure and the Origins of Jurisprudence in Ancient India," *Journal of the American Oriental Society* 135, no. 1, (2015): 33–47.

29 On meanings of the term *vyavahāra* see Pandurang Vaman Kane, *History of Dharmaśāstra*, vol. 3, *Ancient and Mediaeval Religious and Civil Law in India*, 2nd ed. (Poona: Bhandarkar Oriental Research Institute, 1973), 245–52; Patrick Olivelle, ed., with David Brick and Mark McClish, "*vyavahāra*," in *A Sanskrit Dictionary of Law and Statecraft* (New Delhi: Primus Books, 2015), 371–72; and Patrick Olivelle, *A Dharma Reader: Classical Indian Law* (New York: Columbia University Press, 2017), 38–44. The term *vyavahāra* is most often translated in secondary literature as *legal procedure*, following its usage in some later texts, Kane, *History of Dharmaśāstra*, 246. As I explain later, I find this term too narrow. The word *vivāda* (dispute) is sometimes used as a synonym for *vyavahāra*, although not, to my knowledge, before the *Arthaśāstra*.

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between private parties.[30] The earliest definition of *vyavahāra* comes from the *Dharmaśāstra of Yājñavalkya* (ca. fourth to fifth century CE):

> *smṛtyācāravyapetena mārgeṇādharṣitaḥ paraiḥ |*
> *āvedayati ced rājñe vyavahārapadam hi tat ||*
>
> If someone has suffered an injury inflicted by others in a manner that is opposed by *smṛti* [e.g., the *Dharmaśāstra*s] or the norms of conduct, and he makes this known to the king, that is a subject of litigation (*vyavahāra*).[31]

Vyavahāra is initiated when one party to a private transaction feels themselves to have suffered an injury by the other party and voluntarily files a formal complaint with a royal court. The rules of *vyavahāra* are divided between procedural guidelines, sometimes called *vyavahāramātṛkā* (the source of *vyavahāra*), and the norms governing private transactions themselves, called *vyavahārapada*s (the feet of *vyavahāra*). These rules are not themselves described as being legally binding, but serve as authoritative guidelines for reaching a verdict, which is then to be enforced on the litigants by the king.[32]

The many legal meanings of *vyavahāra*—whether *litigation*, *legal procedure*, *rules governing transactions*, *lawsuit*, or, simply, *law*—all converge on one feature that defines *vyavahāra* over against all other rule sets and normative orders presented in the *dharmaśāstra*s: *vyavahāra* is understood exclusively, paradigmatically, and unambiguously as the law practiced in royal courts. Instruction on *vyavahāra* is directed toward the king and his judicial officials and not to any other legal authority. The substantive rules of *vyavahāra* are applicable only to disputes adjudicated by royal judges.[33] So close is the connection between *vyavahāra* and state courts that *vyavahāra* becomes the term for the legal procedure of those courts itself. Our sources sometimes advise state officials to make formal decisions based on other bodies of rules, and such cases might imply the existence of other kinds of state courts or tribunals.[34] But, only *vyavahāra* is discussed in any detail and unambiguously associated with a widespread tradition of courtroom law, one

30 Two of the best recent overviews of *vyavahāra* can be found in Donald R. Davis, Jr., *The Spirit of Hindu Law* (Cambridge: Cambridge University Press, 2010), and Patrick Olivelle, *A Dharma Reader*.

31 Yājñavalkya Dharmaśāstra 2.5. A list of the primary sources quoted or cited appears at the close of this article. Unless otherwise noted, all translations are mine.

32 Derrett, *Dharmaśāstra and Juridical Literature*, 135–42.

33 By *substantive law* I mean *vyavahāra* rules identifying criminal behavior, contractual obligations, or penalties to be assessed. State courts might resort to other norms, but these would have represented bodies of customary law that had their origin and principle use among the private groups to whom they pertain. When such bodies of customary law are relied upon in royal courts, their substantive rules are applied through the procedures delineated by *vyavahāra*. See Olivelle and McClish, "The Four Feet of Legal Procedure."

34 The most prominent of these are rules to be applied for eliminating *kaṇṭaka*s (thorns), persons harmful to the king or public safety. In the extant *Arthaśāstra* (chapter 4) this area of law is called *kaṇṭakaśodhana* (clearing thorns), and it is described institutionally in parallel to the *dharmasthīya* courts where *vyavahāra* is practiced (KAŚ 4.1.1). R. P. Kangle did not believe these to be criminal courts; see R. P. Kangle, *The Kauṭilya Arthaśāstra, Part III: A Study* (Bombay: University of Bombay Press, 1965), 233. Olivelle has argued that they were: Patrick Olivelle, "Kaṇṭakaśodhana. Courts of Criminal Justice in Ancient India," in *Devadattiyam: Johannes Bronkhorst Felicitation Volume*, ed. François Voegeli et al. (Bern: Peter Lang, 2012), 629–41. I am less convinced. The *Nārada Smṛti* deals with the same rules as a part of *vyavahāra* called *prakīrṇaka* (miscellany), in which the king is depicted as bringing cases against criminals himself within the framework of *vyavahāra*. The *Arthaśāstra* also bears witness to forms of administrative law and regulations applied in what are presumably court-like settings (e.g., 2.8.20–31).

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described more or less consistently over the course of centuries. For that reason, I refer to *vyavahāra* generally—both its procedural and substantive rules—as *the law of royal courts* and sometimes call it *state law* as shorthand, even though it must be recognized that by this I am referring only to the state's activity in the adjudication of private disputes. Certainly, much within *vyavahāra* has little to do with state interests or practices, and the relationship between the state and law in ancient India was much broader and more complex.

When we encounter *vyavahāra* rules in the early *dharmaśāstra*s, however, they are also presented as *dharma*, or sacred duty. According to the *dharmaśāstra* tradition, illustrious sages of the past gathered the sacred injunctions scattered throughout the divinely revealed Vedas and organized them into the *dharmaśāstra*s.[35] It would follow from this that every rule presented in the *dharmaśāstra*s is a divine command expressing a sacred obligation.[36] Specifically, rules of *vyavahāra* are rendered within *dharmaśāstra* as part of *rājadharma* (the sacred laws for kings). As such, they express a sacred royal duty to resolve disputes among the king's subjects.[37] Their procedural and substantive rules would also, as *dharma*, appear to represent the sacred duties of judges and individuals who are party to a private transaction, respectively.[38] As *dharma* these rules are no longer advisory: they are binding. Sanction for their breach is automatic and occurs through unseen mechanisms of enforcement that bring negative consequences in both this life and the next, such as *karma* or divine punishment.

Framing rules of *vyavahāra* as *dharma* in this manner ascribes to them an additional set of normative characteristics that complicates their authority, object, and intent. This created interpretive problems for medieval *dharmaśāstra* commentators, who disagreed on the legal authority of the *vyavahāra* rules in their root texts.[39] Efforts were made to distinguish between *dharmaśāstra* rules that express sacred obligations, those that express temporal obligations, and those that express both. The well-known jurist and commentator Medhāthiti, for instance, argued that most *vyavahāra* rules were not based on the Veda and therefore did not carry sacred authority,[40] while others interpreted all *dharmaśāstra* rules as sacred injunctions. The result is that, in the words of Lariviere, "[t]here is . . . a lack of unanimity on the subject of the Vedic basis for each injunction in the dharmaśāstras."[41]

We might say, then, that *vyavahāra* as part of *dharmaśāstra* is normatively overdetermined. Establishing the source of a rule of *vyavahāra* (divine/temporal), its legal authority (binding/advisory), its object (king/judge/litigant), and its purpose (public order/upholding *dharma*) all depend on certain interpretive choices. Scholars like Maine, Lingat, and Derrett see *vyavahāra* as normatively distinct

35 Sankararama C. Sastri, *Fictions in the Development of the Hindu Law Texts* (Adyar: Vasanta Press, 1926), 74.

36 At least, this appears to have been the understanding of the early *dharmaśāstra* writers themselves. J. Duncan M. Derrett, "The Concept of Law according to Medhāthiti, A Pre-Islamic Indian Jurist," in *Essays in Classical and Modern Hindu Law*, vol. 1 (Leiden: Brill, 1976), 174–97, at 179. Some later jurists, such as Medhāthiti, argued that *vyavahāra* rules, like all rules for the king, were not sacred obligations. See below.

37 Kane, *History of Dharmaśāstra*, 242–43.

38 Derrett, "Concept of Law," 179.

39 The tradition thinks of sacred authority as an external quality inhering in certain rules because they were revealed in the Vedas. This provenance could be assumed for any rule of *dharmaśāstra* that was deemed *adṛṣṭārtha* (with an unseen purpose), meaning that it did not have a practical effect. The unpracticalness of such rules, that they served unseen ends, was taken as evidence of their Vedic origin. Rules with an evidently practical purpose were *dṛṣṭārtha* (with a seen purpose), and, as such, did not bear sacred authority. The application of these categories, however, was contested. On this topic, see Derrett, "Concept of Law," 187–92; Richard Lariviere, "Law and Religion in India," in *Law, Morality, and Religion: Global Perspectives*, ed. Alan Watson (Berkeley: Robbins Collection Publications, University of California, Berkeley, 1996), 75–94.

40 Derrett, "Concept of Law," 182–83, 187–92.

41 Lariviere, "Law and Religion," 86.

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from *dharma* based on formal differences between each as different types of rules, particularly based on a distinction between "legal commands" and "religious commands."[42] For such scholars, the concept of "law" is most pertinent to the analysis of *dharmaśāstra* as a means of distinguishing *vyavahāra* from other parts of *dharmaśāstra*, which must be classified as something other than law, such as "ritual" or "religion."[43] Other scholars have championed the traditional *dharmaśāstra* hermeneutic that rules of *vyavahāra* can only properly be understood as part of *dharma*.[44] They argue that, because the tradition generally did not see *vyavahāra* rules as fundamentally distinct from other rules of *dharma*, neither should we. *Vyavahāra*, it would follow, is not the *legal* part of *dharmaśāstra*. Instead, the concept of *dharma*, consisting of an eclectic variety of rule sets and normative complexities, represents a uniquely Hindu approach to law itself.

This is not the place to engage in an extended survey of the issues at stake,[45] but I think that it is misguided to champion either of these approaches as invariably preferable. It seems to me that both have their merits, and a review of the secondary literature shows that nearly all *dharmaśāstra* scholars use the term *law* productively in at least two ways: (1) to describe certain parts of *dharmaśāstra*, particularly *vyavahāra*, over against the rest; and (2) to describe all of *dharmaśāstra*.[46] Here, it may be useful to recall Twining's distinction "between law as an analytic concept, law as an organizing concept, and law as a rough way of designating a scholarly field or focus of attention."[47] If we want to engage in a formal analysis to differentiate the normative characteristics of rules in the *dharmaśāstra* corpus, it will make sense to use an analytic concept of law. If we want to understand the connection between these rules, we may want to use an organizing concept of law. If we want to explain the history or form of a given text or passage, we may find it productive, even necessary, to alternate between different approaches.[48]

I identify *vyavahāra* in my title as *law* not because I wish to deny that status prima facie to other parts or aspects of *dharmaśāstra* nor because I wish to champion a specific definition of law, but because from a historical perspective *vyavahāra* did exist as a legal tradition—as *law*—prior to its incorporation into *dharmaśāstra* and the attendant reconfiguration of its normative characteristics. Lingat's argument is that *dharmaśāstra* was, in origin, something other than law and that it gave birth to law, primarily in the form of *vyavahāra*: "from *dharma* to law." My argument is that *vyavahāra* was already law, and when it was integrated into *dharmaśāstra*, it became *dharma*: "from law to *dharma*." This formulation renders *vyavahāra*-as-*dharma* as the explicandum and implies that it is something other than "law." This is only an unfortunate artifact of the difficulty in translating between legal cultures. It might be preferable to say that *vyavahāra* was a kind of law that became another kind of law within *dharmaśāstra*, but that would make a terrible title. At any

42 See Derrett, *Religion, Law and the State*, 75–96.

43 See, e.g., Derrett, *Religion, Law and the State*, 99.

44 Stated most forcefully in K. V. R. Aiyangar, "Preface," in *Rājadharma* (Adyar: Adyar Library, 1941) xiii–xv. See also, Rocher, "Hindu Conceptions"; Davis, "Legal Tradition."

45 Two good overviews of these issues are Davis, "Legal Tradition," and Davis, introduction to Rocher, *Studies in Hindu Law and Dharmaśāstra*.

46 See Davis, "Legal Tradition," 243–44.

47 William Twining, "General Jurisprudence," *University of Miami International and Comparative Law Review* 15, no. 1 (2014): 1–59, at 48.

48 As Simon Roberts has pointed out, predominant conceptions of law are drawn from Western "folk categories," Simon Roberts, "Against Legal Pluralism: Some Reflections on the Contemporary Enlargement of the Legal Domain," *Journal of Legal Pluralism and Unofficial Law*, no. 42, (1998): 95–106. Its application to non-Western traditions is bound to both distort and reveal. The costs and benefits of a given approach are determined by the definition of law used and the goals of our inquiry, but it is not illegitimate out of hand to use law as an analytical category to differentiate *vyavahāra* and *dharmaśāstra*.

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rate, I leave such analyses to future studies. The purpose of this article is to establish the initial independence of the legal tradition of *vyavahāra* from *dharmaśāstra* as a historical fact, albeit one that bears on the proper understanding of their theoretical relationship.

VYAVAHĀRA IN VEDIC TRADITION

There is no discussion focused on *vyavahāra* or dispute resolution in Sanskrit literature before the first *dharmaśāstra*s (discussed below), although certain legal principles found in the *dharmaśāstra*s can certainly be traced in texts of the Vedic tradition.[49] Rather more productive for understanding the emergence of *vyavahāra* as a legal tradition is an examination of the development of the term *vyavahāra* and related forms in the Vedic tradition up to the period of the early *dharma* texts.[50]

Etymologically, *vyavahāra* breaks down into two preverbs (*vi* + *ava* = *vyava*) and the verbal root *hṛ*, meaning *to bear*. The earliest use of forms derived from *vyava* + *hṛ* can be found in texts of the Early and Middle Vedic periods (ca. 1200–600 BCE). The *Kāṭhaka Saṃhitā* of the *Kṛṣṇa Yajurveda* refers to a *bali* offering made during the *ṛtugraha* offerings as *vyavahāra*.[51] The meaning of the term there is not entirely clear, but it may mean an offering that has been "used" or "exchanged" by parties during the rite. The verbs *vyavāharanta* and *vyavaharanti* occur in the same passage of the *Jaiminīya Brāhmaṇa*, where both simply mean "to make use of" or "to employ," in this case, the sacred fire, Agni.[52] A similar meaning is found also in later texts. The early lexicographer

49 See, for example, Timothy Lubin, "Custom in the Vedic Ritual Codes as an Emergent Legal Principle," *Journal of the American Oriental Society* 136, no. 4 (2016): 669–87.

50 The texts of the Vedic tradition are Sanskrit treatises authored by Brāhmaṇas between about 1200 and 300 BCE, although production of texts in these and ancillary genres continued for some time after. They include not only the Vedic Saṃhitās themselves, but also the Brāhmaṇas, Āraṇyakas, and Upaniṣads and some of the early ancillary disciplines, such as those of grammar and ritual. The *Dharmaśāstra*s, which begin to be composed at the end of this period, are a continuation of the Vedic tradition inasmuch as they codify and build upon rules for conduct that had developed therein. I include in my discussion here a review of the *Śrautasūtra*s and *Gṛhyasūtra*s as well as works on lexicography and grammar, although I am aware that some of these were composed contemporaneously with the early *dharma* literature. I do not include here occurrences of *vyavahāra* and related terms in the *Atharvaveda Pariśiṣṭa*s (36.23.1; 44.2.4; 69.5.3; 72.4.2), given that their dating is uncertain and some were certainly composed after the period in question. One of these, at least, appears to use *vyavahāra* in a legal sense (72.4.2).

51 *Kāṭhaka Saṃhitā* 28.2.

52 *Jaiminīya Brāhmaṇa* 1.172. Translation from H. W. Bodewitz, trans., *The Jyotiṣṭoma Ritual: Jaiminīya Brāhmaṇa I, 66–364* (Leiden: Brill, 1990), 97. In Wilhelm Caland's text of the *Jaiminīya Brāhmaṇa*, the word *vyavahāram* also occurs twice (3.31), seemingly an adverb that Caland renders with *fortwährend ihre Gestalt wechselnd*: constantly changing their shape, Wilhelm Caland, ed. and trans., *Das Jaiminiya-Brāhmaṇa in Auswahl* [Selections from the *Jaiminīya-Brāhmaṇa*] (Amsterdam: Johannes Müller, 1919), 232. Instead of *vyavahāra* in this passage, however, the critical edition of Raghu Vira and Chandra gives *vyavaṃhvāraṃ*, with *vyavahāraṃ* and *vyavaṃhāraṃ* as variant readings for the first and second instances, respectively. See Raghu Vira and Lokesh Chandra, eds., *Jaiminiya Brahmana of the Samaveda*, Book 3 (Nagpur: International Academy of Indian Culture, 1954), 367. So, too, Caland attests *vyavahāram* four times in the *Vādhula Anvākhyāna Brāhmaṇa* (3.27 x2; 4.33 x2). The two passages, each using *vyavahāram* twice, are nearly identical, but he translates the term in the first as (*immer*) *trennend* ([always] separating) and in the second as *abwechselnd* (alternately). For the former, see Wilhelm Caland, "Eine dritte Mitteilung über das Vādhūlasūtra" [A third communication about the Vādhūlasūtra], *Acta Orientalia*, no. 4 (1926): 1–41, at 27. For the latter, Wilhelm Caland, "Eine vierte Mitteilung über das Vādhūlasūtra" [A fourth communication about the Vādhūlasūtra], *Acta Orientalia*, no. 6 (1928): 97–241, at 145. One would need to consult the manuscripts in both instances, as he notes for the second pair: "So vermute Ich statt *vyāvārāṁ*" (Caland, "A Fourth Communication about the Vādhūlasūtra," 145n1.).

Yāska, whose date is uncertain,[53] once uses the gerund *vyavahṛtya* as "having engaged" in battle.[54]

A more specific set of meanings comes into focus in texts of the Late Vedic period (ca. 600–300 BCE), most notably in the grammatical literature. In his *Aṣṭādhyāyī* (ca. 500 BCE), Pāṇini observes that the verb *vyava + hṛ* can have the same meaning as the verbal root *paṇ*, which means "to buy and sell" or "to gamble."[55] Elsewhere Pāṇini uses *vyavaharati* to mean "to conduct business" or "to conduct one's affairs."[56] A connotation of commercial activity is evident in texts of the ritual tradition.[57] The *Baudhāyana Śrautasūtra* twice uses the verb *vyavahāret* to mean "he should pay off" someone's debts.[58] In the *Bhāradvāja Gṛhyasūtra*, the desiderative participle *vyavajihīrṣamāṇa* refers to one "desiring commerce."[59] This sense is found also in texts of the *dharma* literature, where *vyavahāra* can mean "trade" as an economic activity.[60]

In texts of this period, *vyavahāra* also pertains to everyday life. Yāska uses the expression *vyavahārārthaṃ loke* to mean "with regard to everyday affairs in the world."[61] These are presumably the commonplace activities on which daily life depends.[62] Several of the domestic ritual manuals from this period possess a rule that, as part of the rite for a newborn, a child is given a *vyāvahārika* name on the tenth day.[63] This is a name "for everyday use." The meaning here points to the quotidian and the commonplace: what people actually do in everyday practice.

Yāska's use of the term implies that *vyavahāra* was not simply characterized by its quotidian absence of formal characteristics, but could be identified by its own particular features. This aspect of *vyavahāra* is evident in Patañjali's *Mahābhāṣya* (ca. 150 BCE), a commentary on the *Aṣṭādhyāyī*. Patañjali uses *vyavahāra* nine times, all referring to particular *usages* of language.[64] *Vyavahāra* appears four times as the second member of a noun compound to denote "the linguistic conventions of" a given group.[65] These refer to the actual performance of speech acts, and Patañjali confirms that norms of such usage could be gleaned by observation.[66]

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53 Hartmut Scharfe, *A History of Indian Literature*, vol 5, fasc. 2, *Grammatical Literature* (Wiesbaden: Harrassowitz, 1977) 117–19.

54 *Nirukta* 9.23.

55 *Aṣṭādhyāyī* 2.3.57. Translation from Sumitra M. Katre, trans., *Aṣṭādhyāyī of Pāṇini* (Austin: University of Texas Press, 1987), 151.

56 *Aṣṭhādhyāyī* 4.4.72. This comes in an explanation of the meaning of the suffix *-ika*, as in the term *vāṁśakaṭhinika*, meaning *vaṁśakaṭhine vyavaharati* (he conducts his affairs/business in a bamboo thicket). The terms *vyavahāra* and *vyāvahārika* also appear in the *Pāṇinīya Gaṇapāṭha* (5.4.34; 7.3.7).

57 The exact dates of the *Śrautasūtra*s and *Gṛhyasūtra*s are unsettled. See Jan Gonda, *The Ritual Sūtras* (Wiesbaden: Otto Harrassowitz, 1977), 476–87.

58 *Baudhāyana Śrautasūtra* 24.12.3; 25.4.3.

59 *Bhāradvāja Gṛhyasūtra* 2.26.3.

60 E.g., *Āpastamba Dharmasūtra* 1.20.11, 16; 2.16.17; *Baudhāyana Dharmasūtra* 1.2.4, 2.2.5.

61 *Nirukta* 1.2. Translation from Lakshman Sarup, ed. and trans., *The Nighaṇṭu and the Nirukta: The Oldest Indian Treatise on Etymology, Philology, and Semantics* (Delhi: Motilal Banarsidass, 1967), 6.

62 The adjective *vyāvahārikī* is used in the thirteenth book of the *Nirukta* as a technical term to specify *common*, *conventional*, or *everyday* speech, in contrast to the speech of the Vedic mantras (*ṛc*s), liturgical formulas (*yajus*es), and chants (*sāman*s) (13.9). Sarup considers this to chapter to be a much later addition: Sarup, *Nighaṇṭu and Nirukta*, 32.

63 *Śāṅkhāyana Gṛhyasūtra* 1.24.6; *Kauśītaki Gṛhyasūtra* 1.16.15.

64 Pas 4.4, Pas 7, P 1.3.55 x2, P 2.1.10 x2, P 5.3.67, P 8.1.1.1 x2. He uses the verb *vyavaharati* once (Pas 12), referring to the *use* or *performance* of a rite.

65 *aśiṣṭavyavahāre* (according to the linguistic conventions of the uneducated), P 1.3.55; *śiṣṭavyavahārah*: ([someone who observes] the linguistic conventions of the educated), P 1.3.55; and *kitavavyavahāre*: (according the linguistic conventions of gamblers), P 2.1.10 x2.

66 *Mahābhāṣya* P 5.3.67

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Most of the meanings examined so far relate in some fashion to aspects of interpersonal interaction, and we find *vyavahāra* used in the ritual literature simply to mean *interaction*. We read that individuals who have performed a rite called the *vrātyastoma* are *vyavahārya* (to be interacted with).[67] Several of the domestic ritual texts contain the instruction: *nainān upanayeyuḥ | nādhyāpayeyuḥ | na yājayeyuḥ | naibhir vyavahareyuḥ* (They should not initiate them, they should not instruct them, they should not officiate at sacrifices for them. They should not interact with them).[68] Such interactions were probably liable to be conceptualized in terms of *transactions*. Weber provides an extract of the commentary of Yājñikadeva on this passage in the *Kātyāyana Śrautasūtra*, who glosses *vyavahārya* with *vivāhayājanabhojanādiyogyāḥ* (suitable for marriage, officiating at sacrifices, and eating with).[69]

Nowhere among any of these texts do we observe *vyavahāra* used as a legal term. *Vyavahāra* and related forms in the Vedic tradition instead exhibit a semantic range marked by conceptions of *use*, *usage*, *everyday life*, *linguistic usage*, *vernacular language*, *commerce*, *interaction*, and *transaction*. In all of these cases, *vyavahāra* is something that is embedded, and observable, in actual practice. It is easy to see how these ideas might give birth to a conception of law based on authoritative standards guiding everyday transactions and exchange. It is only a small step from observing the features of such practices to reifying norms for them. However it finally occurred, the inflection point where *vyavahāra* came to delineate *law* or *litigation* is not to be found in the Vedic tradition. For that we must turn to other sources.

VYAVAHĀRA IN EARLY POLITICAL AND BUDDHIST SOURCES

The earliest datable use of *vyavahāra* as a legal term comes in a third-century BCE edict of the Mauryan emperor, Aśoka. His inscriptions are the first Indic texts that are known to have been produced by a king or political leader. They are not written in Sanskrit, the language of the Vedic tradition, but in a Prakrit called Māgadhī, the chancellery language of the Mauryan Empire. The edicts draw upon a technical political vocabulary only partly reflected in Brāhmaṇical and Buddhist sources of the period. They provide us our earliest glimpse into the Indic statecraft tradition.

This tradition of statecraft seems to have emerged in South Asia along with a new wave of urban polities around the sixth century BCE. We hear for the first time of *kṣatravidyā* (the science of rule) as a distinct area of learning in a text of that period, the *Chāndogya Upaniṣad*,[70] as well as Pāli literature of the following centuries.[71] The oldest extant representative of this tradition is the celebrated *Arthaśāstra of Kauṭilya* (ca. first century BCE to third century CE). While it is difficult to surmise how representative the *Arthaśāstra* might be, the shared technical vocabulary and practices witnessed across inscriptions and texts of the period point to a common tradition of statecraft prevailing among the urbanized polities of north and central South Asia.[72] This is particularly evident

67 *Kātyāyana Śrautasūtra* 22.4.28; *Parāskara Gṛhyasūtra* 2.5.43.

68 *Āśvalāyana Gṛhyasūtra* 1.19.9, *Śāṅkhāyana Gṛhyasūtra* 2.1.13, *Pāraskara Gṛhyasūtra* 2.5.40.

69 Albrecht Weber, ed., *The Çrautasûtra of Kâtyâyana, with Extracts from the Commentaries of Karka and Yājñikadeva*, 2 vols. (Berlin: Dümmler, 1859).

70 *Chandogya Upaniṣad* 7.1.2, 4; 7.2.1; 7.7.1.

71 Vigasin and Samozvantsev, *Society, State and Law*, 27.

72 Vigasin and Samozvantsev, *Society, State and Law*, 27–42.

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with respect to the legal tradition of *vyavahāra*, whose characteristic features are recognizable in divergent sources from the period.

Aśoka uses the term *viyohāla* (Sanskrit: *vyavahāra*) in his fourth pillar edict (ca. 246 BCE). In this edict, the emperor expresses a desire for his regional officials, called Lajūkas, to practice "uniformity in *viyohāla*" (*viyohālasamatā*) and "uniformity in punishment" (*daṇḍasamatā*). The relevant passage reads as follows on the Delhi-Toprā pillar:

> In order that they should perform (their) duties, being fearless, confident, (and) unperturbed, for this (purpose) I have ordered that either rewards or punishments are left to the discretion of the Lajūkas. For the following is to be desired, (viz.) that there should be both impartiality in judicial proceedings [*viyohālasamatā*] and impartiality in punishments [*daṇḍasamatā*]. And my order (reaches) even so far (that) a respite of three days is granted by me to persons lying in prison on whom punishment has been passed, (and) who have been condemned to death.[73]

Aśoka is addressing here the judicial responsibilities of the Lajūka.[74] In requesting uniformity in punishment, Aśoka presumably means that the Lajūka should make sure that different individuals receive the same punishment for the same crime. The meaning of "uniformity in *viyohāla*" is less clear. The context confirms that Aśoka has some kind of legal activity in mind, but interpreters are divided on its meaning, whether *legal proceedings*, *legal procedure*, or something else.[75]

In another pair of edicts, Aśoka addresses different judicial officials, called the Nagala-viyohālakas (Sanskrit *nagaravyāvahārika*) or Nagalakas (Sanskrit *nāgaraka*), which Hultzsch translates as "judicial officers of the city."[76] Aśoka instructs them as follows:

> Now you must pay attention to this, although you are well provided for. It happens in the administration (of justice) that a single person suffers either imprisonment or harsh treatment. In this case (an order) cancelling

73 Translation by Eugen Hultzsch, *The Inscriptions of Asoka, New Edition. Corpus Inscriptionum Indicarum*, vol. 1 (Oxford: Clarendon Press, 1925), 124–25 (Prakrit text added in square brackets). *yena ete abhītā asvatha saṁtaṁ avimanā kaṁmāni pavatayevū ti etena me lajūkānaṁ abh*[*i*]*hāle va daṁde vā ata-patiye kaṭe ichhitaviye* [*h*]*i esā kiṁti viyohāla-samatā cha siya daṁda-samatā chā ava ite pi cha me āvuti baṁdhana-badhānaṁ munisānaṁ tīl*[*i*]*ta-daṁḍānaṁ pata-vadhānam tiṁni divasā*[*n*]*i me yote diṁne*. Hultzsch, *The Inscriptions of Asoka*, 123.

74 Georg Bühler, "Aśoka's Râjûkas oder Lajukas" [Aśoka's Râjûkas or Lajukas], *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 47, no. 3 (1893): 466–71, correctly identified the Lajūka (sometimes Rajuka or Rājūka) as the chief revenue officer assigned to the various provinces in Aśoka's empire. In addition to revenue, the Lajūka was the authority charged with overseeing legal proceedings and dispensing punishment. The activities of the Lajūka are divided in the *Arthaśāstra* between different officials, such as the Samāhartṛ (collector) and Dharmastha (justice).

75 See Heinrich Lüders, "Epigraphische Beiträge III" [Epigraphic contributions III], *Sitzungsberichte der Königlich Preussischen Akademie der Wissenschaften* 1913: 988–1028. This pairing—of *vyavahāra* and *daṇḍa*—is found in later legal texts, where it apparently relies on a technical differentiation between the litigation phase of a legal action, which culminated in a verdict, and the punishment phase, which may have been carried out by personnel other than the judge presiding over the litigation. See Mark McClish, "Punishment: *daṇḍa*," in *Hindu Law: A New History of Dharmaśāstra*, ed. Patrick Olivelle and Donald R. Davis, Jr. (New York: Oxford University Press, 2018), 273–82.

76 Dhauli I; Jaugaḍa I. His title suggests that his jurisdiction was the "city" (*nagala*; Skt *nagara*). On these officials, see Heinrich Lüders, "Epigraphische Beiträge IV" [Epigraphic contributions IV], *Sitzungsberichte der Königlich Preussischen Akademie der Wissenschaften* 1914: 831–68, at 854–66. The relationship between the Lajūka and Nagala-viyohālaka is not made clear in the edicts, but the former seems to be the political official tasked with the administration of justice, while the latter appear to be the courtroom judges themselves. Perhaps, at least in some instances, they were one in the same.

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> the imprisonment is (obtained) by him accidentally,[77] while [many] other people continue to suffer. In this case you must strive to deal (with all of them) impartially. But one fails to act (thus) on account of the following dispositions: envy, anger, cruelty, hurry, want of practice, laziness, (and) fatigue. (You) must strive for this, that these dispositions may not arise to you. And the root of all this is the absence of anger and the avoidance of hurry. He who is fatigued in the administration (of justice), will not rise; but one ought to move, to walk, and to advance.
>
> ...
>
> For the following purpose has this rescript been written here, (viz.) in order that the judicial officers of the city may strive at all times (for this), [that] neither undeserved fettering nor undeserved harsh treatment are happening to [men]. And for the following purpose I shall send out every five years [a *Mahāmātra*] who will be neither harsh nor fierce, (but) of gentle actions, (viz. in order to ascertain) whether (the judicial officers), paying attention to this object .... are acting thus, as my instruction (implies).[78]

Aśoka appears to address here the issue of "uniformity" (*samatā*) raised in the fourth pillar edict. His instructions imply that the Nagala-viyohālaka is a courtroom judge tasked with sentencing criminals and overseeing their incarceration and/or punishment. The emperor is well aware that some people in his realm receive better or worse treatment than others for the same offense without good reason. This might explain what Aśoka was addressing with the term *daṇḍasamatā* in the fourth pillar edict, but we learn here little about the meaning of *viyohāla*. For that, we can only draw on the title of the Nagala-viyohālaka. To the extent that his title identifies him as some kind of justice or legal officer of the city, we might presume that *viyohāla* had a relatively broad meaning, perhaps equivalent to the *administration of justice* or *law* itself.[79]

These offices and this nomenclature almost certainly did not originate with Aśoka. A judge called the Vohārika (Sanskrit *vyāvahārika*) appears several times in the Pāli monastic code (*Vinayapiṭaka*).[80] In the *Mahāvagga*, King Bimbisāra asks the Vohārikas to pronounce the punish-

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77 The term here is *akasmā* (Sanskrit *akasmāt*), which might be better translated as "for no good reason."

78 Translation from Hultzsch, *The Inscriptions of Asoka*, 95–97. *de*[*kha*]*t*[*a hi t*]*u*[*phe*] *etaṁ suvi*[*hi*]*tā pi* | [*n*]*itiyaṁ eka-pulise* [*pi athi*] *y*[*e*] *baṁdhanaṁ vā p*[*a*]*likilesaṁ vā pāpunāti* | *tata hoti akasmā tena badhana*[*ṁ*]*tik*[*a*] *aṁne cha* .... *hu jane da*[*v*]*iye dukhīyati* | *tata ichhitaviye tuphehi kiṁti m*[*a*]*jhaṁ paṭipādayemā ti* | *imeh*[*i*] *chu* [*jāteh*]*i no saṁpaṭipajati isāya āsulopena ni*[*ṭhu*]*liyena tūlanā*[*ya*] *anāvūtiya ālasiyena k*[*i*]*lamathena* | *se icchitaviye kitiṁ ete* [*jātā no*] *huvevu ma*[*m*]*ā ti* | *etasa cha sava*[*sa*] *mūle anāsulope a*[*tū*]*l*[*a*]*nā cha* | *niti*[*ya*]*ṁ e kilaṁte siyā* [*na*] *te uga*[*ccha*] *saṁchalitaviy*[*e*] *tu va*[*ṭ*]*ita*[*v*]*iy*[*e*] *etaviye vā* |
>
> ...
>
> [*e*]*t*[*ā*]*ye aṭhāye iya*[*ṁ l*]*i*[*p*]*i likhit*[*a h*]*ida ena nagala-vi*[*y*]*o*[*hā*]*lakā sas*[*v*]*ataṁ samayaṁ yūjevū t*[*i*] ... [*na*]*sa akasmā* [*pa*]*libodhe va* [*a*]*k*[*a*]*smā paliki*[*l*]*e*[*s*]*e va no siyā ti* | *etāye cha aṭhāye haka*[*ṁ*] ... *mate p*[*a*]*ṁchasu paṁchasu* [*va*]*sesu* [*n*]*i*[*khā*]*may*[*i*]*sāmi e akhakhase a*[*chaṁ*]*d*[*e*] *s*[*a*]*khināla*ṁ*bhe hosati etaṁ aṭhaṁ jānitu* ....[*ta*]*thā kala*[*ṁ*]*ti atha mama anusathī ti* | Hultzsch, *The Inscriptions of Asoka*, 93–94.

79 The association of *vyavahāra* and statecraft is evident in the next earliest royal inscription of significance. The Mahāmeghavāhana ruler, Khāravela (ca. second–first century BCE), speaks of *vyavahāra* as an object of study in its own right. In his inscription at Hathigumpha, Khāravela boasts that he is studied in *vavahāravidhi*, among other things; K. P. Jayaswal, "The Hathigumpha Inscription of Kharavela," *Epigraphia Indica*, no. 20 (1929–30): 71–89, at 79. This is a term that we encounter in later *dharmaśāstra*s (*vyavahāravidhi*; *Mānava Dharmaśāstra* 8.45; *Yājñavalkya Dharmaśāstra* 2.31), where it seems to mean the "rules of *vyavahāra*," referring to the entirety of rules, both substantive and procedural, governing litigation. This inscription is important because it makes explicit what can only be inferred from earlier usages, namely that by Khāravela's time, *vyavahāra* formed an independent object of study. It is about the same time that *vyavahāra* is first used as a technical term in Sanskrit literature, in the *Arthaśāstra of Kauṭilya*.

80 For a brief sketch of the chronology of these texts, see Oskar von Hinüber, *Pali Literature* (Berlin: Walter de Gruyter, 2000), 19–21.

ment proper for someone who gives ordination to a servant of the king.[81] In the *Cūlavagga*, the Vohārikas are asked to confirm whether the Jeta Grove had indeed been formally sold when Anāthapiṇḍika agrees to beat the prince's rhetorical valuation of the land: "I would not give the grove to you, o householder, even for the price of one hundred thousand."[82] The *Suttavibhaṅga* refers to an "old judge" (*purāṇavohāriko mahāmatto*).[83] Although he had gone forth as a Buddhist monk, the old judge has his professional experience called upon when he is asked to relate the amounts for which King Bimbisāra would have a thief flogged, imprisoned, or exiled.

In the *Bhikkunīvibhaṅga*, Vohārikas are asked to confirm whether a disputed storeroom had been lawfully given to the Order of Nuns.[84] The passage is worth citing at length since it offers a clearer sense of the scope of their legal activities:

> Saying: "Was it given (or) not given?" they asked the chief ministers of justice [*vohārike mahāmatte*]. The chief ministers spoke thus: "Who knows, ladies, if it was given to the Order of nuns?" When they had spoken thus, the nun Thullanandā spoke thus to these chief ministers: "But, masters, was not the gift seen or heard of by you as it was being given, eye witnesses having been arranged?" Then the chief ministers, saying: "What the lady says is true," made over the store-room to the Order of nuns. Then that man, defeated, looked down upon, criticised, spread it about, saying: "These shaven-headed (women) are not (true) recluses, they are strumpets. How can they have the store-room taken away from us?" The nun Thullanandā told this matter to the chief ministers. The chief ministers had that man punished. Then that man, punished, having had a sleeping-place made for Naked Ascetics not far from the nunnery, instigated the Naked Ascetics, saying: "Talk down these nuns." The nun Thullanandā told this matter to the chief ministers. The chief ministers had that man fettered. People looked down upon, criticised, spread it about, saying: "How can these nuns have a store-room taken away (from him) and secondly have him punished and thirdly have him fettered? Now they will have him killed."[85]

In this passage, the Vohārikas are asked to confirm the validity of a gift. They also act as witnesses to the gift and punish one of the donor's sons and his accomplices when solicited by

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81 From *Mahāvagga* 1.40.3. *atha kho rājā Māgadho Seniyo Bimbisāro vohārike mahāmatte pucchi: yo bhaṇe rājabhaṭam pabbājeti, kiṃ so pasavatīti* | Hermann Oldenberg, ed., *The Vinaya Piṭakaṃ: One of the Principal Buddhist Holy Scriptures in the Pâli Language*, vol. 1, *The Mahâvagga* (London: Williams and Norgate, 1879), 74.

82 From *Cūlavagga* 6.4.9. *adeyyo, gahapati, ārāmo api koṭisantharenā 'ti | gahito ayyaputta ārāmo 'ti | na gahapati gahito ārāmo 'ti | gahito na gahito 'ti vohārike mahāmatte pucchiṃsu | mahāmattā evam āhaṃsu: yato tayā ayyaputta aggho kato gahito ārāmo 'ti | atha kho Anāthapiṇḍiko gahapati sakaṭehi hiraññaṃ nibbāhāpetvā Jetavanaṃ koṭisantharaṃ santharāpesi* | Hermann Oldenberg, ed., *The Vinaya Piṭakaṃ: One of the Principal Buddhist Holy Scriptures in the Pāli Language*, vol. 2, *The Cullavagga* (London: Williams and Norgate, 1880), 158–59.

83 *Suttavibhaṅga* 2.1.6.

84 From *Bhikkunīvibhaṅga Saṅghādisesa* 1.1.

85 Translation from I. B. Horner, trans., *The Book of the Discipline* (*Vinaya-Piṭaka*), vol. 3 (London: Pāli Text Society, 1942), 178–79 (terms in italics added). [*dinno*] *na dinno 'ti vohārike mahāmatte pucchiṃsu | mahāmattā evam āhaṃsu: ko ayye jānāti bhikkhunīsaṃghassa dinno 'ti | evaṃ vutte Thullanandā bhikkhunī te mahāmatte etad avoca: api n' ayyo tumhehi diṭṭhaṃ vā sutaṃ vā sakkhiṃ ṭhapayitvā dānaṃ diyyamānan ti | atha kho te mahāmattā saccaṃ kho ayyā āhā 'ti taṃ uddositaṃ bhikkhunīsaṃghassa akaṃsu | atha kho so puriso parājito ujjhāyati khīyati vipāceti: assamaṇiyo imā muṇḍā bandhakiniyo | kathaṃ hi nāma amhākaṃ uddositaṃ acchindāpessantīti | Thullanandā bhukkhunī mahāmattānaṃ etam atthaṃ ārocesi | mahāmattā taṃ purisaṃ daṇḍāpesuṃ | atha kho so puriso daṇḍiko bhikkhunūpassayassa avidūre ājivakaseyyaṃ kārāpetvā ājīvike uyyojesi: etā bhikkhuniyo accāvadathā 'ti | Thullanandā bhikkhunī mahāmattānaṃ etam atthaṃ ārocesi | mahāmattā taṃ purisaṃ bandhāpesuṃ | manussā ujjhāyanti khīyanti vipācenti: kathaṃ hi nāma bhikkhuniyo uddositaṃ acchindāpesuṃ, dutiyam pi daṇḍāpesuṃ, tatiyam pi bandhāpesum | idāni ghātāpessantīti* | Hermann Oldenberg, ed., *The Vinaya Piṭakaṃ: One of the Principal Buddhist Holy Scriptures in the Pāli Language*, vol. 4, *The Suttavibhaṅga, Second Part (End of the Mahâvibhaṅga; Bhikkhunîvibhaṅga)* (London: Williams and Norgate, 1882), 223–24.

the nuns.[86] Although it is a literary representation of the judge's activities, we can presume the actions prescribed are at least plausible representations of their actual function.

The dating of the Vinaya texts is uncertain, but Aśoka was almost certainly using a technical legal term that was already in circulation. This suggests that by the beginning of the third century BCE, and probably earlier, judges were called by the title Viyohālaka/Vohārika/Vyavahārika and that *viyohāla/vyavahāra* was the term most closely associated with the law of royal courts. The *Arthaśāstra* twice mentions an official called the Paura-vyāvahārika, a synonym of Nagala-viyohālaka,[87] but it is found nowhere to my knowledge in the *Dharmaśāstra*s, which use different titles for such judges. As to its locus of origin as a legal term, the Pāli sources show us something else of interest. Although the term *vohāra* is relatively common there, it almost never refers to *law* or *litigation*. The most prominent exception is in the title *vohārika*. From this we can deduce that *vyavahāra* did not emerge as a legal term from out of the Buddhist tradition. Rather, the Pāli texts give every appearance of using an official title originating within the political tradition.

In the political and Prakrit sources, the Vohārika is identified as a *mahāmātra*, or high official of the state. The activities ascribed to this figure in the Vinaya converge on two areas of law: private transactions (*vyavahāra*) and punishments (*daṇḍa*).[88] Regarding the former, state judges act as witnesses to transactions and settle disputes based upon them. Of the latter, they are asked about appropriate punishments and, in the *Bhikkunivibhaṅga*, have individuals punished who are deemed to have committed crimes. It is possible, therefore, that Aśoka's use of *viyohāla* relates in some manner to *transactions*, probably in the extended sense of *judicial activity related to disputes arising out of transactions*. His concern with uniformity focuses on the impartiality of judges, and we can presume that this is as true for *viyohāla* as it is for *daṇḍa*. In the case of *viyohāla*, impartiality might have manifested through the use of uniform standards to render judgements in different cases. It may be that Aśoka has in mind adherence to something like what we find in the *Arthaśāstra*: uniform guidelines governing the proper form of transactions as well a judicial procedure.

VYAVAHĀRA IN THE *ARTHAŚĀSTRA*

The *Arthaśāstra of Kauṭilya* is a Sanskrit manual of statecraft that dates in its original form to about the first century BCE.[89] Its third book, called *Dharmasthīya* (On Justices) presents the earliest

86 Interestingly, this passage also informs us that it is an offense for nuns to undertake a lawsuit, using the phrase *aḍḍaṃ karissāmīti* (Sanskrit *arthaṃ kariṣyāmīti*), "thinking 'I will make a case,'" using the same language as the *Arthaśāstra* and later *dharmaśāstra* texts.

87 KAŚ 1.12.6; 5.3.7. I believe both of these references to be late, but as such they bear witness to the continuity of the (Nagara/Paura-) Vyāvahārika as a title for judges. As Scharfe has pointed out, there is a clear connection between the Aśokan officials and the officials called Nāgarika and Paura-vyāvahārika in the *Arthaśāstra*, Hartmut Scharfe, *Investigations in Kauṭalya's Manual of Political Science* (Wiesbaden: Harrassowitz Verlag, 1993), 174. He also, however, rightly points out that responsibility for *vyavahāra* is not explicitly ascribed to the Nāgarika and Paura-vyāvahārika in the *Arthaśāstra*, but to a more specialized official who is called the Dharmastha (one who is established in dharma, that is, a justice). It is possible, therefore, that the *Arthaśāstra* gives evidence of a more specialized state judiciary.

88 These two areas of law need not be conceptualized as exclusive of one another: the passage from *Bhikkunīvibhaṅga* relates an extended series of legal actions in which *vohārika*s engaged in both kinds of activities.

89 This is the date that I argue for in Mark McClish, *The History of the Arthaśāstra: Sovereignty and Sacred Law in Ancient India* (Cambridge: Cambridge University Press, 2019). It is on the earlier side of the range suggested by Olivelle because I believe that the *Gautama Dharmasūtra* borrowed from the original *Arthaśāstra*, and he has

comprehensive *vyavahāra* code in South Asian history. This section was probably drawn from one or more preexisting sources that presented rules to be used by royal judges in processing disputes arising out of transactions.[90] The third book does not explicitly call its subject *vyavahāra*, but it begins with the instruction that the king's justices, called Dharmasthas, should look into *vyavahārika artha* (matters arising out of transactions).[91] The scope of activity assigned to the Dharmastha conforms to some of the judicial activities of the Voharikas as outlined in the Pāli texts. Rules are given first regarding the determination of the validity of transactions,[92] an activity we witness the Vohārikas carrying out in the *Bhikkhunīvibhaṅga*. After this, rules of judicial procedure are given.[93] Most of the rest of the third book is made up of guidelines for the proper form of various transactions. These are presented over nineteen chapters under seventeen headings, which I group into the following eight categories:

1. Family law:
   - Marriage
   - Inheritance

2. Property law:
   - Immovable property
   - Boundary disputes

3. Community law:
   - Nonobservance of conventions

4. Law of debts:
   - Nonpayment of debts
   - Deposits

5. Labor law:
   - Slaves and laborers
   - Partnerships

dated the former to "late second to early first century BCE": Olivelle, "Social and Literary History of Dharmaśāstra," 21.

90 See Thomas Trautmann, *Kauṭilya and the Arthaśāstra* (Leiden: Brill, 1971), 173–74; Mark McClish, *The History of the Arthaśāstra*.

91 *Arthaśāstra* 3.1.1. Ludo Rocher, "Avyavahārika Debts and Kauṭilya 3.1.1–11," in Rocher, *Studies in Hindu Law and Dharmaśāstra*, 581–85, has argued that *vyavahārika* carries the technical meaning here of *legally binding transaction*. Based on its use in inscriptions and Buddhist scriptures, however, one might wonder whether the term already carried the more general connotation of *law* in the sense of *litigation*.

92 *Arthaśāstra* 3.1.2–16. The first set of these rules concern the conditions under which the transaction was made (3.1.2–11). It cannot, for example, have been conducted indoors or at night. The second set (3.1.12) concern who is eligible to engage in transactions at all. For instance, the *Arthaśāstra* uses, for the first time, the concept of *prāptavyavahāra*, in reference to one who has obtained *vyavahāra*, meaning a person who is of majority or old enough to engage in legally binding transactions (that age is given as sixteen for men). It also uses the term, *atītavyavahāra* (too old for transactions) (KAŚ 3.1.12), for those who are considered legally incompetent due to age. Underlying both is the concept of *svātantrya* (independence), the legal status required for an individual to enter into valid transactions. This gives us a clear sense of how (in theory) *vyavahāra* mediated access to state courts and the king's justice as well as how it formalized legal statuses within society.

93 *Arthaśāstra* 3.1.17–37. These include guidelines on purely procedural matters, such as the proper recording of a plaint, as well as rules for conditions leading to loss of suit and the interrogation of witnesses.

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6. Law of transactions:
   - Cancellation of sale or purchase
   - Nondelivery of gifts
   - Sale by nonowner

7. Assault:
   - Robbery
   - Verbal assault
   - Physical assault

8. Miscellaneous:
   - Gambling and betting
   - Miscellaneous

Some of these sections were augmented or added during the redaction of the text,[94] but this list gives us a reasonably clear sense of the types of transactions that could underlie a *vyāvahārika artha* and the fact that the code principally contained the normative forms of such transactions as conceived by justices.[95] This would appear to have been the bulk of their training, the majority content of *vyavahāravidhi* as a discipline.

The signal feature of *vyavahāra* as a legal concept in the *Arthaśāstra* is that it pertains to instances in which an aggrieved party brings a suit against another party in a royal court. The *Arthaśāstra* indicates that such cases can concern a wide variety of material transactions as well as theft and assault up to, but not including, murder.[96] We can presume that *vyavahāra* courts were widespread in ancient India based on the references just examined and that such courts

94 See Patrick Olivelle, trans., *King, Governance, and Law in Ancient India: Kauṭilya's Arthaśāstra* (New York: Oxford University Press, 2013), 28–31; McClish, *History of the Arthaśāstra*, ch. 6.

95 There is nothing in the *Arthaśāstra* that discusses the normative authority of these rules. They are not presented as having emerged, as a whole, from the legislative activity of the king. Two passages in the extant *Arthaśāstra* do indicate that kings could institute new *vyavahāra*s (11.1.3; 13.5.14), but both clearly have in mind the limited replacement of an existing *vyavahāra* or of a customary rule. As the name suggests, most *vyavahāra* rules were certainly drawn from existing normative practices. See Sen-Gupta, *The Evolution of Ancient Indian Law*; Richard Lariviere, "Dharmaśāstra, Custom, 'Real Law' and 'Apocryphal' Smṛtis," in *Recht, Staat und Verwaltung im klassischen Indien* [Law, state, and administration in classical India], ed. Bernhard Kölver (Munich: Oldenbourg, 1997), 611–27; Albrecht Wezler, "Dharma in the Veda and the Dharmaśāstras," *Journal of Indian Philosophy* 32, no. 5/6 (2004): 629–54; Patrick Olivelle, ed. and trans., *Manu's Code of Law: A Critical Edition and Translation of the Mānava-Dharmaśāstra* (New York: Oxford University Press, 2005), 62. This should not obscure the extent to which politics may have shaped such a code, however. If the depiction in the Pāli Canon is correct, kings did set such things as the rates of fines for certain punishments. And to the extent that what is found in the third book of the *Arthaśāstra* did emerge in the political tradition, such rules may well have been meant as guidelines for royal justices issued by some political authority. See Lingat, *The Classical Law of India*, 136–42. Whatever their force over judges and subjects, these rules do not seem to have operated as legally binding statutes. It might be better to think of them as a depiction of the legal policy of the state, a "framework of juridical reasoning," Lingat, *The Classical Law of India*, 141.

96 Certain criminal acts that are assessed only monetary fines in the third book are, elsewhere in the *Arthaśāstra*, ascribed sanctions of mutilation, torture, and death (multiple examples can be found in 4.10–13). It is not clear whether we are to assume that the Dharmastha of the *Arthaśāstra* had the power to prescribe corporal punishment that the Pāli texts assign to the Vohārika. The existence in the *Arthaśāstra* of another type of judge, called the Pradeṣṭṛ (magistrate), who investigates and punishes crimes like theft and murder, complicates the picture (see, e.g., 4.1.1, 4.4.8, 4.6.20. 4.9.1).

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were overseen by a judge with a title such as Nagalaka, (Nagala)viyohālaka, Vohārika, and Dharmastha. The penalties ascribed to various types of misconduct in the third book of the *Arthaśāstra* are monetary,[97] although it is implied elsewhere in the *Arthaśāstra* that *vyavahāra* courts had their own jails or prisons.[98]

The *Arthaśāstra* also gives us some sense of how *vyavahāra* was conceived in relation to the greater legal order. The text bears witness to a legal typology called the *four feet of dispute* that identified four different types of norms bearing on the resolution of disputes in royal courts.[99] They are, in descending order of authority, the king's command (*rājaśāsana*), private customary law (*caritra*), *vyavahāra*, and *dharma*. In this model, *vyavahāra* refers specifically to the kinds of substantive rules governing transactions that comprise most of the *Arthaśāstra*'s third book. It is, however, only one of four different types of rule sets or normative orders that might bear on a dispute that has come before a justice. The most authoritative kinds of rules were those contained in royal edicts. If such a rule could be found that had bearing on the case at hand, it had authority. Next in authority were any customary laws that the litigants might recognize, presumably because they were members of the same caste, guild, village, extended family, or other private group. If so, the king's justice was to decide the case based on such customary law. Failing both a relevant royal edict and common customary rule, then *vyavahāra* had authority. As a last resort, the justice could be guided by *dharma*, which probably carries here a more generic sense of "righteousness" than it does as a term of art in Brāhmaṇical orthodoxy. Whereas *dharmaśāstra* makes *vyavahāra* a subset of *dharma*, and thereby infuses the former with the normative characteristics of the latter, the original formulation of the four feet considered *vyavahāra* to supersede *dharma*.

This gives us some sense of how the substantive rules of *vyavahāra* operated within the greater legal order. They served as something of a legal backstop, able to be called upon by kings when customary rules were, for whatever reason, insufficient to resolve a dispute between private parties. The most interesting aspect of *vyavahāra* is that it was a body of state law that was not imbued with superseding legal authority, as is the case with the legislation of modern nation states. It served rather to undergird a complex and plural legal order, actually reinforcing the legitimacy of the customary law of private groups. At the same time, it could have served as a jurisprudential framework for the occasional exertion of legal norms by kings: the *Arthaśāstra* tells us that the king had the power to strike down any unrighteous custom (*caritra*),[100] in which case the relevant rule of *vyavahāra* would come into effect. Presumably the unexcelled power of the royal edict provided a legal basis for such moves, but so might a more nebulous justification through *dharma*. Such interventions are, however, presented as the exception, and the structure of the greater legal order meant that customary law would remain the preferred means for dispute resolution in royal courts.

Whatever may have become of the *vyavahāra* tradition in later eras, it is not imagined in the *Arthaśāstra* as a kind of scholastic or theoretical jurisprudence disconnected from the practice of courtroom law. Even if justice was not understood to result from the interpretation and direct application of substantive norms, the form of the *vyavahāra* suggests that it was developed as a practical jurisprudence—made up of both procedural and substantive elements—that trained royal judges to

97 One exception is *Arthaśāstra* 3.19.8–10, which calls for a Śūdra to lose a limb for striking a Brāhmaṇa. These passages are almost certainly interpolations. See R. P. Kangle, *The Kauṭilīya Arthaśāstra, Part I: An English Translation with Critical and Explanatory Notes*, 2nd ed. (Bombay: University of Bombay, 1972), 248n.

98 *Arthaśāstra* 2.5.5; 4.9.21.

99 This and the next paragraph are drawn from Olivelle and McClish, "The Four Feet of Legal Procedure," to which the reader is referred for more detail.

100 *Arthaśāstra* 11.1.3; 13.5.14.

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navigate within a complex legal order. Its emergence is most easily explained not by a need to articulate the sacred duties of kings, but by the necessity of legal authorities to establish norms for everyday transactions to assist in the resolution of disputes between subjects adhering to different varieties of customary law. The necessity for kings and other political leaders to develop such a legal mechanism is self-evident. It may be, then, that the emergence of *vyavahāra*-type rules is connected to the growth of cosmopolitan spaces, such as cities, in which transactions between members of different social groups were routine. Understood as a legal procedure and a body of substantive rules, *vyavahāra* would have enabled the management of a plural legal order as well as regulatory intervention into markets and the prevention of feuding behaviors between private groups.

What makes *vyavahāra* unique among the various normative orders of ancient India is not only its exclusive association with the state, but also the degree to which it represents a formalization of the processes of law: establishing norms, delineating procedures for their application, and systematizing a penology as sanction for their breach. It is, in this sense, the archetypal law of the state. And it is in the *Arthaśāstra* where we see *vyavahāra* in its native context: the statecraft tradition. Although we should presume a degree of overlap between the Vedic tradition and the statecraft tradition in the period, there is nothing in the sources examined so far to indicate that *vyavahāra* originated as part of the intellectual efforts of the orthodox Brāhmaṇical lineages. It appears to be quite unknown to the Vedic tradition before the era of the *dharma* texts. Even if the particulars are lost to history, the general form and early development of *vyavahāra* can be gleaned from royal inscriptions, early Buddhist scriptures, and the *Arthaśāstra*. No doubt there were local variations and historical changes, but the commonalities in technical terms and content among these sources are sufficient for us to conclude that *vyavahāra* names a widespread tradition of state law in ancient India passed down as part of a larger body of statecraft practice and instruction traceable to at least the beginning of the third century BCE and perhaps originating with the statecraft tradition itself.[101]

VYAVAHĀRA IN THE EARLY DHARMA TRADITION (THIRD CENTURY BCE TO SECOND CENTURY CE)

If the statecraft tradition gives us a view into the common intellectual framework within which kings and counselors undertook the practice of governance, the early *dharmaśāstra*s represent a different cultural context entirely. The origin of the *dharma* literature can be traced among the Vedic lineages.[102] These revered teachers were promulgating the shared norms of conduct that delineated Brāhmaṇical orthopraxy and orthodoxy. Such rules are overwhelmingly concerned with the social and ritual life of respected village Brāhmaṇas, even if we presume that some with such training did go on to serve in royal courts.[103] The earliest of the *dharmaśāstra*s, the *Āpastamba Dharmasūtra*,

101 As mentioned above, the reference to *kṣatravidyā*, "The Science of Rule," in the *Chāndogya Upaniṣad* would suggest that the statecraft tradition dates, in some form, to at least the sixth century BCE.

102 This undoubtedly has a complex history of its own. Olivelle, "Social and Literary History of Dharmaśāstra," 19–20, argues, "[i]t is reasonable to assume that Dharmasūtras also were produced by the same kinds of individuals who produced the ritual sutras and within the same kind of educational settings" although we must at the same time posit that theological changes around the status of the householder meant that "the theologians who composed [the *Dharmasūtra*s] were operating with a different *Weltanschauung* than their ritual counterparts, even as they shared the Vedic ritual and mythological world."

103 Hartmut Scharfe, *Education in Ancient India* (Leiden: Brill, 2002), 5, rightly points out that "[t]he ethics of Indian education are rooted in the rural society of the Vedic period … Even when towns began to emerge in

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gives us our best view of the context from which the *dharma* tradition arose. It is overwhelmingly concerned with rules for Brāhmaṇas, with one significant addition: rules for kings, principally made up of rules for *vyavahāra*.[104]

The *Āpastamba Dharmasūtra* has been dated to the third or early second century BCE, roughly contemporaneous with or slightly later than the reign of Aśoka and a century or two before the composition of the original *Arthaśāstra* (ca. first century BCE). *Āpastamba* begins by establishing the sources of its rules on *dharma*,[105] then introduces the subjects that focus its discussion: the four social classes called *varṇa*s.[106] Thereupon, the text goes on to discuss, for the most part, rules for Brāhmaṇa students and householders that are applied mutatis mutandi to the other social classes. The discussion of the four *varṇa*s is formally concluded at *Āpastamba Dharmasūtra* 2.25.1a:

vyākhyātāḥ sarvavarṇānāṃ sādhāraṇavaiśeṣikā dharmāḥ |

We have explained the general and specific *dharma*s of all the *varṇa*s.[107]

Insofar as *Āpastamba* introduces his text as a discussion of the *dharma*s of the social classes, this passage would appear to mark its conclusion.

As it has come down to us, however, the *Āpastamba Dharmasūtra* does not end with this passage, but possesses another five chapters, which are introduced as such:

rājñas tu viśeṣād vakṣyāmaḥ ||

Now, we will explain those [*dharma*s] of the king, because they are distinctive.[108]

What follows are instructions on the *dharma*s of kings, which is recognizably a tract on statecraft.[109] It discusses many of the same topics that we find in *Arthaśāstra*, such as the conduct of the king, construction of the royal palace, appointment of royal officials, collecting taxes, and, above all, rules of the *vyavahāra*-type, which make up most of the tract.

Although the *Arthaśāstra* does not appear to have been the source of these five chapters, we can be confident that another statecraft text was. I have shown elsewhere that the concept of *rājadharma*s is used in the passage just cited as a euphemism for a body of rules of statecraft, rather than sacred obligations of the king per se.[110] Most importantly, however, these rules for kings are not integrated within the framework of the *dharma*s of the social classes, a convention that is universally adopted by *dharma* texts after *Āpastamba*. What we see in *Āpastamba* is a phase in which rules on statecraft were first being added to an older corpus of rules focused on the conduct and practices of respected Brāhmaṇas, but among which they were yet to be fully integrated. It is not clear when the final chapters of *Āpastamba* were composed or added, but their instructions

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the 6th century B.C. and played an ever growing role as centers of administration and commerce, the rural ethic remained and was even strengthened with the solidification of the caste system."

104 The following paragraphs draw upon an argument made in Mark McClish, "King: *rājadharma*," in Olivelle and Davis, *Hindu Law*, 257–72.

105 *Āpastamba Dharmasūtra* 1.1.1–3.

106 *Āpastamba Dharmasūtra* 1.1.4–8.

107 *Āpastamba Dharmasūtra* 2.25.1a.

108 *Āpastamba Dharmasūtra* 2.25.1b.

109 *Āpastamba Dharmasūtra* 2.25–29, except for 2.29.11–15, which serves as a conclusion to the whole text.

110 See McClish, "King: *rājadharma*."

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(particularly on the construction of the king's residence) are primitive in comparison to the teachings of the *Arthaśāstra*.

In comparison with the *Arthaśāstra*, the *vyavahāra*-type rules in *Āpastamba* are not very extensive. Only a few topics are covered, and these in a piecemeal fashion:

- Sexual law
  - sexual misconduct and assault
    - punishments (2.26.18–2.26.21)
    - royal maintenance for victims or expiation (2.26.22–2.27.1)
  - levirate (2.27.2–2.27.7)
  - adultery (2.27.8–2.27.13)

- Other crimes and punishments
  - offenses by a Śūdra (2.27.14–2.27.15)
  - offenses by a Brāhmaṇa (2.27.17–2.27.20)
  - who may pardon (2.27.21)

- Rules protecting owners and masters
  - rules for sharecroppers and herdsmen (2.28.1–2.28.6)
  - obligation to return escaped cows (2.28.7–2.28.9)
  - expropriation and theft (2.28.10–2.28.12)

- Miscellaneous rules
  - king's obligation to punish (2.28.13)
  - guilt of accomplices (2.29.1–2.29.2)

- Ownership of marital property (2.29.2–4)[111]

The orthogenetic model relies on an interpretation of this tract as an embryonic stage in the development of state law. What *Āpastamba* shows us, however, is the opposite. Whoever added these chapters to the *Āpastamba Dharmasūtra* was selectively presenting specific points of law from what can only have been a more comprehensive tradition of courtroom law. It is not surprising, therefore, that rules protecting special privileges for Brāhmaṇas find their place. But a review of the entirety of *Āpastamba* demonstrates that *vyavahāra* is foreign to the main concern of the text, which, like the Vedic literature that preceded it, never uses *vyavahāra* as a technical legal term.[112] We have seen that Aśoka was already using *vyavahāra* to mean something like "law" in this period, and that this practice most likely predated him. In all, *Āpastamba* confirms that the concept of *vyavahāra* did not develop its technical legal connotations in the Vedic tradition generally nor in the *dharma* literature specifically.

111 The source of this list is Mark McClish, "Titles of Law: *vyavahārapada*," in Olivelle and Davis, *Hindu Law*, 299–312, at 304–05.

112 For Āpastamba, *vyavahāra* only means *trade*, as in mercantile activity. It is found as both a verb (1.20.11; 1.20.16) and a noun (2.16.17, although the parallel here with the texts cited in note 62 suggests a different interpretation). The term *saṃvyavahāra* is used once (1.21.5), meaning *social interaction* more broadly. See also *Baudhāyana Dharmasūtra* 2.3.41.

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The next two *Dharmasūtra*s chronologically are those of Gautama and Baudhāyana, both of which may date to around the first century BCE or slightly earlier. Baudhāyana has clearly undergone extensive redaction, making it difficult to assign a single date to the text.[113] Like *Āpastamba*, both contain tracts on the duties of kings that focus primarily on *vyavahāra*-type rules.[114] But, unlike *Āpastamba* both integrate these teachings within the main body of their instructions on the *dharma*s of the social classes. In addition, both Gautama and Baudhāyana use *vyavahāra* as a technical legal term in the sense of "having obtained *vyavahāra*." This is a reference first found in the *Arthaśāstra* to the age at which someone is authorized to engage in valid transactions.[115] The concept implies a normative, proto-legal understanding of *vyavahāra*.

Gautama is far advanced of both *Āpastamba* and *Baudhāyana* in his technical discussion of *vyavahāra*. The text is the first of the *dharma* corpus to use *vyavahāra* to mean something close to *law* itself:

> And [the king's] *vyavahāra* is: Veda, Dharmaśāstras, Ancillaries, Minor Vedas, and Purāṇa. The laws of regions, castes, and families are authoritative when they are not opposed by sacred texts. Farmers, merchants, herders, lenders, and artisans each among their own group. Having consulted on cases with them according to authority, there is an establishment of *dharma*.[116]

The meaning of the term *vyavahāra* is not entirely clear here, but it seems likely that *Gautama* is referring to the tradition of the law of state courts, specifying that they take Brāhmaṇical scriptures as their authoritative guidelines.[117] In the context of what we have already learned, we must interpret this as an orthodox intervention into the practice of *vyavahāra*. Rather than conduct his courtroom law based on rules from a text like the *Arthaśāstra*, which is to say rules from the statecraft tradition, the king is to follow rules on *vyavahāra* provided by Brāhmaṇical scriptures, including the Vedas as well as *Dharmasūtra*s of *Āpastamba*, *Baudhāyana*, and *Gautama*.

We can be confident of this interpretation of *Gautama*'s instructions because *Gautama* has clearly drawn much of his own discussion of *rājadharma* from the *Arthaśāstra* or a very similar text.[118] And his specification that kings use Brāhmaṇical scriptures makes sense only if it serves to exclude other kinds of texts that might also provide such rules. In all, I would argue that *Gautama*'s relative sophistication with respect to *vyavahāra* can be credited to his study of

113 Patrick Olivelle, trans., *Dharmasūtras: The Law Codes of Āpastamba, Gautama, Baudhāyana, and Vasiṣṭha* (Delhi: Motilal Banarsidass, 2000), at 191.

114 *Gautama Dharmasūtra* 10.7–48; 11.1–13.31 (*vyavahāra* discussed at 11.19–13.31); *Baudhāyana Dharmasūtra* 1.18.1–19.16 (*vyavahāra* discussed at 18.17–19.16).

115 See note 91.

116 *Gautama Dharmasūtra* 11.19–22. *tasya ca vyavahāro vedo dharmaśāstrāṇy aṅgāny upavedāḥ purāṇam | deśajātikuladharmāś cāmnāyair aviruddhāḥ pramāṇam | karṣakavaṇikpaśupālakusīdikāravaḥ sve varge | tebhyo yathādhikāram arthān pratyavahṛtya dharmavyavasthā |*

117 Kane, *History of Dharmaśāstra*, 246, takes it as "the means of deciding a matter"; Olivelle, *Dharmasūtras*, 147, takes it as "administration of justice." The immediate context, however, concerns not procedure but the content of law and its sources. The king's *vyavahāra* is (or ought to be) the various scriptures in the first place, but the rules of various groups are authoritative when not in conflict with them. Consultation with those authorized among them results in *dharmavyavasthā*, and ascertainment or establishing of the law in effect. While it could be that *vyavahāra* here includes legal procedure or the administration of justice generally, it certainly invokes the body of substantive laws pertaining to private transactions. Its use here would then be in agreement with the term *vyāvahārika śāstra* as used in a late verse from the *Arthaśāstra* (3.1.44, where it is opposed to *dharmaśāstra*) and which I take as referring to the laws presented in the *Arthaśāstra* itself. This interpretation is supported, further, by Gautama's apparent knowledge of the *Arthaśāstra*, as is evident elsewhere in this passage.

118 McClish, "King: *rājadharma*," 264.

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statecraft texts. What we can only infer in *Āpastamba* is directly perceptible in *Gautama*, as well as later *dharma* texts: their rules on *vyavahāra* depend in large part on statecraft sources.

The origins of the *vyavahāra* rules in *Baudhāyana* and the next *Dharmasūtra* chronologically, that of *Vasiṣṭha*, are not clear, but the *Mānava Dharmaśāstra* ("The Laws of Manu"; ca. second century CE), which inaugurates the "mature" phase of the *dharmaśāstra* tradition, borrows extensively from the *Arthaśāstra*.[119] So does the *Yājñavālkya Dharmaśāstra* (ca. fourth–fifth centuries CE).[120] *Manu* presents the first comprehensive *vyavahāra* code in a *dharma* text,[121] and he embeds it in a long tract on *rājadharma* that is mostly a digest of the *Arthaśāstra*. Although all *dharma* texts draw *vyavahāra*-type rules from earlier *dharma* texts, *Manu* gives further evidence of what we can now recognize as a pattern of *dharma* texts appropriating from the statecraft tradition with a particular interest in the rules of *vyavahāra*.

Unlike his predecessors, however, *Manu's* treatment of *vyavahāra* represents a significant advance over that of the *Arthaśāstra*.[122] *Manu* is the first to divide the rules for *vyavahāra* transactions into eighteen headings he calls *vyavahārapada*s (feet of *vyavahāra*). It is the first text where *vyavahāra* refers to a *lawsuit* (the *Arthaśāstra* calls these *vivāda*) and to the entire process of resolving a dispute in royal court. This latter meaning can only be implied in earlier sources.[123] These and other innovations tell us that the composer of the *Mānava Dharmaśāstra* was connected to the *vyavahāra* tradition in an intimate way. He must have been a jurist himself, whether he was recording historical developments or innovating on his own.

It is only beginning with *Manu* that we can observe the full coalescence of two worlds: that of the learned orthodox Brāhmaṇa and that of the state judge. After *Manu*, *vyavahāra* grows further in importance among *dharma* texts.[124] It makes up a third of the *Yājñavalkya Dharmaśāstra* and is the focus of the *dharmaśāstra*s of Nārada, Bṛhaspati, and Kātyāyana (ca. fifth–seventh centuries CE). These later *dharmaśāstra* authors present further innovations to *vyavahāra* and bring it to its greatest articulation in the ancient period.[125] With *Manu*, *vyavahāra* fully becomes the property of *dharmaśāstra*, and *dharmaśāstra* seems to have begun the process of becoming a decidedly judicial tradition, at least among its most influential texts.

If we situate the development of *vyavahāra* in these *dharma* texts against the backdrop of the political tradition examined above, we can see that the earliest *Dharmaśāstra* texts do not represent the legal awakening of a group of orthodox priests motivated to ramify the requirements of sacred duty through the domain of state law. Instead, *vyavahāra* rules come into the early *Dharmaśāstra*s as part of the integration of an adjunct discipline. *Rājadharma* (the sacred laws for kings) provides a theoretical framework for the absorption of teachings on statecraft, but there is no evidence that *vyavahāra* developed out of earlier reflection on the *dharma* of the king. What we are seeing is not an orthogenetic development, but an assimilative one. The result was the reinterpretation of *vyavahāra* as part of *dharma* and the obfuscation of its independent origin.

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119 Mark McClish, "The Dependence of Manu's Seventh Chapter on Kauṭilya's Arthaśāstra," *Journal of the American Oriental Society* 134, no. 2 (2014): 241–262.

120 Muneo Tokunaga, "Structure of the Rājadharma Section in the Yājñavalkyasmṛti (i.309-368)," 京都大學文學部研究紀要 /*Memoirs of the Faculty of Letters of Kyoto University* 32 (1993), 1–42.

121 *Mānava Dharmaśāstra* 8.1–9.250.

122 McClish, "Titles of Law: *vyavahārapada*," 307–09.

123 This is evident in general references to *vyavahārasthiti*/*vyavahāra sthiti* (8.07; 8.199) or *vyavahāravidhi* (8.45), both referring to rules governing *vyavahāra* as the adjudication of lawsuits in general.

124 For an overview of this development, see McClish, "Titles of Law: *vyavahārapada*."

125 McClish, "Titles of Law: *vyavahārapada*," 309–11.

CONCLUSION: RELIGION AND LAW IN ANCIENT INDIA

I have presented the relationship between the statecraft tradition and *dharmaśāstra* in binary terms, but it should not be conceived as a one-way relationship between two hermetic bodies. We can imagine, on one hand, that ideas and people circulated between the two intellectual traditions in a number of ways, perhaps in ways that blurred their boundaries. Nevertheless, they seem to have maintained relatively distinct identities until the early centuries of the Common Era, when texts like the *Mānava Dharmaśāstra* indicate their more thoroughgoing coalescence. Nor should we imagine the *vyavahāra* tradition itself as homogeneous: it was almost certainly more well developed in some areas and may have taken forms quite different from those depicted in our sources. Once *vyavahāra* tracts were produced within *dharmaśāstra*, they too formed part of a greater legal tradition and served as paradigmatically authoritative sources for later jurists. The key question, reserved for future study, is why *vyavahāra* came to be of interest to Brāhmaṇas of the *dharma* tradition and what that tells us about the relationship between orthodox Brāhmaṇas and the law of state courts.

This study provides critical historical context to some of the normative complexity found in the *dharmaśāstra* literature. One conclusion that we can draw is that the conflict between the normative characteristics of *vyavahāra* and *dharma* is not merely apparent. The integration of *vyavahāra* into the normative context of *dharma* created real and enduring interpretive issues for *dharmaśāstra* as a legal tradition. Foremost among these is the legal authority of *vyavahāra* rules as found in *dharma* texts: do they possess sacred authority, temporal authority, or both? The disagreement and general difficulty found among the commentators tells us that no easy solution to the problem was forthcoming. Another legal artifact of *vyavahāra*'s appropriation was the need to reinterpret the "four feet" of law.[126] In the original formulation, each of these were understood as a rule set or type of rules, but the prioritization of *vyavahāra* over *dharma* there would have been unacceptable to later *dharmaśāstra* jurists and forced them to reinterpret the four feet as four means of resolving a court case. Special rules were applied to these four means so that *dharma* itself became the final determinate of the validity of all rules.[127] The awkward intellectual gymnastics of later *dharma* jurists give proof that the status of *vyavahāra* rules remained a problem for the tradition, which I take as further evidence of their independent origin.

The normative unity that pervades the *dharmaśāstra* corpus based on the prima facie identification of all of its rules as *dharma* should not obscure the fact that the *Dharmaśāstra*s are deeply, messily plural texts. The early history of *vyavahāra* shows us this. These texts are aggregations of divergent rule sets, which fact justifies the potential historical utility of a formal analysis of *dharmaśāstra* based on its constituent normative elements, as attempted by Derrett[128] and Lingat,[129] among others. Perhaps we can venture more boldly to say that one cannot understand the history of *dharmaśāstra* without such formal analysis of its constituent rule sets. The history of *vyavahāra* helps us to see more clearly how *dharmaśāstra* operated in its own legal environment, not merely reflecting or recording that legal order, but actively engaging, transforming, and eliding parts of it. Beneath *dharmaśāstra*'s veneer of timelessness and unchangeability lie the decisive events and great personalities that shaped the legal order of ancient India.

Finally, this study refutes the orthogenetic model and any support that it may have rendered Maine's theory of law's disentanglement from religion or Weber's rationalization thesis. It has

126 Olivelle and McClish, "The Four Feet of Legal Procedure."
127 Olivelle and McClish, "The Four Feet of Legal Procedure," 34–37, 46.
128 Derrett, *Religion, Law and the State*, 75–96.
129 Lingat, *The Classical Law of India*.

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nothing to say, however, about the historical relationship between religion and law more generally, because I have not been able to take us back to the origins of *vyavahāra* itself. What is clear from a review of the earliest sources, however, is that *vyavahāra* appears to have its origin in everyday practices and the processes through which different people—and perhaps most importantly different kinds of people—reflected on the normative form of specific transactions and used those to resolve their disputes. By the time we get a view of these practices, kings are involved, and perhaps political authorities always were. At the same time, though, *vyavahāra* looks like something of an emergent, negotiated order. Certainly, no text claims that the rules of *vyavahāra* were legislated by states. Rather, political leaders were called upon (or betook themselves) to resolve disputes arising in their domains, and they codified the norms that they found in use. If this study tells us anything about the origin of law in South Asia, then, it cautions us first to be more specific (what kind of law?) and encourages us to reject a monocausal view of its emergence from some more fundamental social reality.

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PRIMARY SOURCES

Acharya, Narayana Ram, ed. *Yājñavalkya-smṛti of Yogīśvara Yājñavalkya with the commentary Mitākṣarā of Vijñāneśvara, Notes, Variant Readings, etc.* 5th ed. Bombay: Nirnayasagara Press, 1949.

Bakre, Mahādeva Gangādhar, ed. *Grihya-Sūtra by Paraskar, with Five Commentaries of Karka Upādhyāya, Jayarām, Harihar, Gadādhar, and Vishvanath.* 2nd ed. Bombay: Munshiram Manoharlal, 1982.

Bodewitz, H. W., trans. *The Jyotiṣṭoma Ritual: Jaiminīya Brāhmaṇa I*, 66-364. Leiden: Brill, 1990.

Bolling, George Melville and Julius von Negelein, eds. *The Pariśiṣṭas of the Atharvaveda*. Leipzig: Harrassowitz, 1909–1910.

Caland, Wilhelm, ed. *The Baudhāyana Śrauta Sūtra Belonging to the Taittirīya Saṃhitā*, vol. 2. Calcutta: Asiatic Society, 1907.

Caland, Wilhelm, ed. and trans. *Das Jaiminiya-Brāhmaṇa in Auswahl.* Amsterdam: Johannes Müller, 1919.

Caland, Wilhelm. "Eine dritte Mitteilung über das Vādhūlasūtra." *Acta Orientalia*, no. 4 (1926): 1–41.

Caland, Wilhelm. "Eine vierte Mitteilung über das Vādhūlasūtra." *Acta Orientalia*, no. 6 (1928): 97–241.

Chaubey, Braj Bihari, ed. *Vādhūla-Śrautasūtram*. Hoshiarpur: Katyayan Vaidik Sahitya Prakashan, 1993.

Chintamani, T. R., ed. *The Kauṣītaka Gṛhyasūtras, with the Commentary of Bhavavrata*. Madras: University of Madras, 1944.

Horner, I. B., trans. *The Book of the Discipline* (*Vinaya-Piṭaka*). 5 vols. London: Pāli Text Society, 1938–1966.

Hultzsch, Eugen. *The Inscriptions of Asoka, New Edition. Corpus Inscriptionum Indicarum.* vol. 1. Oxford: Clarendon Press, 1925.

Jayaswal, K. P. "The Hathigumpha Inscription of Kharavela." *Epigraphia Indica*, no. 20 (1929–30): 71–89.

Kangle, R. P., ed. *The Kauṭilīya Arthaśāstra, part I: A Critical Edition with a Glossary*, 2nd ed. Bombay: University of Bombay, 1969.

Kangle, R. P., trans. *The Kauṭilīya Arthaśāstra, part I: An English Translation with Critical and Explanatory Notes*, 2nd ed. Bombay: University of Bombay, 1972.

Katre, Sumitra M., trans. *Aṣṭādhyāyī of Pāṇini*. Austin: University of Texas Press, 1987.
Kielhorn, F., ed. *The Vyâkaraṇa-Mahâbhâṣya of Patañjali*. 2nd ed. 3 vols. Bombay: Government Central Book Depot, 1892–1909.
Olivelle, Patrick, trans. *The Dharmasūtras of Āpastamba, Gautama, Baudhāyana, and Vasiṣṭha: Sanskrit Editions and Annotated Translations*. Sources of Indian Law. Delhi: Motilal Banarsidass, 2000.
Olivelle, Patrick, trans. *King, Governance, and Law in Ancient India: Kauṭilya's Arthaśāstra*. New York: Oxford University Press, 2013.
Olivelle, Patrick, ed. and trans. *Manu's Code of Law: A Critical Edition and Translation of the Mānava-Dharmaśāstra*. New York: Oxford University Press, 2005.
Oldenberg, Hermann, ed. *Çānkhāyanagṛihyam*. In *Indische Studien, Beiträge für die Kunde des indischen Alterhums, herausgegeben von Albrecht Weber*, Band 15 (1878): 1–166.
Oldenberg, Hermann, trans. *The Gṛihya-Sūtras: Rules of Vedic Domestic Ceremonies*. Part 1. Sacred Books of the East 29. Oxford: Oxford University Press, 1886.
Oldenberg, Hermann, ed. *The Vinaya Piṭakaṃ*, 5 vols. London: Williams and Norgate, 1879–1883.
Raghu Vira, ed. *Jaiminīya Brāhmaṇa of the Sāma Veda*, Book 1. Lahore: Arya Bharati Press, 1937.
Raghu Vira, and Lokesh Chandra, eds. *Jaiminiya Brahmana of the Samaveda*, Book 3. Nagpur: International Academy of Indian Culture, 1954.
Salomons, H. J. W., ed. *Bhāradvājagṛhyasūtram: Het hindoesche huisritueel volgens de school van Bhāradvāja*. Diss. Leiden: Brill, 1913.
Sarup, Lakshman, ed. and trans. *The Nighaṇṭu and the Nirukta: The Oldest Indian Treatise on Etymology, Philology, and Semantics*. Delhi: Motilal Banarsidass, 1967.
von Schroeder, Leopold, ed. *Kâthakam: Die Samhita der Katha-Çâkhâ*, erstes Buch. Leipzig: F. A. Brockhaus, 1900.
Stenzler, Adolf Friedrich, ed. *Indische Hausregeln I: Âçvalâyana*, Part 1: Text. *Abhandlungen der Deutschen Morgenländischen Gesellschaft*, III Band, no. 4. Leipzig: Kommissionsverlag. F. A. Brockhaus, 1864.
Weber, Albrecht, ed. *The Çrautasūtra of Kâtyâyana, with Extracts from the Commentaries of Karka and Yajñikadeva*. 2 vols. Berlin: Ferd. Dümmler's Verlagsbuchhandlung, 1859.

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