That dharma in the Dharmaśāstra was derived in a historical sense not from the Vedic literature but from ‘custom’ has long been accepted. In the clearest exposition of this thesis, Larivière writes, “the whole of the dharma corpus can be viewed as a record of custom” (1997: 98, also included in the present volume). An important distinction must be preserved here between dharma and Dharmaśāstra, for the former is a concept and an idea, while the latter is a series of textual reflections on that concept. It is Dharmaśāstra that derives its substance primarily from what Larivière and others call ‘custom.’ For dharma, by contrast, ‘custom’ is only one of its sources. ‘Custom’ is an ambiguous translation for the Sanskrit term acāra, one of the three principal sources of dharma, along with śruti and smṛti, i.e. the Vedas and Dharmaśāstra texts themselves.

The uncertainty about the denotation of ‘custom’ stems from a vacillation between custom as norm and custom as behavior (see, e.g., Larivière, 1997: 104; Wezler, 1999: 84–88) and from a lack of critical reflection on the possible differences between custom and customary law. Both Larivière and Wezler presuppose the nature of custom without due reflection on the ambiguities of the term. The purpose of this paper is to extend their arguments by examining the nature of acāra itself and its relation to the authority of dharma.

The ambiguity of custom in English is deeply embedded in Anglo-American jurisprudence in which custom, also called the Common Law, has, from the times of Blackstone and his predecessors, been considered the truly great source of law’s authority, in contradistinction to the modern legislations of parliaments. From legal circles ‘custom’ entered colonial discussions of social, religious, and legal problems engendered in the encounter between Britain and its new colonies, especially India (Vollenhoven, 1927; Jain, 1963; Bhattacharyya, 1996; Chakravarty-Kaul, 1996: 187–198). Social anthropologists are the latest group to continue to expand, evolve, and criticize the idea of ‘custom,’ again as part of a process of cultural and
intellectual encounter (Moore, 1978, 1986; Renteln and Dundes, 1994). Over the last 50 years or so, however, an impressive literature has accumulated on the historical and linguistic problems involved in using the term ‘custom’ in comparative legal and religious studies. Geertz provides a summary criticism, “The mischief done by the word ‘custom’ in anthropology, where it reduced thought to habit, is perhaps only exceeded by that which it has done in legal history, where it reduced thought to practice” (1983: 208). It is precisely this extrication of thought and agency from the understanding of that leads me to question the suitability of ‘custom’ as a transparent English equivalent. If the Sanskrit term ac āra is to be related to the concept of dharma, to the point of being the very foundation of dharma in the Dharmaśāstra (Wezler, 1999), then we must be clear about what is meant by calling ac āra ‘custom.’

In this essay, I will contend that ac āra refers to norms or standards consciously and deliberately established by the elites of a given group. Both as one of the three traditional divisions of Dharmaśāstra (vyavahāra and prāyaścitta being the other two) and as a generic term for local and regional laws (Davis, 1999: 191ff.), ac āra refers to norms, expressed in the form of rules. As Ganganatha Jha writes in his exposition of the Mīmāṃsā understanding of the relationship of ac āra and dharma, “we are to accept as Dharma only those actions of good men which they do as Dharma; that is to say, any and every act done by good men is not to be regarded as Dharma; when they do an act, thinking it to be Dharma, then alone is that act to be regarded as Dharma” (Jha, 1916: 68). In other words, there is an agentive process, typically in the form of consensus or legislation, whereby a certain behavior is accorded the status of ac āra and thereby becomes a norm, a rule, a law. Ac āra has attached to it a sense of behaving according to a certain set of well-known standards (cf. Wezler, 1999: 84). There may be many behaviors common to a particular group or region, but only when such a behavior has been authorized somehow can it be called ac āra, a standard or law. Medieval Dharmaśāstra commentaries are full of glosses and synonyms for ac āra that indicate both its nature as a norm and its conceptualization as practical and practiced dharma.

Ac āra, therefore, is dharma in practice, the practical, ‘real’ life of dharma that acts as a normative precedent for future action, even though in practice it may sometimes differ from place to place and time to time. If dharma’s authority rests primarily on three sources, then it makes sense to examine the relationship of these sources to
each other and to dharma itself. Elaborating on the medieval Dharmaśāstra presentations of the sources of dharma, I would argue that in general the authority of dharma derives both: (1) historically – from the currency and political significance of ācāra and (2) academically or theologically – from the ideologically powerful connection of ācāra with śruti and smṛti. The first source of authority operates both within and outside of the theological and jurisprudential discourses of Dharmaśāstra, i.e. in the realm of praxis as well, while the second is restricted primarily to this academic branch of learning. However, to the extent that experts in Dharmaśāstra, mostly or exclusively Brahmins, had political and cultural influence, the ideological connection of ācāra with Vedic tradition shaped and informed the historical importance of ācāra as dharma in practice. On the whole, I am concerned here primarily with the theological connections of ācāra and dharma, although I believe the historical connections impinge on the theology and vice-versa. This essay will, therefore, attempt to illuminate the authority of dharma as presented in medieval Dharmaśāstra texts with particular attention to ācāra as the least studied of the three classic sources.

THE AUTHORITY OF THE PERSON IN Dharmaśāstra AND Mīmāṃsā

The first step in understanding the authority of dharma in the religio-legal discourses of medieval Dharmaśāstra takes off from the fact that the most important school for the exegesis of both the Vedas and Dharmaśāstra, the Pūrva-Mīmāṃsā,10 recognized one of the principal sources of knowledge and authority in matters relating to dharma to be human beings who know the Veda (vedavid). To be clear, the Vedas as scripture are the starting point for all Mīmāṃsā, but it is also clear from the tradition as a whole that the Vedas have power and authority only insofar as it is known, understood, and followed by human beings. Part of this grounding of authority in human beings relates to dharma’s foundation in reason, as well as on the Veda. Halbfass elaborates:

Essentially, dharma is that which can only be learned from the Veda and justified through the Veda; there are no other means for knowing it, and no other sources for legitimizing it: to be sure, this ‘rooting in the Veda’ (vedamāla) should itself be secured by reason and argumentation (yukti, nyāya). The dharma is vedamāla; yet the insight that this is so is considered as nyāyamāla, as being based upon reason. (1988: 325–326, cf. Medhātithi on Manu 2.6 in Jha, 1999: V.1: 58)
The medieval *Sarvasvativilāsa* is somewhat more explicit when it makes *nyāya* (reason, logic, common sense, etc.) into a kind of natural supplement to the Veda “vidheyaśa darśanasya katha- manśaśvārakatvena pramāṇakōṭiniveśāt [because it enters into the category of authority (*pramāṇa*) by supplying (completing) the ‘how-portion’ in regard to the performance of what is enjoined]” (Shama Shastri, 1927: 13). DHARMA’s basis in *nyāya* begins to shift the locus of authority away from texts to the people who know the texts and their accompanying ritual and legal traditions.

Medieval Mīmāṃsā texts corroborate the idea that authority also rests in the human person who knows the Vedic texts and traditions. The point is clearly made in commentaries to the 3rd section of the 1st chapter of the *Pūrva-Mīmāṃsā Sūtras* (PMS) of Jaimini. The first *sūtra* establishes the position of the *pūrvapakṣa*, i.e. the interlocutor or straw man, against which the author establishes his opinion through syllogisms. This wrong opinion reads: “dharmasya sābdamūlaḥ vā sābdam anapekṣāṃ syāt [Because the basis of dharma is the Veda, that which is not part of the Veda should be considered unrequired (as *dharma*)]” (PMS 1.3.1, see Jha, 1916: 55). The *siddhānta*, or established teaching, of Jaimini, however, states: “api vā kartirāmāṁvāt pramāṇam anumāṇam syāt [On the contrary, the presumption of a Vedic text] should be the proof (of the authority of *smṛti* and *acāra*) because the agents are identical” (PMS 1.3.2, see Jha, 1916: 56). In this case, the *pūrvapakṣa* suggests that human beings are only obliged to do things that are explicitly stated in the Vedas; in everything else, they can do as they please. However, Jaimini, in the voice of the *siddhānta*, refutes this claim. Jha sums up the medieval commentarial interpretations of the *sūtra* as follows:

Because the agents or persons who compiled the *Smṛtis* are the same that performed actions laid down in the Veda; that is to say, we know that during their lives, Manu, Yājñavalkya and other writers on *Smṛti*, acted fully in accordance with the injunctions laid down in the Veda; and for persons who were such strict followers of the Veda in conduct, it is not possible that they should have made assertions except in accordance with direct Vedic injunctions known to them; therefore, we conclude that the *Smṛti* is authoritative (Jha, 1916: 57).

This argument opened the conceptual floodgates for the Mīmāṃsā tradition because it was extended also to the conventional standards and practices (*acāra*) of these same “agents” (*karta*) who followed the Vedas. Such a view allowed medieval Dharmāśāstra commentators such as Medhātithi to incorporate *acāra* under the same heading, and, therefore, the same status, as *smṛti* itself.
Another aspect of the Mimāṃsaka argument here merits a slight elaboration. The Mimāṃsakas acknowledge that the authority of Dharmaśāstra texts (smṛti) and local laws (ācāra) derives not directly from the extant Vedas, the contents of which overlap very little with Dharmaśāstra texts and local laws, but indirectly from people who respect and know the Vedas. Moreover, and here the argument stretches somewhat, the Mimāṃsakas developed the doctrine that in a case where a rule of smṛti or ācāra cannot be derived from a Vedic text, we should infer or presume (anumāṇa) the existence of a lost Vedic text to which the accepted rule of smṛti or ācāra corresponds.14 The key point here is not the doubtful historical validity of this ‘lost Veda’ doctrine, but the hermeneutical gymnastics performed by the Mimāṃsakas to permit or recognize, in the first place, the authority of humanly constructed norms and to connect that authority, in the second place, with the authority of the Veda.

With this recognition of the authority of certain human pronouncements about religious and legal life, we return to the argument described earlier in which Lariviere, Wezler, and others have asserted that Dharmaśāstra’s real origins lie in ‘custom,’ i.e. ācāra. Although the Mimāṃsakas would likely not characterize Dharmaśāstra’s origins in this way, it seems possible to read Mimāṃsā as permitting such a view provided that what we might call ‘the lost Veda corollary’ is also understood as part of the characterization, an important corollary in that it allows the Mimāṃsakas to claim that all sources of dharma are ultimately based on the Vedas, whether extant or ‘lost.’ As a result, one way of extending the historical thesis of Lariviere and Wezler is to suggest that even Hindu theology accords considerable importance and authority to standards and observances proclaimed and promulgated by humans. The authority of the person provides Dharmaśāstra with an apparatus of change and adaptability, one that can meet the challenges of historical developments while preserving an orthodox theological view of the ‘roots’ of dharma as uniformly Vedic.

THE PRODUCTIVE TAUTOLOGY OF DHARMA AND ĀCĀRA

One striking aspect of the authority of dharma in medieval Dharmaśātra (one that characterizes many earlier and later conceptions as well) is its tautological nature. The tautology works like this: dharma is constituted and promulgated by those who already possess authority, but those authorities must be people who follow and know
dharma. This sociologically constructed tautology with the śiṣṭas, the educated elites, as the living focal point was both hermeneutically and socially efficacious in classical and medieval India. Hermeneutically, the tautology provided theological justification for a diversity of injunctions, rules, and laws while still according importance to dharma by permitting convention to define it only partially. Socially, the tautology allowed the authority for dharma to rest with the leaders of a community who determined the ācāra for their group. Moreover, it provides us with a more plausible way to understand what Indians meant by ācāra and similar words in legal and religious contexts.

An interesting instance of this tautology at work in medieval Dharmasāstra concerns the so-called ‘bad customs’ (durācāra) or ‘special customs’ (anācāra, lit. ‘not-customs’) of particular groups or regions. The relationship of dharma to these deviant standards of conduct – deviant, at least, from an outsider’s perspective – says a great deal about the importance of ācāra in a general way to the substantive content of dharma in practice.

A tension between pan-Indian and regional standards of conduct acutely appears in Dharmasāstra texts. Scholars have sometimes characterized the conflict as being between a transcendent dharma, on the one hand, and ‘customary’ rules, such as ācāra, desācāra, kulācāra, etc. (not to mention the synonymous, and on this view rather paradoxical terms desadharma, kuladharma, etc.) on the other hand (e.g. Lingat, 1973: 176ff.). I think this characterization creates a dichotomy where there should be a continuity. Pitting dharma and ācāra against each other fails to account for the connections between the two described in dharma texts. A look at anācāra in a late medieval Dharmasāstra text known as the Laghudharmapraṇakṣikā (LDhP, Tamburān 1906) helps us see the connections of dharma and ācāra. The date of the LDhP, also called Śāṅkarasmṛti, is unknown but is probably no earlier than the 16th century AD. Its provenance, however, is certain – Kerala. In fact, the text calls itself the rules for the people of Kerala (kēralavāsī). The LDhP is one of at least three texts which records the 64 anācāras of Kerala and Kerala Brahmins (see Parpola, 2001).

Whereas anācāra would usually refer to standards of behavior that deviate from the norm, in the LDhP, it refers to a set of standards for religious, political, moral, and legal behavior which were intended to be normative only for Kerala people, especially Kerala Brahmins, to whom most of the rules apply. In other words, despite its negative prefix, anācāra is a positive label for prescribed norms, not prohibited...
ones. The *an-* here is restrictive, not prohibitive, at least from the point of view of those who accept these rules. I have not seen *anācāra* used in this way anywhere else, although Derrett (1977: 55) has made a cryptic reference to what he calls the ‘marginal anācāra literature’ and to a text called *Anācāranirṇaya*, which I have not been able to locate.

More relevant, however, is Wezler’s discussion (1985) of *durācāra* in the *Gīrvaṇapadaṃtiṇḍa* and *Gīrvaṇavāhamaṇḍiṇḍa* from Bengal.¹⁶ Both of these texts use *durācāra* to refer to accepted norms that were restricted to a particular region. So, we are told that Brahmins in Andhra ride horses, Brahmins in Karnataka eat without bathing first, and that women in the Dravida and Kerala regions do not cover their breasts. The list includes several standard regional norms that were mentioned as early as *Baudhāyanadharmsūtra* 1.2.1-6 (Olivelle, 1999: 133) as well as others. The point here is that this label *durācāra* for certain regionally sanctioned practices comes from outside of the region where they are authoritative, i.e. *not* from the perspective of those who accept the restricted standards. From an internal or insider’s point of view, what is *durācāra* to an outsider means positive prescriptions dictating authoritatively sanctioned behavior in many areas of life.

The interesting fact about *anācāra* and the Kerala case, as opposed now to *durācāra*, is that the insiders *themselves* are calling their standards *anācāra*, specifically recognizing that they deviated from standards elsewhere. Such a recognition of separateness reveals a consciousness of Kerala as a separate cultural entity which deviates in certain ways from pan-Indian norms, here implicitly deemed *ācāra*, not dharma. Moreover, nowhere in these discussions of *durācāra* and *anācāra* are these terms said to be *adharmā*, a fact which would seem to support the interpretation of the terms as sources of dharma in a restricted context.

A few brief examples will clarify exactly what kinds of standards we are talking about. In general, the list of 64 *anācāras* in the LDP includes rules for bathing, eating, clothing, study, occupation, an-*tyeṣṭi* funerary rites, ritual, inheritance, and marriage. The first rule states, for example, “*varjāyeta dantakaśṭhāni* [Do not clean your teeth with sticks].” This contradicts the standard rule in *Yājñivalkyasmrī* and elsewhere to use a twig for cleaning one’s teeth. Another rule prohibits bathing before sunrise, which conflicts again with rules found in *Yājñivalkyasmrī*, *Manu*, and *Viṣṇu-smrī*, among others. We also find a rule restricting marriage and, by implication, inheritance...
to the eldest son “jyeṣṭhabhratā grhit bhavet [(only) the eldest son shall become a householder]” – a practice prevalent among Namputiri Brahmins. There are also rules for non-Brahmins as well. Kṣatriyas, for instance, are enjoined to follow matrilineal inheritance, called marumakkattāyam in Kerala. Śamnyāsins, we are told, should not look at women. These short examples demonstrate the brevity of the rules as well as their diversity.

The list of these rules is introduced as follows (LDhP 12.4.1-2):

athāto 'nuprakasyaṁ nṛṇāṁ kērālaśvināṁ
anācāraṁ samāsena bhriguveṇa pradarsitāṁ

anyatṛācāraḥ bhāvaiḥ
anācāraṁ bhrigūdvaḥ
yāṁ ācāṣṭa catuḥśaṭiṁ akhyāyasya tatra tāṁ api

[Now, therefore, I shall declare anācāras for the people who dwell in Kerala as they have been fully put forth by Bhargava. Among those (previously stated rules), I shall explain these 64 anācāras as well which the offspring of Bhṛgu has made known because they are not followed elsewhere.]

The verses make clear that the rules applied only to the “people who dwell in Kerala.” Twice the rules are called anācāra because, as the text says, “they are not followed elsewhere” and are, therefore, restricted only to people in Kerala. The question then is how do we make sense of these rules in the context of dharma?

Based on these opening lines, we might be led to think that everything people did in Kerala was anācāra, while what people in other regions did was ācāra. In fact, I think this is not the case. Anācāra only refers to this specific list of special rules for people in Kerala, while ācāra remains a general term in the LDhP and in Kerala generally for other standards of conduct approved and accepted by the Kerala community and, presumably, shared by other regions as well. Although dharma is not mentioned specifically, I think it must be understood that both the anācāras and ācāras were dharmas for the people of Kerala, especially considering the frequent reference to dharma in earlier portions of the LDhP. The nature of and relationship between the three terms becomes clearer, however, because of this unusual use of anācāra in a positive sense.

Note how the LDhP says that these anācāras were ‘proclaimed by Bhargava.’ From this, we learn that anācāras and, by inference, ācāras as well were proclaimed or pronounced by people with power and authority. They were not just random patterns of behavior, but rather authorized standards of conduct. The link between anācāra,
ācāra, and dharma was the śiṣṭas, the rṣis, the elites who proclaimed them. The rules for morality, ritual, politics, law, etc. lived in the persons who held the power to dictate those rules, and these persons struggled not only with traditional Dharmaśāstra texts but also with regional standards, in this case called anācāras, to determine what appropriate conduct should be in given circumstances. The tautology of ācāra and dharma neatly operates in the LDhP such that even ācāras that explicitly deviate from standards elsewhere are given the force of dharma because they have been proclaimed by a sage.

The LDhP is a clear case, admittedly unusual, in which it is explicitly recognized that a specific set of regional standards are more important than pan-Indian standards, and yet both were dharmas, albeit with different provenances. In the LDhP, these regional standards constituted dharma, not vice-versa. Given the understanding described above of Dharmaśāstra as grounded in such standards, the case of the LDhP may be unusual only in that it explicitly states that it is based on the standards of a particular region.

There is no conflict between dharma and ācāra, because each is said to constitute the other in the circular manner I have described. Ācāra refers to a specific part of one ‘little tradition,’ yet even the grammatical construction of the term implies the existence of a larger tradition of ācāra which in turn provided the building blocks for dharma and the texts which describe dharma. Historically, the provenance of various ācāras was likely restricted to particular places, but, theologically, ācāra’s scope was held to be more or less universal if properly constituted as the sanctioned practices of the ‘good.’ In the end, in order to understand dharma, we must deconstruct it by understanding its constituent parts, namely the regional standards of India. In so doing, we see how the tautological relationship of dharma and ācāra produced a thriving religious and legal culture that balanced the elements of tradition and change necessary to any successful system of religion and law.

COMMON GLOSSES FOR ĀCĀRA IN MEDIEVAL Dharma śāstra

The variety of medieval commentarial glosses on ācāra17 provides us with another means of assessing ācāra’s relationship to dharma. The range of meanings and synonyms given for ācāra in these commentaries again shows that the authority for this source of dharma rests in the fact that it was held to be a normative model and a practical performance of dharma itself. In general, the glosses suggest that
śācāra was thought to be something passed down over time, but also something that had to be accepted conventionally in the current moment. It was both the recognition of a past tradition and the creation of a future tradition that emanated from the good character and learning of those who preserved and proclaimed śācāra.

Several glosses equate śācāra with ‘convention,’ including samaya (convention), āgama (tradition), vyavahāra (daily business), and lokaṃsāṃgraha (accepted by the people). The Ujjvala of Haradatta explains the difficult term sāmayācārika in Apastambadharmasūtra 1.1 as follows, “sāmayāmūla śācāraḥ sāmayācārikaḥ evambhūtān dharman iti [standards that are based on conventions are called conventional standards; something which has the nature of those (standards) is called conventionally standardized, and (he is speaking of) dharmas of that nature]” (Joshi, 1988: 60). The explicit connection of śācāra with samaya would also link śācāra with the important title of law known as the ‘non-observance of conventions’ (sāmayānapākarma) in which the authority is given for various corporate groups to create their own rules and laws which should be enforced by the king or by the groups’ own power. Samaya as a gloss clearly imparts a normative significance to śācāra.

The other glosses of śācāra as ‘convention’ yield slightly different nuances to the semantic scope of the term. Āgama typically means what is passed down through a lineage of teachers (paramparā) and is found first as a synonym for śācāra in Baudhāyanadharmaśūtra 1.1.4 (“śīśṭāgamah [the third (source of dharma) is the traditions of cultured people]”) in which the expected śācāra is replace by āgama. The principal medieval commentary on this sūtra unambiguously equates the two with an etymology of the compound term śīśṭāgamah: “śīśṭāgamah iti śīśṭāgamah | śīśṭācarita ity arthah [what is handed down by cultured people is the traditions of cultured people; the meaning is what is observed in practice by cultured people]” (Baudhāyanavivaraṇaṇam, quoted in Joshi, 1988: 52). But śācāra is not merely that which is handed down in a traditional manner or through a specific teaching lineage, but also what is common and accepted in the present moment. For instance, vyavahāra ‘daily business’ as a gloss is not meant to suggest random activities one might engage in throughout the day, but rather routinized ways of interacting in common situations, especially in commerce, that often develop through contracts and repeated negotiations. It connotes standardized ways of interaction that have developed through frequent encounters. The gloss lokaṃsāṃgraha ‘accepted by the people’ most
pointedly demonstrates that some Dharmaśāstra authors (e.g. Vṛddhagautama, cited in Joshi, 1988: 50) viewed acāra as something deriving directly from a collective consent of the populace. In this context, one is also reminded of the antonyms lokavidviṣa and lokavikruṣta ‘despised by the people’ which describe instances in which dharma is set aside because it contravenes the conventions of the people. The precise limits and nature of such collective consent or dissent are not well explicated, but the general impulse is clearly to mark as dharma those standards of conduct that were current among at least some significant portion of the populace.

The other class of glosses for acāra frame acāra as an embodiment of or performance of dharma, including śīla and anusṭhāna. These glosses view acāra as something that one follows based on both innate and learned dispositions of personal character. Śīla, for example, connotes the composite habits, propensities, and perspectives that one has developed genetically and, possibly, through education, and, therefore, may be understood as ‘character’ in general sense. In glossing Gautamadharmaśāstra (GDh) 1.2 (tadvidam ca smṛtiśilē [as well as the traditions and character of those who know them, i.e. the Vedas]), the commentator Maskarin states, ‘‘acārātmatsuṣṭi api śīla evāntarbhūte iti na prthag upanyaste [standards of conduct and what is pleasing to oneself are both part of character and, thus, are not separately mentioned]’’ (Joshi, 1988: 43). In this conception, śīla as a gloss for acāra suggests that the latter is a kind of internal embodiment of the Vedic corpus (śruti) and its traditions (smṛti). In addition, acāra as character is most likely the underlying form for the derivative term acārya, or teacher, “one who possesses good character.”

By far the most common gloss for acāra in all of medieval Dharmaśāstra is anusṭhāna, and I will end this discussion of the glosses for acāra by investigating the meaning of this term, especially in relation to dharma. The closest English equivalent for anusṭhāna is probably ‘performance,’ because it connotes both an activity and a model on which that activity is based. Etymologically, anusṭhāna is a nominal form derived from the verb root sthā “to stand, to be fixed on, etc. ‘with the verbal prefix anu’ along, after, with, etc.” The presence of the prefix anu suggests more than mere practice, but rather a performance or practice ‘in accordance’ with some rule or standard. The implicit standard here must be śruti and smṛti to which all acāra is related and with which all acāra is said to conform (see, e.g. GDh 11.20-1). Anusṭhāna is generally more particular in meaning than acāra in that it refers to the proper performance of a previously
enjoined action and not to rule-bound actions in general that carry normative weight. It is, therefore, the particular performance of dharma in a practical context. Acāra, by contrast, refers to the whole collection of such standardized practices that conform to the śruti and smṛti and that supplement the injunctions of these sources of dharma. Anuṣṭāna as a gloss imparts to acāra a sense that it is something one must learn because it is based upon prior paradigms of conduct that have normative significance.

These two groups of synonymous/explanatory terms show the conceptualization of acāra as practiced dharma. The issue of dharma’s authority seems inextricably related to the question of dharma’s practicability. If dharma is not put into practice or cannot be, then the question of its authority is moot. On the other hand, if acāra represents the putting of dharma into practice, as I have argued, then dharma’s authority rests in great measure on the dissemination and understanding of acāra. Ultimately, all acāra is dharma and, in fact, constitutes the practical embodiment and performance of dharma.

CONCLUSIONS

In his introduction to the critical edition of the Mānavadharmāśāstra (forthcoming), Patrick Olivelle argues that Dharmaśāstra texts, like all śāstras, “represent a meta-discourse; they deal with reality but always once removed ... Śāstras exercised control over practice not directly but through the mediation of experts.” Olivelle’s characterization is most appropriate and persuasive, but it also begs the question of what the primary discourse of dharma was in medieval India. If Dharmaśāstra is a ‘meta-discourse’ that derives its content from acāra, then it would follow that acāra must be the primary discourse, i.e. dharma in practice. Dharmaśāstra texts contemplate and systematize acāra without replacing the ongoing value of extra-śāstric acāra to the evolving practical, day-to-day negotiations over the proper course of dharma.

The manner of textual expression used in Dharmaśāstra – a timeless, unchanging, injunctive idiom – often makes it difficult to trace developments of thought about dharma or other topics. The connection of dharma with acāra was certainly not new to the medieval texts. However, acāra’s significance as a source of dharma does appear to grow over time within the Dharmaśāstra corpus (Kane, 1946: 869–879; Altekar, 1952: 43). We find greater elaboration and detail about the nature of acāra; we find acāra being linked with
related terms such as *caritra* and *maryādā* used in other historical sources to refer to local laws and standards (see Davis, 1999, 2002); and we also find a growing number of sources that suggest the true supremacy of *acāra* over *smṛti* or even *dharma* itself, especially in judicial contexts.

For instance, in the medieval *Bālakrīḍā* commentary, Viśvarūpa states, "yathaivāravartanīvāśiṣṭāvyavahārasthitīs tathāiva smṛtyartha 'nusartavyo na tadviparyayena [The meaning of *smṛti* should be understood so as to conform with the established standards of those who dwell in Aryāvarta and not the other way around]" (Ganapati Sastri, 1921–1922). In this case, I would argue that the term *vyavahārasthiti* should be understood as a synonym for *acāra*. Viśvarūpa modifies the absolute precedence accorded to *smṛti* by declaring *acāra* to be an interpretive matrix within which *smṛti* must be understood and applied.

Even *dharma* gives way to *acāra* in certain contexts as attested in the *Kātyāyanasmṛti*, cited in the medieval *Smṛticandrikā* and *Parāśaramādhavīya*: "yad yad acaryate yena dharmaṁ vādharmaṁ eva vā deśasyācaraṇān nityāṁ caritraṁ tad prakārtitam [Whatever is practiced (as a rule), whether it conforms to *dharma* or not, is called *caritra* because it has been perpetually observed (as an authoritative practice) in the locality]" (Joshi, 1937: 103). 20 Again, I would argue that *caritra* in this verse is synonymous with *acāra*, though the former seems to be found generally in discussions of judicial procedure in Dharmāṣṭra texts (Lingat, 1962). The text here, as Kane points out, "is principally concerned with the decision of legal disputes on the basis of the customs of countries and families, but his rules also have a general application" (1946: 862). In other words, the context is a legal dispute and not a general consideration of *dharma*, but this passage nevertheless inverts the basic hierarchy of the sources of *dharma* in the special context of judicial procedures (*vyavahāra*) – a move that pushes *dharma*, and implicitly *śruti* and *smṛti* as well, to a subordinate position in this important practical context. It is unlikely that the text intends to subvert the primacy of the Vedas and śāstras as the principal sources of *dharma*, but the inversion is intriguing as a possible circumscription of the power of these texts in favor of *acāra*. 21 Overall, therefore, *acāra*’s significance as a source of *dharma* and as a source of law and legal procedure in its own right expands in medieval texts.

On the basis of this expanded importance of *acāra*, the main purpose of this essay has been to argue that *acāra* and its rela-
tionship to dharma cannot be fully understood if relegated to the unhelpful category of 'custom.' The idea that ācāra lacks specific content and corresponds to the vague notions of 'custom' that float around legal theory circles must be reconsidered in the light of the precise manner of expression and the clearly defined content of ācāra as it is discussed in the texts. In this way, ācāra constitutes perhaps the most significant source of dharma in medieval Dharmasāstra. At the same time, the authority of ācāra itself derives in a tautological manner from the authority accorded to knowledgeable (śīṣṭa) and good (sat) people whose character is made impeccable and trustworthy by virtue of their Vedic study and education in the śāstras. The productive tautology described here lent both stability and adaptability to the religio-legal thought and institutions of medieval India. It would thus be perilous to understand dharma and its authority without at the same time seeing its intimate connection to ācāra.

**NOTES**

1. A convenient summary of such acceptance by scholars such as Kane, Sen Gupta, Lingat, Derrett, Larivière can be found in Wezler, 1999: 74 (also included in the present volume).

2. For a similar assertion, less well articulated, see Mandlik 1880 [1982]: “The next source of Dharmasāstra which I have now to consider is that of usage or custom. In regard to this branch of law, I am inclined to hold that this has always been the main source of the Aryan law from the earliest times; and that our Smṛtis and Purāṇas, so far as they relate to Dharmaśāstra, have been merely the records of customs that existed in those days” (xliii).

3. The ambiguities in Wezler’s original German version parallel, but not do not precisely coincide, with those in the English version (included in the present volume). The distinctions between Sitte, Brauch, Wandel, Verhalten, and ‘Praxis’, all used by Wezler, do not ameliorate the contradictions entailed in describing custom as both norm and behavior. In my view, ācāra is closest to Brauch and ‘Praxis’ as used by Wezler because both of these terms carry normative weight.

4. Blackstone (1765–1769[1979]), following Hale (1713[2002]), elaborates his definition of 'customs' as unwritten laws that have been gradually codified in written form (I, 63–64) in a way that suggests that their authority and ‘binding power’ is not exclusively derived from ill-defined ‘long usage’ and ‘universal reception.’ He writes:

But here a very natural, and very material, question arises: how are these customs or maxims too be known, and by whom is their validity to be determined? The answer is, by the judges in the several courts of justice. They are the depositary of the laws; the living oracles, who must decide in all cases of doubt, and who are bound by an oath to decide according to the law of the land. (I, 69)
One should also mention for this period the influential notion of custom in David Hume’s work, notably *An Enquiry Concerning Human Understanding*, in which he claims that custom, in the sense of repeated experience, is at the root of all knowledge and is the very basis of epistemology as a whole (1748 [1999]: 121–122), a radically different idea of custom as part of individual, not collective experience.

The most comprehensive review is found in the collected articles in Renteln and Dundes, 1994. See also Dickenson, 1929; Simpson, 1973; Pospisil, 1974; Geertz, 1983; Watson, 1984; Moore, 1986; Correas, 1994; Glenn, 1997.

Here I am specifically disagreeing with Wezler (present volume, f.n. 40) where he declares, “Hacker states that rendering *dharma* as ‘norm,’ ‘law,’ or ‘obligation’ was ‘far too abstract.’ The same is true for *acāra.*”

See also Kumārila’s *Tantravārttika* (Jha, 1983: 184), and Haradatta’s commentary on *Aparastambhadharmasūtra* 1.1.1: “*na hi brūmaḥ samayamātrem pramānāṃ iti* | *kīṃ turīḥ* | *dharmajātāḥ ye manvādayas teṃ samayah pramāṇaṃ dharmādharmanayoḥ* [We are not saying that just any convention is a means of knowing (*dharma*). What is then? The conventions of those who know dharma such as Manu and others are the means of knowing *dharma* and *adharma*]” (Joshi, 1988: 60).

Wezler states, “we can differentiate *acāra* before its realization – the authoritative, ideal model of behavior –, and *acāra* in its actual and practical realization. Good conduct is thus realization of custom – in Gonda’s sense – and this conduct, the recollected tradition, is itself again a model and example for others” (1999: 84–85). This would seem to contradict his own footnote to this passage (cited above in f.n. 6) which empties *acāra* of any normative content on the grounds of over-abstraction. With my reservations about the term ‘custom’ aside, my argument broadly agrees with his main text, but not with his footnote.

Classic examples of such spatial and temporal variability of *dharma/ācāra* include Madhava’s defense of cross-cousin marriage in South India, the *Baudhāyanaśūtra*’s list of five authorized regional practices (1.2.1-6), the *kalivarajas*, and *apaddharma*. From the perspective of Mīmāṃsā, i.e. from a theological point of view, all true *ācāra* has universal applicability and authority and cannot legitimately have authority in one geographic area and not another (Jha, 1916: 84). Medieval Dharmaśāstra seems more ambiguous about the potential variability of *acāra*, although it, too, emphasizes the consonance of Vedic injunctions and *ācāra* rules.

On the intimate connection between Dharmaśāstra and Mīmāṃsā, see Kane, 1962: 5, 1152ff. and Sarkar, 1909.

The same passage also records the following opinion, “*tāsāṃ smṛtināṃ nyāyamālakatve ‘pi nyāyasva vedamālakatvāt tātsmṛtināṃ api vedatulyatvam iti kecit* [Even though the these *smṛti* are rooted in reason, because reason is rooted in the Vedas, even the *smṛti* (of the Vedas) are said to be equal to the Vedas].”

See Jha, 1916: 79ff. for the full explanation of the famous Holākādhikarana on the general authority of local ‘customs’ (*ācāra*). See also *Tantravārttika* (Jha, 1983: 244ff.).

Medhātiḥi on Manu 2.10 (Jha, 1920–1939: Vol. 1: 70): “*śiṣṭasambācārayaḥ api dharmasya kartavyatāvagatiḥ | so ‘pi smṛti eva | tataḥ ca yatra kasmai cīt kāryāya smṛter upādānam itara sadacāro ‘pi grahamayāḥ* [The understanding of the necessary duties of *dharma* arises from the collective standards of cultured people. Thus, these, too, are called *smṛti* (codified tradition). As a result, in whatever context and in whichever matter *smṛti* is mentioned, there the *ācāra* of good people also should be understood]” (my translation).
See Tantravārttika (Jha, 1983: 111ff.).

The traditional boundaries of Kerala are not significantly different from the borders of the modern state by the same name. The Kēralotpatti, for example, defines the Malayāla or Kērala land as the area from Gokarpam (near modern Mangalore) to Kanyākumāri at the southern tip of India, bounded by the Western Ghats throughout.

Although these two texts are not Dharmasāstra texts, their use of the term ācāra resembles that in LDhP and, therefore, provides an instructive point of comparison. See also Deshpande, 1993 for further remarks on the linguistic features of the Sanskrit in the Girvāṇapadamanāji and Girvāṇavāmanāji.

The discussion below is based on a review of the collected commentaries contained in the well-known encyclopedia of Dharmasāstra texts, the Dharmakosā in the Vāraṇṇārāmacandikā (Joshi, 1988), specifically the section on dharmarāmanācāra. This excellent compendium provides a convenient synoptic overview of the Dharmasāstra debates and arguments concerning the sources of dharma, including ācāra. A thorough review in English of the relationship of “custom and Dharmasātra works” can be found in Kane, 1946: 3, 856–884.

See Medhatithi’s Manubhāṣya on Māṇavadharmasāstra 2.6 quoted in Joshi, 1988: 98.

The opposite derivation is also possible, but in either case, the connection of the two terms seems indisputable.

For a similar verse, see Pitāmaha cited in Joshi, 1937: 105. See also the discussion in Lingat, 1973: 176ff.

In this regard, one should also mention rājaśāsana, the edict of the king, also listed in the context of judicial procedures as higher than even ācāra. See Nāradasarnī 1.10 “The four feet of legal procedure are dharma, legal procedure, custom, and the king’s decree; each latter one overrules the former” (Lariviere, 1989). These four ‘feet’ (pāda) should be understood as modes of judicial proof and decision-making.

REFERENCES


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