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DHARMA IN PRACTICE: ĀCĀRA AND AUTHORITY IN
MEDIÉVAL DHARMAŚĀSTRA

That *dharma* in the Dharmaśāstra was derived in a historical sense not from the Vedic literature but from ‘custom’ has long been accepted.¹ In the clearest exposition of this thesis, Lariviere writes, “the whole of the *dharma* corpus can be viewed as a record of custom” (1997: 98, also included in the present volume).² 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 Lariviere and others call ‘custom.’ For *dharma*, by contrast, ‘custom’ is only one of its sources. ‘Custom’ is an ambiguous translation for the Sanskrit term *ācāra*, 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., Lariviere, 1997: 104; Wezler, 1999: 84–88)³ and from a lack of critical reflection on the possible differences between custom and customary law. Both Lariviere 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 *ācāra* 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.⁴ 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; Bhattacharya, 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.⁵ 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 *ācāra* that leads me to question the suitability of ‘custom’ as a transparent English equivalent. If the Sanskrit term *ācāra* 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 *ācāra* ‘custom.’

In this essay, I will contend that *ācāra* refers to norms or standards consciously and deliberately established by the elites of a given group.⁶ 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.), *ācāra* refers to norms, expressed in the form of rules. As Ganganatha Jha writes in his exposition of the Mīmāṃsā understanding of the relationship of *ācāra* 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).⁷ 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 *ācāra* and thereby becomes a norm, a rule, a law. *Ācāra* 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 *ācāra*, a standard or law. Medieval Dharmaśāstra commentaries are full of glosses and synonyms for *ācāra* that indicate both its nature as a norm and its conceptualization as practical and practiced *dharma*.

Ācāra, therefore, is *dharma* in practice, the practical, ‘real’ life of *dharma* that acts as a normative precedent for future action,⁸ even though in practice it may sometimes differ from place to place and time to time.⁹ 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' (*vedamūlatva*) should itself be secured by reason and argumentation (*yukti, nyāya*). The *dharma* is *vedamūla*; yet the insight that this is so is considered as *nyāyamūla*, as being based upon reason. (1988: 325–326, cf. Medhātithi on Manu 2.6 in Jha, 1999: V.1: 58)

The medieval *Sarasvatīvilāsa* is somewhat more explicit when it makes *nyāya* (reason, logic, common sense, etc.) into a kind of natural supplement to the Veda “*vidheyasya darśanasya kathamaṁśapūrakatvena pramāṇakoṭiniveṣāt* [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 Shastry, 1927: 13).¹¹ *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 śabdāmūlatvād aśabdām anapekṣam 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 karṣṣāmānyāt pramāṇam anumānam syāt* [On the contrary, the presumption (of a Vedic text) should be the proof (of the authority of *smṛti* and *ācāra*) 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 (*ācāra*) of these same “agents” (*karṣṣ*) who followed the Vedas.¹² Such a view allowed medieval Dharmasāstra commentators such as Medhātithi to incorporate *ācāra* under the same heading, and, therefore, the same status, as *smṛti* itself.¹³

Another aspect of the Mīmāṃsaka argument here merits a slight elaboration. The Mīmāṃsakas 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 Mīmāṃsakas 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 (*anumāna*) 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 Mīmāṃsakas 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 Mīmāṃsakas would likely not characterize Dharmaśāstra’s origins in this way, it seems possible to read Mīmāṃsā 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 Mīmāṃsakas 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 Dharmaśāstra (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 Dharmaśāstra 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 Dharmaśāstra texts. Scholars have sometimes characterized the conflict as being between a transcendent *dharma*, on the one hand, and ‘customary’ rules, such as *ācāra*, *deśācāra*, *kulācāra*, etc. (not to mention the synonymous, and on this view rather paradoxical terms *deśadharmā*, *kuladharmā*, 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 Dharmaśāstra text known as the *Laghudharmaprakāśikā* (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 (*kēraḷavāsi*).¹⁵ 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 *Gīrvāṇapadamañjarī* and *Gīrvāṇavānmañjarī* 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 *Baudhāyanadharmasūtra* 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, “*varjayet dantakaṣṭhāni* [Do not clean your teeth with sticks].” This contradicts the standard rule in *Yājñavalkyasmṛti* and elsewhere to use a twig for cleaning one’s teeth. Another rule prohibits bathing before sunrise, which conflicts again with rules found in *Yājñavalkya-*, *Manu-*, and *Viṣṇu-smṛti*, among others. We also find a rule restricting marriage and, by implication, inheritance

to the eldest son “*jyeṣṭhabhrātā grhī 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. Saṃnyāsins, 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 'nupravakṣyāmi nṛṇām kēraḷavāsinām
anācārān samāsenā bhārgaveṇa pradarsītān*

*anyatrācāraṇābhāvād anācārān bhrgūdvaḥaḥ
yān ācaṣṭa catuḥśaṣṭim ākhyāsyē tatra tān api*

[Now, therefore, I shall declare *anācāras* for the people who dwell in Kerala as they have been fully put forth by Bhārgava. Among those (previously stated rules), I shall explain these 64 *anācāras* as well which the offspring of Bhrgu 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 Bhārgava.’ 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 *ṛṣis*, 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. *An-cāra* 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 DHARMAŚĀSTRA

The variety of medieval commentarial glosses on *ācāra*¹⁷ 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

ācāra 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 *ācāra*.

Several glosses equate *ācāra* with ‘convention,’ including *samaya* (convention), *āgama* (tradition), *vyavahāra* (daily business), and *lokaśaṃgraha* (accepted by the people). The *Ujvalā* of Haradatta explains the difficult term *sāmāyācārikān* in *Āpastambadharmasūtra* 1.1 as follows, “*sāmāyamūlā ācārāḥ sāmāyācārāḥ teṣu bhavāḥ sāmāyācārikāḥ evaṃbhūtān dharmān 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 *ācāra* with *samaya* would also link *ācāra* with the important title of law known as the ‘non-observance of conventions’ (*sāmāyānapākarma*) 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 *ācāra*.

The other glosses of *ācāra* 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 (*paraṃparā*) and is found first as a synonym for *ācāra* in *Baudhāyanadharmasūtra* 1.1.4 (“*trītiyaḥ śiṣṭāgamaḥ* [the third (source of *dharma*) is the traditions of cultured people]”) in which the expected *ācāra* is replaced by *āgama*. The principal medieval commentary on this *sūtra* unambiguously equates the two with an etymology of the compound term *śiṣṭāgama*: “*śiṣṭaiḥ āgamyate iti śiṣṭāgamaḥ | śiṣṭācarita ity arthaḥ* [what is handed down by cultured people is the traditions of cultured people; the meaning is what is observed in practice by cultured people]” (*Baudhāyanavivaraṇam*, quoted in Joshi, 1988: 52). But *ācāra* 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.¹⁸ It connotes standardized ways of interaction that have developed through frequent encounters. The gloss *lokaśaṃgraha* ‘accepted by the people’ most

pointedly demonstrates that some Dharmaśāstra authors (e.g. Vṛddhagautama, cited in Joshi, 1988: 50) viewed *ācāra* as something deriving directly from a collective consent of the populace. In this context, one is also reminded of the antonyms *lokavidviṣṭa* and *lok-avikruṣṭa* ‘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 *ācāra* frame *ācāra* as an embodiment of or performance of *dharma*, including *śīla* and *anuṣṭhāna*. These glosses view *ācāra* 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 *Gautamadharmasūtra* (GDh) 1.2 (*tadvidāṃ ca smṛtiśīlē* [as well as the traditions and character of those who know them, i.e. the Vedas]), the commentator Maskarin states, “*ācārātmatuṣṭi 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 *ācāra* suggests that the latter is a kind of internal embodiment of the Vedic corpus (*śruti*) and its traditions (*smṛti*). In addition, *ācāra* as character is most likely the underlying form for the derivative term *ācārya*, or teacher, “one who possesses good character.”¹⁹

By far the most common gloss for *ācāra* in all of medieval Dharmaśāstra is *anuṣṭhāna*, and I will end this discussion of the glosses for *ācāra* by investigating the meaning of this term, especially in relation to *dharma*. The closest English equivalent for *anuṣṭhāna* is probably ‘performance,’ because it connotes both an activity and a model on which that activity is based. Etymologically, *anuṣṭhāna* 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 *ācāra* is related and with which all *ācāra* is said to conform (see, e.g. GDh 11.20-1). *Anuṣṭhāna* is generally more particular in meaning than *ācāra* 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. *Ācāra*, 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*. *Anuṣṭhāna* as a gloss imparts to *ācāra* 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 *ācāra* 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 *ācāra* 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 *ācāra*. Ultimately, all *ācāra* is *dharma* and, in fact, constitutes the practical embodiment and performance of *dharma*.

CONCLUSIONS

In his introduction to the critical edition of the *Mānavadharmasāstra* (forthcoming), Patrick Olivelle argues that Dharmasāstra 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 Dharmasāstra is a ‘meta-discourse’ that derives its content from *ācāra*, then it would follow that *ācāra* must be the primary discourse, i.e. *dharma* in practice. Dharmasāstra texts contemplate and systematize *ācāra* without replacing the ongoing value of extra-śāstric *ācāra* to the evolving practical, day-to-day negotiations over the proper course of *dharma*.

The manner of textual expression used in Dharmasāstra – a timeless, unchanging, injunctive idiom – often makes it difficult to trace developments of thought about *dharma* or other topics. The connection of *dharma* with *ācāra* was certainly not new to the medieval texts. However, *ācāra*'s significance as a source of *dharma* does appear to grow over time within the Dharmasāstra corpus (Kane, 1946: 869–879; Altekar, 1952: 43). We find greater elaboration and detail about the nature of *ācāra*; we find *ācāra* 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 *ācāra* over *smṛti* or even *dharma* itself, especially in judicial contexts.

For instance, in the medieval *Bālakrīḍā* commentary, Viśvarūpa states, “*yathaivāryāvartanivāsīṣṭavyavahārasthitis tathāiva smṛtyartha ’nusartavyo na tadviparyayeṇa* [The meaning of *smṛti* should be understood so as to conform with the established standards of those who dwell in Āryāvarta 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 *ācāra*. Viśvarūpa modifies the absolute precedence accorded to *smṛti* by declaring *ācāra* to be an interpretive matrix within which *smṛti* must be understood and applied.

Even *dharma* gives way to *ācāra* in certain contexts as attested in the *Kātyāyanasmṛti*, cited in the medieval *Smṛticandrikā* and *Parāśaramādhavīya*: “*yad yad ācaryate yena dharmyaṃ vādharmyam eva vā | deśasyācaraṇān nityaṃ caritraṃ tad prakīrtitam* [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 *ācāra*, though the former seems to be found generally in discussions of judicial procedure in Dharmaśāstra 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 *ācāra*.²¹ Overall, therefore, *ācāra*’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 *ācāra*, the main purpose of this essay has been to argue that *ācāra* 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 Dharmaśāstra. At the same time, the authority of *ācāra* itself derives in a tautological manner from the authority accorded to knowledgeable (*śiṣṭa*) 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, Lariviere 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 Dharmaśāstra 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 Āryan 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 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 to 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.

⁵ 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.

⁶ 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 *ācāra*."

⁷ See also Kumāri's *Tantravārttika* (Jha, 1983: 184), and Haradatta's commentary on *Āpastambadharmasūtra* 1.1.1: "*na hi brūmaḥ samayamātram pramānam iti | kiṃ tarhi | dharmajñā ye manvādayas teṣāṃ samayaḥ pramānaṃ dharmādharmayoḥ* [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 *adharmā*]" (Joshi, 1988: 60).

⁸ Wezler states, "we can differentiate *ācāra* before its realization – the authoritative, ideal model of behavior –, and *ācāra* 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 *ācāra* 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.

⁹ Classic examples of such spatial and temporal variability of *dharma/ācāra* include Mādhava's defense of cross-cousin marriage in South India, the *Baudhāyanasūtra*'s list of five authorized regional practices (1.2.1-6), the *kalivarjyas*, and *āpaddharma*. 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 *ācāra*, although it, too, emphasizes the consonance of Vedic injunctions and *ācāra* rules.

¹⁰ On the intimate connection between Dharmaśāstra and Mīmāṃsā, see Kane, 1962: 5, 1152ff. and Sarkar, 1909.

¹¹ The same passage also records the following opinion, "*tāsāṃ smṛtīnāṃ nyāyamūlakatve 'pi nyāyasya vedamūlakatvāt tatsmṛtīnām api vedatulyatvam iti kecit* [Even though the these *smṛtis* are rooted in reason, because reason is rooted in the Vedas, even the *smṛtis* (of the Vedas) are said to be equal to the Vedas]."

¹² See Jha, 1916: 79ff. for the full explanation of the famous Holākādhikaraṇa on the general authority of local 'customs' (*ācāra*). See also *Tantravārttika* (Jha, 1983: 244ff.).

¹³ Medhātithi on Manu 2.10 (Jha, 1920–1939: Vol. 1: 70): "*śiṣṭasamācārād api dharmasya kartavyatāvagatiḥ | so 'pi smṛtir eva | tatas' ca yatra kasmai cit kāryāya smṛter upādānaṃ tatra sadācāro 'pi grahītavyaḥ* [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).

¹⁴ See *Tantravārttika* (Jha, 1983: 111ff.).

¹⁵ The traditional boundaries of Kerala are not significantly different from the borders of the modern state by the same name. The *Kēraḷotpatti*, for example, defines the Malayāḷa or Kēraḷa land as the area from Gokarṇam (near modern Mangalore) to Kanyākumārī at the southern tip of India, bounded by the Western Ghats throughout.

¹⁶ Although these two texts are not Dharmasāstra texts, their use of the term *durācāra* 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 *Gūrvāṇapadamañjarī* and *Gūrvāṇavāñmañjarī*.

¹⁷ The discussion below is based on a review of the collected commentaries contained in the well-known encyclopedia of Dharmasāstra texts, the *Dharmakośa* in the *Vārṇāśramadharmakāṇḍa* (Joshi, 1988), specifically the section on *dharmaparamāṇavicāra*. This excellent compendium provides a convenient synoptic overview of the Dharmasāstra debates and arguments concerning the sources of *dharmā*, including *ācāra*. A thorough review in English of the relationship of “custom and Dharmasāstra works” can be found in Kane, 1946: 3, 856–884.

¹⁸ See Medhātithi's *Manubhāṣya* on *Mānavadharmasāstra* 2.6 quoted in Joshi, 1988: 98.

¹⁹ The opposite derivation is also possible, but in either case, the connection of the two terms seems indisputable.

²⁰ For a similar verse, see Pitāmaha cited in Joshi, 1937: 105. See also the discussion in Lingat, 1973: 176ff.

²¹ 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 *Nārada-smṛti* 1.10 “The four feet of legal procedure are *dharmā*, 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.

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