INTRODUCTION

TO THE

MĀNAVA-DHARMA-ČĀSTRA.

No Indian book has been better known for the last hundred years\(^1\) nearly than the so-called "Laws of Manu," and to many people it is still the decisive authority respecting India.\(^2\) Numerous and important as have been the discoveries in Sanskrit literature during this century, and through which a new world has been rediscovered by European scholars, these laws still hold their old place in the popular estimation. This is partly owing to the circumstances under which Sir William Jones brought out his translation, and it is partly owing to the high estimate which, in comparatively modern

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\(^1\) Sir William Jones' translation (Calcutta, 1794) became at once famous; it was reprinted at Calcutta (1796) and London in 1796 (Gildermeister, p. 125). It was early translated into German by Hüttner (1797), and several essays were written on the matter it furnished (Gildermeister, p. 126).

\(^2\) See, \textit{e.g.}, the large use made of it in \textit{S. Johnson's Oriental Religions} (1879), vol. i, p. 169 ff. M. Lafitte has taken the author of the Mānava-dharma-çāstra as a type of the theocratic stage of civilisation (\textit{Les Grand Types de l'Humanité}); Professor Thonissen has also largely used the text in his treatise on early criminal law (\textit{Etudes sur l'Histoire du Droit Criminel des Peuples Anciens}), 2 vols., 1869; and a recent writer in the Calcutta Review (No. cxxi., 1875) on crimes and punishments under Hindu law relies solely on it. All these are instances since ample materials have become available. For the earlier time, when this was not the case, it is sufficient to quote Mill's \textit{History of British India} (2d ed. of 1820), vol. i, bk. ii. pp. 133 ff. (especially pp. 192–246), and Elphinstone's \textit{History of India}, i., chaps. i.–iii. On the other hand, the appearance of the name Manu in the Positivist Calendar for the tenth day of the first month of the year is in every way suitable; it is the only possible representative in such a place of Indian theocracy.
times, has attached to the book in India for perhaps nearly fourteen hundred years. But the grounds assigned for this, as usual in India, are not satisfactory. Sir W. Jones' translation was the first real translation of a Sanskrit work,\(^1\) and for this reason deservedly attracted notice. It threw a flood of real light on Indian notions which had been hitherto imperfectly represented in Europe,\(^2\) and for which the metaphysical philosophers of those days were most curious. Again, a systematic judicial administration was just then begun in the British province of India, and the Manava-dharma-çästra, as translated by Sir W. Jones, at once became, and has remained, an authority on the laws of the so-called Hindus for the uncritical lawyers who attempted the task, and are still carrying it on. It was not suitable for this purpose, for to make it the authority was to take a retrograde step, as even Sir W. Jones soon discovered,\(^3\) and no real pandit

\(^1\) All that had been done before was the translation of Bhartrhári's poem in Rogerius, Opus-Devere, 1651 (into Dutch).

\(^2\) The accounts of Hindu mythology, etc., by Rogerius (1651) and Baldeus (1672) were, e.g., mostly through Tamiil, and these influences are visible in most of the early Portuguese accounts (see Couto, Dec., v. 6, 3, and cf. my paper on early knowledge of existence of the Vedas in the sixteenth century, in the Indian Antiquary, vol. viii. pp. 98 ff.) The later Portuguese accounts, such, e.g., as those in the first vol. of the Collección de Memorias para a Historia de Nações ultra-Marinas Portuguezas, pp. 1–126) are from Mahá-rátha sources. Lord's Display (1630) is second-hand and from Gujarati: he says (Introd. B. 2), "I... essayed to fetch materials for the same out of their manuscripts, and by renewed access, with the help of interpreters, made my collections out of a booke of theirs called the Brákšte, which is to them as their Bible, containing the grounds of their religion in a written word."

But it is plain from what follows that he had to rely on so-called interpreters, who misled him, as they have done other inquirers. His book is very inferior to those by Rogerius and Baldeus. The first real attempt to give an account of Hindu law was in the Digest translated by Halhed (1776), but this was not an original Sanskrit work.

\(^3\) When he got Jagannátha to compile the Digest which was translated by Colebrooke. This, however, Colebrooke from the first rightly condemned, and eventually expressed a stronger opinion on. He says (Preface to Mitákṣará and Dá-syabhága, p. ii.): "In the preface to the translation of the Digest... I hinted my opinion unfavourable to the arrangement of it as it has been executed by the native compiler. I have been confirmed in that opinion of the compilation since its publication; and indeed the author's method... renders his work of little utility to persons conversant with the law, and of still less service to those who are not versed in Indian jurisprudence; especially to
would ever have suggested it; but accident has given it
this supreme position, which is, even now, hardly weak-
ened, owing to the general ignorance of the history of
Sanskrit law.

In India a high position has been claimed for the book
for at least several hundred years. This opinion is very
fully set forth by the later commentators, who lived
within the last few centuries; it is chiefly based on refer-
ces to Manu in the Vedas, Mahābhārata, Brhaspati-
Śruti, etc., such as: "Whatever Manu said is curative;"
"Manu divided his property among his sons;" "A Śruti
opposed to Manu is not approved."

But the myth connecting this law-book with the Manu
referred to in the Vedas is recent, as the real nature (to
be explained) of the book will show. That the text
owed its popularity in India chiefly to its completeness,
orderly arrangement, and intelligibility, cannot be doubted;
and there are other causes connected with the origin of
the text, as we now have it, which, as I hope to show
farther on, probably contributed to the same result. The
fabulous antiquity assigned to it from Sir William Jones'
time (1250–500 B.C.) had little weight except in India.
All Indian books of a sacred character prefer precisely
the same claims.

the English reader, for whose use,
through the medium of translation,
the work was particularly intended." The
real systematic study of Hindu
law became possible with his trans-
lation of the Mitākṣara and Dāya-
bhāga (Calcutta, 1810), which in-
troduced the scientific Digest to
Europeans. Compare also the Life
of this illustrious man by his son,
P. 74 ff.

1 E.g., Kulluka and Rāghavā-
nanda, in their commentaries on i.
1; even Medhātithi quotes the first
saying given above. [Rāgha's quota-
tions are most complete; besides
the above he gives: Bhārate'pi (!)
Pūrṇam, mānavo dharmāh, sāṅgo
Vedāc, cikitsātam/ajñāś Siddhāni ca-
vari na hantaryādhi hetūbhīh.]

2 Tait. Śra. ii. 2, 10, 2, iii. 1. 9.
4; Alt. Br. v. 14; Brhaspati Śruti.
3 Sir William Jones' reasoning is
to be found on pp. xi. and xii. of
the preface to his translation (Haugh-
ton's ed., vol. ii.) Professor Monier
Williams (Indian Wisdom, p. 215)
puts it at about 500 B.C. Johaentgen
(Ueber das Gesetzbuch des Manu,
p. 95) puts 350 B.C. as the latest date
possible. Schlegel confidently as-
serted it not to be later than 1000
B.C. [Dr. B.'s own opinion, being
known before the publication of this
work, has already been anticipated
in print by Nelson, Scientific Study,
p. 37, and Müller, India, p. 366.]

4 [The bracketed paragraph fol-
lowing, crossed through in Dr. B.'s
MS., was evidently intended to be
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[It is time now to explain the real nature of the Mānavadharma-çāstra. This has been proved\(^1\) to be no original treatise, but a versified recension of an older treatise in prose. It is now well known that there were several recensions of the texts of each of the Vedas as used in ancient India, and that people who followed these different recensions split up into other schools in the course of time by the modification of the chronologically secondary Vedic or Brāhmança literature; and still later, and in a still larger degree, by teachers compiling Sūtras, or manuals for the sacrifice, etc., and laws which differed more or less from one another,\(^2\) and thus instituted different schools. Such Sūtra works were very numerous in the early centuries A.D.,\(^3\) and some fifteen still remain, in a more or less complete condition. There is every reason from analogy to believe that each such contained a section on traditional law and custom. The Mānavadharma-çāstra is to be traced back to such a work belonging to the Mānavas, one of the six subdivisions of the Maitrāyaṇīya\(^4\) school of the Black Yajur Veda, of which

revised, as it contained a few errors of authorities, etc., and was perhaps to be completely altered; this has not been done, however, and it may stand, in brackets, as some introduction is necessary to what follows. The brackets shall include also the notes. One or two errors of reference have been silently bettered.]

\(^1\) Professor Weber, in the first volume of Ind. Studien (in an essay written prior to 1850); Professor Max Müller, Letter (1849) to Professor Morley (in the Digest by the latter, and reprinted by Professor Bühler in his and West's Digest and his translation of the Apastamba-dharma-sūtra); and Ancient Sanskrit Literature (2d ed.), pp. 61, 200 ff. Cf. also Weber, Indische Literaturgeschichte, p. 296; Professor Goldsucker (1860) in “Remains,” vol. i, p. 61; Professor Whitney, Sanskrit Grammar, p. xviii.

\(^2\) These differences often were very slight, and in some cases went little beyond a difference of arrangement. See my Classified Index to the Tanjore MSS., p. 21, as regards the relation between parts of the Bhārdvāja and Hiranya-keśin Sūtras.

\(^3\) Kumārila Bhuṭṭa (c. 700 A.D.) says, “Dharma-çāstras and Gṛhya books are studied in each Carana like the rules of the Prātiṣṭhākhyas.”

\(^4\) Here, as the Dharma-çāstras are mentioned with the Gṛhya-sūtras, only Dharma-sūtras can be intended.

\(^5\) See my Index to the Tanjore MSS., p. 9, b. That the Mānavadharma-çāstra is a work attached to the Black Yajur Veda is also apparent from the frequent citation of and reference to this Veda, and even to its late Aranyakas, as will be shown below. It also cites one of the latest of the B. Y. V. sūtras, the Vaikhānasas (vi. 21). The last statement is open to question, as
a few adherents still exist in the Bombay Presidency and in Northern India. Large fragments of the Kalpa portion of their Sūtra have long existed in England,\(^1\) and Dr. Haug recovered the whole, as well as the Gṛhya-sūtra. These MSS. are now at Munich, and of the last there is also a MS. in the University Library at Bombay.\(^2\) So far as we have them, these works are precisely similar to the other sūtras. The Dharma-sūtra has not yet been recovered, and is probably lost for ever; but there can be little doubt that it was turned into verse and added to, and that this is the actual Mānava-dharma-çāstra. That this was done with other such works is also certain.\(^3\) Professor Whitney gives the final results of these researches as follows: "Out of the last two (Gṛhya- and Dharma-sūtras), especially the last, come by natural development the law-books (Dharma-çāstra) which make a conspicuous figure in the later literature: the oldest and most noted of them being that called by the name of Manu (an out-growth, it is believed, of the Mānava Vedic school); to which are added that of Yājñavalkya and many others."\(^4\)

The Manu Smṛti is, then, plainly later than the Sūtra period, as it quotes books of this kind,\(^5\) and this conclusion furnishes the first element by which to fix the date

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1 Together with the commentary of Kumārila Bhaṭṭa (c. 700 A.D.) in the I. O. library, edited (in facsimile) by Dr. Th. Goldstücker (1861). The whole text with another commentary has since been discovered at Bombay by Professor Bühler. [This is really nothing more than a commentary to part of the Črauta-sūtra; cf. Von Bradke's remarks in Z. D. M. G., xxxvi. 448.]

2 [For the MSS. of the Črauta- and Gṛhya-sūtra, with a discussion of their mutual relations and their relations to the text, we may now compare the essay by P. v. Bradke, Ueber das Mānava-gṛhya-sūtra Z. D. M. G., xxxvi. pp. 417-477.]

3 Compare Weber's Ind. Literaturgeschichte, p. 296 note. This matter has been worked out by Weber, Stenzler, Müller, and Bühler.

4 Sanskrit Grammar, p. xviii; compare also Whitney's Oriental and Linguistic Studies, i. p. 72.

5 [Our text quotes Dharma-çāstra, but not Dharma-sūtra; the argument is not wholly convincing, for the metrical Çāstra may have existed contemporaneously with the sūtra.]
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of the text. The Sūtra stage of the early Sanskrit literature is the latest, and has been put at from 600 B.C. to 200 B.C.)¹ The first explicit mention of Dharma-sūtras is in the Mahābhāṣya of Patañjali, or in the second century B.C.² It is therefore obviously impossible to put a metrical work,³ such as our text is, earlier than the first or second century B.C. But a close examination of the text furnishes other important information, which enables us to fix its date much more precisely. Medhātithi—and he was not the first commentator on it, as I shall show—lived about 1000 A.D., and this circumstance fixes the lowest possible date at about 500 A.D.; for it is impossible to suppose that the earliest commentators came nearer than 250 or 300 years after the text.

Let us first consider the form and language of the book. The first striking fact is that it is in cloka verse, and in very simple and modern language.⁴ The style of the verses is not at all that of real old clokas, but is that of the epics, and a good deal is sacrificed for the sake of the metre. Again, the most modern forms of compound words are freely used.⁵ The text thus closely resembles the

¹ Max Müller, Ancient Sanskrit Literature, 2d ed., pp. 244 ff. [These limits are not fixed with any great certainty; in fact, the Sūtra period probably extended to a later time.]
² Goldstücker, "Pāṇini's Place," p. 234 ff.; Weber, Ind. Studien, xiii. p. 457 ff. The earliest date is the middle of the second century B.C.; the latest the end of the first century A.D.
³ The style of the Sūtras is still to be traced in the Māṇava-dharma-çāstra, in, e.g., the constant use of the third person optative, "one ought to," "one should," ... which occurs in nearly every verse of most of the chapters.
⁴ American scholars (Professors Avery and Lanman) have introduced a new and important branch of Sanskrit scholarship—the examination, statistically, of the grammatical forms in Sanskrit texts. This laborious form of research promises most brilliant results, and has already definitely settled the character, so far as verbs are concerned, of the language of different periods. Mr. Edgren has examined the verbs in the text, and has fixed the language as modern (see pp. 320-321 of Prof. Avery's paper, Journal American Oriental Society, vol. x.)
⁵ Whitney, Sanskrit Grammar, p. 424 ff. "There is, however, a marked difference between the earlier and the later language as regards the length and intricacy of the combinations allowed. In Veda and Brāhmaṇa it is quite rare that more than two stems are compounded together, except that some much used and familiar compound, as to an integral word, a further element
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versified forms of ritual Sūtras, the composition of which appears to have chiefly occurred in the early centuries A.D., and of which we have at least one, the metrical form of the Ācvalāyana-grhya-sūtra by the well-known Kumārila Bhaṭṭa, of which the date, viz., about 700 A.D., is beyond doubt.\(^1\)

This singular development of Sanskrit literature has continued down to the present time,\(^2\) and I have myself seen the Indian Penal Code put into Tamil verse by a pettyfogging native lawyer. It is not out of the way to notice that there are traces of a similar practice among the lawyers of old Rome, who had a metrical version of the Laws of the Twelve Tables.\(^3\) Thus both in language and in form the Mānava-dharma-çāstra decidedly belongs to a relatively late development of Sanskrit literature.

If we turn to the matter of the text, the same conclusion is necessarily arrived at.

Compared with the older Dharma-sūtras, two important additions are seen at once in the text: first, chapters i. and xii., which form an explanatory philosophical framework to the whole; second, chapter vii., which is an abstract of polity and conduct of life and affairs for kings, such as is

\(^1\) I was able to fix this date by Tibetan documents. See p. 6 of the preface to my edition of the Sāma-vidhāna-Brāhmans. For an account of the versified Āçv-grhya-sūtra, which I discovered in 1871 among the Tanjore MSS., see p. 14 of my Classified Index. The Ācvalāyana-smṛti is a similar versification of the Ācvalāyana-grhya-sūtra (do. pp. 124–126).

\(^2\) See examples in my Catalogue, and (pp. 14 and 17) Classified Index. Max Müller (Anc. Sansk. Literature, 2d ed., p. 257 ff.), has discussed the object of the Pariçīṭas and such easily intelligible versions of difficult Sūtras.

\(^3\) Schöll, Legis Duodecim Tabularum Reliquiae, p. 4: "Etiam in metricam formam aliando xii tabulas fuisse redactas." [A vague
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found in the Rāja-dharma\(^1\) section of the Mahābhārata and in the Niti-çāstras of perhaps later times; such matter is entirely foreign\(^2\) to the original Sūtras.

The philosophical additions are very characteristic. The dialogue\(^3\) introducing the substantial matter is quite in the style of the Purāṇas, as is the philosophical system used, which is slightly different from the well-known Sāṅkhya system, as was long ago pointed out by Colebrooke, and distinguished by him as the Purānic Sāṅkhya.\(^4\) There cannot be any doubt that this is the system followed in the text, for the commentators have uniformly recognised it to be so.

Now, fortunately, the dates between which this system was in vogue can be satisfactorily established.

The late Professor Goldstücker pointed out that Pāṇini did not know this system;\(^5\) it is, therefore, subsequent to

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\(^1\) Even Medhātithi recognised this as introductory, and that the book really commenced with chap. ii.

\(^2\) Essays, vol. i. p. 249 (ed. Cowell). Goldstücker, "Remains," vol. i. p. 174. Nearly half the existing Purāṇas, including the oldest, follow this system, and are also Vaishnava. The philosophical part of the text has in more recent times been discussed in a most scholarly way by Dr. Jhaentgen, Ueber das Gesetzbuch des Manu, Berlin, 1863. [Cf. Weber's review, ii. bd. Ind. Streifen.]

\(^3\) "Pāṇini's Place," p. 151. "Sāṅkhya is a peculiar form. It comes from Sāṅkhya. . . . Its very name shows that it is the counterpart, as it were, of Nyāya. . . . For while the former builds up a system of the universe, the latter dissects it in categories, and 'enters into' its component parts. Yet a grammatical rule would have to explain why the name of the former system is not a kṛt-formation. . . . It had not been noticed by Pāṇini. Nor does he teach—as he probably would have done had this philosophy existed in
about 300 B.C., when Pāṇini probably lived, and no trace of it appears in the Mahābāṣya, about 150 years later, so the earliest date for these chapters cannot be before the first century A.D. Again, it was entirely supplanted and out of fashion by the introduction of the Vedānta (by Gauḍapāda and the great Čaṇkarācārya) in the seventh and eighth centuries A.D. Thus we get the period 1 A.D. to 700 A.D. as that within which the composition of the Māṇava-dharma-çāstra must have taken place.

But the text furnishes other information which can be turned to account.

It states expressly that Čiva is the god of the Brahmans, Viṣṇu of the Rājas, etc.; and in accordance with this we find (i. 10) the active Being developed from matter (prakṛti) is called Nārāyaṇa, i.e., Viṣṇu. Here again there is a point of contact with the epics and similar compositions. Now all this class of literature has been recognised in India as of a popular character and intended for women and the lower classes, who were not allowed immediate access to the more original sources of information; his time—that the same word means, as a masculine, a follower of the Sāṅkhya philosophy."

1 See my Aindra Grammarians, pp. 44, 103; Weber, Ind. Lit., p. 236.

2 Hiouen-Thsang does not mention these great reformers and their work, which he would certainly have done had they lived before or during his visit to South India in the middle of the seventh century A.D. They must, therefore, as other facts indicate, have lived after 650 A.D.

3 [Where? i. 10 may have been taken from these same Vaiṣṇava portions of the epic; the same derivation is there often given. The first quotation is a mistake, and the argument will have to rest on i. 10.]

4 The Čaiva parts of the Mahābhārata, as A. Holtzmann has seen (Arjuna, p. 13), are interpolations, and it will now be evident, if verse 10 of the text be considered, that these are late Brahmanical interpolations, made not earlier than the tenth century A.D., after the Čaiva reaction had begun.

5 Inscriptions which quote the metrical Śṛṃti occasionally refer to them as Vaiṣṇava-dharma-çāstra, or quote the verses as by Vyāsa, the author, according to vulgar opinion, of much of this class of literature. These are not quotations of the actual Vyāsa-smṛti, and therefore refer to the mythical Vyāsa. In one case an almost unchanged dharma-sūtra has lost its proper name—Kāthaka—and appears as Viṣṇu-smṛti.

6 E.g., Śāyana's commentary on the Black Yajur Veda (Bibl. Ind., vol. 1, p. 2) says that the Bhūrata and Purāṇas are intended to teach women and Čudras their duty, as they may not learn the Vedas. Commentary on the Rg-Veda (ed. Müller, i. p. 33).
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and the Vaisnāvism of the authentic works of this class
marks that they were intended for the class of Rājas, on
whose behalf only it is likely that Brahmans would in
those times have taken the trouble to popularise their
learning.

The interpolation of chapter vii. (which treats of matters
relating solely to polity and the life of kings), confirms
decisively the conclusion that the text was intended for
Rājas. A question may perhaps arise here: If the text
is intended as a manual for kings, why should so many
details which refer solely to Brahmans be inserted? The
conclusive answer to this is that kings are bound to see
that all do their dharma or duty.¹

That the text has been universally received, though a
Black Yajur Veda treatise and not of universal signifi-
cance, is to be attributed to the fact that this Veda is still
the most commonly followed one: in South India about
eighty-five per cent. of the Brahman population adheres
to it.

The above arguments lead, I think, to the safe conclu-
sions:—

1. The text, as it is,² was compiled between about 1 A.D.
and 500 A.D.

2. It is a popular work, intended for Rājas and similar
persons, and was not originally intended for the use of
Brahmans.

It now remains to be seen if it is possible to determine

¹ This duty of a king is fully laid
down in the Gautama-dharma, viii.
1; xi. 1-10: e.g., he shall protect
the castes in accordance with jus-
tice, and those who forsake duty he
shall lead back (xi. 9-10). Compare
also I. S., x. pp. 29, 60. The
Nārada-smṛti is very full on this
point; see xi. 1-7; xvii. 5, 12-16;
and 15 is: “The Brahman would
forsake his brother Brahman, the
Kṣatriya his brother Kṣatriya, and
the stronger would devour the
weaker like fish on a spit;” i.e., if
the king did not punish evil-doers
“of any class” (Jolly). [The same
idea is found already in Mānava-
dharma-śāstra, vii. 20-24.]

² Excluding the verses on which
Medhātithi’s commentary throws
doubt, and which are, therefore,
interpolations subsequent to about
1000 A.D. These are, however, of
no importance as regards the pre-
sent argument.
still more exactly the date and circumstances of the composition of the text. I think this can be done with a considerable amount of certainty. In the first place, it is sufficiently certain that the greater part of India was in great trouble in the first century A.D., and that it is impossible to suppose that such a work as the text, which could only be done under a powerful prince and in peaceful times, could have been written then. Thus the time is further limited from about 100 A.D. to about 500 A.D.

To what king or dynasty in this period is it likely the text could owe its origin? This also can, I think, be inferred with tolerable certainty.

It is well known that in India the kings adopted the gotra of their purohita or domestic priests.\(^1\) Now it is quite certain that the text is called Mānava, not from a mythical Manu, as stated in the first chapter,\(^2\) but that it is so called from the Mānavas, a Brahman gotra and division of the followers of the Black Yajur Veda.\(^3\) Now, in the period in question there arose a great and powerful dynasty, which ruled over the Deccan and Gujarat, and at times over nearly all India, and which (the inscriptions show) claimed to be Mānavyas—\(4\) I mean the Cālukyas.

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\(^1\) Authorities for this are I. S., ix. p. 325; x. p. 83.
\(^2\) This mythical synonym, Manu, occurs in the Vedic literature as the seer of hymns (R. V. viii. 27), and in the legend of the deluge in the Čatapatha Brāhmaṇa (I. S. i. 1-10), translated by Professor A. Weber (Indische Streifen, i. p. 9 ff), and it also occurs in the Matsyas-purāṇa. There are other Vedic allusions (vide above, p. xvii.) Goldsticker was clear that the name “belongs, properly speaking, to ancient Hindu mythology, and it was connected with the renowned law-book in order to impart to the latter the sanctity on which its authority rests” (Remains, i. p. 107).
\(^3\) The Mānavas as a Cākha formed (as already said) one of the six subdivisions of the Maitrāyaṇīyas, and were probably a Sūtra division. The Maitrāyaṇīya (Vedic) Samhitā is still in existence, and was discovered by the late Dr. M. Haug. See his Über das Wesen und den Werth des Wedischen Accents, p. 27 ff. An edition by L. v. Schroeder is in progress.
\(^4\) The epithet “Mānasyānāṃ . . . Cāṇukyaṇāṃ” occurs in several inscriptions, e.g., one of c. 600 A.D. (I. A., ix. p. 124). So down to the eleventh century A.D. Of these, there are some which are Vaiṣṇava as far as the kings are concerned, and confer gifts on Cāiva Brāhmaṇas, a remarkable proof that the verse . . . in the text represented a fact
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Three great branches of this family are known: that which ruled in Gujarat and the west; that of the Deccan, or the central branch, which ruled at Kalyāṇapuruśa in the Deccan;¹ that which ruled on the Telugu sea-coast, and was from the Deccan. The last arose in the beginning of the seventh century, and is therefore too late. The choice, accordingly, must rest between the western and central branches.

Now the inscriptions show that these branches became important about the sixth century A.D.,² and they also appear to show that some of these kings were Jains.³ This is no difficulty, for the Jains and Vaiśṇavas were always closely connected in belief and worship, and are so still;⁴ but a Hindu king would be a more probable patron of such a work as the text, and such an one is not far to find.

The founder of the dynasty is one Pulakeṣi or Polakeṣi, according to the inscriptions, and he must have flourished about 500 A.D.

Is it possible to trace anything about the author? The text, I think, suggests that he was a North Indian, and probably a Punjab Brahman. In verse 20 of the second Lecture a Brahman from that part is declared to be the most proper and best teacher, and presumably the author wrote this to recommend himself. He was therefore most likely one of the learned Brahmans (e.g., Gauḍapāda, and later Bihāra) who came down from the north and helped

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¹ This was first discovered by Sir Walter Elliot. For the present information regarding it, which is chiefly due to Mr. J. E. Fleet, see his articles in the Indian Antiquary and my South Indian Palæography (2d ed.), p. 18 ff. Dr. Bühler has discussed the inscriptions of the Western branch.
² Loc. cit., and Fleet, The Dynasties of the Kanarese Districts, p. 18 ff.
³ See the quotations in p. 134 of A. Barth, The Religions of India.
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to civilise the south. If verses 123 and 126 of Lecture ii. be considered, it is evident that he then lived in a country where little was known of Sanskrit; and this also points to a place in the Deccan ¹ as the locality where the work was composed.

It thus appears that the text belongs to an outgrowth of the old Brahmanical literature, which was intended for the benefit of the kings, where the Brahmanical civilisation had begun to extend itself over the south of India,² and to pursue the giant's course which rendered it the great fact in Eastern history, and when, but for untoward circumstances, it would probably have eventually welded the different races and dynasties of the vast continent of India into a homogeneous whole. It also appears highly certain that it was composed about 500 A.D., under the Cālukya sovereign Pulakeṣī at Kālyānapurī, and that to the subsequent great extent and power of the west Cālukya dynasty it chiefly owes the wide and great

¹ It must be remarked that Ku-mārila Bhaṭṭa, who lived about the time at which I put the composition of the text, considered Tamil and Telugu to be Mlecha languages (see my paper in I. A., i. p. 310); and this would account for the rule in vers. 123 and 126 of Lecture ii. of the text, for to accost in these languages would thus be indecent. [K. lived, according to Dr. Burnell (loc. cit.), two hundred years (700 A.D.) after this date.]

² An important distinction is to be made between the original literature of the Brahmanas, written for themselves in their North Indian home, and the literature which arose on their settling in South India and Malaya, where a modified Brahman civilisation arose, with many essential differences as compared with their source, and which gave rise to an enormous secondary Sanskrit literature, of which, e.g., my Classified Index will afford some notion. It is difficult to carry back these settlements farther than the third century A.D., and the mention of Āpastambha, Brahmanas in the inscriptions is later still. I am, then, unable to agree with Dr. Bühler in his theory (Preface to Āpastambha's translation) that the Āpastamba Sūtras could have been composed in the Andhra (Telugu) country; for they must, though late among the Black Yajur Veda Sūtras, have been composed at least B.C., and the wide use of the book both in North and South India can only be explained by its being in existence already in the North before Brahman emigration began, and its importation into the South by a majority of the emigrants. As regards the form Āpastamba (Ind. Ant. v. 135; ix. 103), I can only view it as an instance of the Dravidian inability to distinguish between aspirated and unaspirated letters; or perhaps here it may have been caused by a false etymology.
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repute it has held, and still holds, in the continent of India.\(^1\)

At the time it was composed, colonies of Indian emigrants were occupying Burnah\(^2\) and the Malay islands, and continued to settle there for several centuries. They took with them the Māṇava-dharma-çāstra, which exists in a loose Burmese paraphrase\(^3\) and in Sanskrit (or Kavi) in the island of B.\(\_\)t;\(^4\)

Thus much being determined, it is now possible to discuss the text and its nearer relations to other parts of the Sanskrit literature, as well as to consider it critically, and its use and influence in the later stages of Sanskrit jurisprudence, including the Indian views in respect of its authority.

To make a right use of the Māṇava-dharma-çāstra, the consideration of these details is obviously requisite; but it has been used by the mere English lawyer for nearly a century in a random way, without the slightest regard to these points.

(a.) The first point to be considered is the transmission of the text down to the present time.

The MSS. of the texts now existing are written in a multitude of different characters, but when the book was

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\(^1\) Till the West Cālukyas were defeated by the Colas (in the eleventh century A.D.), they were almost the masters of India. About the eleventh century our Māṇava-dharma-çāstra was well known, not only to the lawyers, but also to writers on other branches of Sanskrit literature in very different parts of India, e.g., to Kāśtra-Svāmin (a North Indian commentator on the Amarakoṣa), who quotes it together with Yājñavalkya and Nārada, and to Vardhamana (a Gujarāt grammarian) in the beginning of the twelfth century.

\(^2\) Buddhaghosa's mission was about 430 A.D.

\(^3\) It has been published in Burmese, and translated into English by Richardson. It bears about the same relation to the text as the Tamil and vernacular Rāmāyaṇas do to the Sanskrit, i.e., it is not, properly speaking, a translation at all. (Since the "Menu Kyay" (1847), we have (1882-83) other works of the same sort translated by Forchhammer, Wonnana Dhammathat, etc.)

\(^4\) Friederich, "Voorloopig Verslag," in the Transactions of the Batavian Society (xxii.); translated into English by Logan in his Journal of the Indian Archipelago (1849); and again in the J. R. A. S. (N.S., vols. ix. and x.), and into German in Professor Weber's Ind. Stud. (vol. ii. pp. 124-149). [It is doubtful if our Māṇava-castra was known in the island of Bali.]
composed these did not exist, and it was beyond doubt written in a variety of the "Cave character."  

This character was then in use over nearly all Brahmatised India, so the text would at once be widely disseminated, and to this fact must be attributed the trivial varietas lectionis between the Bengali, e.g., and South Indian MSS. But when our oldest authority for the text, the commentator Medhātithi, wrote, about 1000 A.D., this state of things was already much altered; the Nāgari character was fully developed in North India, and in the South what became the Telugu and the Grantha characters were already perfectly distinct. Medhātithi probably used what I have termed elsewhere the Cālukya character, which was the direct predecessor of the modern Telugu. But the difference between this and the Cave character is not of a nature to allow of much alteration in the text, and the small var. lec. mentioned by Medhātithi are certainly to be attributed to the errors of copyists rather than to an alteration of the text by mistakes made in reading one letter for another. Medhātithi's text also shows that there are some interpolations, but these are generally of an explanatory nature, and are prima facie open to suspicion, though Kullūka and the later commentators accept them. There is then no doubt that the textus receptus, viz., that of Kullūka Bhaṭṭa, as adopted in India and by European scholars, is very near on the whole to the original text.

A few other slight interpolations, before the time of Medhātithi, may be, perhaps, suspected, but nothing of

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1 See my South Indian Palaeography, 2d ed., p. 13 ff.
2 See the account of an old Bengali MS. in "Notices," vol. iii. p. 117 ff. The r. l. given is always, at first sight, preferable to the text of Kullūka; but it must be noticed that of the r. l. as given, slightly less than half are only supported by Medhātithi, and that the rest are evidently arbitrary emendations.
3 Elements of South Indian Palaeography, 2d ed. p. 17 ff.
4 See below (p. xli) for reasons for believing that Medhātithi lived in the Deccan.
5 So far as my MS. will allow, I have noticed the r. l. in my notes to the translation.
6 I have carefully marked these in the notes, so far as the poor MS. of Medhātithi accessible to me goes.
real importance. With this view of the history of the
text I have unhesitatingly adopted the recension of Kullūka, marking the verses which Medhātithi does not sup-
port; and of the only two attempts at critical editions, those by Sir G. C. Haughton and Loiseleur Deslong-
champs, I have used the first.

(b) As has already been pointed out, the text belongs to
the second class of Sanskrit law-books: that is to say, to
the books which were intended to popularise the earlier
Dharma-gāstras, and for practical use in tribunals. The
number of these, including the spurious compilations
foisted into this rank, is very considerable. The com-
position of these works probably extended to about 900 A.D.,
and some show most decided evidence of the Vedānta.

1 E.g., the first four verses of ch. i.,
as, according to Nārada-smṛti (Introd., § 4, p. 2, of Jolly’s translation),
the original form of the text began
with our fifth verse. Medhātithi,
however, fully accepts these four
 ślokas. As regards the vv. ix. 64–68,
which Dr. Jolly (p. xiii.) rightly ex-
plains as an interpolation, see the
note in that place. According to the
questionable authority of the intro-
duction to Nārada, the text has been
abridged from far more extensive
compositions in 100,000, 12,000, and
4000 verses. It is possible that there
is a grain of truth here, and that the
text was not brought at once into its
present form, but the story is purely
mythical, and a specimen of Brahm-
manical systematising. Not only is
the existence of such enormous works
on such subjects almost impossible
to conceive, but there is also not a
jot of evidence to support the assertion: cf. Jolly’s remarks, pp. xii.

2 The memory of this scholar, who
helped to a considerable extent the
study of Sanskrit law, should not be
so much forgotten as it is. He was
born in Ireland in 1789, and entered
in 1809 the East India Company’s
Bengal army, and was stationed at
Rangpur. He got permission to
study in the civilians’ college at Cal-
cutta, and in 1813 finished his course
with great success. In 1815 his
health compelled him to leave India,
and in 1817 he was appointed Pro-
fessor of Sanskrit and Bengali at the
Haileybury College. Here he pub-
lished a Bengali Grammar and his
edition of Manu (1825). In 1825
his weak health forced him to resign
his appointment, and he went to
London, where he printed his Sans-
krat - Bengali - English Dictionary
(1833). In 1839 he settled in Paris,
and his weak eyesight not allowing
him to continue his Oriental studies,
he turned his attention to electricity
and physics, but could publish little.
He died at St. Cloud on the 28th
August 1849. (Mohl, “Rapport,”
1850, where a full list of his pub-
lications is to be found in a note.)

3 See the list by Professor Sten-
zler in Ind. Stud., i. p. 232 ff., and
in West and Buhler’s Digest, i. p.
xiii. ff.

4 As I first pointed out in 1868
(Dāyavibhāga, pref., p. ix.) The
Dharma-smṛtis are most clear in
this way. One, Hārita-smṛti (Clas-
sified Index, p. 123), cannot be ear-
lier than 1200 A.D., as it represents
a late form of Vaiṣṇavism.
doctrines, which came into vogue about the eighth century A.D. But of the more important works of this class, the Mānava-dharma-çāstra is decidedly the earliest and most important; the Yājñavalkya-smṛti comes next, and the Nārada-smṛti is later than that. These books all embody, here and there, verses which are certainly much older, but these do not affect the actual dates when these books assumed their present actual forms. Some of these verses are probably popular proverbs or sayings of a great age.

Another point in these texts is that all have a number of verses verbally or substantially in common. Manu (as we have it) contains some 2685 verses; the Yājñavalkya-smṛti, out of 1009 verses, has more than half the same or like these, and the Nārada-smṛti, out of 850 verses, has 37; Manu also occurs in the Viṣṇu and other Smṛtis. Copying is in this case the most likely cause, but that will not explain the same fact as it occurs in the Brāhmaṇas, which also have many passages in common.

Thus the only possible explanation seems to be that the Brāhmaṇas have been compiled from old material, probably in a different form to what it has now assumed. But Professor Whitney thinks that the bearing of this fact is not determined. In considering the nature of this fact as displayed in the law-books and epics, etc., the

1 Excluding, of course, such unmodified Dharma-sūtras as the real Viṣṇu-smṛti, which cannot be said to belong to this class.
2 See p. ix. of Prof. Stenzler’s preface to his edition; also Jolly’s Nārada, p. xvii.
3 See Prof. Jolly’s remarks in the preface to his translation (pp. xv.–xix.): “It becomes, indeed, apparent from a more general survey of the latter code (Yājñavalkya) that it must be younger than Manu’s, but earlier than Nārada’s” (p. xvii.)
4 E.g., the verses ii. 114 and 144, which are found in the Sāṁhitotpāniṣad-Brāhmaṇa (pp. 29, 30 of my edition), and the Nirukta (ii. 4). They also occur in the Viṣṇu and Vāsiṣṭha-Smṛtis.
5 I take these from Stenzler’s and Jolly’s respective works.
6 E.g., the Aitareya and Gopatha Brāhmaṇas; so also the Jaiminiya (Talavakāra) and Čataḥpātha.
7 Sanskrit Grammar, p. xvi. “To a certain extent there is among them (the Brāhmaṇas) the possession of a common material; a fact the bearings of which are not yet fully understood.”
existence of the same state of things in the Brāhmaṇas must not be overlooked: though similar, the explanation is probably different. The law-books have also verses in common with the Mahābhārata.

(c) The most superficial examination of the text proves at once that the Vedic literature in its entirety, even down to a late Sūtra, as well as later developments, was known to the compiler. It repeatedly refers to previous legislators, tradition, and to the “Wise,” and is, therefore, fully entitled to the epithet smārta or “traditional,” which it claims. To Indian theories this fact offers no difficulty, but to the critical student it is significant in a totally different manner. The Indian theory is that Čruti, or revelation eternally existing, and Smṛti, or tradition based on Čruti, are the authoritative sources of the conduct of life in all matters. Though there may be no actual authority in the Čruti for a practice declared by the Smṛti, it is strangely assumed that such practice is based on a Čruti not actually existing among mortals. The important bearing of this belief (which is taught by the Mīmāṁsā system of exegesis of the Vedic literature) has not been hitherto noticed in regard to its effect on Sanskrit law. Here is to be found the possibility of development and of personal influence, to an almost un-

1 E.g., reference to Atri, iii. 16; Atharva, xi. 33; Āranyaka, iv. 123; Asacchāstra, xi. 65; Ithāsā, iii. 232; Upanishads, vi. 29, xi. 262 (rahasya); Rg.-Veda, i. 23, 93, ii. 77, iii. 145, iv. 123–124, xi. 261, 264, xii. 112; Gautama, iii. 16; Tarka, xii. 111; Taṅtirīya Āranyaka (quoted), ii. 181; Dharma-čātra, ii. 10, iii. 232, viii. 3, xi. 60, xii. 106, 109, 111 (Dharma-pāthaka); Nirukta, xii. 111; Nyāya (?), xii. 111; Purāṇa, iii. 232; Bhṛgu, iii. 16; Manu ii. 7, iii. 35, 150, 222, iv. 41, 103, v. 131, vi. 54; Yajur Veda, i. 23, iii. 145, iv. 123–124, vi. 21, 38, ix. 18, xi. 261–264, xii. 112; Yoga, vi. 65; Vādītha, viii 140; Veda-čātra, iv. 260, xii. 99–102, 106; Veda-saṃhitā xi. 77, 258, 262; Vaikhānasā, vi. 21; Čātra, ii. 16, 70; Śaṅkha, ii. 105, 109, 111, iii. 185, iv. 19, 98; Śāma, i. 23, iii. 145, 185, 232, iv. 123–124, xii. 262.

2 E.g., ii. 12, 14, 32, 59, 89, 171; iii. 14, 26, 53, 284; iv. 18, 55, 178; vi. 89.

3 For a full account of the Indian ideas on this subject see Muir’s Sanskrit Texts, vol. iii. p. 1 ff.

4 See Gautama Sūtra, i. 1–3; Āp. Sūtra, i. 1, 2; Text. ii. 6; Yāj. i. 1.

5 So here (ii. 7), all that Manu directed is said to be based on the Veda.
limited extent, in what would otherwise have been the most hopelessly stereotyped and rigid system ever seen. But it must be noticed that even this could be but for a short time, i.e., during the final consolidation of the Vedic religion and system. The Mīmāṃsā and other systems once in full swing, matters became again hopeless, and all that was possible was to rearrange old materials, to which additions then became impossible. All that now remained feasible was to harmonise these materials by means of one of the philosophic systems. This was done by the Nibandhas or Digests, and from difference of method a difference of result followed in some cases; but there was no liberty of interpreting, and the adherence to the chosen system was most rigid; all Indian ingenuity could do was but little, and (except in analysis and precision) practically unimportant. The authors of the Digests were, in fact, in precisely the same position as their European contemporaries, the schoolmen. The Indian system was thus originally, and throughout its course, theocratic. English lawyers, even with the Pentateuch before their eyes, have as yet failed to see that law is in India not differentiated from what is elsewhere matter of religion. The Mānava-dharma-çāstra is then essentially a religious book, and not, as in England and most of Europe, a profane treatise on mere law. The ordeals mentioned are all, e.g., religious ceremonies.

1 In Bengal Jīmutavāhana used the Nyāya; in the Deccan and South India, Medhātithi and Vijnāneçvara and his imitators used the Mīmāṃsā. Hence the different views as regards the time when a right to an interest in the family property arises; the former holding that it arises on birth, the latter on conception.

2 In effect, it was only on doubtful or disputed points that anything could be done. Such are, e.g., the number of nyavāhārapadas or topics of law; niyoga, or a brother taking a deceased brother's wife; the nature of stridhana, etc.

3 The late S. Monk's comparison between the Pentateuch and Mānava-dharma-çāstra is still of interest.

4 It is owing to the peculiar nature of theocratic civilisations that no names of the founders and promoters of these systems have been preserved. It was the work of the priestly caste rather than of individuals, and education consisted in imitation rather than in instruction.

5 The use of torture to extort evidence or confessions is still com-
(d.) A brief survey of the development that can actually be traced will perhaps not be useless here.

Sanskrit literature has preserved traces of an early stage of development of law, viz., between the Brāhmaṇa and Sūtra periods. This unfortunately only refers to criminal law, not to civil law. In the Sūmaydhāna Brāhmaṇa ¹ is a considerable list of crimes there treated as to be expiated by religious ceremonies. In the Sūtras we find the same crimes punished by temporal penalties. It is thus obvious that what afterwards became crimes against the state were at first merely a matter of concern to the individual and his family or tribe.²

There is also ample evidence to prove that criminal law was always but little administered, and that much was left to local usage. Thus a common punishment of adulterous wives in India has always been to cut off their noses. The Pāṇca-tantra mentions it,³ and so do the old travellers of the sixteenth century, but this is not mentioned in the law-books. It is evident that these punishments were left to be carried out by the heads of castes and similar authorities in accordance with their own customs.

There is also a great development traceable in the different Smṛtis as regards, e.g., the use of ordeals, and in definition and systematisation of crimes.

It is remarkable that the only account we have of a trial in ancient India is that of a criminal trial in the early drama, the Mṛcchakaṭiṅkā,⁴ and (much earlier) in the fourth century B.C. little but criminal law was administered by the sovereign, and civil suits seem hardly to have been known:⁵

¹ See p. xiii. ff. of the preface to vol. i. of my edition.
² The earliest trace of law that we find in India is of criminal law. In the Rg-Veda times thieves were seized and beaten and tied to posts. H. Zimmer, "Altindisches Leben" (1879), p. 181 ff.
³ i. 4.
⁴ See Acts ix. and x.
⁵ Megasthenes, Fr. xxvii. (Schwanbeck). The cases tried seem to have
(e.) Books on the Dharma-śāstra were used in the tribunals, and these must have been such as our text; for about 320 B.C. the Greeks found that the Indians had no written laws, but some Smṛtis mention such books. It must, however, be once more clearly and distinctly asserted that these books were merely consulted in order to ascertain the law as it was divinely fixed from all time. They were not codes, nor were they promulgated by the authority of any sovereign; indeed, such a supposition is impossible to any one who has some acquaintance with Indian ideas. The king was to ascertain the law, and to aid him he had Brahman assessors. Now, it is certain, that, at least in later times, there were men to educate men for this office. Inscriptions show that there were provisions made for the study of the Dharma-śāstra in the Brahman settlements, and a relic of the employment of such assessors was to be seen within twenty years ago in the Sudder pandits. That the practice actually coincided with the rules of the Dharma-śāstra all over India is evident, e.g., in the case of deeds of gifts, etc.

One remarkable fact in the history of Indian law is the early occurrence of what is now generally termed “con-

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1 Text, viii. 3 (not necessarily written); Nārada (ed. Jolly), i. 10. Here there can be no doubt that a written book is intended.

2 Megasthenes, Fr. xxvii.

3 I first drew attention to this fact in the preface to my Dāyavibhāga (1868); cf. Nārada Smṛti, i. 31 ff.

4 E.g., Gautama, xi. 23–24: “Reasoning is a means for arriving at the truth; coming to a decision through that, he shall decide properly.” The final decision was with learned Brāhmans (ib. 25).

5 Māṇavā-dharmā-śāstra, viii. 1; Yāj. ii. 2; Nārada, i. 16. This is also hinted at in the still earlier Sūtras, e.g., Āpast. ii. 11, 29, 5; Gautama, xi. 25.

6 This is apparent from the way in which such deeds are drawn up, as I have shown in my South Indian Palæography (2d ed., p. 119). Bernier’s account of the schools at Benares, and Adams’ and (later still) Professor Cowell’s description of the Nuddea tolo (J. As. Soc. Beng.) exactly illustrate this. A few such schools still exist at Benares, though in much diminished numbers. See Sherring’s Benares, pp. 345–346.
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flict of laws." This is to be first traced in the Dharma-
sūtra, or more than two thousand years ago. In the
dharma-çāstra principles are laid down for the decision
of such questions, but they have been entirely neglected
by the English lawyers, as well as the rules about local
laws and customs. The recognition of local laws is
very early, and occurs in full already in the Dharma-
sūtras.

(f.) As regards the use of such books there is some-
two said. The king, as chief judge, had to ascer-
tain the law from the Vedas, etc., and the numerous
Dharma-sūtras; and again, with reference to local
laws, he had to gather it from adequate evidence of
experts.

Now the sacred texts he had to refer to were nu-
erous and more or less conflicting; and the local laws and
customs were also numerous and varying, but recognised.
The authority of the inferior castes to make their own
laws was early admitted. Neither were the Sanskrit
Brahman laws forced on them, nor were their own customs
ignored, as is now the case.

But it is only in the Dharma-çāstra that the difficulties
hence arising are treated in a rudimentary manner, which

1 The existence of these rules was
first brought to the notice of the
legal world in J. H. Nelson's "View"
(1877). See i. 118 of the text for a
very explicit enumeration of what
was recognised in this way in the
Smrīla.

2 Baudhāyana, [i. 1. 2. 1-7];
Āpast. ii. 6. 15. 1; Gautama, xi.
20-21. Cf. chapter i. v. 118, and
viii. 3 of the text, [although it is a
disputed point as to the extent of
recognition to be shown. Cf. Baudh.
ib. 7.]

3 In the fourth century B.C. we
find the king much occupied in ju-
dicial functions, but there were no
written laws to refer to. He went
forth from his palace to act in this
capacity (Megasth., Fr. xxvii., ed.
Schwanbeck). The official recogni-
tion of books to consult certainly is
not earlier than the early centuries
A.D.

4 Gautama, xi. 21. "Cultivators,
traders, herdmen, money-lenders,
and artisans (have authority to lay
down rules for their respective
classes" (Bühler).

5 Goldstücker, "On the Deficien-
cies," etc., 1870 (reprinted in his
"Remains," p. 145 ff.), pointed out
the misuse and misinterpretation of
the Indian Sanskrit law-books by
the superior courts; and other simi-
lar errors have been fully explored
by Nelson in his "View."
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becomes fully developed in the Nibandhas or Digests. In the Smṛti-Candrikā (about 1200 A.D.), and the Mādhaviya (fourteenth century), e.g., we find chapters on Deśadharma or local laws. These display a marked development as compared with the Smṛtis. The earliest recognition of local laws, as already mentioned, is in the Dharma-sūtras, but this refers rather to the differences of the Brahmanical ākṣaras than to local laws proper; but Baudhāyana, beyond doubt, refers to the last,¹ and the Smṛtis do not go much farther than he does. In the Digests we find a provision and limitation unknown to the earlier books, and which is unquestionably due to the progress of Brahmanical civilisation in the South of India. Here we find also almost the only trace of a desire to make Sanskrit law paramount, and to exclude all in local customs inconsistent with it. The siddhānta or conclusion at which Devaṇṇa, the author of the Smṛti-Candrikā, and Mādhava-Sāyana, the author of the Mādhaviya, arrive is, that local laws, to be recognised by lawyers, must not be inconsistent with Sanskrit (or Brahmanical) law.² But this principle has never, in reality, obtained much influence. Even among South Indian Brahmans numberless usual practices are opposed to the Sanskrit law; and in Malabar, Cochin, and Travancore this is so much the case, that a small manual called the Anācāranirṇaya has been composed to enumerate them,³ and these are now enforced by the courts, so far as they come within their cognisance. This

¹ [A blank; but probably the passage above, Baudh. i. 1. 2. 1-7, is referred to.]
² [A blank where a note was to be, followed by these words: — ] . . . Here at last we find a decided step made, and Indian social existence has at last progressed from the family or tribal state to the civic form in which a conception of the state is evident. Further progress would, no doubt, have been made, but for historical events, on which it would be out of place to enlarge here.
³ [This tract is attributed to Čaṭhikāra, of course, but it cannot be more than a few centuries old. It is, however, an unquestionably respectable authority for the peculiar customs of Malabar, and (somehow) has never been noticed by the high court as such. On the other hand, a ridiculous forgery of this century, which pretends to do the same for Canara, is taken for what it pretends
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is, no doubt, a retrograde step, and it is hard to see how tribes now addicted to polyandry and similar customs will ever be able to free themselves, though an inclination to do so has already begun to display itself in a few cases, and attempts are constantly being made to evade its consequence. But the English tribunals are sadly careless in the matter of local customs, and nothing like an attempt has yet been made (except Steele's work) to observe and record such facts. The Portuguese, however, already in the sixteenth century did this well, and the Dutch and French have also taken the same course.

The above will suffice to show how much the Mānava-dharma-çāstra has been misunderstood and misused by the English lawyers.

On perusing the text and similar works, including the Dharma-sūtras, carefully, an impression of unreality arises which casts serious doubts on the reality of these works. We meet with so much that is inhuman, and such a hideous and cynical contempt for the human body, that we are tempted to believe that these books are the insane ideal of crazy fanatics or the foolish reveries of besotted ascetics. But there is too much external evidence that

to be, and is quoted by judges with a serious face! (Madras High Court Reports.) We shall soon see "Jack the Giant Killer" received as an authority on the law of homicide.

1 M. J. C. Loureiro's "Memoria dos estabecimentos Portugueses a Leste do Cabo da Boa Esperança," Lisbon, 1855, contains a Goa "customary" of 1526. F. Nery Xavier has (lately) published others. The Dutch at the beginning of the eighteenth century had the customs of the Jaffna country drawn up. The French courts nearly follow the precepts of the Sanskrit law as regards the customs of the different castes, and the evidence to prove them.

2 E.g., Āpast., i. 9. 25. 12...

"Such a sinner may tear from his body and make the priest offer as a burnt-offering his hair, skin, flesh, and the rest, and then throw himself into the fire" (Bühler). Cf. Yājñ. iii. 247. Prof. Bühler considers that this "is not altogether a mere theory of Apastamba" (p. 83, note). See especially ch. xi. of the text; Vasiṣṭha xx.; Āpast. i. 9, 24 to 25; Gautama xxii. and xxiii.

3 Compare the suicide by fire of Ῥαλας, which astonished the Greeks of Alexander's army (Meg. Fr. x. from Strabo xv. 1); Bardesanes (ed. Hülsenfeld). The practice of sakti (suttee) was very early (Barth., Religions of India, p. 59 ff.) Several remarkable instances of self-torture
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such enormities were commonly done to allow us to accept this easy explanation.

The real explanation may be readily seen by a consideration of the frequency of hysteria and analogous disorders among the natives of the present day. Hardly a day passes in even small villages without a case of this kind, which passes among the people as diabolical possession.\(^1\) In some parts men are habitually reduced to this state artificially in order to deliver oracles.\(^2\) This, the true and satisfactory explanation of the sorcery and witchcraft of the Middle Ages, is, no doubt, the true explanation here also. The partial or total anaesthesia, a characteristic of hysteria, which was known in the Middle Ages as the "Devil's mark," is also adequate to account for the insensitivity to pain which is implied.\(^3\)

There is, however, a striking difference in one respect between India and other countries. Whereas in other countries such hideous displays of human weakness have been dreaded, and even put down with frightful cruelty, in India they have been encouraged, and even made a part

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\(^1\) Hysteria of this kind was known in the Vedic times; compare the girl \textit{gandharva-ghrita} of the Ait. Br.

\(^2\) In the Bhûta worship of South Canara. [After this sentence occurs the remark: "Another widespread indication of it is the prevalent mendacity:" but, as Dr. B. cannot have meant this to be antecedent to "this . . . explanation . . . of sorcery," it appears to have slipped in by mistake.]

\(^3\) The fact that primitive and little developed races display great physical insensitivity is now fully recognised, and should not be forgotten here.
of religious worship. The way of producing them has been reduced to an art in the Yoga and Tantric systems, and a good Hindu is surrounded by provocations of these melancholy diseases.

If anywhere, we must find a Brahman ideal in the endless and stringent rules which would take up every moment of an Indian’s life in frivolous ceremonies, and which can never have been carried out even in India, and are now entirely obsolete.

As the text is, it is one of a large class of works\(^1\) of much the same character, to which a few late forgeries have been added for sectarian purposes. But many of these are mere fragments,\(^2\) and others can be shown to be abridgments which have supplanted older and more copious texts.\(^3\) It is on these that the authors of the Digests have chiefly based their works, and the Mānava-dharma-çāstra takes a prominent place among these; it has not, however, like the text of Yājñavalkya in Vijñāneçvara’s hands, become the foundation of a Digest.

The history of the text in recent times is tolerably complete. The earliest existing commentary that we have is the Manubhāsa by Medhātithi, the son of Vīra-svāmin. His date, about 1000 A.D., can be safely inferred from the following circumstances. He is quoted already by Vijñāneçvara of about 1200,\(^4\) and it is not, therefore,

\(^1\) Upwards of fifty are now enumerated. See Yajñī, i. 4, 5, where twenty are mentioned. This is probably the oldest list. Devānā, the author of the Smṛticandrika, accepts thirty-six Smṛta on the authority of Pañchinasi, and sixteen Upa-smṛta on the authority of Aṅgiras. See p. 133 of my “Classified Index.” Compare the lists by Europeans in I. S., i. p. 232 ff. (by Stenzler); in West and Bühler’s Digest, i. p. xiii. ff.; Stokes, Hindu “Law-book,” p. 5, note, which collects the results of the Indian lists.

\(^2\) Such are Laghu Ātreya-smṛti, Dakṣa, Devala, Pulastya, Budha, Bṛhaspati, the two Yamas, Vyāsas, etc.

\(^3\) Dr. Führer has, e.g., restored in an able manner part of the real Bṛhaspati-smṛti (Darstellung der Lehre von den Schriften, etc., 1879). The work that now passes under this name (see Smṛti-saṅgraha, Calcutta, 1876, pp. 644–651; Tanjore Cat., p. 125) is quite a modern and wretched substitute.

\(^4\) As proved by Bühler. The passage in the Mītākṣara referring to
too much to allow 200 years before this date. But he was not the earliest commentator, and in doubtful passages he often quotes the explanations of others. 1 He was probably a native of the Deccan, 2 and we often find such names as his father’s in the Cālukya inscriptions. His reputation has always been enormous, and he often is mentioned as “Asahāya” or the “Peerless.” 3 He has had a number of successors, who have generally adopted his words, and who seldom differ in interpretation from him. Unfortunately manuscripts of his work are rare, and that accessible to me is not good. 4 Modern scholars will find his work often diffuse, tedious, and obscure, but its practical use is considerable, as he occasionally notices a v. l., and his commentary enables us to trace subsequent interpolations. 5 He followed the Mīmāṃsā system in his explanations. 6

His next follower was Govindarāja, whose work I have been able to examine cursorily in a MS. discovered by Professor Bühler, and belonging to the Bombay Government. It is quite evident that Govindarāja established the textus receptus as adopted by Kullūka, and found everywhere in India, and that he was rival to Medhātithi.

Medhātithi is iii. 24. Medhātithi is also quoted by Mādhava-Sāyana in his Parāśara-smṛti-vyākhyā (fourteenth century), and by the Smṛti-kaumudi (fifteenth century), etc.

1 iii. 15, 5, vii. 139 (anye tu); 255 (anye tu vyācakpate); 271, 274; iv. 19 (ye tu vyācakpate . . . tadayuktam). No predecessor is found mentioned by name (viii. 46, another?). Opposed we often find pūrve, eka, and pare (apare), anye, etc., and the expression quoted, ayuktam, followed by Med.’s view, occurs very often. He also touches on the relative position of the verses and notes arrangements of the same from which he differs. He quotes often Gautama, ii. 60; iv. 9; v. 141 (eka); Vasiṣṭha, Baudhāyana, Gautama, iv. 136; the Mahābhārata, Mahābhāṣya, Pāṇini (v. iii Sūtra-kāri), and many later Smṛtikāraḥ.)

2 See his explanation of kutapa (=a blanket) in his comment on iii. 234. Kutapaḥ . . . udiyeyu kambola iti prasiddhaḥ. Udiya can here only mean “Northerner,” and the word is said to mean a Nepal blanket.

3 Varadarāja calls him by this epithet (see my “Vyavahāra Nirṇaya,” p. 30).

4 It is from the Colebrooke collection in the I. O. Library. [Cf. also Preface, p. xii.]

5 He often quotes other Smṛtis, and evidently had a large acquaintance with Sanskrit literature.

6 Compare his Commentary on iv. 19.
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He seems to have differed much from Medhātithi, and Kullūka occasionally quotes contrary opinions of the two. His name points to about the twelfth century at the earliest.

After him came a commentary by the famous Mūdhava-Sāyaṇa, who lived in the fourteenth century. This work appears to be in existence, but I have not been able to find it or trace it in any library. I have met one pandit who told me he possessed it, but I never could get a sight of it.

After him came Kullūka Bhaṭṭa, whose brief commentary (chiefly taken from Medhātithi) is the commonest and most popular one in existence. He tells us that he was a native of Benares, and he probably lived in the sixteenth or seventeenth century A.D. This commentary is a concise practical work.

After him came a Nārāyaṇa, quoted by Rāghavānanda, but of whom I can learn no more.

Then came Rāghavānanda, whose very brief commentary (Manvarthacandrikā) chiefly follows Kullūka. He refers to all the commentators already mentioned except Sāyaṇa-Mādhava, and seems to have been a native of South India. At least one manuscript of his work is in the great Paris Library, and was used by Loiseleur Deslongchamps for his edition.

Besides these there is a commentary by a Nandanācārya among the Tanjore manuscripts. As his name shows, he was a native of South India; his work appears to be modern and of small value. I can find nothing in it to enable me to fix his date. Perhaps he was the Nanda who wrote on adoption.

Editions of the text are quite recent. Sir William

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1 See the preface to my edition of the Vaiṣeṣa Brāhmaṇa, p. xx.
2 It is a vr̥tti called Manvartha-mukta-vah.
3 [MSS. of this work are still extant.]
4 See p. 126 of my Tanjore Catalogue.
5 The first, with Kullūka’s commentary, was in 4to, Calcutta, 1813. This was printed by Colebrooke’s protégé, Bābu Rām, and, like all the
Jones' translation appeared in 1794. The means of acquiring a knowledge of Sanskrit were then very small, and the author deserves the greatest credit for his generally successful attempt. The chief defects in it are due to the prejudices of the day; it is diffuse and rhetorical, and largely interpolated with passages from Kullūka's commentary; the a priori and metaphysical theories of the time show their influence in every line, and the translation of such terms as ātman will not now pass muster—Sir William Jones has converted the materialist Sānkhya system of the text into the metaphysical deism that he and his associates had so largely adopted. But any correct notion of the Indian systems was then impossible.

Since 1813 numerous reprints of the text, with and without Kullūka's commentary, have appeared at several times in India, but they are all uncritical. Two editions have appeared in Europe, in which a critical restoration of the text has been attempted—that by Sir G. C. Haughton in 1825, and that by Loiseleur Deslongchamps in 1830–33. Haughton gives Sir William Jones' translation, again collated with the Sanskrit; Loiseleur Deslongchamps gives a version of his own in French,¹ but it agrees tolerably closely with that of Sir William Jones.² A revised text of Sir William Jones' translation was begun (about 1840) at Calcutta, but continued only down to iii. 33; Dr. Goldstücker expresses a high opinion of it.³

¹ Goldstücker termed Sir William Jones' translation "excellent," and that of Lois Deslongchamps "very good" (Remains, i. p. 108). Professor Monier Williams (Two Addresses, 1881) also praises Sir William Jones’ version as "admiringly translated."

² Haughton's edition of Sir William Jones' translation was reprinted at Madras (1863), and by Grady at London (1869), and Deslongchamps' translation [of the text] was reprinted at Paris in 1850.

³ Remains, ii. p. 148, note. The differences from Sir William Jones' version are numerous and striking. All the information I have respecting this translation is derived from the above passage. I have not been able to procure a copy.
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Dr. J. Muir has given model translations of numerous passages of the text in his "Sanskrit Texts" and "metrical Translations from the Sanskrit." Many points connected with the text have been fully discussed by Johaentgen, "Über das Gesetzbuch des Manu" (1863).1 "The Mutual Relations of the Four Castes according to the Māṇava-dharma-çāstra" have been fully treated by Dr. E. W. Hopkins (Leipzig, 1881).

This summary of original work up to the present will show that there is room for much more to be done. A new critical edition of the Sanskrit text, with the aid of South Indian manuscripts, is to be desired; but it appears to me it is to be wished that the textus receptus of Kullūka should still be followed, and the discrepancies merely pointed out. The reason for this is to be found in the fact that a critical text would in reality present no considerable v. l., and though some changes in the order of the verses would have to be made, and interpolations omitted, yet it is not advisable to change the well-known numbers of the verses as found in Sir William Jones' translation, for the inconvenience thereby caused would be great. This applies equally to a new translation, which is equally necessary, for the reasons I have already mentioned.

I have therefore followed in the following pages the text after Kullūka as edited by Haughton, and noted the chief discrepancies in the notes. The manuscript of Medhā-

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1 [More important than anything since Johaentgen as regards articles concerned directly with the text is Bradke's Māṇava-grhya-sūtra, in which the relations of our text are discussed from many sides, to the Grhya Sūtra as well as to the Mai-trāyāni Samhitā. A special translation of most of book viii. has been given by Professor Jolly (iii. bd. Zt. für Vergleichende Rechts Wissenschaft). A special but popular essay on Manu will be found l. A., vol. ii. More has been done indirectly in the introductions to the law-books published by Bühler and Jolly. Critiques of special passages are given in Bühler’s Digest, Mandlik’s ed., of the Vyavahāra Mayūkha; and more general critique in Nelson’s Scientific Study of Hindu Law and Müller’s India. The works of Professor Bühler and Professor Jolly (Āpastamba, Gautama, Vasiṣṭha, Baudhāyana, Viṣṇu), the latter’s text of Viṣṇu and translation of Nārada, have done much for the study of Hindu law, and, indirectly, for the Māṇava-gāstra.]
tithi which I have been able to use is unfortunately not a
good one, but I have extracted the more important v. l.
noted by the writer.\(^1\)

As the text has been so often referred to by the courts
in India and the ultimate Court of Appeal, the Privy
Council in England, it might be expected that some use-
ful help would be got from the law reports; but this is not
the case. Most of the cases decided are evidently wrongly
decided,\(^2\) and others really need no elucidation; the deci-
sion may be very able, but (as an eminent writer has said)
"life is not long enough to study able demonstrations that
the moon is made of green cheese." I therefore do not
refer to this branch of literature referring to Sanskrit
law.

It is not often given to any man or class of men to carry
out crucial experiments in sociology, though such a course
has been, one might think, rendered impossible in India
by royal proclamation\(^3\) and actual law; here, however,
it cannot be doubted that the result will confirm the con-
clusion that only a natural and spontaneous development
is of use and value, and that imitation is sterile.

The preceding pages will show that Sanskrit law was
pursuing a course of spontaneous development; this has

\(^1\) It is the one used by Haughton
(i. p. 322-323), and forms part of the
Colebrooke collection now in the
India Office Library. It is recent
/about 1800), and is in 4 vols., but
does not include the commentary on
chap. xii. I owe the power to use
this MS. in India to the kind help of
Dr. Rost, the chief librarian of the
India Office (London).

\(^2\) The most glaring instance is the
so-called "chastity" case, in which
the Privy Council has lately con-
formed the decision of the Bengal
High Court. The question here was:
whether a widow, holding property
as such, and having (admittedly)
ceased to be chaste, could retain it?
She was allowed to do so by both
courts. It is obvious that under
Sanskrit law she would not; for a
property being held for the benefit
of her deceased husband by means
of religious ceremonies, with the
loss of her virtue she could no longer
do so. In fact, she lost her position
in the caste altogether, and her
existence as a member of the family
ceased utterly.

\(^3\) On the resumption of the
Government of India by the Crown
(Proclamation of Nov. 1, 1858), Her
Majesty said: "We disclaim alike
the right and desire to impose our
convictions on any of our subjects.
. . . We will that generally in
framing and administering the law
due regard be paid to the ancient
rights, usages, and customs of
India."
been interrupted, and English doctrine has been pitchforked into Sanskrit texts. Is it likely that a satisfactory result will ever follow? The whole subject is now in a chaotic state, and so great is the uncertainty that valuable property is commonly sold for a thousandth part of its value. So far the present policy cannot be viewed with complacency.

As regards my translation, I have endeavoured to make it as literal and concise as possible. With [the] greater part of the text, i.e., chapters ii. to x., or the really important part of the book, this is not a matter of much difficulty. The case is different with chapters i. and xii. These, as has already been said, are metaphysical, and follow the Sāṁkhya system. Much labour has been bestowed on this subject by Colebrooke, and after him by Dr. F. Hall, but it must be admitted that it is all but impossible to express the terms of this system in a European language. All possible renderings convey much more than the primitive and rude original signifies, and it is impossible to limit each word so as to provide against a too wide signification being attached to it. Language cannot go back to suit primitive and barbarous ideas.¹

The rudimentary metaphysics of India are solely of interest now as showing the development of Indian conceptions, and that, in this respect, there is no difference between India and other countries. Here, as elsewhere, a fictitious stage of conceptions, such as is found in the Upanishads, has been followed by an abstract stage, such as is found in the metaphysical systems. Intrinsically they possess nothing of permanent value, and vanish like

¹ Mr. Nelson ("View") has exposed fully the delusion of "apt equivalents" for the Sanskrit technical law-terms; his remarks apply equally to the philosophical terms, as Dr. F. Hall has noticed (Rational Refutation, pp. viii. to x.): "There are scores of terms belonging to the nomenclature of Hindu philosophy, precise equivalents of which have not yet been wrought out for us with the help of the Latin and Greek. . . . Colebrooke and his successors have indeed elaborated many close and felicitous renderings; still they have left much unattempted, and something to be amended."
mists before the sun when confronted with the results of positive science. To those persuaded of the truth of the axiom, "No force without matter, and no matter without force," the vague a priori dreams of India are, and must remain, without any intelligibility or importance beyond their historical connection; even in this respect they lead to no new laws, but merely confirm what is already established.

But all this [metaphysical] part of the text is an excrescence, and really independent of the subject-matter of the book.

[Note.—Here, somewhat abruptly, Dr. Burnell’s Introduction to Manu is brought to a close. Immediately following is a fragmentary Introduction to Yâjñavalkya, which work was apparently to be translated and published with the Manu, the general heading of the whole-MSS. being “Mânava-dharma-çāstra and Yâjñavalkya-sûrî.” The translation of the latter work was not begun, and the introduction offers nothing new, so that it would be useless to reproduce it here. In regard to the precise dates assumed in this discussion, it may be necessary to remark that many of them are not so undisputed as could be wished; especially in the inscriptions with the various eras in vogue when they were written we are often at a loss. Criticism of the above argument is at present waived by the American editor, who has felt it his duty simply to follow in his predecessor’s steps, and fill the lacunae left in his MS., while abstaining from individual comment, except where it seemed necessary in assertions of facts: although he may at times have questioned whether the theories advanced are based upon sufficient data.]
CORRIGENDA.

Page 1, note 1, p. 9, vs. 61, 63, p. 13, vs. 102, for Syayambkū and Syayambhūva read Syayam, Syayam.

Page 9, vs. 62, insert ) after i.e.

Page 19, vs. 28, for Brāhmaṇ read Brāhma.

Page 24, vs. 64, 66, and p. 29, vs. 105, for texts read mantra.

Page 32, vs. 130, before priest insert sacrificial.

Page 45, note 2, for śākhā read cākhā.

Page 59, vs. 121, for texts read mantra.


Page 68, vs. 194, before Hiranyagarbha insert son of.

Page 72, vs. 232, for Dharma-ṭastra read Dharma-ṭastra.

Page 73, vs. 239, for Cāṇḍāla read Cāṇḍāla.

Page 106, vs. 232, for Brahma read Brahmā.

Page 119, note 4, read Govindārājā-dayāḥ.

Page 124, note 1, for Dimba read Dimbā.

" " 3 and 4, read third line as second.

Page 139, note 3, dele ] after paṇḍuḥ.

Page 144, vs. 70, for Vyāhṛti read Vyāhṛtis.

Page 146, vs. 94, for Brahan read Twice-born man.

Page 152, vs. 37, before Vedas insert three.

Page 158, note 1, and p. 213, note 8, for Ṛtvig read Ṛtvij.

Page 156, first line of notes, for Viśvanātra read Viśvā.

Page 215, vs. 226, for anusatra read mantra.


Page 244, note 4, for world of Brahm read Brāhma-world.

Page 294, note 6, for Courān read Courān.

Page 309, vs. 36, after Nispāda insert semicolon, and for Vaid read Vaid.

Page 315, note 4, for Brahm read Brahma.

Page 328, vs. 29, for Sādyas read Sādhyas, and in note 3, Viśva for viśra.

Page 337, note 3, for often Brhaspati read after Brhaspati.

Page 342, vs. 125, for heating read burning.

Page 349, vs. 176, for Cāṇḍala read Cāṇḍāla.

Page 351, vs. 183, for Ṛtvig read Ṛtvij.

Page 353, vs. 201, enclose of the Veda in ( ).

Page 364, vs. 4, for worlds read world, and in note 4, for minds read mind.