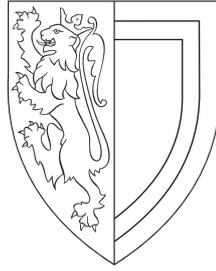


Ownership and Inheritance in Sanskrit Jurisprudence



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Abstract

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This thesis concerns the development of the concept of ownership (svatva) in Sanskrit jurisprudential literature (Dharmaśāstra) and in Sanskrit philosophical literature (Mīmāṃsā and Navya-Nyāya) between the 11th and 19th centuries CE. Scholastic Sanskrit literature (śāstra) boasts one of the world's most detailed and sustained inquiries into the philosophical nature - and legal incidents - of ownership. Classical jurists, ritual hermeneutists and logicians who wrote in Sanskrit engaged in often acrimonious debates: about what ownership is, about how one becomes an owner, about who can be an owner (and who can be owned), and about where to draw the line between śāstric injunctions and the facts of the empirical world.

In what follows, I examine the mutual relationship between shifting philosophical theories of ownership and juridical models of inheritance (dāya) at four watershed moments in Indian intellectual history: the compilation of Vijñāneśvara's *Ṛjūmitākṣarā* (12th Century); the emergence of the university of Navadvīpa (1514); the Brāhmaṇasabhās of the Kāśivīśveśvara temple in Vārāṇasī (1600-1669); and the creation of Anglo-Hindu Law (1772-1825). I argue that different Dharmaśāstric models of inheritance - in which families held property in trusts or in tenancies-in-common - emerged in tandem with related developments in the philosophical understanding of ownership in the Sanskrit text-traditions of hermeneutics and logic. I demonstrate that, contrary to recent work on the subject, one can talk meaningfully about regional 'schools' of precolonial (indeed, even colonial) Sanskrit jurisprudence to the extent that one can identify consistent lines of argument that were strongly associated with specific academic institutions, scholastic lineages and disciplinary techniques in different regions of India.

The thesis makes contributions that will be of use to specialized scholars of Sanskrit knowledge systems and to legal historians in a number of ways. First, the thesis reconstructs the intricacies of the evolution of ownership in a collection of hitherto unexamined textual material. Second, it posits a greater connection between Sanskrit jurisprudence and philosophy than understood previously. Third, it connects the scholastic study of ownership with the self-fashioning and competitive agendas of Brāhmaṇa lineages in early modern university towns such as Mithilā, Navadvīpa and Vārāṇasī. Finally, it problematizes the fashionable truism of a profound epistemic rupture between pre-colonial Sanskrit jurisprudence and colonial Anglo-Hindu law. The thesis suggests a need for a shift in the contemporary scholarly approach to Dharmaśāstra away from inherently flawed considerations of the obvious disjunctures between Dharmaśāstra and positive, Anglo-American 'law,' and militates for an intellectual historical approach to Dharmaśāstra as an expert, scholastic, form of *jurisprudence*. In doing so, the thesis opens up new possibilities for Sanskrit textual history, Indian legal history and comparative jurisprudence.

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Finally, I would like to thank the reader for taking the time to open this thesis. May it be of some service to your intellectual pursuits or to your understanding of ownership, property, and svatva.

Next Year in Los Angeles!

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Introduction

Something is someone's property (when) someone is able to use it as desired.

- Śabaravāmin, *Mīmāṃsābhāṣya* (4th Century CE).¹

There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. And yet there are very few, that will give themselves the trouble to consider the original and foundation of this right.

- William Blackstone, *Commentaries on the Laws of England* (1763).²

This thesis is about two related - and rarely understood - legal phenomena from classical India: ownership and inheritance. The present study attends to these phenomena within the expert Sanskrit text-traditions of jurisprudence (Dharmaśāstra), scriptural hermeneutics (Mīmāṃsā), and formal logic (Navya-Nyāya).³ I show that the philosophical theories of ownership that emerged from hermeneutical and (much later) logical literature were deployed strategically by jurists to defend two competing models of inheritance - in which families held assets in joint trusts or in which family patriarchs exercised virtually unlimited control over ancestral assets.

I demonstrate that during India's long early modern period (1500-1800) these two juridical models of inheritance (and their attendant philosophical justifications) were adopted by Brāhmaṇa scholar (paṇḍit) families who portrayed themselves as the embodiment of southern (Dākṣiṇātya) or eastern (Gauḍa) proper conduct (śiṣṭācāra). Ownership became a prominent topic in broader debates between southern and eastern paṇḍits regarding the just, Dharmic ordering of society. These

¹ *Mīmāṃsādarśana*, Vol. V., ed. V.G. Apte (Pune: Anandashrama Press, 1932), 1656: Śābarabhāṣya on *Mīmāṃsāsūtra* 9.1.9: yo yad abhipretam viniyoktum arhati tat tasya svam.

² William Blackstone, *Commentaries on the Laws of England: Book the Second* (Oxford: Clarendon Press, 1766), 2.

³ More on these below.

debates resulted in the creation of regional ‘schools’ of precolonial Sanskrit jurisprudence in which one can identify consistent lines of argument that were strongly associated with specific academic institutions, scholastic lineages and disciplinary techniques in different regions of India. The advent of European colonialism and the codification of Dharmaśāstra as Hindu personal law through the British administrative apparatus resulted in a novel development - in which the state enforced what were previously scholastic, meta-legal discourses as positive law. While I accept that the colonial, orientalist view of Dharmaśāstra as Hindu *law* failed to capture much of its theoretical, *śāstric* valence, I reject the assertion that pre-colonial and colonial Dharmaśāstric schools of jurisprudence were a colonial invention.

I.A: Ownership, Property, and Svatva

One objective of this thesis is to give a comprehensive account of ownership in the intellectual history of Sanskrit jurisprudence. Before turning to the intricacies and controversies surrounding the discursive registers of law, Dharmaśāstra, and intellectual history, it is worth attending to what terms such as ‘ownership’ and ‘property’ mean in Western legal parlance and in traditional Sanskrit jurisprudence. My intentions are twofold: 1) to introduce the reader to legal debates about ownership’s metaphysics in the west and in India, and 2) to demonstrate that these arguments about property and ownership have been and remain deeply embedded in broader debates concerning the just and equitable organization of society. Ironically, in Anglo-American jurisprudence, ‘property’ is defined rather nebulously, if at all. As John Derrett notes,

fundamental concepts are often the more difficult to define because of their ubiquitous employment... [and] property is just such a concept, standing upon the frontiers of linguistics, law, and logic without deriving final shape

from any of them... Many legal systems (which out of necessity employ the concept at every turn) contrive to dispense with a definition altogether.⁴

In a recent volume on property, Joseph Singer summarizes a fairly standard view of property in Anglo-American jurisprudence as “legal relations among people regarding control and disposition of valued resources.”⁵ “When we think of property,” writes Singer, we tend to think of ownership... [and] an owner has the power to control the property she owns.”⁶ One might think, common-sensically, of this physicalist power ‘to control’ in Blackstone’s or in Śabaravāmin’s terms: as despotic dominion (*dominatio*, *prabhutva*) or as use as desired (*yatheṣṭaviniyoga*).⁷ However, “ownership does not mean the absolute right to control what one owns; rather, it is the fullest bundle of rights that the law will recognize.”⁸

This realist view of property as a bundle of rights - possession, title, mortgage, lease, sale, etc. - which amounts to a list of the incidents of property, has come under withering critique from two directions. On the one hand, legal anthropologists - taking the view of property as relations *among people*, as *in personam* - have

⁴ J. Duncan Derrett, “An Indian Contribution to the Study of Property,” *Bulletin of the School of Oriental and African Studies* 18 (1956): pp. 475-498, 475.

⁵ Joseph Singer, *Property* 5th ed. (New York: Wolters Kluwer, 2017), 2. The formulation of property as relations between people rather than as relations between people and objects traces its origins to a series of articles by Wesley Hohfeld. See “Some Fundamental Legal Conceptions as Applied in Juridical Reasoning” *Yale Law Review* 23.16 (1913): pp. 28-59; 26.8 (1917): pp. 710-770. See Henry Smith, “Property Is Not Just a Bundle of Rights,” *Econ Journal Watch* 8.3 (2011): 279-91, 280: “Hohfeld’s tendency to make fine distinctions was embraced and extended because the social planner or judge could tinker with the bundle, and given the Progressive and New Deal agenda of the Realists, this would allow sticks to be transferred from owners to others with the result still being “property”... This picture carried into the American Law Institute’s Restatement of the Law of Property of 1938 (§ 7, § 10), which defines “real property” as one of a number of present possessory estates and an “owner” as the person who has one or more interests. Objections on the grounds that policy-driven innovations violated property rights could simply be defined away as naïve and superstitious formalism and conceptualism in the service of an anti-Progress agenda masquerading as objective reality.”

⁶ *Ibid.*, 2.

⁷ For an account of earlier, ‘Blackstonian,’ physicalist and absolute theories of ownership and property, see Kenneth Vandavelde, “The New Property of the Nineteenth Century: The Development of the Modern Concept of Property,” *Buffalo Law Review* 29 (1980): pp. 325-368.

⁸ *Ibid.*, 3. For a list and description of the incidents of property, see A. M. Honoré, “Ownership,” in Anthony G Guest (ed), *Oxford Essays in Jurisprudence* (Oxford: Oxford University Press, 1961): pp. 107-147.

deconstructed the bundle by disaggregating its 'sticks' (rights) into a nearly endless series of social relations.⁹ On the other hand - a hand that this study of ownership in Sanskrit jurisprudence plays into - a series of Anglo-American legal scholars, who emphasize the distinctive *in rem*, affecting an item, quality of property, have argued persuasively for a unitary category of property (and ownership).¹⁰

Of course, philosophical discussions concerning the definition and the nature of property and ownership have been and remain deeply embedded in various debates in political theory.¹¹ Hobbes and Locke's theories of ownership as an artificial creation of the state, or as a natural right that pre-existed the formation of sovereign states, were far more than mere observations on a ubiquitous facet of human commerce. Rather, these theories of ownership were part and parcel of broader arguments concerning British society in the wake of an emerging liberal economic order.¹² One can hardly forget that many of the most trenchant critiques of economic liberalism (and its human impact) - Marxist, feminist, or critical racial - use property, and private ownership in particular, as their point of departure for untangling the threads of power and ideology that bind injustice and power.¹³

Similarly, property has become a central category for theorizing individuals' rights

⁹ C.M. Hann, "Introduction: the Embeddedness of Property," in *Property Relations: Renewing the Anthropological Tradition*, ed. C.M. Hann (Cambridge: Cambridge University Press, 1998): pp. 1-47.

¹⁰ The canonical work from this position is that of Thomas Merrill and Henry Smith: "Optimal Standardization in the Law of Property: the Numerus Clausus Principle," *Yale Law Journal* 110.1 (2000): pp. 1-70; "The Property/Contract Interface," *Columbia Law Review* 101 (2001): pp. 773-852; *Property: Principles and Policies* (New York: Foundation Press, 2007); Henry Smith, "Property as the Law of Things," *Harvard Law Review*, 125 (2012): pp. 1691-1726. Also see Robert C. Ellickson, "Two Cheers for the Bundle-of-Sticks Metaphor, Three Cheers for Merrill and Smith," *Econ Journal Watch* 8.3 (2011): pp. 215-222.

¹¹ Alan Ryan, *Property and Political Theory* (Oxford: Blackwell, 1984).

¹² Benjamin Lopata, "Property Theory in Hobbes," *Political Theory* 1.2. (1973): pp. 203-18; James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge: Cambridge University Press, 1980).

¹³ See, for example, Anthony Giddens, *Capitalism and Modern Social Theory: An Analysis of the Writings of Marx, Durkheim, and Max Weber* (Cambridge: Cambridge University Press, 1971); Jeane Schroeder, *The Vestal and the Fasces: Hegel, Lacan, Property, and the Feminine* (Berkeley: University of California Press, 1998); Gloria Billings and William Tate, "Toward a Critical Race Theory of Education," *Teachers College Record*, 97.1. (1995): pp. 47-68.

over their *own* bodies in an era of dizzying technological advancement in medicine, or for advocating the cultivation of moral virtue in the face of the free market's commodification of human value.¹⁴ Examples of property as a cipher for society - its organization, ills, and possibilities for a more equitable future - are legion, but the above survey should convey to the reader that in the West - as in classical India - technical, jurisprudential questions about ownership and broader, philosophical and political questions about how society ought to be organized are intimately linked.

In classical Sanskrit jurisprudence and philosophical texts, ownership and property are given more concrete definitions and more rigorous metaphysical accounts than in any other legal tradition. If Western jurists focused on ownership's incidents - to the neglect of its coherence as a unitary category - traditional Sanskrit scholars focused on the definition of ownership and property - to the neglect of a rigorous account of its incidents. Theories of ownership and property are largely absent from early (5th Century BCE to 5th Century CE) material, but by the 5th Century, Indian scholars began to employ a relational pair of terms to denote proprietary relationships between owners and property - svāmitva (sometimes svāmya) and svatva.¹⁵ The scholastic use of Sanskrit's characteristic linguistic precision and arsenal of nominal and verbal suffixes, produced a theory of ownership and property that escapes many of the definitional difficulties of the Anglo-American tradition.

¹⁴ See, for example, Imogen Goold, "Property Rights in Bodily Material," in Ian Freckleton and Kerry Petersen (eds), *Tensions and Traumas in Health Law* (Forthcoming in Federation Press, 2017); Muireann Quigley, "Human Biomaterials: The Case for a Property Approach," in Imogen Goold, Jonathan Herring, Loane Skene, and Kate Greasley (eds), *Persons, Parts and Property: How Should We Regulate Human Tissue in the 21st Century?* (Hart Publishing, 2014); Jasper A. Bovenberg, *Property Rights in Blood, Genes and Data: Naturally Yours?* (Leiden: Brill, 2006); Michael Sandel, *What Money Can't Buy: The Moral Limits of Markets* (London: Allen Lane, 2012).

¹⁵ Of course, svatva and svāmitva appeared far earlier in Sanskrit grammatical (vyākaraṇa) literature to describe the meaning of the genitive case ending. See Ethan Kroll, "A Logical Approach to Law," (PhD Dissertation, University of Chicago, 2010): pp. 24-29.

In brief, Sanskrit scholars theorized ownership and property as a relation (sambandha) between an owner (svāmin) and something owned, i.e. something that is someone's property (svam). Sva, a reflexive pronoun, is used adjectivally in Sanskrit to denote things (not necessarily assets) with which one has a personal relation - as in 'my parents' (svapitarau), 'my knowledge' (svajñāna) or 'my duty' (svadharma). Svāmin (a possessive derivation from sva) denotes the person who possesses a relation to some sva. Svāmitva and svatva are suffixed words which denote the abstract state or condition of being an owner and being owned: owner-ness and own-ness. With very few - and highly technical - exceptions, Sanskrit theorists used svatva and svāmitva almost interchangeably to describe 'ownership' and 'property' (the latter in the sense of Property rather than in the sense of property).¹⁶ It is important, however, to distinguish between assets (dhana, dravya, artha, etc.) and property (sva, svam): the former denote the range of 'things' which can be owned, while the latter characterize particular assets as being owned.

The theorists initially argued that ownership could be defined as or be characterized in terms of 'use as desired' (yatheṣṭaviniyoga). In the course of time, Sanskrit scholars recalibrated aspects of this account of ownership: some emphasized its cognitive aspect (via saṃskāras, mental impressions), others described the relation between owner and owned as that of agent and object (kartṛkarman), while others - particularly logicians - assigned ownership to various ontological categories such as those of quality (guṇa), absence (abhāva) or even the distinct conceptual category 'ownership' (padārthāntara). Debates raged about the modes of acquiring ownership - and what role Sanskrit jurisprudence played in

¹⁶ For a discussion of svatva and svāmitva in terms of property and ownership, see Manomohini Dutta, "Inheritance, Property and Women in the *Dāyabhāga*" (PhD Diss, University of Texas, 2016): pp. 78-93.

limiting the modes of acquisition available to members of various classes. The incidental characteristic of ownership evolved: from an unrestricted right to use an asset as desired to a more circumscribed *fitness* for use as desired (yatheṣṭaviniyogayogyatva). Through all of its historical vicissitudes, the Sanskrit theory of ownership remained 1) a relationship 2) between an owner and property 3) that afforded an owner some right (adhikāra) related to use as desired (though that did not necessarily entail the actual use as desired). This tradition of ownership was radically *in rem* and radically formal.

Naturally, these technical reflections on ownership and property were part of a broader scholastic discourse (śāstra) that sought to order society according to a very specific political theory - the Dharma of caste and class (varṇāśramadharmā). I explain the categories of Dharma and Śāstra in the following section, but to conclude this section, I want to emphasize the importance of ownership and property in Western and Sanskrit jurisprudence. Talking about ownership and inheritance is a way of drawing attention to the ways that people relate to objects and relate to one another. These relations are notoriously difficult to settle conclusively but debates about ownership - however abstract and technical - are part of much larger projects that are concerned with ideas of morality, justice and 'law.' For many Indians, these ideas are denoted by the term Dharma, and the Sanskrit tradition that analyzed Dharma is known as Dharmaśāstra.

I.B: Dharma, Dharmaśāstra, and Śāstra

This thesis tracks the development of the concept of ownership and inheritance within Dharmaśāstra, the expert Sanskrit tradition of jurisprudential thought. Although the thesis is concerned with the relationship between Dharmaśāstra and other text-traditions (hermeneutics and formal logic), my interest

lies primarily in how these thought traditions' arguments concerning ownership and property inflected juridical debates about the problem of inheritance - and this problem's place in the development of regionally specific schools of Indian legal thought. In this section, I adumbrate the history of the terms 'Dharma,' 'Dharmaśāstra,' and 'Śāstra,' in order to convey to the reader the unique features of the moral and intellectual systems in which debates about ownership and inheritance occur. Before turning to questions concerning the relationship between Dharmaśāstra and Western 'law' in the next section, I want to emphasize the far-reaching, totalizing semantic range of Dharma and I want to sketch out a basic textual history of the Dharmaśāstric tradition.

Dharma, as Patrick Olivelle notes:

clearly constitute[s] the most central feature of Indian civilization down the centuries, irrespective of linguistic, sectarian, or regional differences. In a special way, the centrality of dharma to the understanding of Indian religions has been recognized by all scholars. One has only to pick up any introduction to Hinduism or Buddhism to note the prominence given to this term by the authors. Many note the broad semantic compass of the term, often commenting that the term is 'untranslatable'. One is also left with the impression that, following the orientalist image of the 'unchanging' India, dharma has always been the central concept of Indian religion and culture, that this term has not been subject to evolution and change as it was appropriated, challenged, and sometimes even rejected by different groups and traditions.¹⁷

Dharma's ubiquity in Indian civilization is the product of a long historical process whereby the term was appropriated and recalibrated by successive waves of religious reformers and traditional scholars. Variations on the term Dharma - derived from the verbal root √dhr̥, to bear, to support - appear in the oldest Sanskrit text, the *R̥gveda* (1200 – 800 BCE), and occasionally in the *Atharvaveda* (c. 1000 B.C.E.), but,

¹⁷ Patrick Olivelle, "Introduction," *Journal of Indian Philosophy* 32.5-6 (2004): pp. 421-422.

dharma was not a central term in the ritual or theological vocabulary of the middle and late vedic texts. It occurs less frequently in the Brāhmaṇas and Upaniṣads than we would have predicted for a term that was to become the central concept of Indian civilization.¹⁸

Olivelle's thesis - shared by Alf Hiltebeitel and Wilhelm Halbfass - is that the term Dharma was appropriated by the śramaṇic movements of the fifth century B.C.E. (Buddhism and Jainism) as a term for their visions of a universal moral good, and adopted in the third Century B.C.E. by Aśoka Maurya as a central feature of a pan-Indian political theology - one in many ways opposed to the social hierarchy of Vedic Brāhmaṇism.¹⁹ In response, post-Mauryan Brāhmaṇas developed their own concept of Dharma: as "the privileges, duties and obligations of a man [sic], his standard of conduct as a member of the Āryan community, as a member of one of the castes, as a person, in a particular stage of life [varṇāśramadharmā]."²⁰ The end result of this shift - from universal, non-violent ethics to an all-encompassing series of duties - is a radically deontological Dharma which:

encompasses the prescriptions for, the acts of, and the effects of ritual, purification, diet, statecraft, and penance in addition to rules for legal procedure, contracts, property, corporations and partnerships, inheritance, marriage, and crimes of various sorts.²¹

Of course, this reformulated, radically social Dharma of the post-Mauryan Hinduism is not *merely* a list of duties and obligations. Rather, it is a list of duties and obligations that, taken together, form a model of righteous cosmic order to which

¹⁸ Patrick Olivelle, *Manu's Code of Law: A Critical Edition and Translation of the Mānava-Dharmaśāstra* (Oxford: Oxford University Press, 2005), 42. For the best historical overview of the concept of Dharma, see Olivelle ed., *Dharma: Studies in Its Semantic, Cultural and Religious History* (Delhi: Motilal Banarasiidass 2009).

¹⁹ *Ibid.*, 42-3; Wilhelm Halbfass, *India and Europe: An Essay in Understanding* (New York: SUNY, 1988), pp. 310-333; Alf Hiltebeitel, *Dharma* (Honolulu: University of Hawaii Press, 2010).

²⁰ P.V. Kane, *A History of Dharmaśāstra, Vol. 1. Part 1*. 2nd Edition. (Poona: Bhandarkar Oriental Research Institute, 1968), 3. Cf. Olivelle, *Manu's Code of Law*, 43-44. Also see Patrick Olivelle, *The Āśrama System: The History and Hermeneutics of a Religious Institution* (Delhi: Munishiram Manoharlal, 1993), esp. pp. 8-34.

²¹ Donald Davis, "Hinduism as Legal Tradition," *Journal of the American Academy of Religion* 75.2 (2007): pp. 421-267, 243.

moral human action ought to conform.²² Indeed, this sense of Dharma informs virtually every subsequent Hindu theological system - those that rebel against it, those that embrace it enthusiastically and those that transcend it.

The expert Sanskrit scholastic tradition that transformed the śramaṇic vision of Dharma as a universal ethical good into varṇāśramadharmā is Dharmaśāstra, which, “with an unbroken history of over two millennia... is undoubtedly the longest in Indian history.”²³ The first Dharmaśāstric texts, composed no earlier than the fourth century B.C.E., were a series of Dharmasūtras, the oldest being those of Āpastamba, Gautama, Baudhāyana and Vasiṣṭha. These short aphoristic codes of ritual and legal rules, along with household (gṛhya) and ritual (śrauta) sūtras, formed a category of literature known as Kalpasūtra.²⁴ By the second century C.E., a new genre of Dharma literature emerged: Dharmaśāstra. The Dharmaśāstras, or Dharmasmṛtis, were versified anthologies of rules and regulations that greatly expanded the scope of topics and the depth of opinions on various issues from the Dharmasūtras.²⁵ One major innovation of Dharmaśāstra literature was the inclusion of a bevy of political, commercial, and legal material from Kauṭilya’s treatise on statecraft, the *Arthaśāstra*.²⁶ The Dharmaśāstra, beginning with the watershed *Mānavadharmasāstra* (2nd to 3rd Centuries C.E.), adopted the *Arthaśāstra*’s scheme of eighteen titles of litigation (vyavahārapadas/vivādapadas). One title of

²² Paul Hacker, “Dharma in Hinduism,” *Journal of Indian Philosophy* 34.5 (2006): pp. 479-496.

²³ Patrick Olivelle, “Dharmaśāstra: a Textual History,” in Timothy Lubin, Donald Davis and Jayanth Krishnan eds., *Hinduism and Law: An Introduction* (Cambridge: Cambridge University Press, 2012) pp. 28-57, 28.

²⁴ *Ibid.*, 37-39. See Kane, *HDS*, 1.1., 19-22. For the Dharmasūtras, see Patrick Olivelle, *The Dharmasūtras: the law codes of Āpastamba, Gautama, Baudhāyana, and Vasiṣṭha* (Oxford: Oxford University Press, 1999).

²⁵ *Ibid.*, 41.

²⁶ *Ibid.*, 41. Also see *Manu’s Code of Law*, 13-16. For the *Arthaśāstra* see Patrick Olivelle, *King, Governance, and Law in Ancient India: Kauṭilya’s Arthaśāstra* (Oxford: Oxford University Press, 2013).

litigation, the partition of inheritance (dāyavibhāga), became the site of hot-blooded debates amongst later Dharmaśāstrins.

Over the following centuries, a textual tradition of commentaries (bhāṣyas, ṭīkāś), anthologies (nibandhas) and monographs (kutūhalas, nirṇayas, tattvas, rahasyas, etc.) emerged that attempted to synthesize the many conflicting passages of sūtra and smṛti (Dharmasūtra and Dharmasmṛti) into a coherent intellectual system - Dharmaśāstra. It was in this commentarial tradition, beginning with Bhārucci's 6th Century C.E. commentary on the *Mānavadharmasāstra*, that ownership (svatva) emerged as a category of legal analysis.²⁷ Svatva allowed commentaries to distinguish between legal ownership and mere possession - in cases of adverse possession, questionable title, and inheritance - and by the turn of the second millennium C.E., discussions of svatva and inheritance were twinned in Vijñāneśvara's *Ṛjūmitākṣarā* (11th-12th Centuries), a commentary on the *Yājñavalkyasmṛti*.²⁸ One of Vijñāneśvara's innovations - analyzed in depth in the first chapter of this thesis - dealt with a model of inheritance in which sons and grandsons obtain ownership in their father and grandfathers' assets merely by being born (janmasvatva). The problem for Vijñāneśvara was that the Dharmasūtras and the Dharmasmṛtis never mention birth as one of the canonical methods of acquiring ownership (svatvahetus).

Vijñāneśvara's solution - that ownership and property are secular, extra-śāstric phenomena whose modes of acquisition are established according to custom (ācāra) - set off a long-running debate about the boundaries between Dharmaśāstra and the extra-śāstra, mundane world that cleft India's Dharmaśāstric community of

²⁷ See Kroll, "A Logical Approach to Law," 30-31.

²⁸ For Vijñāneśvara, see Kane, *A History of Dharmaśāstra, Vol. 1. Part 2*. 2nd Edition (Poona: Bhandarkar Oriental Research Institute, 1975): 601-616.

scholars into at least two camps. For these two camps - which would crystallize in commentarial traditions that developed around the *Mitākṣarā* and Jīmūtavāhana's *Dāyabhāga* (12-15th Centuries) - the essential questions were what śāstra was and where the boundaries between śāstra and the activities of the secular world (*lokavyavahāra*) ought to be drawn. In answering these questions, scholars turned to two related śāstric traditions, scriptural hermeneutics (*Mīmāṃsā*) and formal logic (*Navya-Nyāya*).

Dharmaśāstra is a traditional Sanskrit knowledge system, a śāstra. Like other śāstras, Dharmaśāstra has two characteristic traits: 1) an elaborate, highly systematized series of rules - for analyzing and organizing the many disparate and often contradictory injunctions of the Dharmasūtras and the Dharmasmṛtis - and 2) a highly abstracted, metadiscursive conceit that places it above and beyond extra-śāstric human behavior. Drawing on Sheldon Pollock's understanding of śāstras as "a verbal codification of rules, whether of divine or human provenance, for the positive and negative regulation of particular cultural practices,"²⁹ I want to outline the essential features of śāstra as a scholastic meta-tradition and introduce two śāstric traditions whose rules of interpretation influenced Dharmaśāstric debates about ownership and inheritance. Beginning with the six Vedāṅgas (600-300 B.C.E) - grammar, prosody, phonetics, etymology, astronomy, and sacrificial liturgy - "ancillary disciplines that developed out of the perceived need to preserve and understand obsolescent Vedic texts," Sanskrit intellectual activity produced radically nomothetic śāstras pertaining to Dharma, Kāma (pleasure), Nyāya (logic), Nāṭya (dance) and dozens of other topics. As Pollock notes,

²⁹ Sheldon Pollock, "The Idea of Śāstra in Traditional India," in *The Shastric Traditions in Indian Arts*, ed. Anna Dallapiccola (Stuttgart: Wiesbaden, 1989): pp. 17-26, 18.

Classical Indian civilization... offers what may be the most exquisite expression of the centrality of rule-governance in human behavior. Under the influence perhaps of the paradigm deriving from the strict regulation of ritual action in vedic ceremonies, the procedures for which are set forth in those rule-books par excellence, the *Brāhmaṇas*, secular life as a whole was subject to a kind of ritualization, whereby all its performative gestures and signifying practices came to be encoded in texts. *Śāstra*, the Sanskrit word for these grammars, thus presents itself as one of the fundamental features and problems of Indian civilization in general and of Indian intellectual history in particular.³⁰

The dependence of virtually all śāstric genres on the Vedas, however, as the transcendent, unchanging model of all human activity resulted in an intellectual culture in which,

according to his own self-representation, there can be for the thinker no originality of thought, no brand-new insights, notions, preceptions, [sic] but only the attempt better and more clearly to grasp and explain the antecedent, always already formulated truth. All Indian learning, accordingly, perceives itself and indeed presents itself largely as commentary on the primordial *śāstras*.³¹

As an intellectual science, Dharmaśāstra required sophisticated hermeneutical techniques to reconcile its vast corpus of conflicting sūtra and smṛti injunctions.³² The most important śāstric tradition of hermeneutics was the *Mīmāṃsā*, which developed around the *Mīmāṃsāsūtras* of Jaimini (around the turn of the first millennium C.E).³³ Anand Venkatkrishnan characterizes *Mīmāṃsā* as,

a tradition that attempted to understand a corpus of texts, the Veda, by developing systematic interpretive principles. These principles both argued for the epistemological validity of the Veda, defined as distinct from competing scriptural traditions and possessing transcendental authority, and organized the Veda's internal components based on a hierarchy of meaningful language.³⁴

³⁰ Sheldon Pollock, "The Theory of Practice and the Practice of Theory in Indian Intellectual History," *Journal of the American Oriental Society* 105.3 (1985): pp. 499-519, 500.

³¹ *Ibid.*, 515.

³² For an account of contradictions within individual smṛtis, see Olivelle, *Manu's Code of Law*, 29-36.

³³ For an introduction to *Mīmāṃsā* and its technical vocabulary, see Franklin Edgerton, *The Mīmāṃsā Nyāya Prakāśa; or Āpadevī: A Treatise on the Mīmāṃsā System* (New Haven: Yale University Press, 1929).

³⁴ Anand Venkatkrishnan, "Mīmāṃsā, Vedānta, and the Bhakti Movement," (PhD Dissertation, Columbia University, 2015), pp. 3-4.

The practitioners of the Mīmāṃsā, Mīmāṃsakas, developed a hermeneutical system whereby authoritative passages from the Vedas could be analyzed in terms of a hierarchical set of injunctions (vidhis).³⁵ The Mīmāṃsakas' hermeneutical arsenal - determining sentential meaning, classifying injunctions according to scope and time, separating optional and mandatory injunctions, distinguishing between transcendent and mundane effects, etc. - became the standard toolbox for Dharmaśāstrins, particularly by the turn of the second millennium C.E.³⁶

In addition to providing the hermeneutical techniques that Dharmaśāstric authors used to analyze jurisprudential problems, Mīmāṃsā authors developed many an early theory of ownership that provided an essential support to the Dharmaśāstric theory of ownership by birth (janmasvatva). Beginning with Śabaravāmin's (4th Century C.E.) commentary on the *Mīmāṃsāsūtras*, the *Śābarabhāṣya*, several Mīmāṃsakas argued that Dharmaśāstric restrictions (niyamas) regarding the acquisition of assets had moral, rather than legal, force (or, more precisely, affected the moral virtue of an individual rather than their appropriateness for sacrificial endeavors). Further, they argued that ownership, as a *fitness* for use as desired (arhatā, yogyatva, etc.), did not always afford an owner the actual *use* of an asset as desired.

One argument that this thesis develops is that Dharmaśāstric arguments concerning the juridical model of ownership by birth evolved in tandem with

³⁵ For the hierarchy of injunctions, see Lawrence McCrea, "The Hierarchical Organization of Language in Mīmāṃsā Interpretive Theory," *Journal of Indian Philosophy* 28.5 (2000): pp. 429-459.

³⁶ Domenico Francavilla, *The Roots of Hindu Jurisprudence: Source of Dharma and Interpretation in Mīmāṃsā and Dharmaśāstra* (Torino: Comitato Corpus Iuris Sanscriticum et Fontes Iuris Asiae Meridiana et Centralis, 2005); P.V. Kane, *A History of Dharmaśāstra, Vol. 5. Part 1*. (Poona: Bandharkar Oriental Research Institute, 1962): pp. 1152-1351; Lawrence McCrea, "Hindu Jurisprudence and Scriptural Hermeneutics," in *Hinduism and Law: An Introduction* eds. Lubin, Davis & Krishnan, (Cambridge: Cambridge University Press, 2010): pp. 123-136; Kisori Sarkar, *The Mimamsa Rules of Interpretation as Applied to Hindu Law*, (Calcutta: Thacker & Spink, 1907).

Mīmāṃsā theories of ownership as an extra-śāstric, secular phenomenon. A distinct school of jurisprudential thought, whose point of departure from other schools of thought was the Mīmāṃsā theory of ownership, emerged in various commentaries on Vijñāneśvara's *Mitākṣarā* and reached its intellectual zenith in the śāstric monographs of members of the Bhaṭṭa family of paṇḍits in Vārāṇasī in the seventeenth century.

Another śāstric tradition that exercised a tremendous (if largely neglected) influence on Dharmaśāstra was Navya-Nyāya, the 'new epistemology' that developed in Mithilā in the 13th century.³⁷ These new logicians, Navya-Naiyāyikas, reformulated the earlier systems of Nyāya and Vaiśeṣika, which were interested in "ascertaining correctly what people know" and in mapping "the phenomenal world of experience" onto a series of ontological categories (*padārtha*).³⁸ The Navya-Naiyāyikas employed a highly technical vocabulary - delimitation, conceptual category, invariable concomitance, and a series of logical attractions - that brought increased specificity to the use of language.³⁹ Ownership was one topic that drew sustained attention from Navya-Naiyāyikas, particularly those who lived and worked at the university of Navadvīpa, Bengal, in the 16th, 17th and 18th centuries.⁴⁰ Unlike the Mīmāṃsakas, these logicians defended a theory of ownership that depended on śāstra as the exclusive source of knowledge about how ownership is acquired. At the same time, and in the same university, several Dharmaśāstrins developed - via a

³⁷ For work on this relationship, see Kane, *HDS*, 5.2, 1468-1482.

³⁸ Kroll, "A Logical Approach to Law," 3-6.

³⁹ *Ibid.*, 9-11. For overviews of Navya-Nyāya, see H.H. Ingalls, *Materials for the Study of Navya-Nyāya Logic* (Cambridge: Harvard University Press, 1951); Jonardon Ganeri, *The Lost Age of Reason: Philosophy in Early Modern India 1450-1700* (Oxford: Oxford University Press, 2011). For an overview of Nyāya, see Stephen Phillips, *Epistemology in Classical India: The Knowledge Sources of the Nyaya School* (Oxford: Routledge, 2012).

⁴⁰ These logicians form the subject of Kroll's dissertation. For the history of Navadvīpa, see Ganeri, *The Lost Age of Reason*, 42-59.

commentarial tradition on Jīmūtavāhana's *Dāyabhāga* - a juridical model of inheritance diametrically opposed to that of the *Mitākṣarā* and its followers. The Bengali Dharmaśāstrins used a Navya-Nyāya-inflected idiom to argue that sons and grandsons acquired ownership in the father or grandfather's estate only after their father or grandfather's legal divestiture of ownership (uparamasvatva).

To conclude, Dharmaśāstra is a technical, scholastic science (śāstra) that portrays itself as a comprehensive guide to Dharma, the various duties incumbent on individuals (whose archetype is an able-bodied Brāhmaṇa male). In this system, seemingly distinct activities ranging from making one's toilet to dividing one's estate among one's children are facets of a larger, transcendent model of how society ought to be organized according to caste and class. Ownership emerged as a category relatively late in the Dharmaśāstric tradition - initially in the 6th century C.E., but largely after the turn of the second millennium. The appearance of ownership as an analytical category coincides with the Dharmaśāstric tradition's adaption of many of the intellectual tools of Mīmāṃsā. A core argument of this thesis is that Mīmāṃsā and later Navya-Nyāya theories of ownership had a direct impact on Dharmaśāstric approaches to ownership and inheritance.

Having sketched the basic subject of this thesis, and having introduced the reader to the concepts of ownership, Dharma and Śāstra, I turn to the fundamental problem that this thesis tackles: the distinction between (and distraction of) the differences between Dharmaśāstra and 'law.'

I.C: Law, Legalism, and Schools of Hindu Law

The broad claim of this thesis, that one can speak meaningfully of regionally and methodologically distinct 'schools' of Hindu jurisprudence - built around commentaries on the *Mitākṣarā* and the *Dāyabhāga* - regarding ownership and

inheritance in pre-colonial India, warrants an account of what I mean by ‘law,’ ‘jurisprudence,’ and ‘schools of thought.’ This forces us to enter into the most heated debate in contemporary studies of Dharmaśāstra: where and how to draw the line between ‘law,’ and ‘Dharmaśāstra.’ The issue is whether the increasing sophistication of medieval and early modern commentaries and anthologies represent Dharmaśāstrīns employing ancient smṛtis to accommodate contemporary customs (ācāra) or systematically arranging the smṛtis into an intellectually coherent whole.

In brief, there are two camps. One camp, represented by Ludo Rocher, Donald Davis and Patrick Olivelle, argues persuasively that Dharmaśāstra is, first and foremost, “a meta-discourse,” whose influence on practical affairs was indirect and indexed differently at different times.⁴¹ As Ludo Rocher would have it, “the entire commentarial tradition [on *Dharmaśāstra*] is totally separated from reality; nor was it ever intended to intervene in the reality of practical law and jurisdiction.”⁴² The other camp, inaugurated by early orientalist, British administrators such as William Jones (1746-1794) and Henry Colebrooke (1765-1837) and reconfigured by later scholars including John Derrett (1922-2012), Robert Lingat (1892-1972), and P.V. Kane (1880-1972), advances some variation of the hypothesis that Dharmaśāstra texts record and justify the cultural and legal practices of Hindus in discrete temporal and

⁴¹ Olivelle, *Manu’s Code of Law*, 64. See Donald Davis, “Hinduism as a Legal Tradition,” *Journal of the American Academy of Religion* 75.2 (2007): pp. 241-267; Ludo Rocher, “Schools of Hindu Law,” in Donald Davis ed. *Studies in Hindu Law and Dharmaśāstra*. (London: Anthem, 2014): pp. 119-128; and “The Historical Foundations of Ancient Indian Law,” in *Studies in Hindu Law and Dharmaśāstra*: pp. 59-82.

⁴² Rocher, “The Historical Foundations of Ancient Indian Law,” 76.

geographical junctures.⁴³ For example, Robert Lingat and J. Duncan Derrett argue that “the appearance of the commentaries and digests marks a phase... it is no exaggeration to say that it was only with that interpretation that a true juridical science began in India.”⁴⁴

This thesis takes the position that Rocher and Davis are correct to identify Dharmaśāstra as primarily a learned, scholastic tradition. The thesis, however, employs the methodological lens of intellectual history - adapted to the context of India’s early modern Brāhmaṇa ecumene by Jonardon Ganeri, Christopher Minkowski, Rosalind O’Hanlon and Anand Venkatkrishnan - to argue that early modern Sanskrit scholars developed schools of jurisprudential thought that were connected intimately with considerations of power, prestige and regional identity.⁴⁵ In short, I advance a new methodological approach to Dharmaśāstra that shifts the focus of analysis from criticisms of problematic colonial understandings of Dharmaśāstra as positive law to nuanced, intertextual studies of Dharmaśāstric jurisprudence within the social and cultural contexts of early modern and early colonial India.

The error of viewing Dharmaśāstra as a codification of Hindu law - rather than as a uniquely Hindu form of śāstric jurisprudence - is as old as the discipline of Western Indology. In 1772, Warren Hastings, the incumbent Governor-General of Bengal, devised “A Plan for the Administration for Justice in Bengal” that established

⁴³ Bernard Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996); Neeladri Bhattacharya, “Remaking Custom: the Discourse and Practice of Colonial Codification,” in *Tradition, Dissent and Ideology: Essay in Honour of Romila Thapar*, eds. R. Champakalakshmi & S. Gopal (New Delhi: Oxford University Press, 1996): pp. 20-51; Robert Lingat, *The Classical Law of India*, trans. John Derrett, (Berkeley: University of California Press, 1973); John Duncan Derrett, *Dharmaśāstra and Juridical Literature*, (Wiesbaden: Harrassowitz, 1973); Kane, *HDS*, 1.1.

⁴⁴ Lingat, *The Classical Law of India*, 143.

⁴⁵ Jonardon Ganeri, “Contextualism in the Study of Indian Intellectual Cultures,” *Journal of Indian Philosophy* 36.5 (2008): pp. 551-562; Christopher Minkowski, Rosalind O’Hanlon and Anand Venkatkrishnan, eds. *Scholar Intellectuals in Early Modern India* (London: Routledge, 2015).

an integrated hierarchy of civil courts (divānī adālat), culminating in the Sadar Diwānī Adālat, to which Hindus and Muslims could appeal.⁴⁶ The key innovation in Hastings' "Judicial Plan" was that "in all suits regarding inheritance, marriage, caste, and other religious usages, or institutions, the laws of the Koran with respect to Mahometans and those of the *Shaster* with respect to the Gentoos shall be invariably adhered to."⁴⁷ The core of the misunderstanding lay in the company officials' assumption of the relatively stable divisions between ecclesiastical and secular jurisdictions in Britain, where matters of inheritance, adoptions, marriage and the other 'religious' issues were resolved by biblical interpretation.⁴⁸

Christi Merrill states that "Hastings made the straightforward assumption that there were sacred texts in India that would offer a source for interpretation comparable to ecclesiastical authorities in British law."⁴⁹ If a British distinction between secular and ecclesiastic jurisdictions set the stage for the creation of Hindu law, the emerging orientalist project, which "saw ancient texts as the source of authentic knowledge about immemorial custom and tradition," ensured that, with regard to Hindus, Dharmaśāstra would serve as its script and paṇḍits - soon to be

⁴⁶ Rosane Rocher, "The Creation of Anglo-Hindu Law," in Timothy Lubin, Donald Davis, and Jayanth K. Krishnan Eds., *Hinduism and Law: An Introduction*, (Cambridge, 2010): pp. 79-88, 78-9; Atul Chandra Patra, *The Administration of Justice under the East India Company in Bengal, Bihar and Orissa* (New Delhi: Asia Publishing House, 1962); M.P. Jain, *Outlines of Indian Legal History* (Bombay: Tripathi, 1966). Islamic criminal law was administered through Ṣadr Faujdari Adālat.

⁴⁷ George Forrest, *Selections from the Letters, Dispatches and Other State Papers Preserved in the Foreign Department of the government of India, 1772-1785* Vol 2. (Calcutta, Government Press, 1890), 290, cited in John Duncan Derrett, "The British as Patrons of the Śāstra," in *Religion, Law and the State in India* (London: Faber & Faber, 1968): pp. 225-273, 232 fn 2. Cf. Rosane Rocher, "The Creation of Anglo-Hindu Law," 79.

⁴⁸ Christi Merrill, "The Afterlives of Panditry: Rethinking Fidelity in Sacred Texts with Multiple Origins," in *Decentering Translation Studies*, ed. Judy Wakabayashi & Rita Kothari (Amsterdam: John Benjamin, 2009): pp. 75-94, 79. Also see Rachel Sturman, "Property and Attachments: Defining Autonomy and the Claims of Family in Nineteenth-Century Western India," *Comparative Studies in Society and History* 47.3: pp. 611-637.

⁴⁹ *Ibid.*, 79.

framed as ‘jurists’ and as ‘lawgivers’ — would be its actors.⁵⁰ Indeed, it seems that one of Hastings’ primary motivations in commissioning “a digest of Hindu Law” (the Sanskrit *Vivādārṇavasetu*) was to stave off British government interference in the legal affairs of the Company by proving that Hindus had legal codes of their own (and thus did not require the introduction of British civil law).⁵¹

A consequence of Hastings’ Judicial Plan was that tremendous resources were invested in crafting anthologies of Dharmaśāstra texts that outlined the Hindu law of inheritance, contract, marriage, divorce, and adoption.⁵² Orientalists, including William Jones and Henry Colebrooke, began a philological endeavor - to identify and translate the principal Hindu law books - that coincided with the expansion of a colonial judicial apparatus that was designed to enforce these Dharmaśāstric treatises as the statutory codes of Anglo-Hindu Law.⁵³ Henry Colebrooke, Julius Jolly and the jurists of the Anglo-Indian legal system developed and applied as law the theory that *Dharmaśāstra* literature could be divided into *Dāyabhāga* (of Jīmūtāvahana and his followers) and *Mitākṣarā* (divided into Northern, Western, Eastern and Southern subgroups) schools.⁵⁴ Each school and sub-school encapsulated the customary practices of its respective region. The end result was the division of Dharmaśāstra into two principal schools of Hindu law regarding

⁵⁰ Neeladri Bhattacharya, “Remaking Custom: the Discourse and Practice of Colonial Codification,” in *Tradition, Dissent and Ideology: Essay in Honour of Romila Thapar*, eds. R. Champakalakshmi & S. Gopal (New Delhi: Oxford University Press, 1996): pp. 20-51, 22.

⁵¹ Rosane Rocher, *Orientalism, Poetry, and the Millennium: the Checkered Life of Nathaniel Brassey Halhed, 1751-1830* (Delhi: Motilal Banarsidass, 1983), 52-3.

⁵² The *Vivādārṇavasetu*, compiled in 1773 was translated in 1776 as *A Code of Gentoo Laws*. The *Vivādabhaṅgārṇava*, compiled between 1788 and 1794 was translated between 1797 and 1798 as *A Digest of Hindoo Laws*.

⁵³ See Rosane Rocher, “The Creation of Anglo-Hindu Law;” Ludo Rocher, “Schools of Hindu Law;” Donald Davis, “Law in the Mirror of Language: The Madras School of Orientalism on Hindu Law,” in *The Madras School of Orientalism: Producing Knowledge in Colonial South India* ed. Thomas Trautman (Oxford: Oxford University Press, 2009): pp. 288-309.

⁵⁴ Rocher, “Schools of Hindu Law,” 119. See Kane, P.V. Kane, *A History of Dharmaśāstra, Vol. 3*. 2nd Edition (Poona: Bhandarkar Oriental Research Institute, 1973): 544-545.

inheritance that developed as a result of a schism between the followers of Vijñāneśvara's *Mitākṣarā* and Jīmūtavāhana's *Dāyabhāga*. In 1810, Henry Colebrooke published a translation of the *Mitākṣarā* and the *Dāyabhāga*'s chapters on inheritance, where he listed the various Dharmaśāstras associated with different schools of Hindu law.⁵⁵ Colebrooke attributed his model of two principal schools - based on the *Dāyabhāga* and *Mitākṣarā* - and four *Mitākṣarā* sub schools - Mithilā, Benares, Bombay and Madras - to a philosophical difference of opinion regarding ownership between the two schools. He wrote in 1825 that,

In the eastern part of India, viz. Bengal and Bahar, where the Vedas are less read, and the *Mīmāṃsā* [sic] less studied than in the south, the dialectic philosophy, or *Nyāya*, is more consulted, and is relied on for rules of reasoning and interpretation upon questions of law, as well as upon metaphysical topics. Hence have arisen two principal sects or schools, which, construing the same text variously, deduce upon some important points of law different inferences from the same maxims of law.⁵⁶

Colebrooke's model of schools of law was not without its critics - many of whom doubted that scholastic Dharmaśāstra constituted an accurate record of the regional customary laws of various Hindu castes - but schools of Hindu law became an established feature of colonial and post-colonial Anglo-Hindu law.⁵⁷ A substantial body of case law that determined the legal contours of these schools developed in the courts and a number of Sanskritists and historians attempted to reconstruct the unique confluence of social trends that led medieval paṇḍits to adapt the Dharmaśāstric laws of inheritance to reflect the practices of Bengali, Dravidian or

⁵⁵ Henry Colebrooke, *Two Treatises on the Hindu Law of Inheritance: Jimutavahana and Vijñaneshwara* (Calcutta: Hindoostanee Press, 1810), ii-v.

⁵⁶ Sir Thomas Strange, *Elements of Hindu Law: Referable to British Judicature in India* Vol. 1., (London: Payne and Foss, 1825), 314.

⁵⁷ For example, see J.H. Nelson, *Prospectus of the Scientific Study of the Hindu Law*. (London: Kegan Paul & Co, 1881), A.C. Burnell, *The Law of Partition and Succession: from the MS. Sanskrit Text of Varadarāja's Vyavahāranirnaya* (Mangalore: Stolz, 1872). Sir Henry Maine wrote in 1861 that "the Hindoo Code, called the Laws of Menu... does not, as a whole, represent a set of rules ever actively administered in Hindostan." Cited in Ludo Rocher, "Law Books in an Oral Culture: The Indian Dharmaśāstras," in *Studies in Hindu Law and Dharmaśāstra*: 103-117, 107.

Mahārāṣṭrian custom. The views peculiar to Jīmūtāvahana's *Dāyabhāga* (the alienability of the share of an undivided coparcener, the near-absolute discretion of the patriarch in the division of inheritance and the legal validity of partitions enacted in contravention of the *Dharmaśāstra*) were attributed to Bengal's unique history.⁵⁸ For G.C. Sarkar, Brāhmaṇa immigrants from Kanauj needed to protect their wealth from the local Bengali families they intermarried with, while S.C. Mitra argues that Buddhism and 'Tantrism' contributed the strong patriarchy of the Bengali School of Inheritance.⁵⁹

Colebrooke's formulation of schools of Hindu law has come under withering critique. Ludo Rocher and Donald Davis have emphasized the scholastic, śāstric features of Dharmaśāstra and have argued that Dharmaśāstra is not 'law' in the sense of "rules backed by sanctions enforced by the state."⁶⁰ Rocher advances the position "that Dharmaśāstra is first and foremost a scholarly and scholastic tradition, not a practical legal tradition."⁶¹ He argues that the colonial British approach to Dharmaśāstra as a record of positive law, as prescriptive lists of normative behavior, fundamentally misconstrued a 'scholarly' tradition as a 'legal' tradition.⁶² If Dharmaśāstra is not law in the strict sense, what is it? For Rocher, "the true nature of the Hindu lawbooks" is the product of "pandits, who worked with a set of data which they tried - very hard, as they ought to - to arrange within a number of acceptable systems."⁶³ The stability of these systems of interpretation "is the remarkable element in Sanskrit technical literature [śāstra], and it is not restricted to law and

⁵⁸ See Ludo Rocher, *Jīmūtāvahana's Dāyabhāga: The Hindu Law of Inheritance in Bengal* (Oxford: Oxford University Press, 2002), 31.

⁵⁹ *Ibid.*, 31.

⁶⁰ Donald Davis, *The Spirit of Hindu Law*, (Cambridge: Cambridge University Press, 2010), 1.

⁶¹ Donald Davis, "Introduction," *Studies in Hindu Law and Dharmaśāstra*: 18-19.

⁶² *Ibid.*, 19.

⁶³ Ludo Rocher, "Hindu Conceptions of Law," 53.

Dharmaśāstra.”⁶⁴ For Rocher, Brahmanical discussions of ownership and inheritance represent the pinnacle of Brahmanical Dharmaśāstric debate (particularly when tinged with the vocabulary of of the Navya-nyāya). Referring to the existence of schools of law, Rocher writes that,

there was plenty of room for argumentation, but argumentation that relies on factors of personal ability, such as the more or less extensive knowledge of the Mīmāṃsā rules, the sharpness of the mind of the author etc. The remarkable fact is that each author wanted to surpass the other, with the result being that these so-called juridical commentaries grew into one big academic tournament of subtle argument.⁶⁵

Rocher’s conclusion, echoed with undue vehemence by Davis, is that “the *Dāyabhāga* may have become extremely successful and may have been the source of a regular school of thought on inheritance. We have no right, however, to accuse the author of dishonesty, and say that he used the ancient *smṛtis* as a pretext to lay down or codify the law of Bengal.”⁶⁶

Rocher’s characterization of Jīmūtavāhana’s *Dāyabhāga* as the source of a regular “school of thought on inheritance” has not received adequate attention. What do we call a śāstric school of legal thought if law is an inappropriate term? The answer, I argue, is jurisprudence. Donald Davis, starting from Rocher’s deconstruction of Dharmaśāstra as positive law, offers the most sophisticated account of Dharmaśāstra as an expert jurisprudential tradition. First, Davis uses a pluralistic approach to shift the definition of law from “rules backed by sanctions enforced by the state” to “the theology of ordinary life.”⁶⁷ Specifically, he writes that

⁶⁴ Ibid., 53. For the nature of śāstra, its apparent consistency of form and relationship to historical reality see Pollock, Sheldon, “The Theory of Practice and the Practice of Theory in Indian Intellectual History,” “Playing By the Rules: Śāstra and Sanskrit Literature,” and “‘Tradition’ as ‘Revelation’: Śruti, Smṛti, and the Sanskrit Discourse of Power.”

⁶⁵ Ibid., 78.

⁶⁶ Rocher, “Schools of Hindu Law,” 127. For Davis’ more polemical repetition of the same argument, see *The Spirit of Hindu Law*, 97; “Law in the Mirror of Language,” fn 3.

⁶⁷ Davis, *Spirit of Hindu Law*, 1. For an introduction to legal pluralism, see John Griffiths, “What is Legal Pluralism,” *Journal of Legal Pluralism* 24 (1986): pp. 1-55.

law “is both the instrument and rhetoric by which the most familiar, repeated, and quotidian of human acts are first placed in a system or structure larger than the individual experience.”⁶⁸ For Davis, Dharmaśāstras “contain... Hindu jurisprudence, a way of thinking about law from a distinctly Hindu perspective.”⁶⁹

Davis’ definition of precolonial “Hindu Law” as “a variegated grouping of local legal systems... that were united by a common jurisprudence or legal theory represented by Dharmaśāstra” has been of tremendous aid for scholars who aim to reconstruct Indian legal history through corporate conventions, royal inscriptions and innumerable other artifacts of the “local legal systems” whose “correspondence” to Dharmaśāstric jurisprudence “made... [them] more or less Hindu.”⁷⁰ Davis’ further development of his formulation of Dharmaśāstra as a distinctly Hindu form of jurisprudence offers a novel way for attending to the development of schools of Hindu jurisprudence. Davis writes that,

Dharmaśāstra contains the theological jurisprudence of Hindu law and the only reasonable basis upon which local legal systems in India can be called Hindu at all. Anyone familiar with American or European jurisprudence is well aware that the level of abstraction in jurisprudence and its use of hypotheticals, though drawn from legal practice, offers little help in the actual practice of law. Few would suggest, however, that jurisprudence is irrelevant for it is part of the training and disciplining of lawyers and judges in how to think legally. Dharmaśāstra served a similar purpose as its very name śāstra, which instructs or disciplines, tells us.⁷¹

Davis notes that Dharmaśāstric scholasticism constitutes “a thought-world that stands apart from the practical world of culture” wherein śāstric “rules instead construct an imagined ‘metacultural’ domain that seeks to become the substitute for

⁶⁸ *Ibid.*, 1.

⁶⁹ *Ibid.*, 13.

⁷⁰ See Donald Davis, “Intermediate Realms of Law: Corporate Groups and Rulers in Medieval India,” *Journal of the Economic and Social History of the Orient* 48.1 (2005): pp. 92-117; and Timothy Lubin, “The Theory and Practice of Property in Premodern South Asia: Disparities and Convergences,” *Journal of the Economic and Social History of the Orient* (forthcoming).

⁷¹ Davis, “Hinduism as a Legal Tradition,” 246.

culture, to transcend it in the same way that culture is held to displace nature.”⁷²

Further,

the drive to protect an imagined world composed of and guarded by rules is found in all major traditions of religious law. This imaginative realm of rules accounts for the common phenomenon in scholastic traditions of rules that have no possible application in life but are nevertheless debated in detail and with tremendous zeal. On Jewish and Roman jurists, Hezser writes, ‘neither the rabbis nor Roman legal experts were interested in such distinctions [between reality and fiction in case-law] since they were not interested in historical accuracy...The legal world becomes a separate ontological sphere governed by its own rules and distanced from simple social reality.’⁷³

We have arrived, finally, at an understanding of Dharmaśāstra as a form of jurisprudence, which like most, if not all, of the world’s jurisprudential traditions 1) constitutes an abstract, meta-discourse *about the law*, 2) involves a series of highly technical interpretive rules, and 3) can be indexed to practical law in a variety of ways at a variety of times and places. The theory of Dharmaśāstra that shifts from law to legalism accurately captures many of the distinguishing features of the history of Dharmaśāstra.⁷⁴ While Davis’ legalistic idea of Dharmaśāstra militates, conclusively, against Colebrooke’s formulation of schools of Hindu *law, sensu stricto*, it militates in favor of Rocher’s suggestive assertion that Vijñāneśvara and Jīmūtavāhana may have founded influential schools of Hindu *jurisprudence* whose different juridical conclusions were the result of philosophical, hermeneutical and institutional commitments - precisely as Colebrooke claimed in 1825.

⁷² Donald Davis, “Rules, Culture, and Imagination in Sanskrit Jurisprudence,” in *Legalism: Rules and Categories* eds. Paul Dresch and Judith Scheele (Oxford: Oxford University Press, 2015): pp. 29-52, 44.

⁷³ Ibid., 45. Catherine Hezser, “Roman Law and Rabbinic Legal Composition,” in *The Cambridge Companion to Rabbinic Literature*, eds. Charlotte Fonrobert and Martin Jaffee (Cambridge: Cambridge University Press, 2007): pp. 144-163, 146.

⁷⁴ Davis’ pluralistic approach to Dharmaśāstra, with its broad reading of law as a rules-based thought system is firmly grounded in the socio-legal and anthropological movement at Oxford known as ‘legalism.’ For an overview of the legalism’s methodology, see Paul Dresch and Judith Scheele, “Introduction,” in *Legalism Rules and Categories*: pp. 1-28, 1: “The idea of legalism that we took from Lloyd Fallers was described in Volume One of this series as involving an appeal to rules that are distinct from practice, the explicit use of generalizing concepts, and a disposition to address in such terms the conduct of human life).”

This leads to the core questions of this thesis: what is a ‘school’ of Hindu jurisprudence, how do we chart the development, interaction and competition between schools of jurisprudence and other Sanskrit text traditions? How can an intellectual history of ownership and inheritance in these schools of Sanskrit jurisprudence contribute to broader projects concerning the effect of colonialism on India’s traditional knowledge systems?

I.D: Intellectual History, the Scale of Texts, and Schools of Thought

Until then I had thought each book spoke of things, human or divine, that lie outside books. Now I realized that not infrequently books speak of books: it is as if they spoke among themselves. In the light of this reflection, the library seemed all the more disturbing to me. It was then a place of a long, centuries-old murmuring, an imperceptible dialogue between one parchment and another, a living thing, a receptacle of power not to be ruled by a human mind, a treasure of secrets emanated by many minds, surviving the death of those who had produced them or had been their conveyers.

- Umberto Eco, *The Name of the Rose*.⁷⁵

This thesis employs an intellectual historical approach to the study of the development of Dharmaśāstric schools of jurisprudence concerning ownership and inheritance. I take a “school of thought” to imply two phenomena that are often, but not always, mutually concurrent: 1) a consistent and comprehensive line of argumentation, that, unlike a single concept, forms a comprehensive scale of texts that orients the author in relation to previous scholarship; and 2) a deliberate self-representation as a follower, defender, or revitalizer of a tradition with which one has a familial, regional, or disciplinary connection. The scale of texts forces us to ask how an individual author situates himself in relation to his intellectual tradition. When an author’s relationship is framed as taking part in a shared cluster of opinions and

⁷⁵ Umberto Eco, *The Name of the Rose*, trans. William Weaver (New York: Harcourt, 1983), 286.

in a shared lineage, then we may meaningfully describe that relationship as participating in a ‘school of thought.’

This section introduces the reader to three key terms: intellectual history, early modernity and the scale of texts. Each of these terms informs the thesis’ aim of charting the development of schools of jurisprudence in Indian intellectual history. Intellectual history is a contested term. On one hand, as Anand Venkatkrishnan notes,

The history of ideas, to put it in barest terms, was for most of the twentieth century a Euro-American exercise in understanding intellectual shifts in their historical context... [and] its initial practitioners, such as R.G. Collingwood, were heir to a Hegelian idealism that viewed all history as the history of ideas.⁷⁶

A different, less Hegelian and less abstract, strand of intellectual history, originating from the work of the ‘Cambridge school’ of the late twentieth century, that “understood texts as active expressions of language, or speech acts... [which] made interventions in a broader discourse or milieu within which they participated” has had a lasting influence on contemporary research on Sanskrit knowledge systems.⁷⁷ A key feature of the Skinnerian approach to intellectual is contextualism: namely, how “a particular document or pronouncement [may be] situated in a biographical, social, political and literary context rich enough to enable an inference to be drawn about the nature of the illocutionary intervention the document embodies.”⁷⁸ Nevertheless, Ganeri highlights the difficulty of applying Skinner’s technique to India, where Sanskrit scholasticism’s penchant for verbosity and rhetorical pretenses to a-

⁷⁶ Venkatkrishnan, “Mīmāṃsā, Vedānta, and the Bhakti Movement,” 13. The Hegelian approach to Indian intellectual history has been subject to a thorough critique from Ronald Inden. See *Imagining India* (Oxford: Blackwell, 1990).

⁷⁷ Ibid., 13-14. Quentin Skinner, *Visions of Politics, Vol. I: Regarding Method* (Cambridge: Cambridge University Press, 2002). For an introduction to Indian Intellectual history, see Sheldon Pollock, “Is There an Indian Intellectual History?” *Journal of Indian Philosophy* 36.5 (2008): pp. 533-542.

⁷⁸ Ganeri, “Contextualism,” 553.

historical transcendence result in an intellectual milieu that often feels “all text and no context.”⁷⁹

Sanskrit intellectual history requires a rigorously intertextual approach, and the best work on this subject has come from an international collaborative project, “Sanskrit Knowledge Systems on the Eve of Colonialism.”⁸⁰ The group, which “aims to investigate the substance and social life of Sanskrit learning from about 1550 to 1750” has developed a series of techniques to “illuminate our understanding of the scholarly production of intellectuals and social observers during India’s early modern period.”⁸¹ The working group argues that considerations of intellectual “discipline, sect, lineage, and community” formed the context for literary interventions on the part of individual śāstric authors.⁸²

One key problem for the working group is the extent to which pre-colonial India experienced a modernity analogous to that of the West.⁸³ For many, the distinguishing feature of early modernity in South Asia is a “connectedness” between various areas of the subcontinent and the networks of royal patronage and śāstric

⁷⁹ Ibid., 553.

⁸⁰ Pollock, “Is There an Indian Intellectual History.” For a series of articles produced by the group, see <http://www.columbia.edu/itc/meaac/pollock/sks/index.html> The canonical starting point is Pollock, Sheldon. “New Intellectuals in Seventeenth Century India.” *The Indian Economic and Social History Review* 38, no. 1 (2001): 3–31.

⁸¹ Sheldon Pollock, “The Languages of Science in Early Modern India,” in *Forms of Knowledge in Early Modern Asia: Explorations in the Intellectual History of India and Tibet, 1500-1800*, ed. Sheldon Pollock (London: Duke University Press, 2011): pp. 19-48, 20. Christopher Minkowski, et. al., “Introduction,” 1.

⁸² Ibid., 2.

⁸³ For a general account of early modernity, see John Richards, “Early Modern India and World History,” *Journal of World History* 8.2 (1997): pp. 198-203. For contrasting perspectives on the issue, see Sheldon Pollock, “Pretences of Time,” *History and Theory* 46.3 (2007): pp. 336–383; and *The Ends of Man at the End of Premodernity* (Amsterdam: Royal Netherlands Academy of Arts and Sciences, 2005), and Parimal Patil, “The Historical Rhythms of the Nyāya-Vaiśeṣika Knowledge-System,” in *Periodization and Historiography of Indian Philosophy*, ed. Eli Franco (Wien: Sammlung de Nobili, Institut für Südasiens-, Tibet- und Buddhismuskunde der Universität Wien, 2009): 91-126; and Dipesh Chakrabarty, “The Muddle of Modernity,” *American Historical Review* 116.3 (2011): pp. 663-675.

knowledge production that accompanied it.⁸⁴ Rosalind O’Hanlon, drawing from the work of Christopher Bayly, argues that Mughal India’s Brāhmaṇa ‘ecumene’ was characterized by intense, pan-Indian competition for the patronage of royal and imperial courts.⁸⁵ As a result, scholars working on the intellectual history of early modern India have produced groundbreaking work that reconstructs the intricacies of, among other things, the relationship between Mīmāṃsā hermeneutics and bhakti devotionalism⁸⁶, the social politics of using Dharmaśāstric texts to adjudicate regional caste disputes⁸⁷, or the intersecting lines of teacher-disciple knowledge transmission in Advaita Vedānta against the backdrop of political developments in early modern northern India.⁸⁸ A perennial favorite topic of analysis for studies of early modern śāstric intellectual history has been the Bhaṭṭa family of Benares.⁸⁹ The Bhaṭṭas, a family of Mahārāṣṭrian Brāhmaṇas who moved to Vārāṇasī in the sixteenth century, dominated the northern Indian intellectual scene of the sixteenth and seventeenth centuries. They seem to have influenced nearly every discipline of śāstra, from Mīmāṃsā, to Dharmaśāstra, Advaita-Vedānta, and Alāṅkāraśāstra. However, the Bhaṭṭas’ contribution to ownership and inheritance has not been studied adequately.

⁸⁴ Rosalind O’Hanlon, “Letters Home: Banaras Pandits and the Maratha Regions in Early Modern India,” *Modern Asian Studies*, 44:2, (2010): pp. 201-240, 201. Cf. Sanjay Subrahmanyam, “Connected Histories: Notes Towards a Reconfiguration of Early Modern Eurasia,” *Modern Asian Studies*, 31.3 (1997): pp. 735–762.

⁸⁵ Rosalind O’Hanlon, “Speaking from Śiva’s Temple: Banaras Scholar Households and the Brahman ‘Ecumene’ of Mughal India,” *South Asian History and Culture*, 2:2, (2011): pp. 253-277, 254.

⁸⁶ Anand Venkatkrishnan, “Ritual, Reflection, and Religion: the Devas of Banaras,” *South Asian History and Culture*, 6:1 (2015): pp. 147-171.

⁸⁷ Rosalind O’Hanlon, “The Social Worth of Scribes: Brahmins, Kayasthas and the Social Order in Early Modern India,” *Indian Economic Social History Review*, 47.4 (2010): pp. 563-95.

⁸⁸ Christopher Minkowski, “Advaita Vedānta in Early Modern History,” in *Religious Cultures in Early Modern India: New Perspectives*, ed. Rosalind O’Hanlon and David Washbrook. Special Volume of *South Asian History and Culture* 2.2 (2011): pp. 205-31.

⁸⁹ For the family in general, see James Benson, “Śaṅkarabhaṭṭa’s Family Chronicle: The *Gādhivamśavarṇana*,” in Axel Michaels (ed.), *The Pandit: Traditional Scholarship in India* (Delhi: Manohar Publishers, 2001): pp. 105-118.

This thesis adds to the work of Sanskrit Knowledge Systems on the Eve of Colonialism in two ways. First, the thesis adds a substantial body of textual material to the conversation: a series of Dharmaśāstra, Mīmāṃsā and Navya-Nyāya treatises whose importance to contemporaneous debates in other śāstric disciplines has been largely unexamined. In particular, it examines how Dharmaśāstric theories of ownership and inheritance were connected to broader considerations of family, intellectual lineage, regional identity and political patronage. The thesis argues that seemingly abstract, scholastic Dharmaśāstric debates about ownership and inheritance were very much a relevant topic for early modern Vārāṇasī-based scholars. Moreover, the thesis connects jurisprudential arguments in Dharmaśāstra with developments in Mīmāṃsā and Navya-Nyāya and the emergence of Navadvīpa, Bengal, as an intellectual powerhouse (and rival to Mahārāṣṭra) in the 16th century.

Second, this thesis introduces a new analytical tool for describing the complex intertextual relationships between Sanskrit ideas across chronological, disciplinary, and sectarian lines: the scale of texts. R.G. Collingwood observes that,

if in philosophical thought every difference of kind is also a difference of degree, the specifications of a philosophical concept are bound to form a scale; and in this scale their common essence is bound to be realized differentially in degree as well as differentially in kind.⁹⁰

Collingwood's argument is that a scale of forms reveals "overlap and hierarchy" in philosophical thought, where "concepts do not stand as autonomous units to each other, but as overlapping in a progressively developing series, each stage of which is related to its predecessor as advanced is to lower."⁹¹ The result is that "the logical

⁹⁰ R.G. Collingwood, *An Essay on Philosophical Method* (Oxford: Clarendon Press, 1933), 77.

⁹¹ Peter Johnson, *R.G. Collingwood: an Introduction* (Bristol: Thoemmes Press, 1998), 27.

movement from one form to another is... an overlapping chain in which each successive stage both confirms and extends the one before.”⁹²

The historian of India, Ronald Inden, recalibrated the scale of forms as a “scale of texts” in order to shift the historical study of India from a Hegelian history of essentialized ideas to an empirical account of historical agents in time and place. He describes a scale of texts as the way in which,

later agents and their texts overlap with those of their predecessors and contemporaries and, by engaging in a process of criticism, appropriation, repetition, refutation, amplification, abbreviation, and so on, position themselves in relation to them.⁹³

Inden, Daud Ali and Jonathan Walters’ brilliant use of the scale of texts to reconstruct the relationship between the textual artifacts of ‘complex agents’ - committees of learned scholars, monastic institutions, corporate guilds, etc. - and the ‘imperial formations’ of medieval South Asia has set a new paradigm for historical studies of pre-modern South Asia.⁹⁴

While Inden focuses on elite, imperial courts - the Rāṣṭrakūṭa, Cālukya and Cola courts - this thesis employs the model of a scale of texts to analyze the works of individual scholars, scholar families and scholastic institutions within specific intellectual and social contexts. The scale of texts is ideally suited to the thickly intertextual milieu of early modern India and to the discipline of Dharmaśāstra. Further, the scale of texts, when combined with the Sanskrit Knowledge Systems’ account of early modern northern Indian social history, offers the ideal method for theorizing what I take to be a “school of thought.”

⁹² Ibid., 27.

⁹³ Ronald Inden, J. Walters and D. Ali, *Querying the Medieval: Texts and the History of Practices in South Asia*. (Oxford: 2000), 12.

⁹⁴ For a similar project, see Velcheru Rao, David Shulman, & Sanjay Subrahmanyam, *Textures of Time: Writing History in South India, 1600-1800* (Delhi: Permanent Black, 2001).

My interest in demonstrating the existence of schools of Sanskrit jurisprudence - connected to region, discipline and lineage - is not limited to disproving Rocher and Davis' overzealous polemic against Colebrooke. An analytical focus on how distinct schools of jurisprudence developed in medieval and early modern India - and survived into the colonial period - militates against a harmful truism in the study of Indian history and the study of early modern Sanskrit knowledge systems in particular: what Sudipta Kaviraj calls "an epistemic rupture on the vastest possible scale, one of the greatest known in history."⁹⁵ Rosane Rocher and Brian Hatcher have argued persuasively that with regard to Dharmaśāstra, the advent of European colonization did not spell the end of creativity and innovation of paṇḍitic thought.⁹⁶ Between 1772 and the mid-nineteenth century, paṇḍits from Bengal and Benares, who were hired by agents of the East India Company, compiled a series of some of the most sophisticated Dharmaśāstric works on contract, inheritance, adoption and the like. I argue in this thesis that the arguments in these colonial-era anthologies reflect the continuance of traditional, medieval and early modern Dharmaśāstric schools of thought that developed in Vārāṇasī, Navadvī and Mithilā.

The problem with viewing schools of Sanskrit jurisprudence as a "phony" Colonial invention is that such a view elides the contributions of a generation of paṇḍits to an ancient system by attributing their insights and interests to the will of

⁹⁵ Sudipta Kaviraj, "The Sudden Death of Sanskrit Knowledge," *Journal of Indian Philosophy* 33.1 (2005): pp. 119-142, 132.

⁹⁶ Rosane Rocher, "Weaving Knowledge: Sir William Jones and Indian Pandits," in *Objects of Enquiry: the Life, Contributions, and Influences of Sir William Jones, 1746-1794*, eds. Garland Cannon & Kevin Brine (New York: NYU Press, 1995): pp. 51-79; Rosane Rocher, "The Career of Rādhākānta Tarkavāgīśa, an Eighteenth-Century Pandit in British Employ," *Journal of the American Oriental Society* 109.4 (1989): pp. 627-633; Brian Hatcher, "Sanskrit and the Morning After: The Metaphorics and Theory of Intellectual Change," *Indian Economic and Social History Review* 44.3 (2007): pp. 333-361.

their colonial suzerains. The most recent and most significant work on ownership and property in colonial-era Dharmaśāstra digests commits the deeply ironic error of castigating several novel Sanskrit arguments concerning the nature of property - arguments that may well prove that India exercised a greater influence on Anglo-American jurisprudence than previously thought - as foreign impositions.⁹⁷

The endpoint of this thesis - beyond its myriad contributions to the technical details in the evolution of the concept of ownership and the jurisprudence of inheritance in Indian intellectual history - is a broad claim that Dharmaśāstra, traditional Indian jurisprudence, is one of the world's great systems of jurisprudence. This is not a laudatory claim, but rather a call to appreciate that, as with Anglo-American jurisprudence, we can speak of various schools of jurisprudence that are inflected by different philosophical commitments and pursuing different legal goals. We can speak of the evolution of jurisprudential ideas such as ownership and inheritance. We ought to be able to speak of the interaction between Indian and Western jurisprudence and of the future of Indian jurisprudence in a way that emphasizes continuity as much as conflict.

I.E: Outline of Chapters

The body of this thesis comprises four chapters. Each chapter traces the connection between a jurisprudential model of inheritance and a śāstric (Mīmāṃsā or Nyāya) theory of ownership. In Chapter 1, I examine the development of the concept of ownership in Mīmāṃsā and Dharmaśāstra from the first millennium C.E. to approximately the 15th century C.E. Contemporary scholarship has long accepted as a truism that there is a nexus between Dharmaśāstric jurisprudence and Mīmāṃsā rules of interpretation. I focus on the secularization of ownership in

⁹⁷ Nandini Bhattacharya-Panda, *Appropriation and Invention of Tradition: The East India Company and Hindu Law in Bengal* (New Delhi: Oxford, 2008).

Mīmāṃsā and the relationship of this secularization to the development of the theory of ownership by birth (janmasvatva) articulated in Vijñāneśvara's 11th-12th century commentary on the *Yājñavalkyasmṛti*, the *Rjūmitākṣarā*, and later texts. Towards that end I draw attention to two linked trends in Indian intellectual history: 1) the development of a legal concept of ownership that occurred in the Mīmāṃsā tradition centuries before the earliest logicians (Naiyāyikas); and 2) the application of that Mīmāṃsā concept to a medieval Dharmaśāstric jurisprudential approach to inheritance which traced its origins to the *Mitākṣarā*.

The chapter argues that the *Mitākṣarā* marks a crucial juncture at which earlier, inchoate theories of ownership by birth that had appeared in early Dharmaśāstra commentaries were consolidated and combined with a Prābhākara-Mīmāṃsā theory of ownership as a secular, extra-śāstric phenomenon. Vijñāneśvara's combination of Mīmāṃsā theories of ownership and Dharmaśāstric models of inheritance formed a distinctive, comprehensive scale of texts that was embraced by subsequent generations of Dharmaśāstrins. It is this mutual interdependence of Prābhākara-Mīmāṃsā and *Mitākṣarā* Dharmaśāstra which can be identified as the distinctive feature of a discernible *Mitākṣarā* school of jurisprudence. The chapter argues that the one can demonstrate that there is such a thing as a *Mitākṣarā* school of jurisprudence by the ways in which subsequent Dharmaśāstrins in the late medieval period followed the further philosophical developments in Prābhākara-Mīmāṃsā concerning ownership when they commented on, expanded, or recalibrated Vijñāneśvara's model of inheritance. Vijñāneśvara is a founder in the sense that he *consolidated* earlier Dharmaśāstrins' theories of ownership and inheritance and established the parameters for future debate about the issue. The chapter does not, however, argue that the early

Mitākṣarā school - a primarily academic school - was associated with distinct geographical regions or teacher-disciple lineages.

The second chapter traces the development of a uniquely Bengali (Gauḍa), Navya-Nyāya-inflected school of jurisprudence that developed at the university of Navadvīpa (founded in 1514) in Bengal during the sixteenth century. The university of Navadvīpa became one of India's greatest centers for the study of Navya-Nyāya. The Dharmaśāstrins and Naiyāyikas who lived and worked together in Navadvīpa's colleges (ṭols) shared a cluster of philosophical and jurisprudential propositions - many pertaining to ownership and inheritance - that they contrasted with the propositions of the scholars of Mithilā, a rival - and at that time, more famous - university town in what is modern Bihar. Navadvīpan Dharmaśāstrins, including Śrīnāthācārya Cūḍāmaṇi (1475-1525), Rāmabhadra I (1510-1570), and Acyutacakravartin (1510-1570), and logicians, such as Raghunātha Śiromaṇi (1460-1540), and Jayarāma Nyāyapañcānana (17th Century), began to speak of themselves, their ritual practices and their intellectual opinions, as being part of a Bengali (Gauḍa) school of thought. Navadvīpa's jurists and logicians focused on the *Dāyabhāga* of Jīmūtavāhana (12-15th Centuries), an obscure, previously unknown treatise on inheritance, as the central text of their new school of jurisprudence: dozens of commentaries on the *Dāyabhāga* were written in a Navya-Nyāya idiom and dozens of Navya-Nyāya treatises on ownership defend arguments from the *Dāyabhāga*.

Contemporary scholarship downplays or disputes a connection between the rise of Navadvīpa as a center of Dharmaśāstra and as a center of Navya-Nyāya. The emergence of a Bengali scale of Dharmaśāstra texts coincided, geographically and chronologically, with the emergence of a Navadvīpan, Bengali school of Navya-

Nyāya. In their commentaries on the *Dāyabhāga* Dharmaśāstrins such as Śrīnāthācāryacūḍāmaṇi, Rāmabhadra and Acyutacakravartin deployed Navya-Nyāya theories of ownership to defend Jīmūtavāhana and reject Vijñāneśvara's theory of ownership by birth. Likewise, Navadvīpan-trained Navya-Naiyāyikas, including Rāmabhadra Sarvabhauma and Jāyarāma Nyāyapañcāna, developed metaphysical accounts of ownership that accepted the conclusions of *Dāyabhāga* school *a priori*.

I aim to rectify the misconception that there was no causal connection between these developments. I do so by drawing attention to the relationship between Navya-Nyāya theories of ownership as discernible from the śāstra alone (śāstraikadhigamyasvatva, etc.) and the Dharmaśāstric theory of ownership by the cessation of the ownership of the previous owner (upamasvatva) articulated in Jīmūtavāhana's *Dāyabhāga*. I advance two lines of argumentation: 1) that Navadvīpan Dharmaśāstrins incorporated Jīmūtavāhana's *Dāyabhāga* in a self-consciously Bengali assemblage of Dharmaśāstra texts; and 2) that Navadvīpan commentaries on the *Dāyabhāga* and Navya-Nyāya discussions of ownership reflect a deliberate and mutually influential attempt to articulate an internally consistent cluster of Bengali theories of ownership and inheritance - a school - in opposition to a Maithila school of jurisprudence.

The third chapter examines the reception of *Dāyabhāga* jurisprudence and Navya-Nyāya theories of ownership in the Dharmaśāstra and Mīmāṃsā writings of Mahārāṣṭrian Brāhmaṇas in the city of Vārāṇasī in the sixteenth and seventeenth centuries. I argue that for the Bhaṭṭa family of Vārāṇasī, a famous and influential family of Mahārāṣṭrian Mīmāṃsakas and Dharmaśāstrins who identified themselves as exemplary southern (Dākṣiṇātya) Brāhmaṇas, Gauḍa Dharmaśāstrins and their

Navya-Nyāya philosophy constituted a significant threat. The Bhaṭṭas characterized Vijñāneśvara's *Mitākṣarā* as the paradigmatic southern, Mīmāṃsā-compliant treatise on inheritance. They incorporated the *Mitākṣarā* and Mīmāṃsā theories of ownership into a comprehensive southern school of jurisprudence - whose opinions they contrasted with those of the Gauḍas. This school of thought, developed in the commentarial writings of successive members of the Bhaṭṭa family, including Rāmakṛṣṇabhaṭṭa (16th Century), Kamalākarabhaṭṭa (active 1610-1640), Nīlakaṇṭhabhaṭṭa (mid-17th Century) and Gāgābhaṭṭa (late 17th Century) deployed Mīmāṃsā theories of ownership and inheritance against Navya-Nyāya ones.

The chapter argues that the Bhaṭṭas' polemic against the Navadvīpan, Navya-Nyāya-inflected school of jurisprudence marks a watershed moment when the *Mitākṣarā* and its Mīmāṃsā theory of ownership were incorporated into a broader, distinctively southern scale of Dharmaśāstra texts. The Bhaṭṭa family headed the many Brāhmaṇa assemblies (Brāhmaṇasabhās) that met in Vārāṇasī's Kāśīviśveśvara temple in the sixteenth and seventeenth centuries to adjudicate caste disputes and matters of ritual entitlement. I argue that these jurisprudential and social factors are intertwined inexorably: the Bhaṭṭas' legacy as the acme of southern Brāhmaṇism can be attributed to their vigorous defense of traditional Dharmaśāstra from a rival Bengali school of law. They accomplished this in three ways. First, the Bhaṭṭas crafted a comprehensive scale of Dharmaśāstra texts that weighed and that rejected the opinions (on subjects as diverse as festivals, meat-eating, and the legal validity of irreligious transactions) of prominent eastern and Bengali Dharmaśāstrins such as Vācaspatimiśra II (actually a Maithila author), Śūlapāṇi Upādhyāya, Raghunandana Bhāṭṭācārya and Śrīnāthācāryacūḍāmaṇi. Further, they contrasted the views of these Bengalis with those of southerners. Second, with regard to

inheritance specifically, the Bhaṭṭas defended the *Mitākṣarā* school's theory of janmasvatva and its attendant legal implications from the objections of Bengali Dharmaśāstrins. Finally, the Bhaṭṭas, in their Mīmāṃsā writings, adopted Navya-Nyāya techniques to advocate a theory of ownership as a secularly created causal capacity (śakti) in contrast to Bengali theories of ownership as a śāstrically determined conceptual category (padārtha) or as a qualified absence (viśiṣṭābhāva). I argue that the Bhaṭṭas' philosophical arguments concerning the metaphysics of ownership are linked to their jurisprudential arguments concerning the theory of patrilineal coparcenary trusts. Both of these positions, in turn, are implicated in the broader attempt by the Bhaṭṭas to frame their śāstric writings as a facet of their identity as exemplary southern Brāhmaṇas.

Ultimately, the chapter concludes that these developments led to the formation of distinct schools of Dharmaśāstric thought centered on Vārāṇasī/ Mahārāṣṭra and Mithilā/Bengal, whose theories of ownership and inheritance were incorporated within broader scales of Dharmaśāstra texts and within enduring teacher/disciples lines of transmission and multi-generational sub-commentarial traditions.

The fourth chapter turns to the British encounter with traditional Sanskrit learning in the late eighteenth and early nineteenth centuries and traces the construction of Hindu Schools of Law in Colonial India between 1772 and 1825. The chapter examines three digests of Sanskrit Dharmaśāstra that were compiled at the behest of the East India Company and whose English translations were utilized by British jurists in colonial courts: the *Vivādārṇavasetu* (translated in 1776 as *A Code of Gentoo Laws*), the *Vivādabhaṅgārṇava* (translated in 1795-6 as *A Digest on Contracts and Succession*), and the *Dharmaśāstrasamgraha* (which served, I argue,

as the impetus for Colebrooke's *Two Treatises*). I accept that the basic premise of Anglo-Hindu Law - that Dharmaśāstric legal treatises encapsulate local custom - suffers from fundamental flaws. However, I argue that the colonial era Dharmaśāstra digests articulate discernible, regionally specific schools of jurisprudential thought regarding ownership and inheritance. The treatises do this, I contend, by recapitulating and by enhancing the eastern and southern scales of Dharmaśāstra texts that developed originally in Navadvīpa and Vārāṇasī in the sixteenth and seventeenth centuries. On the one hand the *Vivādārṇavasetu* and the *Vivādabhaṅgārṇava*, compiled by teams of Bengali logicians, synthesize and defend the *Dāyabhāga*'s Bengali (Gauḍa) theories of ownership by the cessation of the ownership of the previous owner (upamasvatva), ownership as discernible from the śāstra alone (śāstraiḥkagamyatva), and *factum valet* against the opinions of Maithila rivals (often utilizing the formal techniques of Navya-Nyāya philosophy). On the other hand, the *Vyavahārabālabhaṅgī* - compiled by a Mahārāṣṭrian Mīmāṃsaka - synthesizes and defends the *Mitākṣarā*'s southern (Dākṣiṇātya) theories of ownership by birth (janmasvatva) and of ownership as secular (laukika) against the *Dāyabhāga* and logicians identified as Bengali (Prācyā, Gauḍa, etc.).

Conceiving of Dharmaśāstra as positive law and positing regionally specific schools of Dharmaśāstric jurisprudential philosophy constitute two independent propositions. In accepting the first proposition and rejecting the second proposition, I argue that Colebrooke's formulation of schools of law - particularly his formulation of Dharmaśāstric theories of ownership and inheritance as rooted in the *Dāyabhāga* and *Mitākṣarā* - constitutes a logical and an appropriate understanding of the state of Dharmaśāstra that he encountered directly in the Dharmaśāstra anthologies compiled for the British and through his collaboration with Bengali, Maithila and

Mahārāṣṭrian paṇḍits. Further, Colebrooke's hypothesis that Navya-Nyāya and Mīmāṃsā theories of ownership lie at the heart of the division of *Dāyabhāga* and *Mitākṣarā* schools of Sanskrit jurisprudence is supported by the *Vivādārṇavasetu*, the *Vivādabhaṅgārṇava*, and the *Vyavahārabālabhaṭṭī*'s discussions of ownership and inheritance.

The chapter makes the broad claim that the schools of Dharmaśāstric thought that developed in the sixteenth and seventeenth centuries endured through the eighteenth century. Additionally, the chapter argues that many of the paṇḍits who assisted British orientalist and jurists in the compilation of Dharmaśāstra digests and in the construction of Anglo-Hindu law adhered to the classificatory and pedagogical scheme of regionally specific *Dāyabhāga/Mitākṣarā* schools of Dharmaśāstra. In doing so, the chapter makes two significant interventions in contemporary scholastic debates concerning the history of Dharmaśāstra and law in colonial India. The first intervention takes aim at a shibboleth of modern studies of Dharmaśāstra: that the division of Dharmaśāstric discussions of inheritance into Gauḍa, Vārāṇasī, Maithila, Dākṣiṇātya and Drāviḍa schools is alien to Dharmaśāstra as a discipline. I argue that although the construction of a Drāviḍa school of law was an unwarranted product of British legal and orientalist overreach, the Dharmaśāstra compendia of the eighteenth century and the earlier intellectual history of ownership and inheritance support a model of Sanskrit schools of legal thought. In this sense, the chapter functions as a capstone to this thesis' broad argument that Rocher and Davis' opposition to Colebrooke is at least partly incorrect and that scholars ought to attend to the ways in which considerations of regional identity, pedagogical lineage, and disciplinary commitments inflected the intellectual history of jurisprudence in ancient and early modern India.

The conclusion of the thesis summarizes and charts the material that I examine in the four chapters. The broad takeaway of my research is that attending to the philosophical and legal intricacies of ownership and inheritance is of benefit not only to scholars whose interests lie in specialized studies of Dharmaśāstra. Rather, because ownership and inheritance were fundamentally problematic categories, they provide a valuable lens for charting continuity, conflict and colloquy between camps of paṇḍits who arrived at very different understandings of ownership and its attendant legal phenomena. Furthermore, because considerations of ownership and inheritance were at the very heart of the British colonial apparatus - an apparatus associated with a mercantilist political economy - Dharmaśāstric discussions of ownership and inheritance offer an ideal avenue for testing the credibility of claims that the advent of colonialism destroyed the vitality of traditional Sanskrit knowledge systems.

The conclusion explores the significance of the this thesis' findings for the role of Hindu law in postcolonial India. The conclusion examines the Hindu Code Bills of 1955-6 and militates against the quick and easy assumption that modern, neo-liberal legal universals offer an inherently superior form of justice. Furthermore, the conclusion explores two areas where additional research on the subject of ownership in Sanskrit jurisprudence shows promise. First, an expanded focus from the specific legal problem of inheritance to a broader consideration of ownership's legal incidents - contract, mortgage, religious trusts, women's property rights, etc. - would shed light on - and provide a means of deconstructing - many of the most pressing topics in post-colonial Hindu law. A related, but less certain, project involves charting the possible connections between Sanskrit theories of ownership (notable

for its plurality of 'sub-proprietary' rights) and the development of early forms of the 'bundle of rights' in classical jurisprudential theories from the nineteenth century.

In the course of this thesis, I hope to show that ownership and property - however boring they might appear to be - ought not be viewed in the same light in which Kafka grimaced at Austrian law - as "sawdust... chewed by a thousand mouths before."⁹⁸ This introduction has argued that property law - or the Sanskrit theoretical reflection thereon - was inflected by the intellectual dynamism, hot-blooded polemic and diversity of thought of the many paṇḍits who dedicated their lives to the śāstric study of property.

⁹⁸ Robert Kaplan, "Joseph K. Claims Compensation: Franz Kafka's Legal Writings," *Advances in Historical Studies* 3 (2014): pp. 115-121, p. 116.

Chapter 1: The *Mitākṣarā* School and Mīmāṃsā

In this chapter I examine the development of the concept of ownership in Mīmāṃsā and Dharmaśāstra from the first millennium C.E. to approximately the 15th century C.E. Contemporary scholarship has long accepted as a truism that there is a nexus between Dharmaśāstric jurisprudence and Mīmāṃsā rules of interpretation.¹ Indeed, much has been written concerning the precise nature of this nexus, particularly with regard to custom and law. I want to shift the focus to related issues that have been underestimated by recent scholarship on Dharmaśāstra and by scholarship on the philosophy of ownership in Sanskrit knowledge systems: the secularization² of ownership in Mīmāṃsā and the relationship of this secularization to the development of the theory of ownership by birth (janmasvatva) articulated in Vijñāneśvara's *Ṛjūmitākṣarā*.³ Towards that end I draw attention to two linked trends in Indian jurisprudential history: 1) the development of a philosophical concept of ownership that occurred in the Mīmāṃsā tradition centuries before the earliest logicians (Naiyāyikas); and 2) the application of that Mīmāṃsā-derived concept to a medieval Dharmaśāstric jurisprudential approach to inheritance which traced its origins to the *Mitākṣarā*.

The central object of inquiry of the chapter is Vijñāneśvara's 11th-12th Century commentary on the *Yājñavalkyasmṛti*, the *Ṛjūmitākṣarā* (commonly referred

¹ See Domenico Francavilla, *The Roots of Hindu Jurisprudence: Source of Dharma and Interpretation in Mīmāṃsā and Dharmaśāstra* (Torino: Comitato Corpus Iuris Sanscriticum et fontes Iuris Asiae Meridianae et Centralis, 2005).

² By secular I mean extra-śāstric. The Sanskrit word, *laukika* (worldly) captures much of the popular Western idea of secular as temporal.

³ See Donald Davis, *The Spirit of Hindu Law* (Cambridge: Cambridge University Press, 2010), and Ethan Kroll, "A Logical Approach to Law" (PhD diss., University of Chicago, 2010).

to as the *Mitākṣarā*).⁴ With the possible exception of the *Mānavadharmasāstra* (the Laws of Manu), the *Mitākṣarā* is the single most important treatise in the history of Dharmaśāstra. The *Mitākṣarā*, although ostensibly a mere gloss of the *Yājñavalkyasmṛti*, goes into extraordinary detail on many facets of ācāra (conduct), vyavahāra (jurisprudence), and prāyaścitta (atonement). The *Mitākṣarā* serves as the touchstone for virtually every subsequent Dharmaśāstrin. As P.V. Kane notes:

The *Mitākṣarā* holds a position similar to that of the Mahābhāṣya of Patañjali in Grammar or the Kāvya prakāśa of Mammaṭa in Poetics. It embodies in itself the results of centuries of legal speculation that preceded it and becomes in its turn a source of further exegesis and improvements.⁵

The *Mitākṣarā* was also the essential text for H.T. Colebrooke's colonial theory of regional schools of Dharmaśāstric law of inheritance. As Colebrooke declares in the preface to his *Two Treatises*:

The range of its authority and influence is far more extensive than that of Jimuta-vahana's treatise; for it is received in all the schools of *Hindu* law, from *Benares* to the southern extremity of the peninsula of *India*, as the chief groundwork of the doctrines which they follow, and as an authority from which they rarely dissent.⁶

This chapter aims to ask how and why the *Mitākṣarā* came to be so influential in the intellectual history of ownership by birth. My contention is that the *Mitākṣarā* marks a crucial juncture at which earlier, inchoate theories of ownership by birth that had appeared in early Dharmaśāstra commentaries were consolidated and combined with a Prābhākara-Mīmāṃsā theory of ownership as a secular, extra-śāstric phenomenon. For the *Mitākṣarā* and its followers in Dharmaśāstra, ownership

⁴ For Vijñāneśvara, see Kane, *A History of Dharmaśāstra*, Vol. 1., Part 2. 2nd Edition (Poona: Bhandarkar Oriental Research Institute, 1975): 601-616.; Günter-Dietz Sontheimer, *The Joint Hindu Family: Its Evolution as a Legal Institution* (New Delhi, Munshiram Manoharlal, 1977): 120-139; J.D. Derrett, "the Relative Antiquity of the Mitākṣarā and the Dāyabhāga," *Madras Law Journal* (1952): pp. 9-15; and Kroll, "A Logical Approach to Law," 20.

⁵ P.V. Kane, "The Predecessors of Vijñāneśvara," *The Journal of the Bombay Branch of the Royal Asiatic Society*, (1925): pp. 193-221.

⁶ H.T. Colebrooke, *Two Treatise on the Hindu Law of Inheritance* (Calcutta: Hindoostanee Press, 1810), iv.

is theorized as a quality (guṇa) of an asset (dhana, dravya), produced by secularly recognized acts of acquisition (lokasiddhārjanopaya) and characterized as a fitness for use as desired (yatheṣṭaviniyogayogyatva).

The chapter aims to redress three mistaken assumptions underlying leading scholars' contributions to the study of ownership in the Sanskrit tradition as it relates to the *Mitākṣarā*. The first assumption, presented by such scholars as Ludo Rocher and Donald Davis, is that the *Mitākṣarā/Dāyabhāga* debate can be projected anachronistically into the earliest strata of Dharmaśāstra commentary and that Vijñāneśvara's importance to virtually all subsequent Dharmaśāstrins can be de-emphasized.⁷ The second assumption, made by John Duncan Derrett, is that the Mīmāṃsakas' theory of secular ownership is inherently morally regressive. Derrett characterizes Vijñāneśvara's use of Prabhākara's secular theory of ownership as the cynical move of a Brahman "pathetically keen" to prove the validity of his community's often questionable titles to assets acquired in dubious circumstances.⁸ Derrett does not properly trace the Mīmāṃsā theory of ownership. This might account for why he fails to acknowledge the pains to which the Mīmāṃsakas go to offer a secular theory of property which conforms to ethical considerations of moral propriety and societal equity - albeit an equity which differs in many respects from Western concepts of justice.

The third assumption, made by Ethan Kroll, is that the earliest sophisticated philosophy of ownership was developed in the Nyāya tradition. In examining the earliest strata of Mīmāṃsā theories of ownership, Kroll's focus on the term svatva at the cost of related terms - svāmya, svāmi, svam, and so on - resulted in his failure to

⁷ See Davis, *The Spirit of Hindu Law*; Ludo Rocher, "Schools of Hindu Law," in *Studies in Hindu Law and Dharmaśāstra*, ed. Donald Davis (New York: Anthem Press, 2014): pp. 119-141.

⁸ J. D. Derrett, "The Right to Earn in Ancient India: A Conflict between Expediency and Authority" *Journal of the Economic and Social History of the Orient* 1.1 (1957): pp. 66-97, 84, fn 1.

notice the philosophical rigor with which Mīmāṃsakas including Śabara, Śālikanātha, and Bhavanātha treated ownership. Kroll maintains that:

The first sophisticated definition of *svatva* comes not from the *Dharmaśāstra* or *Mīmāṃsā*, but from a seemingly random passage in the *Nyāyavārttikatātparyāṭīkā*... of the 9th c. [Nyāya] scholar Vācaspatimiśra.⁹

In response to Kroll, I argue that the Mīmāṃsā contributions to the study of ownership were integral to the development of Dharmaśāstric theories of inheritance, particularly amongst those śāstrins who followed Vijñāneśvara's arguments in the following centuries. It is this mutual interdependence of Prābhākara-Mīmāṃsā and *Mitākṣarā*-Dharmaśāstra which can be identified as the distinctive feature of a *Mitākṣarā* school of jurisprudence.

In short, this chapter argues three points: 1) that the Mīmāṃsā developed the earliest Sanskrit theories concerning ownership and property; 2) that Vijñāneśvara's treatment of inheritance marks a turning point because he combined Mīmāṃsā theories of ownership with the ethical dimensions of Dharmaśāstric legal problems; and 3) that subsequent Dharmaśāstrins in the late medieval period followed the further philosophical developments in Prābhākara-Mīmāṃsā concerning ownership when they commented on, expanded, or criticized Vijñāneśvara's model of inheritance. Vijñāneśvara is a founder in the sense that he *consolidated* earlier Dharmaśāstrins' theories of ownership and inheritance and established the parameters for future debate about the issue. Vijñāneśvara fashioned a distinctive, influential scale of Dharmaśāstra and Mīmāṃsā texts.¹⁰

The reader should note that any reference to Jīmūtavāhana, or to 'easterners,' or to specific geographical locations or 'schools of law' are

⁹ Kroll, "A Logical Approach to Law," 34-35.

¹⁰ See the introduction to this thesis for an analysis of the scale of texts.

conspicuously absent from the scale of Dharmaśāstra texts developed by Vijñāneśvara and his immediate followers. Thus, Vijñāneśvara can be considered a ‘founder’ of a ‘school of jurisprudence’ in an intellectual, rather than a social sense. In the following chapter I will demonstrate that the identification of regionally specific schools of Dharmaśāstra tied to distinct philosophical commitments first emerges with the rise of Bengal as a center of Navya-Nyāya in the 16th Century.

1.A: Consolidating Earlier Dharmaśāstra

In this section I take up the issue of Vijñāneśvara’s relationship to earlier Dharmaśāstrins’ theories of ownership and inheritance. Ethan Kroll has described the growing importance of *svatva* as an analytic tool in the commentaries of Bhārucci, Viśvarūpa and Medhātithi, but the question remains: to what extent do these earlier authors anticipate the unique arguments of the *Mitākṣarā*?¹¹ My argument - that the *Mitākṣarā* marks a sea-change in the Dharmaśāstric approach to ownership and inheritance - contrasts with the dominant theory in contemporary Dharmaśāstra studies. Two eminent scholars of Dharmaśāstra, Ludo Rocher and Donald Davis, argue against the idea that Vijñāneśvara founded a ‘*Mitākṣarā* school of law.’¹²

The characterization of the jurisprudential distinction between ownership by birth (*janmasvatvavāda*) and ownership by the father’s death (*upamasvatvavāda*) as a debate between the *Mitākṣarā* and the *Dāyabhāga* “schools of Hindu Law” is a phony, artificial creation of [H.T.] Colebooke... I state this so boldly primarily to encourage future scholars... to stop repeating this mischaracterization of the classical Hindu law.¹³

Davis readily admits that “both of these texts [the *Mitākṣarā* and the *Dāyabhāga*] articulated their own version of these two legal positions,” but, he argues, “both positions also had earlier advocates and later critics.”¹⁴ Davis suggests

¹¹ Kroll, “A Logical Approach to Law,” 17-23.

¹² Rocher, “Schools of Hindu Law.”

¹³ Davis, *The Spirit of Hindu Law*, 97.

¹⁴ *Ibid.*, 97.

that “ownership by birth was advocated in similar terms [to those in the *Mitākṣarā*] by Viśvarūpa and Asahāya in the ninth century, while ownership by the father’s death had prior supporters in Bhārucci, Dhāreśvara and Medhātithi.”¹⁵ Davis refers to a passage from the 16th Century *Sarasvatīvilāsa* of Pratāparudra in which various perspectives on inheritance are attributed to pre-Vijñāneśvara Dharmaśāstrins such as Asahāya, Bhārucci and Medhātithi.¹⁶

My response to Davis is one of only partial acceptance. Although earlier Dharmaśāstrins had debated whether sons acquired ownership by birth (janma) or by partition (vibhāga), Vijñāneśvara inaugurated a new epoch in the intellectual history of Dharmaśāstra by compiling an inchoate, but recognized (by Viśvarūpa and Medhātithi) theory of sons’ coparcenary property rights in their father’s estate and then transforming it into a comprehensive model of inheritance. The crucial element of Vijñāneśvara’s system - the distinction between apratibandhadāya and sapratibandhadāya (inheritance with and without an obstruction, respectively) - was a synthetic combination of a customary theory of birth as a cause of ownership (articulated in Medhātithi’s *Manubhāṣya*) and a legal theory of sons’ pre-partition proprietary rights in their father’s estate (advanced by Viśvarūpa in the *Bālakrīḍā*). This twofold definition of dāya, that elevated custom to the status of śāstric law, forced Vijñāneśvara to free the concept of ownership from its śāstric constraints and to argue against the *Smṛtisāgraha* and Dhāreśvara’s theory of ownership as mere possession. By taking each of Vijñāneśvara’s signature arguments in turn - the

¹⁵ Ibid., 97.

¹⁶ *Sarasvatīvilāsa: Vyvahārakāṇḍaḥ*, ed. R.S. Sastry (Mysore: Oriental Library Sanskrit Series, No. 71, 1927), 347: **asahāyavijñānayogiprabhṛtīnām tu yat svāmisambandhād eva nimittād anyasya svam bhavati tad dāyaśabdenocyate iti, tan na sahante bhāruccyaparārkaprabhṛtayaḥ svatvahetūnām krayādīnām tallakṣaṇāsambhavāt... tarhi strīnām dāyānarhatvāt.** Earlier in the chapter, pg 344, Pratāparudra defines dāya as “paternal assets fit for partition.” **bhāruccyaparārkaḍīnām lakṣaṇam - vibhāgārham piṭṛdravyam dāyam iti tad eva samyak.**

definition of *dāya*, the customary proprietary right of sons by birth, and the extra-*śāstric* nature of ownership - I aim to show: 1) that Vijñāneśvara's predecessors did *not* advance a theory of *janmasvatva* (in the sense of mediate and immediate *dāya* supported by a holistic body of *smṛti* law); and 2) that Vijñāneśvara was the first Dharmaśāstrin to make a legal case for ownership by birth.

1.A.1: The Definition of *Dāya*

The first issue to address is the definition of *Dāya*. Vijñāneśvara opens his discussion of inheritance in a lengthy preamble to *Yājñavalkya* 2.114. Given the importance of ownership as a framing analytic for his *Dāyaprakaraṇa*, it is striking that Vijñāneśvara does not define *svatva* or *svāmya* in this section of the *Mitākṣarā*. Later in the *Vyavahārādhyāya*, Vijñāneśvara defines property (*svam*) as “an asset in connection to one’s self.”¹⁷ On the other hand, Vijñāneśvara defines *dāya* as “an asset which becomes the property of another, solely on account of (that person’s) relation to the (asset’s) owner.”¹⁸ *Dāya*, according to Vijñāneśvara, is of two types:

Immediate *dāya* and mediate *dāya* [*apratibandhadāya* and *sapratibandhadāya*]. Sons and grandsons gain ownership in the [assets] of their father and their father’s father by dint of being their sons and grandsons. That is immediate *dāya*. Paternal uncles, brothers, and others gain ownership in the [assets] of their nephews, brothers, etc., only if there are no male descendants, or, if there are, only after the latter’s ownership lapses. That is mediate *dāya*.¹⁹

¹⁷ *Mitākṣarā* on *Yājñavalkyasmṛti*, 2.168, 280: **svam ātmasambandhi** dravyam anyavikrītam asvāmikrītam yadi paśyati, tadā labheta gr̥hṇīyāt asvāmivikrayasya svatvahetutvābhāvāt. This occurs in a comment that forbids sale without ownership. Cf I.S. Pawate, *Dāyavibhāga: or the Individualization of Communal Property and the Communalization of Individual Property in the Mitakhsara Law* (Dharwar, Karnatak University Press, 1975), 85.

¹⁸ *Yājñavalkyasmṛti: with the Mitākṣarā of Vijñāneśvara*, ed. R.K. Panda (Delhi, Bharatiya Kala Prakashan, 2011), 280: tatra dāyaśabdena yad dhanam svāmisambandhād eva nimittād anyasya svam bhavati tad ucyate.

¹⁹ Rosane and Ludo Rocher, “Ownership by Birth: The *Mitākṣarā* Stand,” *Journal of Indian Philosophy* 29 (2001): 241-255, 242; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 280: sa ca dvividhaḥ **apratibandhaḥ sapratibandhas** ca. tatra putrāṇām pautrāṇām ca putratvena pautratvena ca pitṛdhanam pitāmahadhanam ca svam bhavatīty apratibandho dāyaḥ. pitṛvyabhrātrādīnām tu putrābhāve svāmvyabhāve ca svam bhavatīti sapratibandho dāyaḥ. Whereas the Rochers and most Western scholars translate *dhana* and *dravya* as “property,” I prefer the term “asset,” or “assets” to avoid the confusing these terms with *svam*.

This two-part definition of *dāya* - as ownership caused solely by virtue of relation and as immediate and mediate - is the signature characteristic of inheritance in the *Mitākṣarā*. According to Pratāparudra, the first part of Vijñāneśvara's definition of *dāya* was first coined by Asahāya, the author of a partially lost commentary on the *Nāradaśmṛti*.²⁰ Although Asahāya may well have originated this definition of *dāya* in terms of mere relation, two facts are worth noting: 1) Asahāya's commentary has not been preserved in its totality; and 2) with the exception of the *Sarasvatīvilāsa*, Asahāya is never invoked as an authority for the purposes of defining *dāya*. One can infer from these two facts that even if Vijñāneśvara took his cue from Asahāya, the *Mitākṣarā* was this definition's chief representative in later years. While it is true that earlier commentators, Bhārucci and Medhātithi, offered alternative definitions of *dāya*, there is no evidence that their definitions were connected with a theory of ownership by the cessation - typically as a result of legal or biological death - of the ownership of the previous owner (*uparamasvatva*).²¹

Vijñāneśvara is the first Dharmaśāstrin to combine Asahāya's definition of *dāya* with a theory of mediate *dāya* (in which a proprietary right exists but is obstructed by the existence of a nearer cognate). Vijñāneśvara's characterization of *dāya* as immediate and mediate is likely connected to a theory of ownership which had its antecedents in earlier Dharmaśāstric debates concerning mortgages (*ādhi*). Variations on the term obstruction (*bandha*) appear frequently in earlier and later

²⁰ For Asahāya's date, textual history and positions in Dharmaśāstra, see P.V. Kane, *A History of Dharmaśāstra*, Vol. 1. Part 1. 2nd Edition (Poona: Bhandarkar Oriental Research Institute, 1968): 546-551.

²¹ For a list of various definitions of *dāya*, see J. Duncan Derrett, "The Development of the Concept of Property in India, C. AD 800-1800," in *Essays in Classical and Modern Indian Law*, Vol. 2, (Leiden: E.J. Brill, 1977): 8-130, 54

Dharmaśāstric discussions of mortgage.²² The sūtras and smṛtis forbid a mortgager or mortgagee from alienating mortgaged assets.²³ This put Dharmaśāstrins in a double bind - if a mortgager's ownership were extinguished by the act of mortgage, what would prevent a mortgagee from selling the mortgaged asset? Conversely, if a mortgager retains ownership of a mortgaged asset, what would prevent him from selling or mortgaging it again to someone else? The solution lay in theorizing an obstructed form of ownership.²⁴ In short, the *Mitākṣarā*'s division of dāya into mediate and immediate dāya is an example of Vijñāneśvara's synthesis of pre-existing Dharmaśāstric ideas about svatva, that had little to do with inheritance, into a model of inheritance.

1.A.2: Does Ownership Precede Partition?

Vijñāneśvara's distinction between mediate and immediate dāya, built on the intellectual scaffolding of mortgaged property, is contingent on the assumption that sons acquire a proprietary right in their fathers' and paternal grandfathers' estates during their lifetime. Viśvarūpa argued that ownership must precede partition for reasons of logical coherence, and Medhātithi argued that although *customary* aphorisms might acknowledge ownership by birth on the part of a son, *legally* speaking, one should not follow such dicta in practice. Vijñāneśvara consolidated

²² For example, see *Bṛhaspatismṛti* 1.10.38 in Patrick Olivelle, *A Sanskrit Dictionary of Law and Statecraft* (Delhi: Primus Books, 2015), 81: ādhir bandhaḥ samākhyātaḥ sa ca proktaś caturvidhaḥ. Cf. J. Duncan Derrett, "The Development of the Concept of Property in India, C. AD 800-1800" in *Essays in Classical and Modern Indian Law. Vol. 2* (Leiden: E.J. Brill, 1977): 8-130, 81 fn 299; I.S. Pawate, *Dāyavibhāga: or the Individualization of Communal Property and the Communalization of Individual Property in the Mitakhsara Law* (Dharwar, Karnatak University Press, 1975), 41-43.

²³ For example, see *Yājñalkyaśmṛti* 2.23 and *Mānavadharmasāstra* 8.143.

²⁴ Pawate, *Dāyavibhāga*, 41-43. While Vijñāneśvara fails to mention the idea that a mortgagor's is *obstructed*, he generally follows Aparārka's conclusion about the second mortgage being void. The passage from Aparārka, a comment on Yāj. 2.23-4, reads: yathā - kṣetrādikam ādhim kṛtvā vikṛīya dattvā vā punas tasyaiva kṣetrasya puruṣāntaram praty adhamarṇena ādhir dānam vikrayo vā kriyate. tadā pūrvakriyā satyottarā mithyā. pūrvakṛtābhyām dānavikrayābhyām svāmitvanivṛttau punar asvāminā kriyamāṇau dānavikrayau na sidhyataḥ. **ādhiparaṇena tu yady api svāmibhāvo na nivartyate tathāpi pratibadhyate.** tataś ca tasya kṣetrasya ādhitvānivṛttau puruṣāntaram pratyādhitvam kartum naiva śakyate.

these two positions by expanding Viśvarūpa’s relatively sparse comments to address a more robust body of smṛti law and by framing Medhātithi’s customary practices as śāstric law.

Viśvarūpa, a southerner who wrote the *Bālakrīḍā*, an influential commentary on the *Yājñavalkyasmṛti*, and who flourished in the 9th century, is the first śāstrin to argue that ownership precedes partition. Without explicitly advancing a theory of ownership by birth, he argues that in regard to grand-paternal assets, ownership (svatva) on the part of male children and grandchildren precedes partition (vibhāga). The discussion hinges on an interpretation of Yāj. II.124: “the ownership of both the father and the son is the same in land, trusts, and assets which were acquired by the grandfather.”²⁵ In a phrase that would be echoed later by Vijñāneśvara, Viśvarūpa asks “now, does svatva (arise) after partition, or does partition (occur) when svatva already exists?”²⁶ Viśvarūpa argues that Yāj. II.124 indicates that sons and fathers *both* have ownership (here prabhutva) in grand-paternal assets.²⁷ Viśvarūpa’s only warrant is that Yāj. II.125 states explicitly that sons born after a partition are entitled to a portion of the partitioned estate.²⁸ Consequently, svatva, i.e., a dravyasambandha, would not be produced for a son born after partition if partition were the cause of the production of svatva.²⁹

Viśvarūpa acknowledges an obvious objection: if sons had ownership in their father’s assets before partition, a father could not perform sacrifices without the

²⁵ *Yājñavalkyasmṛti*: with the *Bālakrīḍā* of Viśvarūpācārya, Volume 1, ed. Gaṇapati Śāstrī, (Trivandrum: Trivandrum Sanskrit Series, No. 74, 1922), *Yājñavalkyasmṛti* 2.124, 244: bhūryā pitāmahopāttā nibandho dravyam eva vā / tatra syāt tādṛśam svāmyam pituḥ putrasya cobhayoḥ //

²⁶ *Ibid.*, 244: atha kiṃ vibhāgāt svatvam, uta svatve sati vibhāga iti.

²⁷ *Ibid.*, 244: bhūryā pitāmahopāttā nibandho vā akṣayanidhiḥ anyad eva vā dravyam, tatra pitāputrayos tulyam prabhutvam syāt pratyetavyam nirvicikitsam evety arthaḥ. ubhayor ity avibhaktasyaiva svatvajñāpanārtham.

²⁸ *Bālakrīḍā* on *Yājñavalkyasmṛti* 2.125, 245: vibhakte ‘pi savarṇāyāḥ putro jāto vibhāgabhāk /

²⁹ *Ibid.*, 245: tasmāt svatve saty eva ity uktam. yadi hi vibhāgena svatvasambandho ‘bhaviṣyat, tato vibhaktajasya [putrasya] dravyasambandho nopāpatsyata.

consent of their sons.³⁰ If a son already possesses a proprietary right in the ancestral estate, how could a father obtain the permission of his neonatal son to conduct a sacrifice?³¹ Viśvarūpa's only response is that a father can perform sacrifices with *his* self-acquired assets (assets in which a son does *not* have svatva) and a father can divide those assets (unlike grand-paternal assets) as *he* wishes.³²

While Viśvarūpa's commentary on the division of inheritance is remarkable because he frames his analysis of *Yājñavalkyaśmṛti* II.124-125 through the lens of svatva and because he argues, implicitly, for janmasvatva (or something close to it), Viśvarūpa's comments are noticeably thin. Viśvarūpa's arguments are confined to two śloka and are not connected to his comments on any other verses pertaining to inheritance. He is content to use the term in his discussion of dāya, as in other locations in the *Bālakrīḍā*, as a short-hand for a dravyasambandha.³³ Indeed, Viśvarūpa never explicitly ties a theory of pre-partition ownership with a theory of birth as a cause of ownership - precisely the framing issue for the *Mitākṣarā*'s model of inheritance.

Vijñāneśvara adopts most of Viśvarūpa's arguments from YS II.124-125, but he embeds them within a broader argument that seeks to accomplish two things: 1) foreground the implications of YS II.124 as a warrant for ownership by birth (and apratibandhadāya); and 2) demonstrate the compatibility of such a view with several seemingly contradictory śmṛti passages. For example, Vijñāneśvara concludes his comments on janmasvatva by undertaking a careful, line-by-line analysis of śmṛti passages pertaining to joint family possessions. A pūrvapakṣin might argue that: 1) a

³⁰ *Bālakrīḍā* on *Yājñavalkyaśmṛti* 2.124, 244: vibhāgāt svatvam ity āhuḥ. anyathā jātaputrasyādhānādiśrutir dravyasādhānyāt svatyāgāsambhavād virudhyate.

³¹ *Ibid.*, 244: na ca tadanujñānād anuṣṭhānam iti yuktaṃ, jātamātrasyānujñānāsakteḥ.

³² *Bālakrīḍā* on *Yājñavalkyaśmṛti* 2.125, 245: yat tv anuṣṭhānavirodhādi codyam, tat svayam ārjitenāpi tat siddher na kimcit... yā tv icchayā vibhāgasmṛtiḥ sā svayam upāttadravyavato draṣṭavyā.

³³ For Viśvarūpa's other references to svatva, see Kroll, "A Logical Approach to Law," 31-33.

father could not perform sacrifices enjoined after the birth of a son because the son would have *svatva* in the father's possessions from birth;³⁴ and 2) rules exempting affectionate gifts made by father to his sons or wives from partition would be redundant if sons were owners from birth because such gifts (of joint assets) could only be made with the consent of all members of the family.³⁵ Vijñāneśvara responds to the first objection by arguing that the force of the Vedic injunction is sufficient to empower a father to perform a sacrifice with joint family assets.³⁶ Further, a father *does* have the ability to act independently with regard to his movable, self-acquired assets and to perform sacrifices with it.³⁷ With reference to the *Viṣṇusmṛti's* verse on affectionate gifts, Vijñāneśvara states that the exemption of affectionate gifts from partition refers to instances of either the father making gifts of self-acquired movable assets (over which sons presumably have no proprietary interest) or of immovable assets given with the consent of all the sons with a proprietary interest in it.³⁸ Consequently, Vijñāneśvara argues that one cannot deny that sons acquire *svatva* in

³⁴ Rosane and Ludo Rocher, "Ownership by Birth," 247; *Mitākṣarā* on *Yājñāvalkyasmṛti* 2.114, 282: vibhāgāt *svatvam* iti tāvaty uktam. jātaputrasyādhānavidhānāt. yadi janmanaiva *svatvam* syāt tadotpannasya putrasyāpi tatsvam sādharmaṇam iti dravyasādhyeṣv ādhānādiṣu pitur anadhikārah syāt. See note 30 for a parallel passage in the *Bālakrīḍā*.

³⁵ Rosane and Ludo Rocher, "Ownership by Birth," 247-8; *Mitākṣarā* on *Yājñāvalkyasmṛti* 2.114, 282-3: tathā vibhāgāt prāk pitṛprasādabdhasya vibhāgapraṭiṣedho nopapadyate. sarvānumatyā dattatvād vibhāgaprāptyabhāvāt. yathāha śauryabhāryādhane cobhe yac ca vidyādhanam bhavet / trīṇy etāny avibhājyāni prasādo yaś ca paitṛkaḥ // **Nārada 13.6** // iti tathā bhartrā prītena yad dattaṃ striyai tasmin mṛte 'pi tat / sā yathākāmam aśnīyād dadyāt vā sthāvarād rte // **Nārada 1.28** // iti prītidānavacanam ca nopapadyate janmanaiva *svatve*.

³⁶ Rosane and Ludo Rocher, "Ownership by Birth," 249; *Mitākṣarā* on *Yājñāvalkyasmṛti* 2.114, 283: yad apy arthasādhyeṣu vaidikeṣu karmasv anadhikāra iti, tatra tad vidhānabalād evādhikāro gamyate.

³⁷ Rosane and Ludo Rocher, "Ownership by Birth," 250; *Mitākṣarā* on *Yājñāvalkyasmṛti* 2.114, 283: tasmāt paitṛke paitāmahe ca dravye janmanaiva *svatvam*, tathāpi pitur āvaśyakeṣu dharmakṛtyeṣu vācanikeṣu prasādādānakuṭumbabharaṇāpadvimokṣādiṣu ca sthāvaravyatiriktadravyavinnyoge svātantryam iti sthitam.

³⁸ Rosane and Ludo Rocher, "Ownership by Birth," 249; *Mitākṣarā* on *Yājñāvalkyasmṛti* 2.114, 283: yat tu 'bhartrā prītena' ity ādi **viṣṇuvacanam** sthāvarasya prītidānajñāpanam tat svopārjitasyāpi putrādyabhyānujñayaiveti vyākhyeyam. pūrvoktair **maṇimuktā**divacanaiḥ sthāvaravyatiriktasyaiva prītidānayogyatvaniścayāt. The verses involving 'gems and pearls' read: maṇimuktāpravālānām sarvasyaiva pitā prabhuḥ / sthāvarasya tu sarvasya na pitā na pitāmahaḥ // pitṛprasādād bhujyante vastrāṇy ābharaṇāni ca / sthāvaram tu na bhujyeta prasāde sati paitṛke //

paternal and grand-paternal assets as a result of birth.³⁹ A further example of Vijñāneśvara's thoroughness is his introduction of an exception (apavāda) to the general rule that fathers may not alienate ancestral assets without the consent of their agnatic families.⁴⁰ Viśvarūpa's comments were obviously an inspiration for Vijñāneśvara, but the *Mitākṣarā* tests Viśvarūpa's theory against a broader body of śāstric law.⁴¹

Vijñāneśvara elevates the theory of janmasvatva from an extra-legal custom to the status of law. In doing so he is likely indebted to Medhātithi's commentary on the *Mānavadharmasāstra*, the *Manubhāṣya*.⁴² Medhātithi's *Manubhāṣya* (9th-11th Century) is one of the best known and earliest commentaries on the *Mānavadharmasāstra*. The *Bhāṣya*, often lauded for its balance between brevity and subtlety, represents the first substantial discussion of theories of ownership by birth in Dharmaśāstra.⁴³ In contrast to Davis' assertion that Medhātithi was an opponent of janmasvatva, Medhātithi explicitly, if tepidly, testifies to a son's proprietary right as a result of his birth as a matter of custom (ācāra). Like Viśvarūpa, Medhātithi applies the concept of pre-partition svāmya/svatva as an analytical tool to address thorny issues in inheritance, but he doesn't advocate a distinctive position. Medhātithi serves as an index of the state of janmasvatva before Vijñāneśvara: there are statements concerning ownership by birth that are attributed to virtuous people

³⁹ Rosane and Ludo Rocher, "Ownership by Birth," 250; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 283: tasmāt paitṛke paitāmahe ca dravye janmanaiva svatvam.

⁴⁰ Rosane and Ludo Rocher, "Ownership by Birth," 250; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 283: eko 'pi sthāvare kuryād dānādhamanavikrayam / āpādkāle kuṭumbārthe dharmārthe ca viśeṣataḥ //

⁴¹ Vijñāneśvara acknowledges Viśvarūpa's influence in an introductory verse. See *Mitākṣarā* on *Yājñavalkyasmṛti* 1.1, 1: yājñavalkyamunibhāṣitam muhur **viśvarūpavikaṭoktivistṛtam** / dharmasāstram rjubhir **mitākṣarair bālabodhaye** vivicyate //

⁴² For Medhātithi's date and works, see Kane, *HDS*, 1.2: 573-583.

⁴³ See J. Duncan Derrett, "The Concept of Law According to Medhātithi, a pre-Islamic India Jurist," in *Essays in Classical and Modern Hindu Law*, Vol 1 (Leiden: Brill, 1976): 174-197.

(ācāryas), but they are neither recognized as *smṛti* nor are they applied consistently to a comprehensive model of inheritance.

In a discussion of whether a son's qualities or his caste should determine his relative worth in relation to inheritance, Medhātithi argues that caste is the most important factor because "the ācāryas say that one who is born has ownership of assets."⁴⁴ On Manu 9.202, Medhātithi argues that separated, co-uterine sons might still partake of a partition when their father dies because "one who is born is called a *svāmin*."⁴⁵ Medhātithi immediately limits this description of ownership by birth - referring the reader back to an earlier verse of Manu (9.104) - which describes sons as 'powerless/non-independent' in regard to paternal assets during the lifetime of their parents - and explains that Manu 9.104 shows that ownership (*svāmya*) accrues to sons immediately after the death of their father.⁴⁶

Manu 9.209 states that "if a father recovers lost ancestral assets, he shall not, unless he so wishes, share it with his sons, being as it is his self-acquired assets."⁴⁷

⁴⁴ *Manubhāṣya of Medhātithi, Vol. II-III*, ed. Ganganatha Jha (Calcutta: Asiatic Society of Bengal, 1939), 291; *Manusmṛti: The Laws of Manu with the Bhāṣya of Medhātithi, Vol. IV, Part 1* (Calcutta: University of Calcutta, 1924), 173: *samavarṇāsu ye jātāḥ sarve putrā dvijanmanām / uddhāram jyāyase dattvā bhajeraṇ itare samam //Manu 9.165// jāter atyantamānyatvāt. 'utpanno vārthasvāmyam ity ācāryā' iti.*

⁴⁵ *The Laws of Manu with the Bhāṣya of Medhātithi, Vol. V*, 176; *Manubhāṣya of Medhātithi, Vol. II-III*, 302: *sodaryā vibhajerams tam sametya sahitāḥ samam / bhrātaro ye ca saṃsrṣṭā bhaginyaś ca sanābhayaḥ // yata uktam - samutpanno vācyāḥ svāmīti.* The logic here is subtle: Medhātithi argues that because Manu 9.202 mentions co-uterine (*sodaryā*) and un-separated (*saṃsrṣṭa*) brother *separately*, separated co-uterine brothers must have a proprietary right. 'The Ācāryas...' is one of the most hotly contested *smṛti* passages in the history of Indology. See, for example Julius Jolly, *Outlines of an History of the Hindu Law of Partition, Inheritance and Adoption* (Calcutta: Thacker, Spink and Co., 1883), 110, where he argues that: "Vijnāneśvara or his predecessors, from whom he may be supposed to have borrowed his theory, came to fabricate a text, in which the doctrine that property is by birth is attributed to the holy teachers... and to attribute this text to the Sage Gautama, who was looked to as the principal authority in regard to the sources of ownership."

⁴⁶ *The Laws of Manu with the Bhāṣya of Medhātithi, Vol. V*, 176; *Manubhāṣya of Medhātithi, Vol. II-III*, 302: *anīśās te hi jīvatoḥ iti tatra pitur ūrdhvam samanantaram eva putrāṇām svāmyam darśayati.*

⁴⁷ *The Laws of Manu with the Bhāṣya of Medhātithi, Vol. V*, 172; *Manubhāṣya of Medhātithi, Vol. II-III*, 301: *paitṛkam tu pitā dravyam anavāptam yad āpnuyāt / na tat putrair bhajet sārddham akāmaḥ svayam arjitam //*

The assumption underlying Manu's comment appears to be that in other circumstances, a father *must* share it with his sons. Medhātithi argues that:

If, for so long as they are minors (lit. not full-grown), sons are owners (of ancestral assets), then (when they are adults), because sons are in no way different (than fathers with respect to those ancestral assets), all (fathers and sons) partake of the assets of the grandfather (during a division of assets) because the division of inheritance is preceded by ownership (svatva).⁴⁸

Medhātithi admits that sons have a proprietary right in ancestral assets and argues that a father, upon the birth of his son, should not mortgage or sell his assets with the exception of using said assets to support the family properly (yoga).⁴⁹

Medhātithi adds a cautionary note, relating that:

In actual practice (ācāreṇa), even though, in this stage of (their) life (asyām avasthāyām), sons have ownership (svāmya) (in ancestral assets), sin (on the part of sons) dividing (the ancestral assets against the will of their father), is inferred on the strength of seeing (in smṛti) admonitory verses (such as) 'and divided by an unwilling father.'⁵⁰

Medhātithi is clearly aware of the moral hazard of emphasizing the coextensive proprietary rights of fathers and sons in paternal assets. Indeed, he argues that because exercising one's proprietary right against the will of one's father is not dharmic, a son should obtain assets through means other than from paternal assets.⁵¹ In fact, if sons were to force their father to partition paternal assets, then that would be like someone who receives improper gifts - there would be svāmya, but there would also be sin on the part of the son.⁵²

⁴⁸ *Manubhāṣya of Medhātithi, Vol. II-III*, 302, Mb on Manu 9.209: saty api ca putrasya svāmye yāvad apraptās tāvat sarvathā viśeṣābhāvāt sarve pitāmahanabhājah svatvapūrvakatvād vibhāgasya.

⁴⁹ *Ibid.*, Mb on Manu 9.209: bandhakrayādikriyāsu pitṛdhanam jātaputreṇa na viniyoktavyam. yogakuṭumbabharanādaḥ tu viniyogo darśitaḥ.

⁵⁰ *Ibid.*, 302, Mb on Manu 9.209: ācāreṇa saty api cāsyām avasthāyām putrāṇām svāmye 'pitṛā cākāmena vibhaktān,' iti nindādarśanād balād vibhājayantaḥ pāpā ity anumīyate.

⁵¹ *Ibid.*, 302, Mb on Manu 9.209: ataḥ sambhavaty upāyāntare na pitārthanīyaḥ. adharmo hi tathā syāt.

⁵² *Ibid.*, 302, Manu 9.209: yāthāsakṛta[sat?]pratigraheṇa bhavati svāmyam doṣas tu puruṣasya. The edition is misprinted. Asatpratigraha 'receiving from an unworthy person' is a common trope in Dharmasāstra.

In contrast to Medhātithi, Vijñāneśvara elevates this morally ambiguous custom of ownership by birth to the status of law by linking a theory of mediate and immediate dāya with the sūtras of Gautama outlining śāstric means of acquiring assets. Vijñāneśvara quotes a passage from the *Gautamadharmasūtras*: “one becomes an owner by inheritance, purchase, partition, garnering, or discovering.”⁵³ For Vijñāneśvara, inheritance (riktha) means apratibandhadāya and partition (samvibhāga) means sapratibandhadāya.⁵⁴ Further, according to Vijñāneśvara, “the following Gautama [Dharmasūtra] text proves the point: the teachers say that one becomes an owner right from birth.”⁵⁵ The difference between Medhātithi and Vijñāneśvara might seem trivial - the former quotes what might well be a popular maxim while the latter places this maxim within the *Gautamadharmasūtras* which list the ways in which one becomes an owner. Vijñāneśvara’s *Mitākṣarā*, however, abandons Medhātithi’s moral uncertainty: for Vijñāneśvara ownership by birth is not an undesirable but acknowledged practice - it is the central pillar of his model of inheritance. Virtually every Dharmaśāstrin after Vijñāneśvara would characterize the phrase “the teachers say that one becomes an owner right from birth” as “that sūtra of Gautama which appears in the *Mitākṣarā*.”⁵⁶

⁵³ Rosane and Ludo Rocher, “Ownership by Birth,” 245; *Dharmasūtras Parallels: Containing the Dharmasūtras of Āpastamba, Gautama, Baudhāyana, and Vasiṣṭha*, ed. Patrick Olivelle (Delhi: Motilal Banarsidas, 2005), 211: svāmī rikthakrayasaṁvibhāgaparigrahādhiḡameṣu brāhmaṇasyādhikam labdham kṣatriyasya vijitam nirviṣṭam vaiśyaśūdrayoḡ.

⁵⁴ *Mitākṣarā*, 282: tatrāpratibandho dāyo riktham... samvibhāgaḡ sapratibandho dāya.

⁵⁵ Rosane and Ludo Rocher, “Ownership by Birth,” 249; *Yājñavalkyasmṛti: with the Mitākṣarā* on *Vijñāneśvara*, 2.114, 283: tathoṡpattyaivārthasvāmitvam labhetety ācāryāḡ iti **gautamavacanāt**. Cf, *Smṛticandrikā*, Vol. III, Part 2, ed. L. Śrīnivāsācārya (Mysore, Government Oriental Library, Government Oriental Library Series, Bibliotheca Sanskrita, 1916), 603: tathāca paitṛkadhanaalābhahetutvenoktam **gautamenaiva** - ‘utpattyaivārthasvāmitvam labhetety ācāryaḡ.’

⁵⁶ Raghunandana refers to the phrase attributed to Gautama as “the text of Gautama... cited in the *Mitākṣarā*” probably to indicate its lack of complete authenticity and Śrīkrṣṇa (in his commentary on the *Dāyabhāga*, 2.21) states that it is spurious (amūla). Cf Kane, *HDS*, III, 557-8, fn. 1041. Cited in the apparatus to *Vivādatāṇḡava*, 1949, 2: **mitākṣarādhr̥tagotamavacanam** amūlaḡ. Also, see *Sontheimer, The Joint Hindu Family*, 93. For Aparāditya’s defense of a similar position see *HDS*, III, 557, fn. 1040.

1.A.3: The (Extra)Śāstric Nature of Ownership

Vijñāneśvara's attempts to elevate a custom - that does not appear in any known edition of the *Gautamadharmasūtras* - to the status of law forced him to justify an extra-śāstric (laukika) theory of janmasvatva. As Derrett notes, "had he and his followers *seriatim* been convinced of the genuineness of this text and its interpretation it would have been quite unnecessary for them to consider... whether Property might be secular and capable of causes apart from the methods of acquisition laid down in the *smṛti*-texts."⁵⁷ Although Medhātithi refers very sparingly to ownership and to the acquisition thereof as secularly established or extra-śāstric, Vijñāneśvara is the first Dharmaśāstrin to take up the issue with any seriousness. He is certainly the first Dharmaśāstrin to tie a secular theory of ownership to the problem of inheritance. Vijñāneśvara introduces the issue by asking: "must the ways in which one becomes an owner be derived solely from the *śāstras*, or are there other ways of becoming an owner?"⁵⁸ This question is central to Vijñāneśvara's broader argument because 'birth' is, at least up to this point in time, nowhere mentioned in *smṛti* as a source acquiring ownership.

Vijñāneśvara's pūrvapakṣin objects to a secular theory of ownership on the grounds that it would render the *smṛtis*, which list various means of acquiring assets, superfluous; it would legally recognize the ownership of thieves and other

⁵⁷ J. Duncan Derrett, "The Right to Earn in Ancient India: A Conflict between Expediency and Authority," *Economic and Social History of the Orient*, 1., No. 1 (1957): pp. 66-97, 81, fn 1

⁵⁸ Rosane and Ludo Rocher, "Ownership by Birth," 242; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 280: kim śāstraikasamadhiḡamyam svatvam uta pramāṇāntarasamadhiḡamyam iti.

undesirables; and it would reduce ownership to a matter of mere possession.⁵⁹

Consequently, Vijñāneśvara's opponent makes a convincing case that ownership should be discernible from the śāstra alone (śāstraikasamadhigamyatva).⁶⁰

Vijñāneśvara's opponent is likely Saṅgrahakāra or Dhāreśvara.⁶¹ Dhāreśvara and Saṅgrahakāra's views first (and only) appear in the *Smṛticandrikā* of Devaṅṇabhaṭṭa, a 13th Century follower of Vijñāneśvara, who records a verse and a half from the *Smṛtisaṅgraha* that makes the argument clearer:

It is surely not the case that the owner of an asset is the one in whose hand it lies. For is it not the case that one's property can be in the hands of others because of theft and the like? Therefore ownership should be (known) from śāstra alone, not also from custom/secular experience.⁶²

Devaṅṇabhaṭṭa also records a verse from Saṅgrahakāra which states: "One cannot say that one's property is whatever he uses as he desires, for the *use* of everything is restricted by the śāstra."⁶³ The pūrvapakṣin attempts to argue that even if the *production* of ownership were secularly established, the *use* of one's property is regulated by the śāstras and consequently one cannot define ownership in terms of use as desired.

⁵⁹ For the superfluity of smṛti, see Rosane and Ludo Rocher, "Ownership by Birth," 242; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 281: **gautamavacanāt** 'svāmī rikthakrayasaṃvibhāgapariḡrahādhighameṣu brāhmaṇasyādihikam labdham kṣatriyasya vijitam nirviṣṭam vaiśyaśūdrayoh' [Gautama 10.39-42] iti pramāṇāntaragamyatve svatve nedam vacanam arthavat syāt; For recognizing theft and reprobated acquisition, see *ibid.*, 242 & 281: adattādāyinaḥ sakāśād yājanādidvāreṇāpi dravyam arjayatām daṇḍavidhānam anupapannam syāt svatvasya laukikatve; and *ibid.*, 242 & 281: api ca laukikam cet svatvam mama svam anenāpahṛtam iti na brūyād, apahartur eva svatvāt. anyathānyasya svam tenāpahṛtam iti nāpahartuḥ svam. evam tarhi survarṇarajatādisvarūpavad asya vā svam anyasya vā svam iti śaṃśayo na syāt.

⁶⁰ Rosane and Ludo Rocher, "Ownership by Birth," 242; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 281: tatra śāstraikasamadhigamyam iti tāvad ukam...

⁶¹ For Saṅgrahakāra and Dhāreśvara, see P.V. Kane, *HDS*, I.2., 537-541 & 585-591 respectively. Vijñāneśvara refers to the views of the Saṅgrahakāra and Dhāreśvara, but not in the context of ownership. Indeed, it is only from Devaṅṇabhaṭṭa onwards that the *Smṛtisaṅgraha* and the *Mitākṣarā* are placed in apposition.

⁶² For Devanabhaṭṭa's date and context, see Kane, *HDS*, I.2., 737-741; *Smṛticandrikā*, Vol III, Part II, ed. L. Śrīnivāsācārya (Mysore: Government Oriental Library, 1916), 600: vartate yasya yad dhaste tasya svāmī sa eva na / anyasvam anyahasteṣu cauryadyaiḥ kim na vartate // tasmāc chāśtrata eva syāt svāmyam nānubhavād api /

⁶³ *Smṛticandrikā*, Vol III, Part II, 601: na ca svam ucyate tadvat svecchayā viniyuḡyate / viniyogo 'pi sarvasya śāstreṇaiva niyamyate //

Vijñāneśvara's response is that ownership is *laukika* because "people living in foreign lands" (*pratyantavāsins*) engage in commerce without any knowledge of the *śāstras* and because ownership allows people to engage in practical, secular activities.⁶⁴ Indeed, as Vijñāneśvara notes:

Ownership is a lay matter... [because it] allows people to engage in activities that have a lay purpose. It's like rice and such things, quite different from the *āhavanīya* and other fires used in the ritual, which rest solely on the *śāstras* and are not instrumental in performing lay [*laukika*] activities... Fires like the *āhavanīya* do not allow people to engage in lay activities in their role as sacrificial fires, but only inasmuch as they are viewed as plain fires.⁶⁵

Further, Vijñāneśvara dispenses with the question of theft by pointing out that theft is never recognized as a source of ownership in secular society.⁶⁶ Ownership is determined by an activity which is recognized in the secular world as a valid act of acquisition, not by a *śāstric* passage.⁶⁷ Vijñāneśvara's point is that

it is not the fact that an object is made either of gold or of something else that allows one to apply it to a purchase... [but rather the fact] that the buyer owns it... [for] he cannot apply to a purchase anything he does not own."⁶⁸

For Vijñāneśvara, because ownership was earlier proved to be secularly established, "there is no denying that the notion of sons and others gaining ownership by birth has an even stronger lay basis."⁶⁹ Vijñāneśvara is the first

⁶⁴ Rosane and Ludo Rocher, "Ownership by Birth," 244; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 281: *api ca pratyantavāsīnām apy adṛṣṭaśāstravyavahārāṇām svatvavyavahāro dṛśyate.*

⁶⁵ Rosane and Ludo Rocher, "Ownership by Birth," 244; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 281: *laukikam eva svatvam laukikārthakriyāsādhanatvāt vr̥thiyādivat. āhavanīyādīnām hi śāstragamyānām na laukikakriyāsādhanatvam asti... na hi tatrāhavanīyādirūpeṇa pākādisādhanatvam. kiṃ tarhi pratyakṣādīparidṛśyamānāgnīyādirūpeṇa.*

⁶⁶ Rosane and Ludo Rocher, "Ownership by Birth," 245; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 281: *na caitāvatā caurādīprāptasyāpi svatvam syād iti mantavyam. loke tatra svatvaprasiddhyabhāvāt vyavahāravisaṃvādāc ca.*

⁶⁷ Or, *via negativa*, if the act is dubious, the ownership is dubious, Rosane and Ludo Rocher, "Ownership by Birth," 246; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 282: Prologue to 2.114: *yad api svam anenāpahṛtam iti na brūyāt svatvasya laukikatva iti tad apy asat svatvahetubhūtakrayādisaṃdehāt svatvasaṃdehopapatteḥ.*

⁶⁸ Rosane and Ludo Rocher, "Ownership by Birth," 244; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 281: *iha tu suvarṇādirūpeṇa na krayādisādhanatvam api tu svatvenaiva. na hi yasya yat svam na bhavati tat tasya krayādyarthakriyām sādhayati.*

⁶⁹ Rosane and Ludo Rocher, "Ownership by Birth," 248; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 283: *atrocyate lokaprasiddham eva svatvam ity uktam. loke ca putrādīnām janmanaiva svatvam prasiddhataram nāpahnavam arhati.*

Dharmaśāstrin to have addressed those objections to a secular theory of ownership that would be identified later with the Saṅgrahakāra. Vijñāneśvara is also the first Dharmaśāstrin to use that theory to answer an opponent who argues that “one does not gain ownership by birth, but either when the prior owner disappears, or when he [the prior owner] initiated partition.”⁷⁰

Perhaps Vijñāneśvara’s comments in the *Mitākṣarā* are a response to the Saṅgrahakāra and Dhāreśvara, but we lack the ability to be certain. Devaṅṇabhaṭṭa’s paraphrase of Dhāreśvara represents what appears to be a much later stage of the debate about the nature of ownership. It is striking that neither Vijñāneśvara, Viśvarūpa nor Medhātithi actually offer a definition of svatva or svāmitva. This seems to support Kroll’s view that rigorous definitions of ownership are absent from medieval Dharmaśāstra. However, Saṅgrahakāra’s arguments hint at a debate within Mīmāṃsā which played a central role in the development of a *Mitākṣarā*-centered stream of Dharmaśāstra.

Before turning to the relationship between Dharmaśāstra and Mīmāṃsā in the following section, I want to emphasize that from a purely *jurisprudential* standpoint, Vijñāneśvara’s *Mitākṣarā* marks a turning point. One can argue that bits and pieces of the *Mitākṣarā*’s theory of janmasvatva and the *Dāyabhāga*’s theory of upamasvatva existed before Vijñāneśvara. This, rather than an absence of institutional appendices, is the essence of Rocher and Davis’ opposition to identifying Vijñāneśvara as a ‘founder’ of a ‘school of thought’ about inheritance and ownership - what I call a school of jurisprudence. My survey of Viśvarūpa and Medhātithi suggests that Rocher and Davis’ views are anachronistic: it is

⁷⁰ Rosane and Ludo Rocher, “Ownership by Birth,” 248; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 283: tasmān na janmanā svatvam kiṃtu svāmināśād vibhāgād vā svatvam.

extraordinarily difficult to see how Medhātithi and Viśvarūpa offer anything more than stray, unconnected comments. Such an anachronistic perspective is also contrary to the basic fact that great, influential thinkers like Vijñāneśvara, Mammaṭa, or Patañjali were not influential because they invented their systems *ex nihilo* but because they consolidated the fragmented ideas of earlier thinkers - that they set the boundaries of the scale of texts within which later authors would develop the tradition. In combining the definition of *dāya* with a theory of mortgages and by linking the resulting theory of *apratibandhadāya* and *sapratibandhadāya* with a select series of *smṛti śloka*s, Vijñāneśvara set the general boundaries within which the debate about inheritance would unfold for several centuries, until the emergence of the *Dāyabhāga* in the sixteenth century. Further, by appealing to an extra-śāstric theory of *svatva*, Vijñāneśvara inaugurated a debate concerning ownership and inheritance in which *Mīmāṃsā* would play a prominent role. In this sense, Vijñāneśvara was very much the founder of a distinctive, *Mitākṣarā* school of jurisprudence regarding ownership and inheritance.

1.B: Consolidating *Mīmāṃsā*

In this section I take up the relationship between the *Mitākṣarā* and *Mīmāṃsā*. In the previous section I examined the purely *legal* side of Vijñāneśvara's consolidation of earlier debates concerning *janmasvatva*. In this section, I take up the *philosophical* side of Vijñāneśvara's innovation in the *Mitākṣarā*. The distinction between law and philosophy is notoriously ill-defined and often blurred, but I use it here to draw the reader's attention to the difference between *what* the *smṛtis* say regarding ownership and inheritance and *how* one ought to characterize the *smṛtis* in relation to the other śāstric disciplines.⁷¹ In doing so I aim to reinforce my argument

⁷¹ For law and philosophy, see Mark Tebbit, *Law and Philosophy: An Introduction* (Routledge, 2017).

from the previous section - that Vijñāneśvara's *Mitākṣarā* marks a turning point in the Dharmaśāstric approach to ownership and inheritance - by tying Vijñāneśvara's legal defense of janmasvatva with a Prābhākara-Mīmāṃsā theory of ownership as a secularly established entitlement for use as (yatheṣṭaviniyogārhatā).

This section argues that Vijñāneśvara's theory of janmasvatva was intimately connected with the theory of secular ownership as developed in the Prābhākara school of Mīmāṃsā. In positing the efficacy of extra-śāstric modes of acquiring assets, Vijñāneśvara found a convenient ally in the *Bṛhatī* of Prabhākara and possibly the *Rjuvimalāpañcikā* of Śālikanātha. The earliest Dharmaśāstras (the smṛtis and sūtras), like the *Mīmāṃsāsūtras*, say little to nothing about the nature of ownership. It was only with the Mīmāṃsā commentaries of Śabara, Prabhākara and Śālikanātha that ownership and its relationship to the sacrifice and to the secular world was interrogated. Their theory of ownership - as that which is fit to be used according to its acquirer's intentions - was surely not the 'what I hold I own' theory advanced by Kroll and Derrett.⁷² Even at so early a stage of development as the *Mīmāṃsābhāṣya*, there was a concern about the moral rectitude of an act of acquisition. These early Mīmāṃsā theories of ownership were applied, increasingly as time wore on, by early Dharmaśāstra commentators such as Viśvarūpa and Medhātithi to solve thorny legal concerns such as adverse possession, the ownership of land and joint family inheritance. What sets Vijñāneśvara's *Mitākṣarā* apart from its predecessors is the depth of its reliance on Prābhākara-Mīmāṃsā and its use of Mīmāṃsā-reasoning to tackle concerns about the moral propriety of placing the question of legal ownership outside of śāstric regulation.

⁷² See Kroll, "A Logical Approach to Law," 37, where he identifies Pārthasārathimīśra as making "a regressive move."

This section makes three arguments which relate to the way in which Mīmāṃsā theories of ownership influenced the development of a *Mitākṣarā* school of jurisprudence: 1) that as early as Śabara (4th Century C.E.) Mīmāṃsakas began to wrestle with the metaphysics of ownership; 2) that the Prābhākara-Mīmāṃsakas Prabhākara and Śālikanātha agreed - against the Kaumarila-Mīmāṃsakas - that ownership was characterized by moral *propriety* rather than practical *possession*; and 3) that although Viśvarūpa and Medhātithi sporadically employed these Prābhākara theories of ownership to address thorny legal conundrums, Vijñāneśvara was the first Dharmasāstrin to extend their dual vision of *svatva* as *puruṣārtha* and *laukika* to the defense of *janmasvatva*.

1.B.1: Ownership in Śabara's *Bhāṣya*

Turning to the earliest Mīmāṃsā source on ownership and acquisition - Śabarasvāmin's (4th Century C.E.) commentary on the *Mīmāṃsāsūtras*, the *Śābarabhāṣya*, I want to argue against Ethan Kroll's assertion that:

Śabara provides little insight into the meaning of *svatva*, and references to *svatva* by early commentators on his work are equally spare... the difficulty for him lies in ascertaining whether, and how, that *saṃbandha* should be created when the donee is not a real human being.⁷³

Śabara explicitly mentions *svatva* in six places in the *Śābarabhāṣya* - all in relation to giving (*dāna*) or to sacrificing (*yāga/tyāga*), but he never gives an explicitly defines the term.⁷⁴ I argue that we can reconstruct a sophisticated and consistent understanding of the conceptual content of Śabara's theory of ownership (*svatva*) - as a fitness for use as desired - through a reading of how Śabara analyzes three instances of *svatva*; the acquisition of assets, divine ownership, and the limits of 'giving all' in the Viśvajit sacrifice. My contention is that Śabara is the earliest sāstrin

⁷³ Kroll, "A Logical Approach to Law," 29.

⁷⁴ Kroll, "A Logical Approach to Law," 28-29: According to Kroll the six places are: ŚB on MS 2.2.1, 3.3.44, 4.1.30, 4.2.28, 6.7.1-2, and 10.3.50.

to define ownership in terms of a secularly established fitness for use as desired, and that Śābara laid the foundation for the subsequent development of the Prābhākara-Mīmāṃsā theory of ownership that served as the cornerstone of the *Mitākṣarā* school of inheritance.

Śābara hints at a more sophisticated understanding of *svatva* in the fourth *adhyāya* of the *Mīmāṃsāsūtras*, where he examines the distinction between those activities whose primary purpose is the support of the Vedic ritual (*kratvartha*) and those activities whose primary purpose is the pleasure of people (*puruṣārtha*).⁷⁵

Śābara's most important argument in defense of the acquisition of assets as *puruṣārtha* - that if ownership existed merely for the purpose of conducting *yāgas*, there would be no ownership *outside* of a ritual context - concerns, implicitly, the issue of the fundamental nature of ownership itself.⁷⁶ In brief, one might wonder whether ownership is inherently a ritual activity given that the performance of the ritual itself depends on (owned) assets.⁷⁷ Śābara flips the script on his opponent and

⁷⁵ *Mīmāṃsādarśana*, Vol. IV, ed., V.G. Apte (Pune: Anandashrama Press, 1932), 1193, Ms 4.1.1: athātaḥ kratvarthapuruṣārthayor jñānāsā. Śābara frames this distinction as a question of *motive*, i.e. why an individual would choose to carry out a particular Vedicly prescribed command (*vidhi*). The *Mīmāṃsāsūtras*, *Mīmāṃsādarśana*, Vol. IV, 1194, Ms 4.1.2, define *puruṣārtha* as: yasmin prītiḥ puruṣasya tasya lipsārthalakṣaṇāvibhaktatvāt. Jha, trans., *Śābarabhāṣya*, Vol. II, (Baroda: Baroda Oriental Institute, 1934), 709, translates this as “that upon which follows the happiness of man; because its undertaking is due to the man’s desire to obtain happiness and [the man’s purpose] is not different [from happiness].” Śābara adds that such actions proceed exclusively from a (secular) desire for benefit rather than from a *sāstric* injunction. Śābara defines *kratvārtha* as the opposite to *puruṣārtha* and argues that *kratvartha* activities are known *only* from the *sāstra*, i.e. the Vedas. See *Mīmāṃsādarśana*, Vol. IV, 1194, Śb on MS 4.1.2: tasya lipsārthalakṣaṇā. tasya lipsārthenaiva bhavati, na sāstreṇa. kratvartho hi sāstrād avagamyate, nānyathā... puruṣārthe lakṣite, tadviparitaḥ kratvartha iti kratvarthasya lakṣaṇaṃ siddham. The basic distinction is that some actions, such as pouring ghee into a fire at a particular time or invoking a particular *devatā* in a ritual, are enjoined by the Veda without reference to a particular ‘fruit’ (*phala*). Sometimes a sacrificer is ordered to invoke a *devatā* or press Soma at a specific juncture *merely because it is enjoined by the Veda*. At other times, an activity - such as acquiring assets or having children - has a patently obvious reward for the person who performs it.

⁷⁶ *Mīmāṃsādarśana*, Vol. IV, 1197: Śb on Ms 4.1.2.2: atha yad uktam, niyamavacanam anarthakam, puruṣārthe dravyaparigrahe satīti. ucyate... na ca parokṣam pratyakṣasya bādhakam bhavati. The issue for Śābara is that the *pūrvapakṣin* must indirectly postulate (*parokṣam yuktibuddhyā*) a reason for the acquisition of assets. This is, in Śābara’s estimation, insufficient to displace the visible pleasure which assets bring to individuals.

⁷⁷ *Mīmāṃsādarśana*, Vol. IV, 1195-6: Śb on Ms 4.1.2.2: tasmād yajatiśrutigrhītaṃ dravyārjanaṃ yena vinā yāgo nivartate, sa yāgasya śrutayā parigrhīta iti gamyate. tasmāt kratvartha iti.

argues that if the acquisition of assets were kratvartha then there could be no sacrifice at all:

And further, if the acquisition of assets is for the sake of the sacrifice because of the śāstra, then it (a given asset), so acquired, could not be used (viniyujyeta) anywhere else (i.e. in any non-ritual way). Then there would be the complete elision of all sacrifices.⁷⁸

Śabara's comments imply a connection between ownership and use - where the key word is the optative of the root √yuj, 'to use.' Śabara makes this connection explicit in the ninth adhyāya of the *Mīmāṃsāsūtras* where he argues against the view that the Gods might have ownership.⁷⁹ Śabara argues that phrases such as "the deity's village" or "the deity's field" must be understood as figurative usages of the word "the deity's."⁸⁰ Śabara invokes what appears to be a maxim concerning what qualifies as one's property (svam):

Something is someone's property (when) someone is able to use it as desired (yad abhipretam viniyoktum arhati tat tasya svam). And a deity does not use a village or a field as it desires. Therefore one can't say 'he bestows (ownership on the deity).' That which is abandoned, having been offered to the deity, however, becomes the wages of the deity's attendants (devapariçārakas).⁸¹

⁷⁸ *Mīmāṃsādarśana*, Vol. IV, 1196: Śb on Ms 4.1.2.2: api ca, yadi śāstrāt karmārtham dravyārjanam, tan nānyatra viniyujyeta tathārjitam. tatra sarvatantparilopaḥ syāt.

⁷⁹ *Mīmāṃsādarśana*, Vol. V, 1651: Śb on Ms 9.1.7: ārthapatyā ca. evaṃ hi smaranti. arthānām iṣṭe devateti. tathā, devagrāmo devakṣetram ity upacāras tām eva smṛtim draḍhayati. Cf, S.C. Bagchi, *Juristic Personality of Hindu Deities* (Calcutta: University of Calcutta, 1931), 70. For Mīmāṃsā theories of God, see Francis X. Clooney, "Why the Veda Has No Author: Language as Ritual in Early Mīmāṃsā and Post-Modern Theology," *Journal of the American Academy of Religion* 55.4 (1987): 659-684; and Francis X. Clooney, "What's a God? The Quest for the Right Understanding of *Devatā* in Brāhṇical Ritual Theory (*Mīmāṃsā*)," *International journal of Hindu Studies* 1.2 (1997): 337-385

⁸⁰ *Mīmāṃsādarśana*, Vol. V, 1656: Śb on MS 9.1.9: upacāro 'pi devagrāmo devakṣetram ity upacāramātram.

⁸¹ *Mīmāṃsādarśana*, Vol. V, 1656: Śb on MS 9.1.9: yo yad abhipretam viniyoktum arhati tat tasya svam. na ca grāmam kṣetram vā yathābhiprāyam viniyuṅkte devatā. tasmān na samprayacchatīti. devapariçārakānām tu tato bhṛtir bhavati, devatām uddiśya yat tyaktam.

One might argue that the deities *can* make use of their assets through temple priests who act in accordance with the deity's wishes.⁸² Śabara's response offers the most concrete definition of what constitutes a proprietary relation:

This is not right; what is vouched for by direct Perception is that the things are used according to the wish of the Temple-priests themselves... In fact, even those who speak of the Deities as possessing the things, do not deny the will of the Priests (as determining the actual use of the things); in fact, they themselves say that 'the Deity does as the attendant priests desire'; and that person who follows the will of another and who cannot make use of the things according to his own desire cannot be the *owner* of those things.⁸³

One application of this theory of ownership - as fitness for use - appears in seventh pāda of the sixth adhyāya of the *Mīmāṃsāsūtras*, where Śabara discusses the Viśvajit sacrifice, in which one is enjoined to give away all one's property (sva) without exception.⁸⁴ Śabara argues that proprietary svatva extends only to that which one has under their "control" (prabhutva).⁸⁵ Although one could not give one's parents *as parents* to another person - in the sense of ending his svatva and creating another's svatva - one could give one's parents *as servants*.⁸⁶ Śabara concedes the *alienability* of one's relatives in the capacity of a servant, but he argues that such a practice is 'illegal,' or 'inappropriate' (na nyāyya).⁸⁷ Śabara's comments imply a distinction between two kinds of svatva - that svatva which denotes a general relationship to an individual and that svatva which denotes a proprietary relationship

⁸² Ganganatha Jha, trans., *Śābarabhāṣya*, Vol. V, 1436; *Mīmāṃsādarśana*, Vol. V, 1656: Śb on Ms 9.1.9: yad eva lokā arthān viniyuñjate, tad devatābhiprāyād evety adhyavasyāma iti.

⁸³ Ganganatha Jha, trans., *Śābarabhāṣya*, Vol. IV, 1436; *Mīmāṃsādarśana*, Vol. V, 1656: Śb on Ms 9.1.9: tan na. pratyakṣāt pramāṇād devatāparicārakāṇām abhiprāya ity avagamyate. sa na śakyo bādhitum. ye 'pi devatām īśānām varṇayanti, te 'pi nāpahnvate paricārakāṇām abhiprāyo bhavati. na ceśāno bhavati yaḥ parābhiprāyam anurudhyate, yasya na svābhiprāyād viniyogo bhavati.

⁸⁴ *Mīmāṃsādarśana*, Vol. IV, 1492, MS 6.7.1: svadāne sarvam aviśeṣāt.

⁸⁵ *Mīmāṃsādarśana*, Vol. IV, 1492, MS 6.7.2: yasya vā prabhūḥ svād itarasyāśakyatvāt.

⁸⁶ *Mīmāṃsādarśana*, Vol. IV, 1492, MS 6.7.1: nanu dānam ity ucyate svatvanivṛttiḥ, parasvatvāpādanam ca. tatra pitṛādīnām aśakyam svatvam nivartayitum. na hi kathamcit pitā na pitā bhavati. ucyate. satyam nāsau na pitā bhavati. śakyate tu paravidheyaḥ kartum. parasvatvāpādanam ca dānam dadāter arthaḥ.

⁸⁷ *Mīmāṃsādarśana*, Vol. IV, 1492, Śb on Ms 6.7.2: na caitan nyāyyam, yat pitṛādīnām paricārakatavam.

to an individual characterized by one's ability to use and alienate that item (or person) as one desires. Śabara's distinction between family as family and family as property would have been relevant in ancient India in which epigraphical and Dharmaśāstra records suggest that fathers sometimes sold their wives, sons, and daughters as property, but not the other way around.⁸⁸

To conclude, our review of Śabara's thoughts on ownership illuminates four essential points that are significant for the later intellectual history of ownership that developed in Mīmāṃsā and Dharmaśāstra literature. First, Śabara is the first Śāstrin to introduce a comprehensive, if often implicit, understanding of ownership as a relationship (sambandha) between an owner (svāmin) and property (sva), characterized as an entitlement (arhatā) to be used (√yuj) as one desires (yadabhipreta). Second, usability is subject to practical and moral limitations: one cannot give away a familial relationship and one should surely not give away one's family members in the capacity of slaves. Third, śāstric rules governing the acquisition of ownership have an invisible, moral force rather than a visible, legal force. All three concepts received extended treatment by later Mīmāṃsakas and were of great utility in the unfolding of the Dharmaśāstra debate concerning ownership in general and inheritance in particular.

Even if Śabara does not offer an explicit definition of svatva or svasvāmīśambandha in the *Bhāṣya*, his formulation, "yo yadabhipretam viniyoktum arhati tat tasya svam" is, in practice, a definition of svatva. If so, Śabara's proto-yatheṣṭaviniyoga understanding of svatva is the earliest attested instance of such a

⁸⁸ See Nirmal Chandra Chatterjee, "Patria Potestas in Ancient India," in *2 AIOC* (Calcutta: University of Calcutta, 1922): pp. 365-77; J.D. Derrett, "Prohibition and Nullity: Indian Struggles with a Jurisprudential Lacuna," *Bulletin of the School of Oriental and African Studies* 20 (1957): 203-215, 206, fn 1; and J.D. Derrett, "An Indian Contribution to the Study of Property," in *Essays in Classical and Modern Indian Law, Vol II* (Leiden: Brill, 1976): pp. 8-130, 492, fn 4.

concept in Sanskrit. Kroll supposes that the earliest formulation of such a theory is found in the work of Vācaspatimiśra the first (9th Century C.E.), but Śabara's comments push such a date back by at least four centuries.⁸⁹ Moreover, my analysis of the *Śābarabhāṣya* indicates the primacy of Mīmāṃsā over Nyāya in the history of the development of the concept of ownership in India - especially with regard to jurisprudence.

1.B.2: The Prābhākara-Mīmāṃsā Theory of Ownership

Turning to the next layer of Mīmāṃsā discussion concerning ownership - Prabhākara's *Bṛhatī* and Śālikanātha's *Ṛjuvimalāpañcikā* - I want to address two of Kroll and Derrett's largest misconceptions about the development of the Mīmāṃsā theory of ownership.⁹⁰ Derrett and Kroll characterize the Mīmāṃsā as advocating a regressive theory of ownership as mere possession. Derrett views Vijñāneśvara's use of Prabhākara's secular theory of ownership as the cynical move of a Brahman "pathetically keen" to prove the validity of his community's often questionable titles to various assets obtained through questionable means.⁹¹ Derrett, tracing the evolution of *svatva* as *laukika* in the Prābhākara and *Mitākṣarā* schools, states boldly:

Following Prabhākara... Vijñāneśvara and his followers, with slight demur, in their eagerness to quieten anxiety as to titles commit themselves to the proposition that the ultimate source of information on the validity of acquisitions is popular recognition: a conclusion which we cannot but

⁸⁹ Kroll, "A Logical Approach to Law," 36-37: Kroll admits that Vācaspatimiśra, "provides no indication as to the source of *yatheṣṭaviniyogayogyatva*, and it is entirely possible his usage reflects a phrase common to contemporary scholarly parlance." I suggest that the earliest attestation of such scholarly parlance is Śabara's *bhāṣya*.

⁹⁰ For an overview of the difference between these schools, see Ganganatha Jha, *Pūrvamīmāṃsā in its Sources* (Benares: Benares Hindu University, 1942); and Ganganatha Jha, *The Prābhākara School of Pūrva Mīmāṃsā* (Allahabad: University of Allahabad, 1911). For an overview of the historical evolution of Mīmāṃsā, see Jean-Marie Verpoorten, *Mīmāṃsā Literature* (Wiesbaden: O. Harrassowitz, 1987); For more recent work on the school, see Elisa Freschi, *Duty, Language and Exegesis in Prābhākara Mīmāṃsā: Including an edition and translation of Rāmānujācārya's Tantrarahasya Śāstraprāmeyapariccheda* (Leiden, Brill, 2012).

⁹¹ J. Duncan Derrett, "The Right to Earn in Ancient India: A Conflict between Expediency and Authority," *Economic and Social History of the Orient*, 1.1 (1957): 66-97, 84.

deplore, especially when we bear in mind specific instances of the conflict between justice, law and common practice in such matters as tax evasion.⁹²

Kroll supports such a view implicitly when he contrasts Pārthasārathimiśra's definition of *svatva* as *yatheṣṭaviniyojyatva* with Vācaspatimiśra I's definition of *svatva* as *yatheṣṭaviniyogayogyatva*.⁹³ Kroll argues that there is a:

subtle, but vital, distinction. The term *yogyatva* (fitness) implies, as Vācaspati Miśra suggests, a notion of *aucitya* (propriety). *Aucitya* implies a system of laws, governance, or moral precepts to which action should conform. The risk, as Pārthasārathi would presumably acknowledge, is that *aucitya* inevitably restricts the use of assets to a particular sphere, namely, that sphere of activity deemed *ucita* (proper).⁹⁴

Kroll foregrounds identifies moral propriety (*aucitya*) as the primary concern of Nyāya and he identifies usability (*yojyatva*) as the primary concern of Mīmāṃsā. That Kroll and Derrett do not properly trace the Prābhākara-Mīmāṃsā theory of ownership accounts for why they fail to acknowledge the pains to which the Mīmāṃsakas go to offer a secular theory of ownership which conforms to ethical considerations of propriety and equity.

Admittedly, the Bhāṭṭa school of Mīmāṃsā appears to take a morally regressive view of ownership as possession. While Kumārila has relatively little to say about the nature of ownership, his commentator, Pārthasārathimiśra (10th Century), gives a famous definition of ownership as the ability to use an asset as one desires (*yatheṣṭaviniyojyatva*).⁹⁵ Pārthasārathimiśra argues that if we accept that ownership is the ability to use an asset as one desires, and if the acquisition (and use) of assets existed solely for the sake of sacrifices, there would be no ownership

⁹² *Ibid.*, 85-87.

⁹³ Kroll, "A Logical Approach to Law," 37-39.

⁹⁴ Kroll, "A Logical Approach to Law," 40.

⁹⁵ *Tantraratanam*, Vol. V, ed. Ganganatha Jha (Benares: Princess of Wales Sarasvati Bhavan Texts, No. 31, Part 1, 1930), 19: Tr on Tṭ on Ms 4.1.2: *yatheṣṭaviniyojyatvam hi svatvam*. Cf Kroll, "A Logical Approach to Law," 38; For the date of Pārthasārathimiśra, see Kroll, "A Logical Approach to Law," 37; and Jean-Marie Verpoorten, *Mīmāṃsā Literature*, 41-2.

because one could not use an asset *as one desires* outside of the sacrificial context.⁹⁶ If there is no ownership, then there could not be a sacrifice because one could not give one's *own* assets.⁹⁷ Consequently, says Pārthasārathimiśra, a śāstric restriction on how one acquires assets is subordinate to the act of acquisition itself and it is fair to postulate sin on the part of a man who acquires assets through a non-śāstric means and oversteps said restriction.⁹⁸

A more sophisticated, less regressive definition of ownership in terms of *entitlement* (arhatā) arose in the commentarial tradition of the Prābhākara school. Although Prabhākara makes little contribution to the theory of ownership, Śālikanātha is a groundbreaking figure. In the *Bṛhatī*, Prabhākara typically gives a brief gloss of Śabara's views, so it seems surprising that he had a significant impact on Dharmaśāstra.⁹⁹ Prabhākara makes two contributions: a statement that “acquisition which does not produce svatva is a contradiction in terms,” and a defense of svatva as a singular entity.¹⁰⁰ Like Pārthasārathimiśra, Prabhākara insists that overstepping śāstric restrictions on how one acquires assets will create a blemish for the acquirer but will not create a blemish for the sacrifice (that requires legal ownership on the part of the sacrificer/acquirer).¹⁰¹

⁹⁶ Ibid., 19: Tr on Tṭ on Ms 4.1.2: kevalakratvarthatve tv anyatrāviniyogād yatheṣṭaviniyojyvatvābhāvāt svatvābhāva iti. Cf Kroll, “A Logical Approach to Law,” 38-39.

⁹⁷ Ibid., 19: Tr on Tṭ on Ms 4.1.2: svīyadravyābhāvāt parityāgo nāstīti kratuvighātaḥ syāt.

⁹⁸ Ibid., 19: Tr on Tṭ on Ms 4.1.2: evam ca niyamasyārjanāṅgatvāt tadatikrame puruṣasyopāyāntareṅrjane pratyavāyaḥ kalpyate. Cf Kroll, “A Logical Approach to Law,” 39.

⁹⁹ For Prabhākara, see Jean-Marie Verpoorten, *Mīmāṃsā Literature*, 31-34.

¹⁰⁰ Rosane and Ludo Rocher, “Ownership by Birth,” 244; *Bṛhatī of Prabhākaramiśra with the R̥juvimalā of Śālikanātha*, Vol. IV, ed. S. Subrahmanyam Shastri (Madras: University of Madras Press, 1964), 962, Bṛ on Śb on Ms 4.1.2: arjanam svatvam nāpādayatīti vipratīṣiddham; *Bṛhatī*, 961-2, Bṛ on Śb on Ms 4.1.2: Atrocyate neme adhikārasūnyā niyamavidhayaś śakyante vaktum. Jīvanāya pravṛttā adhikṛtā bhaviṣyanti. Na ca śabdād evādhikāraḥ adhikārād eva hy adhikāraḥ. sa tu kvacit chabdāvagamyāḥ kvacit pramāṅāntarāvagamyāḥ. ataḥ svatvasyāviśeṣāt sarvapuruṣārthanirvṛttau na viśeṣaś śakyate ‘vadhārayitum. Prabhākara's pūrvapakṣin argues that there might be two svatvas because there are two reasons why one might be qualified to acquire assets: for personal support and for sacrifices. Prabhākara says that this is untenable.

¹⁰¹ *Bṛhatī*, Vol. IV, 965, Bṛ on Śb on Ms 4.1.2: tasmāt puruṣārthā dravyārjananiyamā iti sthitam. ato niyamātikramaḥ puruṣāyanarthaḥ na kratoḥ.

Śālikanātha (10th Century), author of the *Ṛjувimalāpañcikā*, a commentary on Prabhākara's *Bṛhatī*, presents the first comprehensive conception of svatva in Mīmāṃsā literature.¹⁰² The *Ṛjувimalā* is the missing link between Śābara's nascent definition of svatva as a *fitness* for use as one desired and Bhavanātha's definition of svatva as *yatheṣṭaviniyogārhatā* in the *Mīmāṃsānayaviveka*. Śālikanātha's innovations are threefold: he defines ownership as *yatheṣṭaviniyogārhatā*; he introduces the theory of ownership by birth; and he applies his theory of ownership to the problem of the Viśvajit sacrifice. Śālikanātha is arguably the first śāstrin to define svatva. Śālikanātha argues that the proper definition of ownership has been stated by the 'blessed commentator' Śābarasvāmin - 'yo yad yathābhiprāyam viniyoktum arhati tat tasya svam.'¹⁰³ Śālikanātha argues that what Śābara means to say is that svatva is an entitlement (*arhatā*) for use as desired and not (as Pārthasārathmiśra advocates) the mere use of an object as desired. After all, such a definition would over-extend to objects obtained through violent force, and would fail to extend to the assets of infants, lunatics and others who lack the legal capacity to engage in commercial transactions.¹⁰⁴

Śālikanātha gives the earliest account of the doctrine of ownership by birth. He states that "acquisition is of manifold from, sometimes (for example) birth, as in the case of paternal assets (*pañṭṛkeṣu*)."¹⁰⁵ Śālikanātha's defense of ownership by birth is linked to a model of secular ownership in which the modes of acquiring assets are known from secular usage: "entitlement (*arhatā*) exists for someone when

¹⁰² On Śālikanātha, see Jean-Marie Verpoorten, *Mīmāṃsā Literature*, 38-39.

¹⁰³ *Ṛjувimalā of Śālikanātha*, 962: Ṛj on Bṛ on Śb on Ms 4.1.2: ucyate, uktam hi **bhagavatā bhāṣyakāreṇa** 'yo yad yathābhiprāyam viniyoktum arhati tat tasya svam' iti.

¹⁰⁴ *Ṛjувimalā of Śālikanātha*, 962, Ṛj on Bṛ on Śb on Ms 4.1.2: atrāyam bhāvaḥ - na yatheṣṭaviniyoganibandhanam svatvam balātkārahṛteṣu atiprasaṅgāt. bālādihaneṣu aprasaṅgāc ca.

¹⁰⁵ *Ibid.*, 962, Ṛj on Bṛ on Śb on Ms 4.1.2 Bṛ on Śb on Ms 4.1.2: arjanam ca nānārūpam kvacij janma, yathā pañṭṛkeṣu.

acceptance and the like, which are the means of obtaining svatva and which are established in the secular world, are undertaken.”¹⁰⁶ Śālikanātha adds that one should infer that sometimes marriage is the cause of the production of svatva in the case of the joint assets of a husband and wife.¹⁰⁷ It is likely that Śālikanātha was aware of Dharmaśāstric texts or of floating maxims which assume such a theory of acquisition (from birth or marriage) and that his inference in the *Rjuvimalā* is an attempt to explain the apparent existence of a proprietary relationship in those instances without recourse to the formal lists of modes of acquisition in Gautama or Manu.¹⁰⁸

For example, when Śālikanātha comments on the giving of “the earth” in the Viśvajit sacrifice in the sixth adhyāya of the *Mīmāṃsāsūtras*, he argues that one cannot possibly give the entire globe, endowed with pastures, highways, water and the like.¹⁰⁹ However, svatva is secular and (presumably because of local, laukika convention) people *can* give a village and when they give a village, they are really giving the houses and fields which are delimited by the phrase, “a village.”¹¹⁰ Śālikanātha does not elaborate on the significance of his phrase “laukikam ca svatvam.” What the phrase seems to imply, in the context of the debate concerning the giving of ‘the earth,’ is that local convention dictates that people have a right to come and go (and draw water, etc) in common, public spaces.

¹⁰⁶ Ibid., 962, Rj on Bṛ on Śb on Ms 4.1.2: tena yatheṣṭaviniyogārhatayā svatvam, tadarhatā ca tatra tasya yatra pratigrahādayo loke prasiddhā upāyāḥ pravṛttāḥ.

¹⁰⁷ Ibid., 962, Rj on Bṛ on Śb on Ms 4.1.2: kvacit pariṇayaḥ yathā dāṃpatyoh dhanam ity evamādiṣūhanīyam. For the idea that ownership is equal between husbands and wives, see Sontheimer, *The Joint Hindu Family*, 11-14.

¹⁰⁸ We will see in the fourth chapter of this thesis that Rāmakṛṣṇabhaṭṭa went so far as to call “marriage” a form of “birth” for the sake of explain the commonalty of property between husbands and wives.

¹⁰⁹ *Rjuvimalā of Śālikanātha*, Vol V, 194, Rj on Bṛ on Śb on Ms 6.7.2: bhūgolakam gopatharājamārgajalādisamanvitam kṛtsnam eva dātum na śakyate...

¹¹⁰ *Rjuvimalā of Śālikanātha*, Vol V, 194, Rj on Bṛ on Śb on Ms 6.7.2: laukikam ca svatvam. ye tu grāmādikam dadati te ‘pi vāstukṣetrādikam eva dadatīti mantavyam. grāmas tu tadavacchedaka iti niravadyam.

This raises the question: what is the purpose of śāstric restrictions on ownership if the ways of acquiring ownership are determined from secular practice? For Śālikanātha, Dharmaśāstrins use the modes of acquiring assets that are established from secular usage in order to ward off confusion “as in the case of Vyākaraṇa and the like.”¹¹¹ Śālikanātha seems to imply that like grammar, Dharmaśāstra draws upon the collective practices of people outside of the Veda and selects some of these practices for particular praise and some of these practices for censure.

The first layer of commentary from the Prābhākara-Mīmāṃsakas makes explicit many of the implicit assumptions of Śabara’s theory of svatva. Śālikanātha’s *Ṛjuvimalā* marks a decisive change in the scale of Mīmāṃsā texts addressing ownership: he frames Śabara’s comments on ownership in term of *fitness* - moral propriety - and he introduces secular convention as the standard by which legal ownership is determined. Śālikanātha’s comments are sparse and their implications would be developed by later Dharmaśāstrins and Mīmāṃsakas.

1.B.3: Mīmāṃsā in Pre-*Mitākṣarā* Dharmaśāstra Commentary

It is surprising that Davis and Rocher do not mention Mīmāṃsā in their arguments to the effect that Vijñāneśvara could not have founded a school of thought. One of the most distinctive elements of the *Mitākṣarā*’s defense of ownership by birth is its foregrounding of Prabhākara’s arguments that the niyamas restricting the acquisition of assets are puruṣārtha and that the sources of ownership (including birth) are established by secular practice. As with the legal arguments (the idea of obstructed svatva, the necessity of ownership before partition and the existence of ownership outside of the śāstra) which I examined in the previous

¹¹¹ *Ṛjuvimalā of Śālikanātha*, Vol IV, 962, Ṛj on Bṛ on Śb on Ms 4.1.2: **smṛtikārās** ca lokaprasiddhopāyam eva kurvate vyāmohanivṛttaye **vyākaraṇādivat**.

section, Vijñāneśvara was not the first Dharmaśāstrin to draw on a Prābhākara pre-legal tradition. Viśvarūpa and Medhātithi make sporadic but non-negligible references to Mīmāṃsā. Vijñāneśvara's invocation of Prabhākara (and implicitly Śālikanātha) ties into my broader argument that the *Mitākṣarā* marks a turning point in history of Dharmaśāstra. Rather than cite the odd aphorism, Vijñāneśvara foregrounds the Mīmāṃsā theory of ownership as laukika, follows the *Rjuvimalā*'s considerations of theft and implicitly adopts the definition of svatva as yatheṣṭavinīyogārhatā. In the following section we shall see that Vijñāneśvara's innovation of reading Prābhākara commentaries on M.S. 4.1.2 in conjunction with discussions of inheritance became the standard approach for most subsequent Dharmaśāstrins.

Viśvarūpa invokes Śābara's characterization of the rules governing the acquisition of assets as puruṣārtha in a comment on Yāj. 2.144. Yāj 2.144 gives a list of persons excluded from inheritance: the impotent, the outcast, the outcast's son, the lame, the lunatic, the idiot and those suffering from incurable diseases.¹¹² Viśvarūpa comments that some would argue that 'lame' and other terms figuratively denote all individuals who are ineligible to perform Vedic rites such as the Agnihotra.¹¹³ Viśvarūpa argues that this cannot be correct because assets are puruṣārtha.¹¹⁴ Indeed, we can observe that even unlearned, ritually ineligible individuals are capable of (using) assets.¹¹⁵ The opponent's argument - that a deformed person is not entitled to a share of inheritance because he is not eligible to

¹¹² *Bālakrīdā*, 253, Bk on Ys 2.144: klībo 'tha patitas tajjaḥ paṅgur unmattako jaḍaḥ / andha 'cikitsyarogādyā bhartavyāḥ syur niraṅśakāḥ //

¹¹³ Ibid., 253, Bk on Ys 2.144: paṅgavādivacanāny agnihotrādyanadhikṛtānām sarveṣām upalakṣaṇārthānīti kecit.

¹¹⁴ Ibid., 253, Bk on Ys 2.144: tad asat puruṣārthatvād dravyasya.

¹¹⁵ Ibid., of *Viśvarūpācārya*, 253, Bk on Ys 2.144: avaidyasya cānadhikṛtasyaiva dravyārhatvadarśanāt.

perform sacrifices - relies on an implicit assumption that ownership is limited to the sphere of ritual activity. Viśvarūpa's defense of ownership outside of Vedic ritual attests to the importance of Mīmāṃsā in early Dharmaśāstra commentary, but there does not appear to be a connection between his Mīmāṃsā commitments and his theory of pre-partition ownership. The closest Viśvarūpa comes to such a position is a stray comment that "the traditional belief" (sampradāya) is that there is a connection (sambandha) between un-outcast but ritually ineligible sons and the assets of their grandfathers.¹¹⁶ However, Yāj. 2.144 must be taken as an illustration of the inappropriateness of such sons using those assets for anything other than their maintenance.¹¹⁷

Medhātithi's *Bhāṣya* demonstrates a more developed use of Mīmāṃsā than Viśvarūpa's *Bālakrīḍā*. Medhātithi argues that if sons were to force their father to partition paternal assets, then that would be like someone who receives improper gifts - there would be svāmya, but there would also be sin on the part of the son.¹¹⁸ The phrase 'there would svāmya but there would also be sin/moral blemish (doṣa) on the part of the son/person (puruṣa)' might well reflect an awareness of Prabhākara on Medhātithi's part.¹¹⁹ In a series of ślokas delineating the rights and duties of individuals in regard to slaves (śūdras and dāsas), Medhātithi draws a contrast between *independence* (svātantrya) and *ownership* (svāmya) and argues that "since it is called '*their* assets' (svadhana) slaves (and sons and wives) *do* have

¹¹⁶ Ibid., 253, Bk on Ys 2.144: pitāmahadravyasambandhas tv apatitānām andhādīnām asty eveti sampradāyaḥ.

¹¹⁷ Ibid., 253: Bk on Ys 2.144: sāmārthyenaiva tu bharaṇamātrātirikthadravyavinīyogāśakter aucityānuvādo 'yam ity avaseyam.

¹¹⁸ See note 50-52.

¹¹⁹ See note 101.

ownership (svāmya) in their own assets.”¹²⁰ The core of Medhātithi’s argument is Prabhākara’s statement in the *Bṛhatī* that “acquisition which does not produce svatva is a contradiction in terms.”¹²¹ For, as Medhātithi argues, such a proposition would be as ridiculous as saying “the woman whose son I am is not my mother.”¹²²

Medhātithi displays an awareness of Śabara’s views on svatva in two passages which delimit the legal facts of property: discussions of ‘gods’ property’ (devasva) and the gift of earth (bhūdāna). Medhātithi argues that one might concede that popular usage might speak of some assets as ‘gods’ property,’ but it is not possible for these assets to exist in a svasvāmi-relationship with a particular god because:

of the impossibility of the gods’ svasvāmisambandha in the primary sense (of the word). For the gods do not use an asset as they please. Nor are they seen to guard (their property). And such (use and protection) is how property (sva) is defined in secular usage.¹²³

Medhātithi’s reference to lack of use as desired (na devatā icchayā niyuñjate) refers clearly to Śabara.¹²⁴ Medhātithi’s repeated use of the word ‘sambandha,’ particularly the svasvāmisambandha, may well reflect an awareness of Śālikanātha’s explicit use of that term to characterize svatva. Medhātithi also appears to rely on Śālikanātha’s *R̥juvimalā* when the former discusses private ownership of “the

¹²⁰ *The Law of Manu with the Bhāṣya of Medhātithi*, Vol. V, 434; *Manubhāṣya*, Vol. II-III, 239: Mb on Manu 8.416: bhāryā putraś ca dāśāś ca traya evādhanāḥ smṛtāḥ / yat te samadhigacchanti yasya te tasya tad dhanam //Manu 8.416// asti tāvad dāsānām svadhane svāmyam, yadā svadhanam iti vyapadiśyate. atrocyate. pāratantryavidhānam etat. asatyām bhartur anujñāyām na strībhiḥ svātantryeṇa yatra kvacid dhanam viniyoktavyam. evam putradāsayor api draṣṭavyam.

¹²¹ See note 100.

¹²² *The Laws of Manu with the Bhāṣya of Medhātithi*, Vol. V, 434; *Manubhāṣya*, Vol. II-III, 239: Mb on Manu 8.416: yathā kaś cit brūyād yasyā aham putraḥ sā na mama janantīti tādr̥g etat.

¹²³ *Manubhāṣya*, Vol. II-III, 375-6: Mb on Manu 11.25: atha samācārato devasvam bhavatu, svasvāmibhāvas tāvan nāsti... devān uddiśya yāgādikriyārtham dhanam yad utsṛṣṭam tad devasvam. mukhyasya svasvāmisambandhasya devānām asambhavāt. na hi devatā icchayā dhanam niyuñjate. na ca paripālanavyāpāras tāsām dr̥śyate. svam ca loke tādr̥śam ucyate. tasmād devoddeśena yad uktam ‘nedam mama devatāyā idam’ iti tad devasvam; Cf S.C. Bhagci, *The Juristic Personality of Hindu Deities*, (Calcutta: University of Calcutta Press, 1933), 71-74.

¹²⁴ See note 81.

earth” (bhūmi). The question for Medhātithi concerns what precisely is entailed in land ownership. Much of Medhātithi’s argument occurs in the *Bṛhatī* as read through the *Rjūvimalā* rather than Śabara or Kumārila.¹²⁵ Medhātithi writes:

As for the Mīmāṃsakas’ idea that one cannot give the earth in the Viśvajit sacrifice, namely, ‘the earth is not (to be given) because it is common to all,’ that applies to the globe (rather than fields and the like). For the earth is common to all people in the sense that they can do such things as walk about on it.¹²⁶

1.B.4: Vijñāneśvara’s Consolidation of Prābhākara-Mīmāṃsā Theories

As in the case of his legal, purely Dharmaśāstric arguments, Vijñāneśvara’s use of Mīmāṃsā theories of ownership marks a sea-change in the history of the relationship between Dharmaśāstra and Mīmāṃsā because he consolidated disparate, earlier approaches into a composite whole. Unlike Medhātithi, Vijñāneśvara does not use the Prābhākara school to analyze small issues sparingly. Rather, Vijñāneśvara’s foregrounds the Mīmāṃsā theory of svatva as a central component of the Dharmaśāstric analysis of dāya. In doing so, he changes the Dharmaśāstric approach to ownership and inheritance in two key ways: 1) Vijñāneśvara explicitly invokes Prābhākara’s commentary and uses it to frame the janmasvatva/upamasvatva divide using the twin theories of ownership as laukika and the niyamas as puruṣārtha; and 2) Vijñāneśvara implicitly invokes Śālikanātha’s

¹²⁵ See notes 109 & 110.

¹²⁶ *Manubhāṣya of Medhātithi, Vol. II-III*, 115-116: Mb on Manu 8.99: hanti jātān ajātāmś ca hiraṇyārthe 'hṛtaṃ vadan / sarvaṃ bhūmyanṛte hanti mā sma bhūmyanṛtaṃ vadīḥ // Mn_8.99 // kā punar iyam bhūmir nāma? yad etad pṛthivīgolakam parvatāvaṣṭambhanam sāgarāvadhi prasiddham. nanv iyatyāḥ kaḥ svāmī ko apahartā? na hi sārvabhaumaḥ kaś cit asti. tathā ca gāthā bhumeḥ 'na mām martyaḥ kaś cana dātum arhati.' na kaś cit sārvabhaumo [a]stīty abhiprāyaḥ. (Śatapatha Brāhmaṇa 13.7.1.15)... sarvasādhāraṇāham. sarvajanopabhogyā. kevalam rājāno rakṣānirbandhamātrabhāja iti abhiprāyaḥ. ata etāvatyā bhūmer na dānāpahārāsambhava iti kutaḥ vivādaḥ? satyam. yathavāyam bhūmiśabde [a]tra vartate evam kṣetragrāmasthaṇḍilādāv api. tatra ca sambhavaty eva svāmyam. kṛtsnagolakābhiprāyam eva cādeyatvam bhūmer viśvajiti mīmāṃsakair uktam, 'na bhūmiḥ syāt sarvān pratyaviśiṣṭatvād iti (Śābarabhāṣya on 6.3.3).' sarvān puruṣān pracaṅkramaṇādiyogyatayāviśiṣṭatā bhūmir.

arguments that concern the implications of such a theory of ownership - theft and the definition of ownership as *yatheṣṭaviniyogārhatā*.

Vijñāneśvara's boldest innovation is his explicit invocation of Prabhākara's *Bṛhatī*. As we saw before, Prabhākara, following Śabara, concludes that the restrictions on the acquisition of assets (listed in Gautama, Manu and other *smṛtis*) are *puruṣārtha* and that overstepping those restrictions will harm a person, but not the ritual act (in which said asset is used).¹²⁷ Vijñāneśvara - defending the position that *janmasvatva* accords with a *laukika* theory *svatva* - notes that "the *Mīmāṃsakas* [lit. *Nyāyavids*] are of the opinion that ownership gained by means of the restricted ways has a lay basis [*laukika*]." ¹²⁸ Vijñāneśvara invokes the opinion of "the master" (guru) Prabhākara:

if the restricted ways of acquiring [assets] affected the ritual, the acquirers would not 'own' anything they acquired in these ways, because ownership would be a canonical matter. In reality, the fact that acquiring [assets] by means of gifts and the like conveys ownership has a lay basis. He concludes the section on the *prima facie* opinion as follows: '*If acquiring [assets] affected the ritual there would be no ownership, and the ritual would not come to fruition. As someone said: acquiring something without owning it is a contradiction in terms.*'¹²⁹

Vijñāneśvara uses this argument to support his contention that because ownership is a secular matter and because lay convention recognizes birth as a source of acquiring ownership, then sons have a proprietary interest in their patrilineal estate from birth. The second argument from the *Bṛhatī*, which Vijñāneśvara lifts verbatim,

¹²⁷ See note 101 above.

¹²⁸ Rosane and Ludo Rocher, "Ownership by Birth," 244; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.168, 281: *niyatopāyakam svatvam lokasiddham eveti nyāyavido manyante*.

¹²⁹ Rosane and Ludo Rocher, "Ownership by Birth," 244; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 281: *tathāhi lipsāsūtre ṛtīye varṇake dravyārjananiyamānām kratvarthatve svatvam eva na syāt svatvasyālaukikatvād iti pūrvapakṣāsambhavam āśaṅkya dravyārjanasya pratigrahādīnā svatvasādhanatvam lokasiddham iti pūrvapakṣaḥ samarthito guruṇā - **nanu ca dravyārjanasya kratvarthatve svatvam eva na bhavatīti yāga eva na samvarteta pralapitam idam kenāpi arjanam svatvam nāpādayati' iti vipratīṣiddham iti vadatā**. Cf *Bṛhatī*, 961-962, Bṛ on Śb on Ms 4.1.2: *Nanu kratvarthatve svatvam eva na bhavatīti yāga eva na samvarteteti pralapitam idam kenāpi arjanam svatvam nāpādayatīti vipratīṣiddham*.*

is the conclusion (siddhānta): that “any breach of the restricted ways of gaining ownership affects the individual, not the ritual.”¹³⁰ Indeed, Vijñāneśvara’s next argument, identified as an ‘elaboration’ (vivṛta) of the previous opinion cuts to the core of the issue:

‘If the restrictions imposed on the ways of gaining ownership affected the ritual, the ritual would be valid only when performed with [assets] acquired by means of one of the restricted ways; rituals performed with [assets] acquired in different ways would be invalid... On the other hand, since the final opinion maintains that the restrictions... affect the individual, the ritual is valid even if it is performed with [assets]... acquired in defiance of the restrictions. The fault of breaching the restrictions affects the individual only.’ This means that he [the siddhānta] accepts that [ownership of assets] can be acquired in defiance of the restrictions, on the grounds that otherwise the ritual performed with it would not be valid.¹³¹

For Vijñāneśvara, unlike Viśvarūpa and Medhātithi, the twinned theories of svatva as laukika and the niyamas governing its acquisition as puruṣārtha are central to the case which he has been building about inheritance: even if birth as a source of ownership is extra-śāstric, there is no problem because the śāstra does not have sole authority over how one acquires ownership. Vijñāneśvara is the first Dharmaśāstrin to combine the idea that svatva is a secular phenomenon with the view that transgressing śāstric restrictions of acquiring assets results in a moral blemish and legal ownership. This is one of the core pillars of the *Mitākṣarā* school of jurisprudence: a Mīmāṃsā inspired view that popular usage trumps śāstric command.

¹³⁰ Rosane and Ludo Rocher, “Ownership by Birth,” 244; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 281: tathā siddhānte ‘pi svatvasya laukikatvam aṅgīkṛtyaiva vicāraprayojanam uktam **ato niyamātikramah puruṣasya na kratoh iti**. Cf Bṛ on Śb on Ms 4.1.2 cited in note 101 above.

¹³¹ Rosane and Ludo Rocher, “Ownership by Birth,” 244-5; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 281: asya cārtha evam vivṛtaḥ... yadā dravyārjananiyamānām kratvarthatvam tadā niyamārjitenaiḥ dravyeṇa kratusiddhir na niyamātikramārjitenā dravyeṇa na puruṣasya niyamātikramadoṣaḥ pūrvapakṣe. rādhānte tv arjananiyamasya puruṣārthatvāt tadatikrameṇārjitenāpi dravyeṇa kratusiddhir bhavati, puruṣasyaiva niyamātikramadoṣa iti niyamātikramārjitasyāpi svatvam aṅgīkṛtam.

Prabhākara, however, only claims that the restrictions regulating the acquisition of assets are *puruṣārtha*, i.e., performed with a motivation regarding the individual. A *niyama* being *puruṣārtha* and *svatva* being *lokasiddha* are not synonymous. Vijñāneśvara goes far beyond Prabhākara's sparse comments in the *Bṛhatī*. Indeed, scholars, noting that Vijñāneśvara's elaboration (*vivṛta*) does not appear in Prabhākara's *Bṛhatī* have wondered from where it might have come.¹³² My contention is that Vijñāneśvara likely relies on the view of the the first Mīmāṃsaka to endorse the view that the accomplishment of *svatva* - i.e., the production of ownership - is *laukika*, - i.e., Śālikanātha. Vijñāneśvara appears to *assume* Śālikanātha's interpretation of this passage of the *Bṛhatī*.¹³³ This may seem like a small distinction, but the Vijñāneśvara's defense of *svatva* as *laukika* - in conjunction with an interpretation of the *dravārjananiyamas* as *puruṣārtha* - allows us to locate Vijñāneśvara neatly within a specific level of commentarial development in the Mīmāṃsā tradition: namely, in Śālikanātha's dramatic reformulation of the *Bṛhatī*.

There is further evidence that Vijñāneśvara implicitly invokes Śālikanātha's arguments from the *Ṛjuvimalā*. Śālikanātha was the first Mīmāṃsāka to explore ownership by birth as a secularly established phenomenon and he was the first Mīmāṃsāka to take up the issue of theft in relation to a secular theory of ownership. Vijñāneśvara expands on both of these topics in the *dāyabhāga* section of the *Mitākṣarā*.¹³⁴ What is noticeably absent from the *Mitākṣarā* is any definition of

¹³² Rosane and Ludo Rocher, "Ownership by Birth," 253 fn 24: "Although this 'elaboration' does not appear in the *Bṛhatī*, the *Subodhinī* and the *Bālambhaṭṭī* attribute it the *guru* (*vivṛto guruṇeti śeṣaḥ*). Mitramiśra's digest, the *Vyavahāraprakāśa*, which cites the passage, attributes it to a commentator (*ṭīkākr̥t*). It is not part of the *Ṛjuvimalāpañcikā*, Śālikanātha's commentary on the *Bṛhatī*."

¹³³ See note 106 above. Prabhākara never explains *why*, if the *dravyārjananiyamas* are *kratvartha*, then there would be no *svatva* and hence no sacrifice. Śālikanātha explains suing Śābara's comments on *devasvam*. This is one indication that Vijñāneśvara was reading Prabhākara through Śālikanātha.

¹³⁴ See note 66 above.

ownership. This is surprising because ownership is the primary focus of his chapter on inheritance and because Vijñāneśvara was obviously steeped in a Mīmāṃsā tradition that developed a fairly sophisticated definition of ownership.

The closest Vijñāneśvara gets to defining ownership are his comments that “if the way in which an item is acquired - by purchase, etc. - is in question, the person who owns it is in question as well” and that “it is not the fact that an object is made either of gold or of something else that allows one to apply it to a purchase... [but rather the fact] that the buyer owns it... [for] he cannot apply to a purchase anything he does not own.”¹³⁵ One might suspect that in arguing that ownership accomplishes sale Vijñāneśvara adopts Pārthasārathimīśra or Śabara’s view of ownership as possession - *yatheṣṭaviniyojyatva*. This would be incorrect, however, because Vijñāneśvara is concerned, explicitly, with distinguishing between possession and ownership - between usability and moral propriety. Vijñāneśvara’s specific phrasing, “*na hi yasya yat svam na bhavati tat tasya krayādyarthakriyām sādhayati,*” evokes Śabara and Śālikanātha’s definition of *svatva* as being fitness for use as desired when secularly established acts of acquisition such as acceptance are undertaken. For Vijñāneśvara, as for Śālikanātha, it is a secularly recognized act of acquisition which makes an asset one’s property and that asset fit for use in transactions.¹³⁶ It appears that Vijñāneśvara implicitly draws on Śālikanātha’s definition of ownership as *yatheṣṭaviniyogārhatā* - a definition which Vijñāneśvara’s followers make explicit.

In conclusion, Vijñāneśvara’s theory that the causes of ownership are not restricted to śāstric passages depends, either implicitly or explicitly, on Prābhākara-Mīmāṃsā theories of ownership and there are indications that Vijñāneśvara was

¹³⁵ See notes 67 & 68.

¹³⁶ See note 106.

working from Śālikanātha's *Ājivimalā* (the first Mīmāṃsā text to explicitly mention birth as a secularly established cause of ownership). Pace Kroll, Vijñāneśvara appears to have drawn on a quite sophisticated Mīmāṃsā theory of ownership which did *not* conceive of ownership as mere practical possession. Pace Derrett, Vijñāneśvara was aware of the issue of moral propriety (evidenced by his discussion of theft) and was not content to free ownership from *any* legal constraints. Although Vijñāneśvara was not the first Dharmaśāstrin to use Śabara, Prabhākara and Śālikanātha's theories of ownership, he was the first to tie these theories to a model of inheritance. As we shall see in the following section, Vijñāneśvara's successors - those for and against janmasvatva - would frame their discussion of ownership by using Mīmāṃsā material from the Prābhākara school. In short, just as Vijñāneśvara marks a turning point in his *legal* approach to inheritance he also marks a turning point in his *pre-legal* approach to inheritance.

1.C: The Medieval *Mitākṣarā* School

In this section I turn to the reception of the *Mitākṣarā* amongst later Dharmaśāstrins. I want to look at how Vijñāneśvara's followers such as Devaṅṇabhaṭṭa (*Smṛticandrikā*, 1150-1225), Viśveśvara (*Subodhinī*, 1360-1390) and Madanasimha (*Madanaratnapradīpa* 1425-1450) copy an increasingly sophisticated philosophical analysis of svatva in Bhavanātha's *Nayaviveka* (11th Century). I argue that although there is little evidence to suggest that Vijñāneśvara founded a 'school' of law - in the sense of an educational institution, family lineage or political movement - the *Mitākṣarā* marked a turning point in the development of the Dharmaśāstra-Prābhākara-Mīmāṃsā nexus because Dharmaśāstrins such as Devaṅṇabhaṭṭa and Madanasimha defined themselves in relation to the *Mitākṣarā* and Prābhākara-Mīmāṃsā theories of ownership. Devaṅṇabhaṭṭa, Viśveśvara and

Madanasimha strengthen the Prābhākara-Mīmāṃsā-*Mitākṣarā* nexus by using the *Nayaviveka*'s extensive defense of svatva as yatheṣṭaviniyogayogyatva to defend Vijñāneśvara's theory of janmasvatva and apratibandhadāya. In short, the *Mitākṣarā* founded a school of thought in which theoretical considerations of ownership were an essential component of a unique model of inheritance.

Furthermore, Ethan Kroll asserts that Bhavanātha's systemization of earlier Mīmāṃsā theories of ownership is the first sophisticated treatment of ownership in Sanskrit intellectual history. I want to render Bhavanātha's argument in greater clarity and I want to demonstrate that far from creating the definition of yatheṣṭaviniyogārhatā *ex nihilo*, Bhavanātha was merely expanding a consistent line of argumentation in the Prābhākara school that could trace its genesis to the *Śābarabhāṣya*. I also take up Derrett's apparent cynicism with respect to the ethics of an extra-śāstric theory of ownership. I argue that what Derrett sees as the fundamental flaw of Bhavanātha and Vijñāneśvara - the moral complexities of an extra-śāstric theory of ownership - constitutes the framing questions that define the *Mitākṣarā* school of Dharmaśāstra as a school of thought.

1.C.1: Bhavanātha's *Nayaviveka*: The First Metaphysics of Ownership

Bhavanātha's 11th Century *Mīmāṃsānayaviveka*, a commentary on the *Mīmāṃsāsūtras* that takes inspiration from *Ṛjuvimalāpañcikā*, is the single most influential Mīmāṃsā text in the development of the concept of ownership and represents further developments of the Prābhākara school in the early medieval period. We know relatively little about Bhavanātha's life and historical context, but his observations concerning the secular nature of ownership and its metaphysical implications changed the treatment of svatva in Dharmaśāstra and Mīmāṃsā decisively. While a few arguments concerning ownership from the *Nayaviveka* have

received scholarly attention from Derrett, Kane, and Rocher, these authors have limited their treatment to passages which appear in Dharmaśāstranibandhas such as the *Smṛticandrikā* and the *Madanaratnapradīpa*.¹³⁷ Bhavanātha's key arguments are really expansions of Śālikanātha's sparse comments from the *Ṛjuvimalā*.

Bhavanātha defines svatva as "fitness for use as desired" (yatheṣṭaviniyogārhatā); theorizes that svatva is a sambandha between an acquirer and an acquired asset; and supports a secular theory of ownership with an appeal to śāstric grammar (Vyākaraṇa).

Bhavanātha argues that "according Śabara, ownership is not the use of an asset as one desires, but the fitness for use as one desires (yatheṣṭaviniyogārhatā)."¹³⁸ Bhavanātha quotes a maxim that the fact that "one has for his purposes whatever one has acquired" (tac ca tasya tadarthatvam yad yenārjitam) is established from secular usage.¹³⁹ Glossing Śālikanātha, Bhavanātha explains that if acquisition was subordinate to the purposes of the sacrifice, then there would be no svatva, i.e., ability to use an asset as one desires (dhanam yatheṣṭaviniyojyam).¹⁴⁰ Presumably, an opponent might object that Bhavanātha relies on a definition of ownership based largely on possession, but Bhavanātha, invoking Śabara, states that ownership is *not* the use of an asset as one desires but rather the fitness to use an asset as one desires. That fitness, argues Bhavanātha, is *not* produced from the śāstra or from sacrificial activities, but from manifold acts of acquisition, such as birth, that are established in the secular world.¹⁴¹

¹³⁷ Kane, *HDS*, 3., 550; J.D. Derrett, "The Right to Earn in Ancient India," 66-97.

¹³⁸ *Mīmāṃsānayaviveka*, Vol. 3., ed. S Subrahmanya Shastri (New Delhi, Rashtriya Sanskrit Sansthan, 2004), 44: na yatheṣṭaviniyogaḥ svatvam, kiṃtu yatheṣṭaviniyogārhatety uktam śābare.

¹³⁹ *Ibid.*, 45: tac ca tasya tadarthatvam yad yenārjitam, lokasiddham cārjanam janmādiḥ.

¹⁴⁰ *Ibid.*, 45: nanu kratvaṅgatve dhanam na yatheṣṭaviniyojyam iti svam eva na bhavati.

¹⁴¹ *Ibid.*, 45: tac ca tasya tadarthatvam yad yenārjitam, lokasiddham cārjanam janmādiḥ. Cf *Ṛjuvimalā*, 962: Ṛj on Bṛ on Śb on Ms 4.1.2: Cf notes 106 & 107.

While Śabara and Śālikanātha are content with placing svatva outside the purview of sacrificial regulations and with leaving considerations of whether one is a legal owner to the Dharmaśāstrins, Bhavanātha engages in a lengthy discussion concerning the *nature* of svatva. Derrett appears to have been unaware of this discussion and this lack of awareness is the likely cause of his dissatisfaction with the medieval Mīmāṃsā/Dharmaśāstra approach to svatva. Bhavanātha argues that svatva is a svasvāmisambandha which is created, destroyed and transferred through legally valid acts of acquisition and alienation. He further argues that his metaphysics are logically consistent and able to protect the ownership of children, the mentally infirm and other lawful owners from usurpation.

Bhavanātha introduces the metaphysical nature of ownership with a pūrvapakṣin who argues that “there is no essential quality (dharma) dependent on an act of acquisition that can be properly understood (with epistemic certainty).”¹⁴² This is wrong, says Bhavanātha, because svatva, the svasvāmisambandha, is merely the relationship between an acquirer and an acquired object which is brought about by an act of acquisition.¹⁴³ In fact, it is established in the secular world that the relationship between agent and object is brought about by action.¹⁴⁴ Consequently, with regard to property, one need not depend on a separate source of knowledge (other than knowledge of acquisition).¹⁴⁵ It would not be possible to argue that the svasvāmisambandha would be destroyed at the end of the act of acquisition because the loci of the two things having that relationship would not be destroyed.¹⁴⁶ For example, when a father concludes the act of ‘fathering’ he does not cease to be

¹⁴² Ibid., 45: nanu nārja[n]ādhīnaḥ ko [‘]pi dharmo mānagamyah.

¹⁴³ Ibid., 45: arjanād arjakārjyasambandha eva hi svasvāmisambandhaḥ.

¹⁴⁴ Ibid., 45: kriyāgarbho hi kartṛkarmanoḥ sambandho lokasiddhaḥ.

¹⁴⁵ Ibid., 46: na svam prati pṛthāṅmānam apekṣate.

¹⁴⁶ Ibid., 46: na caivam arjanakriyāpaye tajjanyasambandhasyāpy apāyah sambandhiṅoḥ āśrayayor anapāyāt.

a *father*, but when a father dies one might metaphorically speak of ‘father’ in the sense of his previous state.¹⁴⁷ Bhavanātha recognizes that although acquisition is multifaceted, one cannot say that the use of the word ‘*sva*’ in reference to an asset is not singular.¹⁴⁸ This is because of the use of the word *sva* is something delimited by acquisition.¹⁴⁹ As for the word ‘acquisition,’ it delimits through a reckoning/counting which is brought about through the sequence of memory.¹⁵⁰ For example, an old man might use the word *sva*, in the sense of ownership, to refer to something he has held in the same possessive relationship since he was young.¹⁵¹

A *pūrvapakṣin* might argue that such a relationship between owner and an asset could never be destroyed through an act of abandonment (or sale) because the state of being an acquirer, like the state of being a father, would be indestructible.¹⁵² Bhavanātha responds by arguing that when the cause of the destruction of the relationship occurs there cannot be the relationship - just as there is the destruction of the state of being a wife when someone commits one of the five great sins (*mahāpātaka*).¹⁵³ Bhavanātha explores another ‘clever’ (*dhīra*) theory of what *svatva* might be: that with regard to property (*sva*), ownership (*svāmitva*) is a particular peculiar condition of the soul (independent of the *svasvāmisambandha*) which is knowable through the mind.¹⁵⁴ Bhavanātha, however, responds that (*svāmitva*) would be knowable by the mind of people such as thieves or not

¹⁴⁷ Ibid., 46: na hi pituḥ kriyāpāye ‘pi pitṛtvam apaiti pitur abhāve tu bhūtapūrvagatyopalakṣaṇam pitā.

¹⁴⁸ Ibid., 47: na cārjananānātve dhanaviśayasvasābd[a]syāpy anekārthatā.

¹⁴⁹ Ibid., 47-48: svasābdasyārjanopādhinā pravṛtteḥ.

¹⁵⁰ Ibid., 48: arjanaśabdā tu smṛtiparamparāgatā gaṇanopādhitā eva.

¹⁵¹ Ibid., 48: evam yaunādisambandhatulyayogakṣeme svatve svasābdo vṛddhavyavahārasiddhaḥ. This portion of the *Nayaviveka* appears to be corrupt. My reading reflects the connection between memory and the example.

¹⁵² Ibid., 46: nanv evam yāvaddravyaṃ sambandhasyānapagamāt tyāgo na syāt... nanu pitṛtvavad aśakyahānārjakatā.

¹⁵³ Ibid., 46: maivam. sambandhāpāyahetūpanipāte kathaṃ sambandhaḥ... mahāpātakādau bhāryātvāder api hānāt.

¹⁵⁴ Ibid., 50: yat tu dhīreṇoktam. svaṃ prati svāmitvam ātmadharmo manovedyam iti, tan na.

knowable by the mind by children and the like.¹⁵⁵ In conclusion, Bhavanātha warns that inferring *fitness* (for the use of an asset as desired) from the observation of the use of an asset as one desired is foolish, and consequently, that fitness (for the use of an asset as desired) is merely the state of being the subject of an act of acquisition.¹⁵⁶

Bhavanātha addresses the moral implications of a secular theory of ownership by comparing *smṛti* to grammar. Bhavanātha reiterates that “the destruction of the state of *sva* and *svāmi* as a result of a mental intention to relinquish (one’s *svatva*) is established from secular usage.”¹⁵⁷ A *pūrvapakṣin* worries - as Derrett would object eight hundred years later - that because secular usage might wrongly assume there to be *svatva* in an asset acquired through theft or through force, one cannot determine *svatva* from secular practice.¹⁵⁸ Bhavanātha writes:

Smṛti (i.e. *Dharmaśāstra*), like *smṛtis* such as *Vyākaraṇa* and the like, has as its purpose the construction of fixed rules concerning things that are not the subject of people’s thoughts (i.e., known) for the first time. The *smṛti* is meaningful because it establishes the meaning of the *śāstra* (i.e., the *Vedas*) without giving up the essential meaning.¹⁵⁹

An obvious objection is that in that case, Vedic injunctions to carve a sacrificial post, Vedic recitation and the like (*yūpācāryādi*), would be secular acts that would be accomplished merely through secular actions such as carving and

¹⁵⁵ *Ibid.*, 50: *corāder api tanmanovedyatayā syāt. bālasya ca na syāt.*

¹⁵⁶ *Ibid.*, 50: *yatheṣṭaviniyogadarśanād eva tadarhatādhīr iti tu mandam... arjanaviṣayatayaiva tadarhatety uktam.*

¹⁵⁷ *Ibid.*, 46: *tad evaṃ lokasiddhas tyāgasaṅkalpād apāyo ‘pi svasvāmitāyāḥ.*

¹⁵⁸ *Ibid.*, 46: *nanu lokato ‘pi balātkārauryārjite ‘pi svatvābhimānān na lokataḥ vyavasthā.*

¹⁵⁹ *Ibid.*, 47: *ata evānidamprathamalokadhīviṣayavyavasthitinibandhanārthā smṛtiḥ vyākaraṇādismṛtivat. tāttvikatyāgācchāstrārthasiddher arthavattā smṛteḥ. The phrase tāttvikatyāgācchāstrārthasiddher appear to be corrupt. I am grateful to Professor Diwakar Acarya for the useful emendation: tāttvikātyāgāc cchāstrārthasiddher arthavattā smṛteḥ. The Madanaratna refers to a sūtra from Patañjali 6.2.162, “sadanvākhyānāc chāstrasyeti” - because the śāstra explains (words) that are (already) existing. See note 111 for Śālikanātha’s similar thoughts.*

teaching (laukikacchedanādhyāpanādi).¹⁶⁰ Bhavanātha counters this objection by arguing that even in the absence of a Vedic restriction people have known, not for the first time, that yūpas and the like are not accomplished merely through visible acts of acquisition (such as secular carving or teaching).¹⁶¹ That is to say that a post, if carved through secular carving, does not become a sacrificial post. It only becomes a sacrificial post if undertaken in conjunction with a Vedic injunction. As for the fact that there are such things as restrictions concerning the acceptance of gifts (only from virtuous people), these restrictions are for the sake of accomplishing a Vedicly enjoined act of giving and not for the purpose of producing svatva.¹⁶² Similarly, the varamaṅgala (enjoined by the Veda during weddings) is enjoined for a purpose pertaining to good fortune (abhyudaya), not for the purpose of making someone a wife.¹⁶³ The point is that even if legal ownership is a secular matter, the religious rectitude of the act of acquisition that produced said ownership is still governed by the śāstra.

Bhavanātha's comments concerning Vyākaraṇa implicitly evoke a lengthy discussion of the relationship between śāstra and lokavyavahāra which occurs in the opening sections of Patañjali's *Paspaśāhnika*.¹⁶⁴ For the grammarians, a grammatically incorrect word will convey meaning in a non-ritual context provided

¹⁶⁰ Ibid., 47: nanv evam yūpācāryādiḥ laukikacchedanādhyāpanādikriyāsādhyā eva laukika syāt. Alternatively, if we read anidaṃprathama as a gloss of apūrva, then the translation of the passage would be: "(Vedic Injunctions) to carve a sacrificial post, recite and the like, which are accomplished through secular actions such as carving and teaching, would be secular injunctions (and not Dharmic injunctions)."

¹⁶¹ Ibid., 47: maivam. niyamamantrādivirahe saty api sāmḍrṣṭikārjanakriyāmātrād yūpādyasiddher anidaṃprathamatayābhyupagamāt. Again, reading anidaṃprathama as apūrva would produce a different translation: "Even in the absence of a restricting Vedic passage, one doesn't understand the injunction of the yūpa as an apūrva-vidhi just by seeing a yūpa acquired."

¹⁶² Ibid., 47: yad api pratigrahe niyamādidarśanam tad api vihitadānasiddhyartham na svatvotpattartham.

¹⁶³ Ibid., 47: varamaṅgalaniamādarō 'pi na bhāryotpattarthah. kintv abhyudayāntarārthah.

¹⁶⁴ *Vyākaraṇamahābhāṣya: Paspaśāhnika* ed. & trans. S.D. Joshi and J.A.F. Roodbergen (Pune: University of Pune, 1986)

that they are intelligible to the community in which they are spoken.¹⁶⁵ According to Bhavanātha, one acquires an unseen (adṛṣṭa) merit in following the restrictions offered the smṛti, but the smṛti does not have exclusive authority over the production of svatva.

Independent of its later influence, the discussion of svatva in the *Nayaviveka* helps rectify two commonly held assumptions concerning the understanding of svatva in Mīmāṃsā literature. Firstly, Bhavanātha very clearly does *not* equate possession with ownership and goes to great lengths to prove that one cannot infer the existence of the latter when observing the former. Secondly, Bhavanātha is keen to scrutinize his definition of svatva (and the definitions of others) through a test of its moral implications (such as svatva on the part of a thief). The issue that Bhavanātha takes up and the Dharmasāstrins examine at length is precisely the one that Derrett identifies as a failing in the system - the tension between ownership being overdetermined or underdetermined by śāstric injunctions. Bhavanātha informs the reader about the strengths and limits of śāstra as a source of knowledge about ownership

When considering the level of sophistication in the Prābhākara-Mīmāṃsakas' attention to ownership it seems obvious why Vijñāneśvara would have used their arguments to defend a secular theory of ownership. In contrast to Derrett and Kroll's assumptions of morally regressive philosophical simplicity, Śālikanātha and Bhavanātha give a philosophically sophisticated and ethically complex account of ownership. It is interesting that few have given Śabara the credit he deserves for being the first author to define ownership in terms of fitness for use as desired.

¹⁶⁵ Ibid., 26 & 125-6: Varttika 4: samānāyām iti. yady api sākṣād apabhraṃśā na vācakās tathāpi smaryamāṇasādhuśabdavyavadhānenārtham pratyāyayanti. kecic cāpabhraṃśāḥ paramparayā nirūḍhim āgatāḥ sādhuśabdān asmarayanta evārtham pratyāyayanti. anye tu manyante sādhuśabdavad apabhraṃśā api sākṣād arthasya vācaka iti.

Moreover, Bhavanātha's interest in the metaphysics of ownership - how it is created, maintained and destroyed and where it is located - antedates similar discussions amongst the Naiyāyikas by at least two centuries.

1.C.2: Vijñāneśvara's Successors

To see the impact of the *Mitākṣarā* on the subsequent development of the concept of ownership in medieval Dharmaśāstra, we must turn to the anthologies, nibandhas, which characterized much Dharmaśāstra literature in the second millennium C.E. It is my contention that subsequent Dharmaśāstrins who defended the *Mitākṣarā* - typified by Devaṇṇabhaṭṭa (1150-1225), Viśveśvara (1360-1390) and Madanasimha (1425-1450) - relied on the *Nayaviveka*'s definition of svatva as yatheṣṭavinīyogārhatā to argue against the opinions of Dhāreśvara (1000-1055) and Saṅgrahakāra (800-1000). I aim to demonstrate that the *Mitākṣarā* did indeed found a school of thought - in which Dharmaśāstric discussions of inheritance took their cue from Mīmāṃsā - and that said school of thought continued to develop in tandem with Prābhākara-Mīmāṃsā theories of ownership. I want to examine three ways in which the medieval followers of the *Mitākṣarā* apply Bhavanātha's contributions to the concept of svatva: 1) they define svatva as yatheṣṭavinīyogārhatā to refute Vijñāneśvara's probable pūrvapakṣins from the *Mitākṣarā* - Saṅgrahakāra and Dhāreśvara; 2) they appeal to Bhavanātha's metaphysical arguments about svatva to account for how birth can lead to ownership; 3) they expand the connection between smṛti and Vyākaraṇa to flesh out the moral implications of a secular theory of ownership. In each case the core structure of the *Mitākṣarā*'s theory of apratibandhadāya is retained.

Devaṇṇabhaṭṭa's *Smṛticandrikā*, one of the earliest extant Dharmaśāstra-nibandhas, defends the *Mitākṣarā* against Saṅgrahakāra and Dhāreśvara's theory of

śāstraikasamadhighamyasvatva by appealing to the *Nayaviveka*'s definition of svatva as a *fitness* for use as desired.¹⁶⁶ Devaṅṅabhaṭṭa is an explicit follower of the *Mitākṣarā*. The few places where he differs from Vijñāneśvara - such as the definition of dāya - are typically small improvements framed using the concept of moral fitness.¹⁶⁷ It is remarkable that the only pre-Jīmūtavāhana opponents of Vijñāneśvara who wrote about ownership in any depth are preserved exclusively in a scale of texts fashioned by the followers of Vijñāneśvara.

The context of the debate is a verse from the *Devalasmṛti* that describes sons as “having non-ownership” (asvāmya) so long as the father is alive and free from fault.¹⁶⁸ Devaṅṅabhaṭṭa argues that this verse should be construed as establishing a lack of *independence* rather than *ownership* on the part of the sons.¹⁶⁹ This is because even when a father is alive and free from fault, it is secularly established that sons have ownership (svāmya) in their father's assets.¹⁷⁰

Devaṅṅabhaṭṭa's framing question is whether ownership can exist without independent control over individual assets. An opponent (Saṅgrahakāra/Dhāreśvara) argues that because svatva and svāmya are alike in referring to the acquisition and

¹⁶⁶ Vijñāneśvara refers to the views of the Saṅgrahakāra and Dhāreśvara, but not in the context of ownership. Indeed, it is only from Devaṅṅabhaṭṭa onwards that the *Smṛtisaṅgraha* and the *Mitākṣarā* are placed in opposition.

¹⁶⁷ For example, Devaṅṅabhaṭṭa refines Vijñāneśvara's definition of dāya as “an asset in which an individual gains ownership, the necessary and sufficient condition being that he be connected to the owner.” Such a definition would allow women to be inheritors (dāyada). Rather, says Devaṅṅabhaṭṭa, dāya is “an asset *fit for partition* which becomes the property of another, the necessary and sufficient condition being that he be connected to the owner.” The idea of *fitness* likely comes from the *Nayaviveka*. *Smṛticandrikā, Vol 3., Part 2.* ed. L. Śrīnivāsācārya (Mysore: Government Oriental Library, Government Oriental Library Series, 1916), 623: na ca dāyaśabdena yad dhanam svāmisambandhād eva nimittād anyasya svam bhavati tad ucyata iti dāyādiśabdānirūpaṅārtham **mitākṣarāyām** uktam yuktam. evaṃ hi patyuh svam patisambandhād eva nimittāt patnīsvam bhavati ityasyāpi dāyatvāpattiḥ. tataś ca adāyāḥ striya iti śrutivirodho durvārah syāt. asman mate tu vibhāgārham svam svāmisambandhād eva nimittād anyasya svam bhūtam dāyaśabdārthe iti vibhāgānarham patnīsvam na dāya.

¹⁶⁸ *Smṛticandrikā, 3.2, 600*: pitary uparate putrā vibhajeran pitur dhanam / asvāmyam hi bhavet eṣām nirdoṣe pitari sthite //

¹⁶⁹ *Ibid.*, 600: iti, tatrāsvāmyavacanam asvātantryapratipādanārtham iti mantavyam.

¹⁷⁰ *Ibid.*, 600: nirdoṣe pitari sthite 'pi pitṛdhane putrāṅām janmanā svāmyasya lokasiddhatvāt.

preservation (of assets), if one is proved to be discernible only from the śāstra, the other must be as well.¹⁷¹ Consequently, ownership cannot be secular and the ownership of sons (by birth) is not established in the secular world because that would render Devala's explicit mention of 'not owners' worthless.¹⁷² The pūrvapakṣin cites a verse and a half from the *Smṛtisaṅgraha*, which as we saw in the *Mitākṣarā*, purports that if one were to assume that the owner of some asset is the person in whose possession the asset is observed, then one could not (rightly) say 'he has stolen my property' because he is the owner since the asset has been seen in his possession.¹⁷³

The debate centers on the proper definition of ownership. The Saṅgrahakāra argues that one could not say that one is able to use an asset as one likes because one is a legal owner (and not a thief).¹⁷⁴ Indeed, even if the *production* of ownership were secularly established, the *use* of one's assets is regulated by the śāstras and consequently, Saṅgrahakāra states: "One cannot say that one's property is whatever he uses as he desires, for the *use* of everything is restricted by the śāstra."¹⁷⁵

Dhāreśvara, according to Devaṅṅabhaṭṭa, argues against the idea that because something is the property of the person who uses it as he desires, and because something stolen should not be used as one desires, there is no over-extension of the definition of svatva as yatheṣṭaviniyojyva.¹⁷⁶ This is because, according to

¹⁷¹ Ibid., 601: yasmāt svāmyasvatvayos tulyayogakṣemayor ekataram adhikṛtya sādhitē 'pi śāstraikasamadhigamyatve dvayor eva sādhitam bhavati.

¹⁷² Ibid., 600: nanv alaukikam svāmyam na putrāṅām lokasiddham iti vṛdhaiva 'svāmyam hi bhavet' iti vacanasvārasyabhaṅgaḥ kriyate.

¹⁷³ Ibid., 600-601: vartate yasya yad dhaste tasya svāmī sa eva na / anyasvam anyahasteṣu cauryadyaiḥ kiṃ na vartate // tasmāc chāstrata eva syāt svāmyam nānubhavād api / kim ca yadi yad yasyāntike dṛṣṭam tasyaiva svāmī tarhy asya svam etenāpahṛtam iti na brūyāt, yasyaivāntike dṛṣṭam tasyaiva svāmitvāt.

¹⁷⁴ For Vijñāneśvara's arguments to that effect, see note 67.

¹⁷⁵ See note 63.

¹⁷⁶ Ibid., 602: kim tu yad vastu yena yatheṣṭam viniyuḥyate tat tasya svam ity ucyate. tatas ca nātiprasaṅgādidūṣaṇam, apahṛtāder ayatheṣṭaviniyojyasya svavyavahārāprasaṅgād iti vācyam.

Dhāreśvara, there is no such thing as the ability to use something as one desires when the use of an asset, even when the subject of a transaction as one's property, is restricted by the śāstra to things such as supporting one's family and gurus.¹⁷⁷ The thrust of Dhāreśvara's argument is that the very nature of ownership as a śāstrically regulated phenomenon precludes the possibility of an extra-śāstric theory of ownership by birth.

Devaṅṅabhaṭṭa defends the *Mitakṣarā* theory of ownership by birth by appealing to the *Nayaviveka*'s theory of svatva as fitness for use as desired. We saw that Vijñāneśvara implicitly adopts this theory of ownership, but Devaṅṅabhaṭṭa states explicitly that “we do not say that property is (something) to be used as one desires but rather we say that property is what is fit to be used as desired.”¹⁷⁸ An opponent argues that as śāstric obligations to support one's family or elders render the idea of ‘use as desired’ meaningless - because nothing is really available to be used as desired - but Devaṅṅabhaṭṭa quotes the *Nayaviveka* to the effect that “that which someone acquires is fit to be used by him as he desires” and argues that even in the absence of using something as one desires an asset is *fit* to be used as one desires (by virtue of being acquired).¹⁷⁹ Devaṅṅabhaṭṭa explains that when Bhavanātha claims that “acquisition is secularly established as in the case of birth and the like” he means to say that the acquisition of assets through means such as

¹⁷⁷ Ibid., 602: yatas sarvasya svavyavahāraṇiṣayasyāpi dhanasya viniyogaḥ śāstreṇaiva gurubhṛtyāder bharaṇādau niyamyata iti yatheṣṭaviniyojyam kim api nāstīti. prapañcitam caitat sarvam dhāreśvarasūriṇā.

¹⁷⁸ Ibid., 602: atrocitate - na brūmo yatheṣṭam viniyojyam svam iti, kim tu yatheṣṭaviniyogārham svam iti brūmahe.

¹⁷⁹ Ibid., 602: nanu śāstreṇa gurubhṛtyāder bharaṇādau viniyoganiyamād yathā yatheṣṭaviniyojyam durnirūpam tathā yatheṣṭaviniyogārhatvam api yatheṣṭaviniyogābhāvād eva durnirūpam. maivam, yatheṣṭaviniyogābhāve ‘pi yad yenārjitam tat tasya yatheṣṭaviniyogārham ity evaṃ nirūpyate. tathā ca **nayaviveke bhavanāthenaivam** nirūpitam ‘tac ca tasya tadarham yad yenārjitam’ iti granthena.

birth, purchase, division and the like, but not theft and the like, is secularly established since time immemorial.¹⁸⁰

Devaṅṅabhaṭṭa also appeals to the *Nayaviveka*'s analogy between smṛti and grammar to defend against claims that a secular theory of ownership would render smṛti niyamas purposeless. Like Bhavanātha, he argues that “smṛti, (i.e. Dharmaśāstra), like smṛtis such as Vyākaraṇa and the like, has as its purpose the restriction of things which are distinguished by being the subject of secular intentions since time immemorial.” Devaṅṅabhaṭṭa explains that because acquisition, which produces ownership, is secularly established since time immemorial, people should certainly know that acquisition produces ownership so that they can accomplish secular and Vedic activities.¹⁸¹ Indeed, writes Devaṅṅabhaṭṭa, “the Gautama-authored Dharmasmṛti (10.39-41) was written to constrain the means of acquisition that are established as being the content of secular understanding since time immemorial, just as Vyākaraṇa and other smṛtis have as their purpose the restriction of good words.”¹⁸² Devaṅṅabhaṭṭa argues that the term inheritance (riktha) in the Gautamasūtras actually means “the acquisition of inheritance, i.e. the birth of the son and the like which produces ownership in the father’s assets.”¹⁸³ This, says Devaṅṅabhaṭṭa, is how Gautama states that birth is a cause of obtaining (ownership)

¹⁸⁰ *Mīmāṃsānayaviveka*, Vol 3., ed. S Subrahmanya Shastri (New Delhi, Rashtriya Sanskrit Sansthan, 2004): 603: sa eva ‘lokasiddham cārjanam janmādi’ iti. janmakrayasamvibhāgaparigrahādihigamādy evānidamprathamalokasiddham dhanārjanam na punaś cauryādikam ity arthaḥ.

¹⁸¹ *Smṛticandrikā*, 3.2., 603: yata evānidamprathamalokasiddhārjanam eva svatvāpādakam tataś ca tad eva laukikavaidikavyavahārasiddhyartham avaśyam jñeyam.

¹⁸² *Ibid.*, 603: ata evānidamprathamalokadhīviṣayatayā vyavasthitārjanānām svagranthe nibandhanārthā ‘svāmī rikthakrayasamvibhāgaparigrahādihigameṣu’... ityādikā gautamādipraṇītā dharmasmṛtiḥ sādhuśabdanibandhanārthavyākaraṇādismṛtivat kṛtety arthaḥ.

¹⁸³ *Ibid.*, 603: riktham rikthārjanam pitrādihane svāmitvāpādakam putrādijanmeti yāvat.

in paternal assets: “the ācārya says that one obtains ownership of assets by birth alone.”¹⁸⁴

The rest of Devaṅṅabhaṭṭa’s discussion of janmasvatva follows the *Mitākṣarā* closely. This continuity of form is remarkable in that it demonstrates that the *Smṛticandrikā* is the first in a long line of adherents to the *Mitākṣarā* school. However, the *Smṛticandrikā* is remarkable in that it introduces two key arguments to the scale of texts: a citation of, and rejoinder to, Saṅgrahakāra and Dhāreśvara’s defense of śāstraikasamadhigamyasvatva and the *Nayaviveka*’s analogy between Vyākaraṇa and Dharmaśāstra. The latter testifies to the shared trajectory of the development of the concept of ownership in Prābhākara-Mīmāṃsā and the increasing sophistication of the *Mitākṣarā* school of thought in medieval Dharmaśāstra anthologies. Devaṅṅabhaṭṭa’s use of the *Nayaviveka* is innovative, particularly his insistence that ownership is not merely secularly established, but not contingent on the ability to use one’s property as desired.

Viśveśvarabhaṭṭa’s 14th Century *Subodhinī* is the oldest surviving commentary on the *Mitākṣarā*.¹⁸⁵ Viśveśvara typically glosses Vijñāneśvara without offering much further elaboration, but when discussing Vijñāneśvara’s paraphrase of Prabhākara, Viśveśvara quotes the *Nayaviveka* at length. Viśveśvara does not name Bhavanātha or the *Nayaviveka*, but Viśveśvara defends janmasvatva by turning to Bhavanātha’s arguments concerning the metaphysics of ownership.¹⁸⁶ Viśveśvara explores how the relationship between an owner and some property is created and

¹⁸⁴ Ibid., 603: tathāca paitṛkadhanalābhahetutvenoktam **gautamenaiva - ‘utpattyaivārthasvāmitvam labhetety ācāryaḥ.**’ Devaṅṅabhaṭṭa explains that this means ‘by the arising of the body in the mother’s womb alone:’ utpattyaiva mātur garbhe śārīrotpattyaivety arthaḥ.

¹⁸⁵ For the the dating of Viśveśvarabhaṭṭa, see Kane, *HDS*, 1.2., 792-804.

¹⁸⁶ *Mitākṣara: With Viśvarūpa and Commentaries of Subodhini and Bālabhāṭṭi*, edited by S.S. Setlur (Madras: Brahmavadin Press, 1912), 597, Introduction to Yāj. 2.114: janmanā pratigrahādibhiś cārjitasya dhanasya lokasiddham iti loke vṛddhavyavahārasiddhatvāt.

destroyed. Viśveśvara rejects the argument that there is no essential quality (dharma), produced by acquisition and capable of being understood with epistemic certainty, which can be designated ‘svatva.’¹⁸⁷ For Viśveśvara, svatva is merely that relationship between owner and property which is the relationship between acquirer and acquired brought about through an act of acquisition.¹⁸⁸

Viśveśvara’s point is that because it is established in the secular world that the relationship between agent and object is brought about by action, one need not depend on a different source of knowledge (other than acquisition in order to know that someone is an owner of an asset).¹⁸⁹ The essential metaphysical question turns on how an ephemeral action such as acquisition could bring about a relationship which is enduring. Viśveśvara, drawing on Bhavanātha, argues that there is no destruction of the relationship having the form of svatva produced by that (act of acquisition) when the act of acquisition terminates because the loci of the two things possessing that relation (acquirer and acquired) are not destroyed.¹⁹⁰ After all, a father does not cease to be a father when he has ceased the act of fathering.¹⁹¹ Although brief, Viśveśvara’s use of the *Nayaviveka* confirms the core argument of this section: the Dharmaśāstrins who followed Vijñāneśvara’s theory of janmasvatva and apratibandhadāya followed the expanding arguments of the Prābhākara-

¹⁸⁷ Ibid., 597, Introduction to Yāj. 2.114: nanu nārjanotpannaḥ ko ‘pi dharmo mānagamyo yat svatvam iti vyavahriyate. maivam; Cf. *Mīmāṃsānayaviveka*, Vol. III, 45: nanu nārja[n]ādhiṇaḥ ko [‘]pi dharmo mānagamyah.

¹⁸⁸ Ibid., 597, Introduction to Yāj. 2.114: arjanād arjakārjyasambandho yaḥ svasvāmibhāvasambandhas tad eva svatvam. Cf. *Mīmāṃsānayaviveka*, Vol. III, 45: arjanād arjakārjyasambandha eva hi svasvāmīsambandhaḥ.

¹⁸⁹ Ibid., 597, Introduction to Yāj. 2.114: tac ca pṛthānāmānam nāpekṣate; yataḥ kriyāgarbhaḥ kartṛkarmaṇoḥ sambandho lokasiddhaḥ. Cf. *Mīmāṃsānayaviveka*, Vol. 3, 45-46: kriyāgarbho hi kartṛkarmaṇoḥ sambandho lokasiddhaḥ... na svam prati pṛthānāmānam apekṣate.

¹⁹⁰ Ibid., 597, Introduction to Yāj. 2.114: na cārjanakriyāpaye tajjanyasvatvarūpasambandhasyāpāyaḥ sambandhiṇor āśrayayor anapāyāt. Cf. *Mīmāṃsānayaviveka*, Vol. 3, 46: na caivam arjanakriyāpāye tajjanyasambandhasyāpy apāyaḥ, sambandhiṇoḥ āśrayayor anapāyāt.

¹⁹¹ Ibid., 597, Introduction to Yāj. 2.114: na hi pituḥ kriyāpāye pitṛtvam apaiti. Cf. *Mīmāṃsānayaviveka*, Vol. III, 46: na hi pituḥ kriyāpāye ‘pi pitṛtvam apaiti.

Mīmāṃsā and buttressed the legal implications of the *Mitākṣarā* with a pre-legal inquiry into the philosophical, metaphysical dimensions of ownership as a secular phenomenon.

While Devaṅṇabhaṭṭa's *Smṛticandrikā* and Viśveśvara's *Subodhinī* leave several questions concerning ownership unanswered, Madanasimha's mid-fifteenth century *Madanaratnapradīpa*, the most developed Dharmaśāstra anthology of the *Mitākṣarā* school before the rise of the *Dāyabhāga* school, goes into tremendous detail on the relationship between Dharmaśāstra, Vyākaraṇaśāstra and secular, worldly custom.¹⁹² The treatment of *dāya* follows closely what appears in the *Smṛticandrikā*, but is innovative in its interpretation of Pārthasārathimiśra's *Tantrarātna* in accordance with Bhavanātha's *Nayaviveka*. The *Madanaratnapradīpa* was likely the model for post-*Dāyabhāga Mitākṣarā* adherents including Mitramiśra and Kamalākarabhaṭṭa. Further, the *Madanaratnapradīpa* offers the most sophisticated treatment of the *Nayaviveka*'s arguments concerning ownership. As such, it is fitting to conclude this survey of the development of the *Mitākṣarā* school with an analysis of the *Madanaratnapradīpa*. In the explanation of the division of inheritance, the *Madanaratnapradīpa*, following Devaṅṇabhaṭṭa, defines inheritance (*dāya*) as "an asset connected to the father and the like which is fit for partition."¹⁹³

Like Devaṅṇabhaṭṭa, Madanasimha introduces Saṅgrahakāra and Dhāreśvara as pūrvapakṣins who attack the theory of secularly established ownership from both ends - *svāmitva* and *svatva*. The Saṅgrahakāra argues that *svāmitva* must be discernible from the śāstra alone because a secularly established *svāmitva* would

¹⁹² *Madanaratnapradīpa: Vyavahāravivekodyota*, ed. P.V. Kane (Bikaner: Anup Sanskrit Library, Ganga Oriental Series; no. 6, 1948). For the background and context of the *Madanaratnapradīpa*, see Kane's introduction to the edition.

¹⁹³ *Ibid.*, 321: *dāyo nāma vibhāgārham pitrādīsambandhi dravyam.*

extend even to thieves and the like.¹⁹⁴ The Saṅgrahakāra makes many of the same arguments which appear in the *Smṛticandrikā*: the inability to sue for stolen possessions, the irrelevance of śāstric niyama-s regarding acquisition and the absence of birth in śāstric lists of means of acquiring ownership. Dhāreśvara argues that there could be no secular understanding of ownership. Dhāreśvara's assertion is that one could not get out of Saṅgrahakāra's argument by saying that what is used by someone as they please is their svam because even the use of lawfully acquired assets is regulated (niyamita) by śāstra.¹⁹⁵ Consequently, one could never use svatva (i.e. yatheṣṭaviniyojyatva) to defend a secular theory of ownership.¹⁹⁶

Madanasimha responds, like Devaṅṅabhaṭṭa, by appealing to the *Nayaviveka*. First, in response to Dhāreśvara's concern about thieves and the obsolescence of smṛti, the *Madanaratna*, following the *Nayaviveka*, argues that "acquisition is secularly established as in the case of birth and the like" and consequently, "Smṛti (i.e. Dharmaśāstra), like Smṛtis such as Vyākaraṇa and the like, has as its purpose the restriction of things which are distinguished by being the subject of secular intentions since time immemorial."¹⁹⁷ The *Madanaratna* explains that Vyākaraṇaśāstra teaches the meanings of words established in secular usage in

¹⁹⁴ Ibid., 323: na hi yatsamīpe yad dhanam dṛṣyate tasya tad dhanam svam sa ca tasya svāmīti cauryādilabdhadhane 'pi svasvāmibhāvaprasaṅgāt.

¹⁹⁵ Ibid., 324: na ca yena yad yatheṣṭam viniyuujyate sa tasya svāmī tac ca tasya svam caurādilabdham tu na tatheti vācyam. sarvasya nyāyopārjitasyāpi dhanasya kuṭumbapoṣaṇādau viniyogaḥ śāstreṇa niyamita iti svecchānusāreṇa viniyogaviṣayatvābhāvād iti. etat saṅgrahakāramataṃ dhāreśvarabhaṭṭenāpy āśritam. Cf *Smṛticandrikā*, Vol III, Part II, 602: kim tu yad vastu yena yatheṣṭam viniyuujyate tat tasya svam ity ucyate. tatas ca nātiprasaṅgādidūṣaṇam, apahṛtāder ayatheṣṭaviniyojyasya svavyavahārāprasaṅgād iti vācyam. yatas sarvasya svavyavahāraviṣayasyāpi dhanasya viniyogaḥ śāstreṇaiva gurubhṛtyādeḥ bharaṇādau niyamyata iti yatheṣṭaviniyojyam kim api nāstīti. prapañcitam caitat sarvam dhāreśvarasūriṇā.

¹⁹⁶ Ibid., 324: tasmāc chāśtraikasamadhigamyatvāt katham svasvāmibhāvasya lokasiddhatvam.

¹⁹⁷ Ibid., 324-325: uktaṃ caitan **nayaviveke** prābhākaramatāmbujaprabhākareṇa bhavanāthēna - lokasiddham vārjanam janmādi, ata evānidamprathamalokadhīviṣayatā sthite nibandhanārthā smṛtir vyākaraṇādismṛtivad iti. Cf *Mīmāṃsānayaviveka*, Vol III, 47: ata evānidamprathamalokadhīviṣayavyvasthiti nibandhanārthā smṛtiḥ vyākaraṇādismṛtivat. Also, Cf *Smṛticandrikā*, 3.2, 603: yata evānidamprathamalokasiddhārjanam eva svatvāpādakam tatas ca tad eva laukikavaidikavyavahārasiddhyartham avāśyam jñeyam.

order to instruct people in the appropriate use of those words and cites a vārtika quoted in Patāñjali's *Mahābhāṣya* (1.1.62), "śāstra explains words that exist."¹⁹⁸ The thrust of the *Madanaratna's* argument is that Vyākaraṇa selects particular forms of secular linguistic usage for praise or censure depending on their śāstric correctness but doesn't determine what words are actually used in the world. Dharmaśāstra, like Vyākaraṇaśāstra, might praise or censure particular means of acquisition (recognized in the secular world) for the sake of moral propriety, but such restrictions do not determine what the secular world recognizes as legally valid means of acquisition. A Brahman might earn money in defiance of śāstric restrictions by farming (which he is prohibited from doing except in emergencies) but he will still have svatva in his ill-gotten gains. He may have to perform a penance in the form of abandonment of these assets or reciting mantras, but his children may divide said assets without incurring a moral blemish. A thief, however, who breaks a śāstric injunction not to steal will not have svatva because unlike farming, theft is not a locally recognized method of acquisition. His children, if they divide the assets, would

¹⁹⁸ Ibid., 325: yathā vyākaraṇaśāstre siddhā eva śabdāḥ sādhutvajñānārtham anukhyāyante tathety arthaḥ. Vyākaraṇaśāstrasya lokasiddhaśabdānvākhyāpakatvam uktam **mahābhāṣye** "sadanvākhyānāc chāśtrasyeti." sadanvākhyānāt siddhaśabdānvākhyāpakatvād ity arthaḥ.

incur a moral blemish and may be punished by the king.¹⁹⁹ In short, Madanasimha distinguishes between moral faults with an unseen effect (sin and the need for ritual purification) and secular illegality which has a seen effect (in the form of state-sponsored punishment).

Madanasimha also offers the most comprehensive theory of ownership in medieval Dharmaśāstra and neatly ties together the Prābhākara and Kaumarila theories of ownership (yatheṣṭaviniyogārhatā and yatheṣṭaviniyojyatva respectively). The *Madanaratna*, invoking the Nayaviveka, argues that svatva is not the capacity to use an asset as one desires, but the appropriateness to use an asset as one desires.²⁰⁰ Using the metaphor of a seed in a granary, the *Madanaratna* argues that although one might not be able to use an asset as one would like because of a śāstrically enjoined necessity such as supporting one's family, one is still the legal owner of the asset by virtue of having acquired it (through a valid method of acquisition). Similarly, while a seed stored in a dry granary may not produce sprouts,

¹⁹⁹ Ibid., 325-326: yathā siddhaśabdānuśāsanārthe vyākaraṇaśāstre ye lokasiddhāḥ śabdās te sarve sāmānyato viśeṣato vānuśiṣṭā eveti yas tatra nānuśiṣṭo yo vā - na nisambuddhyoḥ - ityevamādivākyaḥ sambuddhau luptanakāro 'sādhur ity evamrūpeṇa prakāreṇāsādhutayopadiṣṭaḥ sa lokasiddha eva na bhavati na prayogārhas tathā lokasiddhasya svatvahetunibandhanārthe gautamādiśāstre sarvo 'pi svatvahetur upadiṣṭa eveti yas tatra nopadiṣṭho yo vā cauryādivat svatvāsādhakatvenoktaḥ sa laukiko 'pi svatvahetur na bhavati ato 'satpratigrahavāñijyādilabdhasya yadi śāstre svatvam niṣiddham tarhi loke 'pi cauryādilabdhatvatsvatvasyānaṅṅīkartavyatvāt. tasmād yad garhiteneti vākyam asatpratigrahasvayamkr̥takṣivāñijyādīnām svatvahetutve saty api brāhmaṇasya... **yājñavalkyabrhaspatyādivākya**ir āpadvṛtītenoktānām teṣām anāpady āśrayaṇe doṣasambandhāt tadupāyalabdhadravaparitāgajapataporūpam prāyaścittam vidadhāti na tu tadupāyalabdhasya svatvam niṣedhatīty āstheyam. ata evāsatpratigrahādīnārjayitur na corādidaṇḍaviśeṣaḥ smaryate. evaṃ cānāpady api asatpratigrahādīnārjitasya svatvam asty eveti tatputrāṇām tadvibhājyam eva. arjayitur eva doṣasambandhāt prāyaścittācaraṇam cauryādilabdhasya tu na tādr̥kṭvam iti na tadvibhājyam. The analogy to Vyākaraṇaśāstra is thus: Pāṇini 8.2.8. "na nisambuddhyoḥ" (one should retain the nasal ending in the vocative - i.e. bho rājan but not bho rāja) tells us to prefer one linguistic usage over another, but if one were to drop the nasal in the vocative case, it would be improper, but intelligible for the purpose of communication. Such a position would *not* mean that nonsense words are intelligible for the purpose of conveying meaning.

²⁰⁰ Ibid., 325: na ca yatheṣṭaviniyojyatvam svatvam iti vāyam brūmaḥ. kiṃ tarhi? yatheṣṭaviniyogayogyatvam. The *Madanaratnapradīpa* seems to have Pārthasārathimīśra's definition from the *Tantrarātna* in mind. See Kroll, "A Logical Approach to Law," 39, quoting *Tantrarātna*, pg 19: yatheṣṭaviniyojyatvaṃ hi svatvam. kevalakratvarthatve tv anyatrāviniyogād yatheṣṭaviniyojyatvābhāvāt svatvābhāva iti.

it is capable of producing sprouts by virtue of its being a seed.²⁰¹ Interestingly, Madanasimha turns to Pārthasārathimiśra's *Tantrarātna* and argues that this is the case "even in the *Tantrarātna* which follows the opinions of (Kumārila) Bhaṭṭa."²⁰² As Pārthasārathimiśra argues, "svatva is the ability to use an asset as one desires because if the acquisition of assets were exclusively for the purpose of the sacrifice, there would not be yatheṣṭaviniyogātva because one could not use an asset in any other way (than the sacrifice)."²⁰³ Pārthasārathimiśra's definition of svatva as yatheṣṭaviniyojyātva has typically been viewed by Derrett and Kroll as being at odds with Bhavanātha's definition of svatva as yatheṣṭaviniyogārhatā. Madanasimha, however, argues, on the basis of Pāṇini 3.3.169, that the gerundive yojya (from the root √yuj) is used in the sense of propriety (arha).²⁰⁴ The *Madanaratnapradīpa* thus attempts to bring the Bhāṭṭa and Prābhākara schools of Mīmāṃsā into alignment. The other possibility is that the difference between yatheṣṭaviniyojyātva and yatheṣṭaviniyogārhatā amounted to far less than it has been made out to be in secondary scholarship.

To conclude, Madanasimha's comments in the *Madanaratnapradīpa* support the argument which I have been advancing through this chapter. The development of the theory of janmasvatva was connected intimately with the theory of secular ownership as developed in the Prābhākara school of Mīmāṃsā. On the one hand, Vijñāneśvara took an inchoate, but recognized (by Viśvarūpa and Medhātithi) theory of sons' coparcenary property rights in their father's estate and transformed it into a

²⁰¹ Ibid., 325: tac ca [svatvam] śāstreṇa kuṭumbabharanādiviniyoganiyamanena viniyogāntaraviṣayatām alabhamānasyāpy arjitatvaprayuktam asty eva. yathā kutaś cid dheter aṅkurotpādanam akurvato 'pi kuśūlādīsthitasya bījasya bījatvaprayuktam aṅkurotpādanayogyatvam.

²⁰² Ibid., 325: bhaṭṭamatānusāriṇi tantrarātne 'pi...

²⁰³ Ibid., 325: yatheṣṭaviniyojyātva hi svatvam kevalakratvarthatve 'nyatrāviniyogād yatheṣṭaviniyogābhāve.

²⁰⁴ Ibid., 325: viniyojyam atra viniyogārham - arhe kṛtyatṛcaś ca iti **pāṇinismaraṇāt**.

comprehensive model of inheritance. In doing so, he was working against a more literal reading of the *smṛtis* and *sūtras*. In order to elevate custom to the status of śāstric law, Vijñāneśvara had to free the concept of ownership from its śāstric constraints. It is clear that the *Smṛtisaṅgraha* and Dhāreśvara had already opposed such an idea, but Vijñāneśvara found a convenient ally in the *Bṛhatī* and possibly the *Ṛjuvimalā*. Ownership, they said, could not be limited to the sphere of ritual propriety because it was a secular phenomenon. While Vijñāneśvara can be called, rightly, the founder of a school of jurisprudence for innovating this bold connection between *dāya* and *Mīmāṃsā*, it was left to those Dharmaśāstrins who inherited his theories to follow the implications of the *Mitākṣarā* systematically and to work out a definition of ownership. Devaṅṇabhaṭṭa and Madanasimha turned to a later Prābhākara-Mīmāṃsaka, Bhavanātha, to accomplish this task. For them, ownership could be defined as the fitness to use an asset as one desires, and ownership could be acquired through any means not reprobated in the secular world.

1.D: Conclusion

The rise of the *Mitākṣarā* as a discernible school of legal thought follows the development of the Prābhākara school of *Mīmāṃsā*. The earliest Dharmaśāstras (the *smṛtis* and *sūtras*), like the *Mīmāṃsāsūtras*, say little to nothing about the nature of ownership. It was only with the *Mīmāṃsā* commentaries of Śabara, Prabhākara and Śālikanātha that ownership and its relationship to the sacrifice and secular world was interrogated. Their theory of ownership as that which is fit to be used according to its acquirer's intentions was surely not the 'what I hold I own' theory advanced by Kroll and Derrett.²⁰⁵ It is apparent that even at so early a stage of development as

²⁰⁵ Kroll, "A Logical Approach to Law," 37, where he the author identifies Pārthasārathimiśra as making "a regressive move."

the *Mīmāṃsābhāṣya*, there was a concern about the moral rectitude of an act of acquisition. These early Mīmāṃsā theories of ownership were applied, increasingly as time wore on, by early Dharmaśāstra commentators such as Viśvarūpa and Medhātithi to solve thorny legal concerns such as adverse possession, the ownership of land and inheritance. Vijñāneśvara represents a sea-change in the history of the application of Mīmāṃsā reasoning to Dharmaśāstra. The passage from the age of Dharmaśāstra commentaries to Dharmaśāstra-nibandhas saw the application of the next stage of Prābhākara Mīmāṃsā commentary as represented by the *Nayaviveka*. Between the 12 and the 15th centuries, the Dharmaśāstra debate about the nature of ownership and inheritance took its cue from the *Nayaviveka*. In short, the well-known nexus between Dharmaśāstra and Mīmāṃsā was at the heart of the emergence and subsequent expansion of the *Mitākṣarā* school. We shall see in the following chapter how Jīmūtavāhana, conspicuously absent from any of the texts in this chapter, was drawn into a Nyāya-based attack on the theories of ownership articulated in the Mīmāṃsā.

To conclude, I want to emphasize that Davis and Rocher are correct to warn against identifying Vijñāneśvara as the founder of a school of law in the sense that he originated the idea of janmasvatva, that he wrote in opposition to an eastern, Bengali, or Nyāya-inflected rival, or that he established an academic institution with students, disciples and discernible political applications. At the same time, it is difficult to discount Vijñāneśvara's profound impact on the discipline of Dharmaśāstra. When one asks why Colebrooke would identify the *Mitākṣarā* as "the chief groundwork" of Dharmaśāstra "from *Benares* to the southern extremity of the peninsula of *India*" it is obvious that one reason is, as Kane notes, that the *Mitākṣarā* is the Dharmaśāstric analogue to the *Mahābhāṣya* of Patañjali or the *Kāvya prakāśa*

of Mammaṭa.²⁰⁶ This chapter explored the salient features of the *Mitākṣarā* school - the twofold definition of *dāya*, the legal implications of ownership by birth, the theory of extra-śāstra ownership, the metaphysics of the Prābhākara school of Mīmāṃsā - in relation to Vijñāneśvara's predecessors and successors. The picture that emerged was stark: before Vijñāneśvara, Dharmaśāstrins made stray comments about ownership and Mīmāṃsā here and there, but they very clearly did not *follow* any discoverable pattern closely. After Vijñāneśvara many Dharmaśāstrins followed a pattern which was clearly based on the *Mitākṣarā*. We shall see in the following chapter that the ubiquity of the *Mitākṣarā* school made it an exceptionally strong opponent *against which* to develop an opposing, regional, Nyāya-inflected school of jurisprudence - complete with definite educational institutions, teacher-student transmissions and strong polemical tendencies.

²⁰⁶ H.T. Colebrooke, *Two Treatise on the Hindu Law of Inheritance* (Calcutta: Hindoostanee Press, 1810), iv; P.V. Kane, "The Predecessors of Vijñāneśvara" *The Journal of the Bombay Branch of the Royal Asiatic Society*."

Chapter 2: The *Dāyabhāga* School and Navya-Nyāya

In this chapter I examine the development of Bengali (Gauḍa) school of jurisprudence that emerged in the late fifteenth century in Navadvīpa, Bengal. For this school, the most important treatise regarding inheritance was Jīmūtavāhana's *Dāyabhāga* (12th-15th century). In the late 15th century, Navadvīpa's ṭols, śāstric instructional institutions, rose from obscurity to the height of fame as centers of learning, particularly in two śāstric disciplines: jurisprudence (Dharmaśāstra) and the "new epistemology" (Navya-Nyāya).¹ By the end of the 16th century, Bengali (Gauḍīya) Dharmaśāstrins (such as Raghunandana Bhaṭṭācārya 1510-1580) and Navya-Naiyāyikas (such as Raghunātha Śīromaṇi 1460-1540) were (in)famous in pan-Indic scholarly debates - particularly with reference to inheritance and the philosophy of ownership.

Contemporary scholarship downplays or disputes a connection between the rise of Navadvīpa as a center of Dharmaśāstra and as a center of Navya-Nyāya. I aim to rectify this misconception and draw attention to the relationship between Navya-Nyāya theories of ownership as discernible from the śāstra alone (śāstraikadhigamyasvatva, etc.) and the Dharmaśāstric theory of ownership by the cessation of the ownership of the previous owner (uparamasvatva) articulated in Jīmūtavāhana's *Dāyabhāga*. I advance two lines of argumentation: 1) that Navadvīpan Dharmaśāstrins incorporated Jīmūtavāhana's *Dāyabhāga* in a self-consciously Bengali assemblage of Dharmaśāstra texts; and 2) that Navadvīpan commentaries on the *Dāyabhāga* and Navya-Nyāya discussions of ownership (svatva) reflect a deliberate and mutually influential attempt to articulate an internally

¹ For the history of Navadvīpa, see Jonardon Ganeri, *The Lost Age of Reason: Philosophy in Early Modern India 1450-1700* (Oxford: Oxford University Press, 2011), 39-61. For the activities of Navadvīpan ṭols, see E.B. Cowell, "Report on the Tolls of Nuddea," *Proceedings of the Asiatic Society of Bengal* (1867): pp. 86-102.

consistent cluster of Bengali theories of ownership and inheritance - a school - in opposition to a Maithila school of thought.

This chapter's object of inquiry is Jīmūtavāhana's *Dāyabhāga*, a Dharmaśāstric monograph written sometime between the thirteenth and fifteenth centuries. With the exception of Vijñāneśvara's *Mitākṣarā*, the *Dāyabhāga* is the most influential Sanskrit text on the division of inheritance (dāyavibhāga). The *Dāyabhāga* is remarkable for its polemic against the theory of ownership by birth (janmasvatva) and for its venerable reverence in Bengal. When H.T. Colebrooke selected the *Dāyabhāga* as a counterpart to the *Mitākṣarā* in his formulation of schools of Hindu Law he notes that:

The *Bengal* school alone, having taken for its guide Jīmūta-vahana's treatise, which is on almost every disputed point, opposite in its doctrine to the *Mitācsharā*... the preference appeared decidedly due to the treatise of Jīmūta-vāhana himself... because he was the founder of this school, being the author of the doctrine which it has adopted...²

Even Ludo Rocher, a longstanding opponent of Colebrooke's formulation of schools of Hindu Law, testifies to the enduring importance of the *Dāyabhāga*:

It is easy to understand why Colebrooke was advised to study and translate Jīmūtavāhana's *Dāyabhāga*. The *Dāyabhāga* had become very important in Bengal; it can be said without exaggeration that most later works [on inheritance] produced in Bengal were directly or indirectly commentaries on Jīmūtavāhana's text.³

Jīmūtavāhana's provenance is equally remarkable. We know virtually nothing about Jīmūtavāhana as an historical individual. That the *Dāyabhāga* can be dated no more precisely than somewhere in a nearly four-hundred-year window is remarkable when we consider the relatively tight chronology for contemporaneous

² H.T. Colebrooke, *Two Treatise on the Hindu Law of Inheritance* (Calcutta: Hindoostanee Press, 1810), v. Cf Ludo Rocher, *Jīmūtavāhana's Dāyabhāga: The Hindu Law of Inheritance in Bengal* (Oxford: University of Oxford Press, 2002), 23.

³ Ludo Rocher, "Schools of Hindu Law," in *Studies in Hindu Law and Dharmaśāstra*, ed. Donald Davis (New York: Anthem Press, 2014): pp. 119-141, 125.

Dharmaśāstrins. Despite occasional references to Jīmūtavāhana's other two works (the *Kālavivkeā* and *Vyavahāramāṭṛkā*)⁴ the *Dāyabhāga* was completely unknown until Śrināthācāryacūḍāmaṇi, a prominent Navadvīpan Navya-Nāyāyika, wrote a commentary on it at the end of the 15th century.⁵ In short, the *Dāyabhāga*, a text diametrically opposed to the *Mitākṣarā* in matters of ownership by birth, went from total obscurity to become the second most important Dharmaśāstra nibandha on inheritance, despite the fact that it was studied only by a relatively small number of paṇḍits in a handful of ṭols in Navadvīpa that were associated strongly with Navya-Nyāya philosophy.

This chapter uncovers how and why the *Dāyabhāga* - and its theory of heirs' ownership by the cessation of the ownership of the previous owner - came to be connected with the study of Navya-Nyāya in Bengal. The chapter's argumentative structure is oriented towards correcting three misconceptions that are repeated, sometimes uncritically, by contemporary scholars of Dharmaśāstra. The first misconception, advanced by Ludo Rocher, is that "from a historical point of view Jīmūtavāhana cannot have been 'the founder of the Bengal school...' [because] in fact, the legal principles that have become characteristic traits of the Bengal school of inheritance were not even typically Bengali before Colebrooke translated the *Dāyabhāga*, in 1810."⁶ Rocher's skepticism about some aspects of Colebrooke's arguments are warranted, but Rocher ignores the incorporation of Jīmūtavāhana's *Dāyabhāga* into a self-consciously Bengali scale of Dharmaśāstra texts that: a) consolidated the opinions of earlier authors such as Śūlapāṇi; and b) was oriented against a regional rival - the logicians and jurists of Mithilā.

⁴ For Jīmūtavāhana's biography and bibliography, see Rocher, *Jīmūtavāhana's Dāyabhāga*.

⁵ Rocher, "Schools of Hindu Law," 125.

⁶ Rocher, *Jīmūtavāhana's Dāyabhāga*, 32.

The second misconception, also advanced by Rocher, asserts that Colebrooke was mistaken to argue that “the Bengal school was greatly influenced by the nyāya system of philosophy.”⁷ Rocher errs in focusing on the *Dāyabhāga* at the expense of the vast commentarial tradition that developed around the text (and led to its prominence). The Bengal school was influenced, profoundly, by Navya-Nyāya techniques and, as I contend, the *Dāyabhāga* became the darling of Bengali logicians in large part due to its ability to be read in congruity with fundamental Nyāya concepts of ownership as developed in Navadvīpa’s ʒols.

The third misconception belongs to Ethan Kroll. In his monumental translation of a vast portion of the Navya-Nyāya archive on ownership, Kroll argues that:

Significantly, neither Vardhamāna nor Raghunātha (nor any of the other post-Gaṅgeśa *naiyāyika*-s) appears to be arguing that the conception of *svatva* is not, as both Vijñāneśvara and Pārthasārathi Miśra contend, independent of *dharmaśāstra*.⁸

Kroll has read too much Navya-Nyāya, clearly. The thrust of his triple-negative arguments is that Bengali Naiyāyikas accept Vijñāneśvara’s Prābhākara-Mīmāṃsā-inflected theory of ownership as a secular phenomenon, implicitly, *because they never reject that theory explicitly*. Kroll commits an *argumentum ad ignorantiam* that fails to take into account two distinguishing features of Navya-Nyāya debates concerning the philosophy of ownership: 1) that the shift of Navya-Nyāya from Mithilā to Bengal in the sixteenth century coincided with an increasing focus on inheritance (and uparamasvatva) as a topic of debate; and 2) that Navya-naiyāyikas explicitly invoke Jīmūtavāhana and the *Dāyabhāga*-commentators’ arguments about ownership, inheritance, and property when exploring the legal implication of various metaphysical accounts of ownership.

⁷ Rocher, *Jīmūtavāhana’s Dāyabhāga*, 41.

⁸ Ethan Kroll, “A Logical Approach to Law” (PhD diss., University of Chicago, 2010), 42.

This chapter advances three arguments in support of the view that the *Dāyabhāga* was foundational to a Bengal School of Inheritance: 1) that Śrīnāthācāryacūḍāmaṇi (1475-1525) used the *Dāyabhāga* to fill a conspicuous gap in a Bengali scale of Dharmaśāstra texts developed in opposition to a Maithila scale of Dharmaśāstra texts and built around the work of Śūlapāṇi (1375-1460); 2) that Śrīnāthācāryacūḍāmaṇi and subsequent commentators on the *Dāyabhāga* such as Raghunandana Bhaṭṭācārya (1510-1580) and Acyutacakravartin (1510-1570) utilize Navya-Nyāya analytical techniques to defend a theory of ownership as discernible from the śāstra alone (śāstraiḥkagamyatva, etc.), to reject the theory of ownership by birth, and to advance the Bengali Navya-Nyāya theories of ownership (of, for example, Raghunāthaśiromaṇi) against the Maithila Navya-Nyāya theories of ownership; and 3) that subsequent Nyāya debates about the philosophical nature of ownership: a) implicitly defend a theory of upamasvatva; and b) employ arguments from Bengali *Dāyabhāga* commentators to analyze ownership in relation to inheritance.

In short, this chapter argues for a stronger understanding of a ‘school’ in relation to the *Dāyabhāga* than that which developed in relation to the *Mitākṣarā* in medieval India. As Navadvīpa grew as a centre of Nyāya and Dharmaśāstraic learning - against their regional rival, Mithilā - in the 16th Century, its paṇḍits developed a scale of texts that involved a Nyāya/Dharmaśāstra nexus, that was geographically specific, and that followed the transmission of lines of argumentation from distinct teacher-disciple lineages in Navadvīpa’s ṭols. As a consequence, these paṇḍits developed a theory of ownership as a distinct conceptual category (padārtha) or as a syncopated pair of qualified absences (viśiṣṭābhāva) that in either case is produced by śāstrically determined methods of acquisition and that afforded

an owner a largely unrestricted right for use as desired (*yatheṣṭaviniyoga*). Although the Navadvīpan adherents of the *Dāyabhāga* school of jurisprudence reject the *Mitākṣarā*'s theory of ownership by birth - for reasons of philosophical accuracy - they direct their polemic towards Mithilā primarily.

In the previous chapter we saw that the followers of the Vijñāneśvara's *Mitākṣarā* defended a Mīmāṃsā-based theory of ownership as an attribute (*guṇa*) of an asset, that is produced by secularly recognized methods of acquisition (including birth) and that amounted to a fitness for use as desired - even if actual use is prohibited. In the following chapter we shall see that the migration of Bengali Naiyāyikas to Vārāṇasi in the 17th century promoted several prominent Mīmāṃsakas (who saw themselves as defenders of 'southern' Brāhmaṇa orthodoxy) to defend Vijñāneśvara from perceived attacks from the likes of Jīmūtavāhana and Raghunātha Śiromaṇi. This Benarsi, Southern/Eastern and *Mitākṣarā/Dāyabhāga* polemic led to the early modern phenomenon of two regionally specific, jurisprudential schools of Hindu inheritance law.

2.A: A Bengali Scale of Dharmaśāstra Texts - From Mithilā to Navadvīpa

In this section I take up the formation of a Bengali scale of Dharmaśāstra in the 16th Century and the roles of Śrīnāthācāryacūḍāmaṇi and the *Dāyabhāga* in the formation of that scale of texts. The questions I ask are: when did the *Dāyabhāga* become a quintessentially 'Bengali' text, what were the stakes involved in the process of localizing the *Dāyabhāga*, and to what extent did the formation of a Bengali scale of Dharmaśāstra texts antedate Jīmūtavāhana? My argument - that Śrīnāthācāryacūḍāmaṇi's *Dāyabhāgaṭīppanī* marks the juncture at which the *Dāyabhāga* became the emblematic Bengali treatise of inheritance - contrasts with the dominant view of modern Dharmaśāstra studies. Ludo Rocher and

Donald Davis frame the idea of a '*Dāyabhāga* school' of law as a "phony" invention of H.T. Colebrooke. For Davis, the issue is chronological, because "ownership by the father's death had prior supporters in Bharuci, Dhāreśvara and Medhātithi."⁹ In the previous chapter I argued that Davis' position is anachronistic: pre-Vijñāneśvara/*Dāyabhāga* authors developed neither comprehensive nor consistent lines of argumentation in relation to inheritance and ownership. Vijñāneśvara was an influential founder of a school of thought not in spite of previous, similar opinions, but because he consolidated those opinions. With regard to Jīmūtavāhana and the Bengal school, the obvious argument is that Dhāreśvara and Saṅgrahakāra (the only other surviving adherents of a theory of ownership as discernible from the śāstra alone) *only* appear as pūrvapakṣins in the writings of Vijñāneśvara's followers (Pratāparūdra included) and play no role in medieval and early modern debates about inheritance and ownership in Bengal or Vārāṇasi. In short, Davis' argument overemphasizes the importance of Dhāreśvara and Saṅgrahakāra and obscures the *Dāyabhāga*'s role as a touchstone for all subsequent eastern Dharmaśāstrins writing on inheritance.

Rocher makes two objections to the idea of a *Dāyabhāga* school of Dharmaśāstra. Even if Jīmūtavāhana was not himself a Bengali author, Rocher's first objection - "that the legal principles that have become characteristic traits of the Bengal school of inheritance were not even typically Bengali before Colebrooke translated the *Dāyabhāga*, in 1810" - would be disproved by the *Dāyabhāga*'s appropriation by Bengali commentators such as Śrīnāthācāryacūḍāmaṇi. Rocher's second objection is that Jīmūtavāhana cannot "have codified Bengali customs" because "Śrīnāthā's [and other commentators'] interest in the *Dāyabhāga* was not

⁹ See Donald Davis, *The Spirit of Hindu Law* (Cambridge: Cambridge University Press, 2010), 97.

that of a practicing lawyer... [but was rather] confined to his *ṭol* in Navadvīpa.”¹⁰

Rocher asks, rhetorically:

How can it, then, be explained that a text with the express purpose of giving local customs their place within the framework of the Dharmaśāstra remained practically unnoticed for four centuries [between the 10th and 15th Centuries]?¹¹

Rocher’s skepticism of Jīmūtavāhana as the founder of a school of Dharmaśāstra, in the sense that the *Dāyabhāga* represents an attempt to bring the Dharmaśāstric law of inheritance into alignment with local Bengali customs or to defend those Bengali customs from the influence of the *Mitākṣarā*, is justified. This skewed view led generations of scholars to “look for elements that would explain why the law of inheritance was ‘different’ [in Bengal] from that of other parts of India as represented primarily by the chapter on inheritance in the *Mitākṣarā*.”¹² These explanations for the *Dāyabhāga*’s extension of more inheritance rights to cognatic descendants than the *Mitākṣarā* range from the implausible to the absurd. G.C. Sarkar argued that Jīmūtavāhana’s ancestors moved to Bengal from Kanauj and sired offspring from many local women (of similar caste but of lower rank) who grew up in their maternal grandfathers’ houses.¹³ S.C. Mitra, “by contrast, emphasized the impact of Buddhism” and the importance it places on “‘natural affection’” or the impact of “Tantrism and the role it accords to various forms of the goddess” to account for the *Dāyabhāga*’s model of inheritance.¹⁴ To account for Jīmūtavāhana’s apparent defense of ownership as ‘usability as desired’ (*yatheṣṭaviniyojyatva* or *yatheṣṭaviniyogārhatva*), S. Setlur appeals to Bengal’s status “from time immemorial,

¹⁰ Rocher, “Schools of Hindu Law,” 125.

¹¹ *Ibid.*, 125.

¹² Rocher, *Jīmūtavāhana’s Dāyabhāga*, 29.

¹³ *Ibid.*, 29. cf Sarkar, *Dāyatattva*, xxxviii-xlii.

¹⁴ *Ibid.*, 29. cf S.C. Mitra, “Origin and Development of the Bengal School of Hindu Law,” *Law Quarterly Review* 21 (1905): pp. 380-92; 22 (1906): 50-63.

[as] a leading centre of trade.” For Setlur, “because any clog on the free transfer of property is...inconvenient” to a commercial community, “Jīmūtavāhana... made the [joint Hindu] family... to be a tenancy-in-common.”¹⁵ Alternatively, J.C. Ghose argues that because - according to him - the *Dāyabhāga* was composed under the patronage of Jalāl-ud-dīn Muhammad Shāh (1415-1433) of Bengal, the *Dāyabhāga* is clearly “the old Hindu Law modified by Muhammadan ideas about individual property.”¹⁶

Rocher admits that “the *Dāyabhāga* may have become extremely successful and may have been the source of a regular school of thought on inheritance,” and he hints that this may be due to Śrīnāthācāryacūḍāmaṇi and his disciples’ commentarial efforts, but he does not follow the implications of such a view. My argument follows R.M. Chakravarti, who notes that Śūlapāṇi, in attempting to establish a systematic Bengali approach to Dharmaśāstra - against that of Mithilā -, “had not treated of the Vyavahāra and... Vivāda sections of smṛti... [and] this omission... might have influenced... [Śrīnāthācāryacūḍāmaṇi] in selecting the subject of Dāya-bhāga... which had... [been] well studied in the Hindu courts of Mithilā.”¹⁷ Śrīnātha and his pupil Raghunandana, “backed by keen reasonings, strong prejudices, vigorous criticisms of the predecessors, specially the Maithilas... dominated the field of smṛti learning in Bengal.”¹⁸ By examining the chronological development of several layers of the Bengali scale of Dharmaśāstric texts - Jīmūtavāhana, Caṇḍeśvara, Śūlapāṇi, Vācaspatimiśra II, Śrīnāthācāryacūḍāmaṇi, Raghunandana and Acyuta, I aim to

¹⁵ Ibid., 31. cf S. Setlur, “Bengal School of Hindu Law,” *Law Quarterly Review* 23 (1907): pp. 202-19.

¹⁶ Ibid., 31. cf J.C. Ghose, *The Principles of Hindu Law*, 3d ed. Vol 2, (Calcutta: S.C. Auddy & Co., 1917), xv.

¹⁷ R.M. Chakravarti, “The History of Smṛti in Bengal and Mithilā,” *Journal of the Asiatic Society of Bengal* (1915): pp. 311-407, 344. Śrīnātha’s father, one Śrīkara, is - *pace* Chakravarti - *not* the author of a commentary on the *Dāyabhāga*, *Dāyabhāgavinirṇaya*. See R.C. Hazra, “Śrīnāthācāryacūḍāmaṇi of Bengal: His Works and Legacy,” *Indian Historical Quarterly*, (1950): pp. 277-292; 287-289.

¹⁸ Ibid., 357.

demonstrate: 1) that medieval Bengali Dharmaśāstra was virtually unknown outside of Mithilā; 2) that Śūlapāṇi, Śrīnātha and Raghunandana attempted to offer a comprehensive, explicitly Bengali rejoinder to Mithilā in Dharmaśāstra; and 3) that Bengali commentators read the *Dāyabhāga*, anachronistically, according to this geographical division of Dharmaśāstra. In so doing, these commentators recast the *Dāyabhāga* as a foundational text of a Gauḍa school of jurisprudence that was based in Navadvīpa.

2.A.1: A Walled Garden in Bengal

The development of mutually influential Gauḍa schools of Dharmaśāstra and Navya-Nyāya began in Mithilā (modern Tirhut), “the principal seat of Hindu learning in the 13th, 14th and 15th centuries” and a centre of Dharmaśāstra and Navya-Nyāya to which students from across India came in order to study.¹⁹ Chakravarti argues that due to the Islamic conquest of Bengal in the twelfth century:

until Sanskrit learning began to revive in the fifteenth century, Gauḍīya scholarship and composition remained dormant, and the outside world of Sanskrit knew very little of the older scholarship in Gauḍa except by vague and generally nameless traditions. Even in Mithilā, which had not lost all connection with Bengal, the references run vaguely *Gauḍāḥ*, *Gauḍa-vākyāni*, *Gauḍā-smṛti*, *Gauḍa-nibandha*, or still more vaguely as *prāñcāḥ*.²⁰

Chakravarti’s polite communalism notwithstanding, he highlights an important feature of the development of a Gauḍa school of Dharmaśāstra: before Śrīnāthācāryacūḍāmaṇi, Mithilā-based Dharmaśāstrins used the term ‘Gauḍa,’ sparingly, as an appellation for treatises and cultural practices emanating from Bengal. Maithila Dharmaśāstrins display an awareness of Jīmūtavāhana and Śūlapāṇi’s texts and arguments, and they occasionally identify these authors as

¹⁹ S.C. Vidyabhusana, *A History of Indian Logic: Ancient, Medieval and Modern Schools* (Delhi: Motilal Banarsidass, 1971), 521-522.

²⁰ *Ibid.*, 325. The majority of Chakravarti’s examples are taken from a manuscript of Caṇḍeśvara’s *Kṛtyaratnākara*. cf fn 1.

Gauḍa, but they certainly not to describe an interlocking scale of texts or a school of thought. The great Maithila Dharmaśāstrin Caṇḍeśvara Ṭhakkura (1314-1370), author of a series of seven-fold ‘Jewel Mines’ of Dharmaśāstra, *Smṛtiratnākara*, was the first Maithila to attest to Bengali Dharmaśāstra.²¹ Chakravarti notes that, based on a “great similarity” between Caṇḍeśvara’s *Kṛtyaratnākara* and Jīmūtavāhana’s *Kālaviveka*, it is “reasonable to infer that the *Kṛtyaratnākara* had borrowed... from the *Kāla-viveka*... indirectly as Gauṛīya-smṛti.”²² Moreover, Caṇḍeśvara refers to the śloka detailing the celebration of the “*Durgotsava*, the great festival of Bengal” and “*Dasāharā*” that appear in the *Kālaviveka* as ‘Bengali statements accepted by the populace’ (mahājanaparigrhīta gauḍavākyāni).²³

Chakravarti uses this reference to establish *a terminus ante quem* for Jīmūtavāhana, but if, as Bihani Sarkar argues, Jīmūtavāhana was “the earliest smārta to proselytize the Durgā Pūjā” in the *Durgotsavanirṇaya* of the *Kālaviveka*, then Caṇḍeśvara’s apparent reference to Jīmūtavāhana represents a foundational moment in the development of a Bengali scale of Dharmaśāstra: the acknowledgment in Mithilā of specifically Gauḍa Dharmaśāstra texts.²⁴ Caṇḍeśvara’s *Kṛtyaratnākara* inaugurated a pattern that characterized medieval Bengali Dharmaśāstra: an oscillating exchange between Bengali and Maithila authors in which Dharmaśāstra became identified, gradually, with regional opinions about certain topics. Similarly, Vācaspatimiśra II, the famous Navya-Naiyāyika and Dharmaśāstrin (1425-1480), records the views of ‘easterners’ (*prāncāḥ*) in, for

²¹ Caṇḍeśvara, see P.V. Kane, *A History of Dharmaśāstra, Vol. 1. Part 2*. 2nd Edition (Poona: Bhandarkar Oriental Research Institute, 1975), 763-775; Chakravarti, “Smṛti in Bengal,” 382-4.

²² *Ibid.*, 326.

²³ *Ibid.*, 326.

²⁴ Bihani Sarkar, “The Rite of Durgā in Medieval Bengal: An Introductory Study of Raghunandana’s *Dūrgapūjāttva* with Text and Translation of the Principal Rites,” *JRAS, Series 3*, 22, 2 (2012): pp. 325–390; pg 330. doi:10.1017/S1356186312000181

example, the *Vyavavahāracintāmaṇi*.²⁵ In his *Nyāyasūtroddhāra*, Vācaspati refers to himself as “a paṇḍit of the Mithilā king” (Mithileśvarasūriṇā).²⁶ Vācaspati was the first Dharmaśāstrin to refer to the views of Śūlapāṇi and he was the second or third Dharmaśāstrin (after Caṇḍeśvara or Śūlapāṇi) to refer to the works of Jīmūtavāhana (but not to the *Dāyabhāga*).²⁷

In light of these Mithilā-based Dharmaśāstrins’ identification of Śūlapāṇi and Jīmūtavāhana as Gauḍa, one might be tempted to view Śūlapāṇi or Jīmūtavāhana as the founders of a Bengal school. Although Śūlapāṇi Upādhyāya’s works would become ubiquitous touchstones for Bengali and non-Bengali Dharmaśāstrins, Śūlapāṇi never identifies himself as Gauḍa nor does he frame his arguments as rejoinders to a Mithilā school of thought.²⁸ Neither Śūlapāṇi nor Jīmūtavāhana ever speak about their geographical location and only subsequent self-identified Gauḍa authors labeled them as Gauḍa and framed their arguments as attacks on a Maithila school of thought.²⁹ Chakravarti argues that Śūlapāṇi was “among the earliest stars of the Hindu Revival [in Bengal because]... he reorganized the Bengal School of Smṛti.”³⁰ Caṇḍeśvara’s possible reference to Jīmūtavāhana’s *Kālaviveka* aside, there is no evidence to support Chakravarti’s assertion that a discernible Bengal school of Dharmaśāstra antedated Śūlapāṇi (or, more properly speaking, Śrīnāthācāryacūḍāmaṇi). Nor does Śūlapāṇi refer to Caṇḍeśvara or Vijñāneśvara on matters on inheritance. Śūlapāṇi refers once to the views of “the *Ratnākara*” in the *Sāmkrāntiviveka*, but he does not label Caṇḍeśvara a Maithila or contrast

²⁵ Chakravarti, “Smṛti in Bengal,” pg 396.

²⁶ *Ibid.*, 399. For Vācaspatimiśra, see Kane, *HDS*, 1.2., 844-854.

²⁷ *Ibid.*, 315-316.

²⁸ For Śūlapāṇi, see Kane, *HDS*, 1.2., 823-840.

²⁹ Chakravarti, “Smṛti in Bengal,” 340-341.

³⁰ *Ibid.*, 343.

Caṇḍeśvara with a Gauḍa perspective.³¹ Śūlapāṇi seems to have conceived of his many nibandhas on individual topics as a corporate whole: an investigation into smṛti (*Smṛtiviveka*), but not as a codification of ‘Gauḍa Smṛti.’ Moreover, Śūlapāṇi did not write a treatise on inheritance *per se*. He composed a commentary on the *Yājñavalkya-smṛti* - the *Dīpakalikā*, but in his comments on *Yājñavalkya*’s section on inheritance (2.114-149), he gives a perfunctory account of inheritance that does not articulate an explicit theory of upamasvatva or śāstragamyasvatva.

Śūlapāṇi’s most famous treatises - the *Dattakaviveka* (adoption), *Durgotsavaviveka* (Durga festival) and the *Śraddhāviveka* (funerary rites) - all attracted commentary from self-styled Navadvīpan logicians. That juncture - at which Navadvīpan logicians and Dharmaśāstrins produced a commentarial corpus that combined Śūlapāṇi and Jīmūtavāhana’s works and framed them as a Gauḍa alternative to Vācaspatimiśra II and Caṇḍeśvara - marks the founding of a Bengal school of jurisprudence³²

2.A.2: Śrīnāthācāryacūḍāmaṇi: The Founder of the Bengal School

The commentarial literature on Jīmūtavāhana and Śūlapāṇi, that was produced in Navadvīpa at the end of the fifteenth century marks the emergence of a Bengal school of thought, particularly with regard to ownership and inheritance. At this time, many Bengali logicians and Dharmaśāstrins who were trained in Mithilā, the regional center of śāstric learning, migrated home to establish their own educational institutions. These ṭols, many of which were located in Navadvīpa, would coalesce into the “University of Nadia.” In Dharmaśāstra, the central figure of this new school of thought was Śrīnāthācāryacūḍāmaṇi. He, rather than Jīmūtavāhana

³¹ Ibid., 342, fn 1. *evam eva kalpataru-ratnākara-parijātādayaḥ.*

³² Ibid., 337-340.

or Śūlapāṇi, ought to be viewed as the founder of a Bengali school of jurisprudence because: a) his work (and that of his followers) identified self-consciously as Bengali, Navadvīpan, etc; b) he created a comprehensive commentarial tradition that synthesized the *Dāyabhāga*'s model of inheritance with Śūlapāṇi's theory of Śraddhā (spiritual benefit); and c) inaugurated a pedagogical chain of transmission (paramparā) in which commentators read Jīmūtavāhana polemically against Caṇḍeśvara, Vācaspatimiśra II and other Maithila paṇḍits (as well as against Vijñāneśvara).

We know relatively little about Śrīnātha, other than that he established a ṭol in Navadvīpa at the time that that city was emerging as a major center of commerce and of śāstric learning at the beginning of the sixteenth century.³³ Chakravarti notes that:

It would seem that in Navadvīpa (the admitted home of his son Rāmabhadra) his ṭol was one of the most important and influential, where brilliant students [such as Raghunandana... were carefully trained. To Śrīnātha belongs the credit of popularizing the study of Jīmūtavāhana's difficult *Dāyabhāga*. In fact by their commentaries he, his son, and... Raghunandana, established the reputation of Jīmūtavāhana for all time to come.³⁴

Śrīnātha authored commentaries on Jīmūtavāhana's *Dāyabhāga* (*Dāyabhāgaṭippanī*) and Śūlapāṇi's *Śraddhāviveka*.³⁵ He also compiled a series of 'oceans' of Dharmaśāstra covering purification (śuddhi), rites (kṛtya) and discernments (vivekas) on topics including the Durgā festival (based on Jīmūtavāhana's *Kālaviveka*).³⁶ In the introduction to his commentary on the *Dāyabhāga*, Śrīnātha identifies himself, modestly, as the son of Śrīkara and as "the

³³ See, Kroll, "A Logical Approach to Law," 14; Ganeri, *The Lost Age of Reason*, 57-59.

³⁴ Chakravarti, "Smṛti in Bengal," 351.

³⁵ Chakravarti, "Smṛti in Bengal," 345-6.

³⁶ *Ibid.*, 348-9.

brilliant jewel of the east” (prācīratna).³⁷ Śrīnātha’s son, Rāmabhadra, who writes in the colophon of his *Vyavasthāsaṅgraha* that he is a “resident of Navadvīpa,” helps us to place Śrīnātha in this particular city in Bengal.³⁸ A remarkable feature of Śrīnātha’s writing is his self-awareness as an ‘eastern’ author and his apparent interest in attacking Maithila authors. For example, his *Śuddhitattvārṇava*, which names Vācaspatimiśra’s *Śuddhicintāmaṇi*, “refers occasionally to Gauḍas... [and] quotes often the customs of Maithilas (more than seventeen times), and has... criticized them with such remarks” as *tan-na yuktaṁ*, *tac-cintyaṁ*, *matam-apāstaṁ*, *tan-mandaṁ*.³⁹

Śrīnātha founded a school of Gauḍa Dharmaśāstra not only because he began a tradition of identifying as Bengali and of criticizing the ‘Miśras’ of Mithilā. He left an indelible imprint on the shape of the scale of Dharmaśāstra texts that Bengali Dharmaśāstrins would follow in the following centuries. Śrīnātha developed a commentarial pattern that focused on synthesizing three texts of his illustrious forebears: Jīmūtavāhana’s *Dāyabhāga*, Śūlapāṇi’s *Śraddhāviveka*, and Jīmūtavāhana and Śūlapāṇi’s *Kālaviveka* and *Durgāpūjaviveka*. Taken together, Śrīnātha’s commentaries attack Vācaspatimiśra and Caṇḍeśvara on matters of inheritance, the principle of spiritual benefit (for which the *Śraddhāviveka* was the principal text) and the Durgotsava.⁴⁰ Śrīnātha inaugurated the *Dāyabhāga*-commentarial tradition and the *Śraddhāviveka* commentarial tradition. His *Arṇava* texts - and the proselytization of a Gauḍa version of Dūrgapūja therein - proved

³⁷ *Dāyabhāga*, ed. Heramba Chatterjee (Howrah: Howrah Saṁskṛta Sāhitya Samāja, 1978), 1. *Dāyatīpannī* on DBh 1.1: **śrīkarācāryaputreṇa prācīratnena dhīmatā / ṭīpanī śrīnāthena vidhīyate //**

³⁸ Chakravarti, “Smṛti in Bengal,” 350: navadvīpanivāsī.

³⁹ *Ibid.*, 346.

⁴⁰ For the question of the ‘Spiritual Benefit’ from Śraddhā and the preference for various heirs in the *Dāyabhāga*, see Ludo Rocher, “Inheritance and Śraddhā: The Principle of ‘Spiritual Benefit,’” in *Studies in Hindu Law and Dharmaśāstra*: pp. 267-278.

popular among later Bengali commentators such as Raghunātha Sārvabhauma (*Smārtavyavasthārṇava*) and Gopāla Nyāyapañcānana (*Ācāranirṇaya*) and among southern paṇḍits such as Kamalākarabhaṭṭa (*Nirṇayasindhu* - where the *Arṇavas* are identified as Gauḍanibandhas).⁴¹

Śrīnāthācāryacūḍāmaṇi's work marks the founding of a Bengal school of Dharmaśāstric thought because it combines a self-consciously 'eastern' self-identification with an attempt to organize disparate texts by eastern authors into a comprehensive rejoinder to Mithilā-based opponents. However, although Śrīnātha attacks opponents identified explicitly as Maithila, and although Śrīnātha is the first Gauḍa to mention the *Dāyabhāga*, his and his son's commentaries on the *Dāyabhāga* never frame Jīmūtavāhana's arguments as indictments of Maithila authors or of the *Mitākṣarā*. Rather, Śrīnātha was preoccupied with defending Śūlapāṇi's legacy. He acknowledges his indebtedness to Śūlapāṇi in an introductory verse to his commentary on the *Śraddhāviveka* and he claims that he wrote a commentary on the *Śraddhāviveka* because Śūlapāṇi's arguments "were often misrepresented by the people through jealousy or ignorance or fondness for bad logic."⁴² The only time Rāmabhadra Nyāyālaṅkāra Bhaṭṭācārya names contemporary Dharmaśāstra authors on inheritance is when he defends Śrīnātha - whom he identifies as his father and guru - from the attacks of Acyuta Cakravartin.⁴³

2.A.3: Raghunandana and Acyuta: Jīmūtavāhana as an Opponent of Mithilā and the *Mitākṣarā*

⁴¹ *Dāyabhāga*, ed. by H. Chatterjee, xix fn 29. Cf Sarkar, "The Rite of Durgā in Medieval Bengal," 332.

⁴² Hazra, "Śrīnātha Ācārya-cūḍāmaṇi," 291, fn 58: kva śūlapāṇer vacanaṃ durūhaṃ [kva] dhīmadīyālpamā tathāpi / bravīmi tātparyalavaṃ tadīyaṃ yad atra tan me sudhiyaḥ kṣamadhvam // 292, fn 63: kecit kutarkādhyavasāya + + nye dveśāt (? dveśāt) pare gaḍḍarikāpravāhān / ajñānataḥ kecana śūlapāṇer bhāṣyanti siddhāvapathādapetāḥ //

⁴³ Chakravarti, "Smṛti in Bengal," 348. Cf *Dāyabhāga*, ed. by H. Chatterjee, xx. Cf *Dāyabhāga*, ed. Bhāratacandra Śiromaṇi (Calcutta: Vidyāratna Press, 1863), 89, on Dbh, 2.53.

Śrīnātha and Rāmabhadra incorporated the *Dāyabhāga* into an explicitly Gauḍa scale of Dharmaśāstra texts - built around Śūlapāṇi - but it was Śrīnātha's most prominent pupil, Raghunandana Bhaṭṭācārya and his most vocal critic, Acyutānanda Chakravartin, who began to read *Jīmūtavāhana*, anachronistically, as rejecting the views of Vijñāneśvara, Caṇḍeśvara and Vācaspatimiśra.⁴⁴ Acyuta and Raghunandana's commentaries on the *Dāyabhāga* mention, polemically, the opinions of Caṇḍeśvara, Miśra, the Maithila⁴⁵ and the *Mitākṣarā*.⁴⁶ Raghunandana Bhaṭṭācārya, was a pupil in Śrīnātha's ṭol. His commentary on the *Dāyabhāga*, the *Dāyabhāgavyākhyā*, "quotes, among other[s]... the *Cintāmaṇi*... the Miśrāḥ (often), the *Ratnākara*" and often criticizes "Vācaspati Miśra and his followers."⁴⁷

Raghunandana wrote a comprehensive overview of the essence of Smṛti in 28 sections. Called the *Aṣṭāvimśati-tattva*, it covers pilgrimage (tīrtha), marriage (vivāha), inheritance (dāya), Durgā worship (durgotsava) and the like.⁴⁸ For Raghunandana, the polemic against Maithila Dharmaśāstrins are in the same vein as Śrīnātha's: part of a broader competition over Dharmaśāstra generally in which inheritance formed a small, but important facet. Acyuta and Śrīkrṣṇa, on the other hand, appear far more invested in the *Dāyabhāga* and in arguing against Śrīnātha and the Maithila Dharmaśāstrins. Acyuta was a far keener logician than either Śrīnātha or Raghunandana and, as we shall see, his interest in the *Dāyabhāga* extended beyond the merely legal to the logical.

⁴⁴ For Raghunandana's identification of Śrīnātha as his Guru, see Hazra, "Śrīnātha Ācārya-cūḍāmaṇi of Bengal," 290.

⁴⁵ Chakravarti, "Smṛti in Bengal," 324; Rocher, *Jīmūtavāhana's Dāyabhāga*, 18 & 22. Acyuta (and Śrīkrṣṇa) on Dbh 2.27: iti **caṇḍeśvarādyanumataditam** apakārtum āha; on Dbh 4.3: atra **caṇḍeśvarādisvahastitam** prācīnamatam adhikṣeptum āha; on Dbh 9.1.31: iti **ratnākaramatam** api niṣpramāṇam ity anyathā siddhāntayati sampratītam; and Raghunandana on Dbh 12.4: iti **ratnākaramiśrādimatapratyuktam**.

⁴⁶ Rocher, *Jīmūtavāhana's Dāyabhāga*, 22; Raghunandana on Dbh 1.7, 1.39, & 1.42; Acyuta and Śrīkrṣṇa on Dbh 1.39, 2.18 and 4.2.27.

⁴⁷ Chakravarti, "Smṛti in Bengal," 352.

⁴⁸ Ibid., 352.

Chakravarti argues that although famous Maithila Dharmaśāstrins “agree generally with those ideas of the North Indian School” it was “in fact the later Gauriyas [who] by frequently criticizing and discussing these Maithilas suggested the idea that they formed a separate school.”⁴⁹ Śrīnātha’s *Dāyabhāgaṭippanī* marks the moment when the *Dāyabhāga* was incorporated into a scale of Dharmaśāstra (and Navya-Nyāya) texts that was, as we have seen, connected intimately with the rise of Navadvīpa as a centre of śāstric learning. It is understandable, then, that as Navadvīpa’s importance grew, its leading paṇḍits such as Raghunandana and Acyuta Cakravartin came to read the *Dāyabhāga* increasingly against prominent Maithila texts, and to usher in an apparent schism between Bengali and Maithila schools of thought. This goes to show, *pace* Rocher, that the *Dāyabhāga*, whatever its origins, *became* Bengali long before H.T. Colebrooke and the construction of Anglo-Hindu Law. Even Rocher notes that ‘Gauḍa’ and ‘Maithila’ appellations appear commonly in the writings of 18th Century eastern Indian Dharmaśāstrins.⁵⁰

Figure 1 charts the Gauḍa scale of Dharmaśāstra texts that emerged in 16th Century Navadvīpa. The table is arranged vertically in descending chronological order. The table is arranged horizontally by each author’s date, location, and principal treatise on inheritance and Dūrgapūja/Śraddhā. At each horizontal layer, a given text incorporates arguments from texts that appear lower in the same column. The founding of Navadvīpa in 1514 marks the emergence of a Gauḍa scale of Dharmaśāstra texts. Gaps (in inheritance and in Śraddhā) that are filled in by later authors attest to the deliberate mapping of the Gauḍa scale of texts onto the Maithila scale of texts.

⁴⁹ *Ibid.*, 377.

⁵⁰ Rocher, “Schools of Hindu Law,” 121.

Figure 1: The Gauḍa Scale of Dharmasāstra Texts

(Name & Location)	(Treatise on Inheritance)	(Treatise on Śraddhā)	(Treatise of Durgāpūja)
Rāmabhadra I (Navadvīpa, 1510-1570)	Dāyabhāgavivṛti	Śraddhāvyaavasthā	Smṛtitattvavinirṇaya
Acyutacakravartin (Navadvīpa, 1510-1570)	Dāyabhāgasiddhānta- kumudacandrikā	Śraddhāvivekaṭīpaṇī	N/A
Raghunandana Bhaṭṭācārya (Navadvīpa, 1510-1580)	Dāyatattva/ Dāyabhāgavyākhyāna	Śraddhātattva	Durgāpūjatattva
Śrīnāthācāryacūḍāmaṇi (Navadvīpa, 1475-1525)	Dāyatīpannī	Śraddhācandrikā/ Śraddhādīpikā	Kṛtyatattvārṇava

1514: Emergence of Navadvīpa (Raghunātha Śiromaṇi Founds ‘Chair’ in Nyāya)

Vācaspatimiśra II (Mithilā, 1425-1480)	Vivādacintāmaṇi/ Vyavahāracintāmaṇi	Śraddhācintāmaṇi	Kṛtyacintāmaṇi
Śūlapāṇi (Bengal, 1375-1460)	N/A Śrīnātha fills with Dāyabhāga	Śraddhāviveka	Durgāpūjaviveka
Caṇḍeśvara (Mithilā, 1314-1370)	Vivādaratnākara	N/A Vācaspatimiśra fills with Śraddhācintāmaṇi	Kṛtyaratnākara
Jīmūtavāhana (Bengal? 12-14th Centuries)	Dāyabhāga	N/A Śrīnātha fills with Śraddhāviveka	Kālaviveka

2.B: Avacchedakas, Nirūpakas, and Padārthas in *Dāyabhāga* Commentaries

In this section I take up the relationship between Navya-Nyāya philosophy and the jurisprudential commentaries on the *Dāyabhāga*. In the previous section we saw that by the end of the 16th century Bengali Dharmasāstrins began to assemble a distinctively Gauḍa scale of texts, vis-a-vis Mithilā, that incorporated Jīmūtavāhana’s *Dāyabhāga* as its paradigmatic treatise on inheritance. This development occurred as several Bengali paṇḍits established a series of ṭols in Navadvīpa. However, at nearly the same time, Vasudeva Sarvabhauma and

Raghunātha Śīromaṇi, two Bengali Brahmans who probably studied Navya-Nyāya in Mithilā, returned to Navadvīpa and set about training a new generation of Gauḍa logicians.⁵¹ S.C. Vidyabhushana argues that Raghunātha “founded... a special Chair of Logic” in the “University of Navadvīpa” where “in Smṛti there is a chair of the Senior Smārta (Jurist), which was inaugurated by Raghunandana.”⁵² Ownership (svatva) was a popular topic for Maithila Navya-Naiyāyikas and Raghunātha Śīromaṇi and Rāmabhadra Sarvabhauma, wrote on the topic extensively. Considering the centrality of theories of ownership to Dharmaśāstric models of inheritance, and considering the fact that sixteenth century Bengali Dharmaśāstrins and logicians lived and worked in the same ṭols in Navadvīpa, it appears likely that there was some measure of influence between these two disciplines.

Rocher, pushing back against Colebrooke’s division of Dharmaśāstra into *Mitākṣarā* and *Dāyabhāga* schools, argues that “Colebrooke’s statement to the effect that the Bengal school was greatly influenced by the *nyāya* system of philosophy” is mistaken because “in reality, there is little *nyāya* in the *Dāyabhāga*.”⁵³ Rocher, however, admits that Colebrooke “could not help facing *Navya-Nyāya* firsthand while reading the commentaries on the *Dāyabhāga*” and he admits that “in the *ṭols*... in Bengal, the two main topics of instruction were *Navya-Nyāya* and *dharmaśāstra*.”⁵⁴ Rocher concludes “that, in Colebrooke’s opinion... [the *Mitākṣarā* and the *Dāyabhāga*] were accepted as the laws of Benaras and Bengal, respectively, at a later stage only” but in his haste to dismiss the link between the *Dāyabhāga* and

⁵¹ See Ganeri, *The Lost Age of Reason*, 42-45; H.H. Ingalls, *Materials for the Study of Navya-Nyāya Logic* (Cambridge: Harvard University Press, 1951), 9-19; Kroll, “A Logical Approach to Law,” 100-102.

⁵² S.C. Vidyabhushana, *A History of Indian Logic*, 525-527.

⁵³ Rocher, *Jīmūtavāhana’s Dāyabhāga*, 41.

⁵⁴ *Ibid.*, 40-41.

Navya-Nyāya he ignores the historical conjuncture during which that Bengali association was forged.⁵⁵ Colebrooke's argument is that:

In the eastern part of India, viz. Bengal and Bahar, where the Vedas are less read, and the *Mīmāṃsā* less studied than in the south, the dialectic philosophy, or *Nyāya*, is more consulted, and is relied on for rules of reasoning and interpretation upon questions of law, as well as upon metaphysical topics. Hence have arisen two principal sects or schools, which, construing the same text variously, deduce upon some important points of law different inferences from the same maxims of law.⁵⁶

Rocher errs in assuming that, because Navya-Nyāya does not appear in the *Dāyabhāga*, the Bengal school was, therefore, not indebted to Navya-Nyāya analytical techniques or to Navya-Nyāya theories of ownership. Rocher's comments elide how the *Dāyabhāga* commentators, particularly Śrīnāthācāryacūḍāmaṇi, Rāmabhadra I, Acyutacakravartin and Śrīkṛṣṇatarkālaṅkāra articulate an interpretation of the *Dāyabhāga* that hinges on Navya-Nyāya techniques and theories.

This section unpacks three instances where the commentators use Navya-Nyāya techniques and concepts to frame the *Dāyabhāga* as a rejoinder to the *Mitākṣarā* school of jurisprudence. First, the commentators use Navya-Nyāya terminology (*avacchedaka*, *vyāpyatva*) to explain Jīmūtavāhana's derivation of inheritance (*dāya*) as an object noun from the root $\sqrt{dā}$, (to give) and thereby to defend Jīmūtavāhana's theory of *upamasvatva*. Second, when summarizing Jīmūtavāhana's *pūrvapakṣin* (an advocate of *janmasvatva*), the commentators advocate three different philosophical theories of ownership that draw from and argue against Maithila Navya-Nyāya theories of ownership and support Gauḍa-Nyāya theories of ownership. Third, when the commentators reject *janmasvatva* and

⁵⁵ Rocher, "Schools of Hindu Law," 122.

⁵⁶ Sir Thomas Strange, *Elements of Hindu Law: Referable to British Judicature in India Vol. 1.*, (London: Payne and Foss, 1825), 314.

the *Mitākṣarā*'s adage that sons become owners by birth, they rely on Navya-Nyāya theories of ownership as discernible from the śāstra alone (śāstraikagamyatva, etc.). In short, even if there is little Navya-Nyāya in the *Dāyabhāga* and even if the *Dāyabhāga* never mentions the *Mitākṣarā*, Śrīnāthācārya and Acyuta's commentaries transform the *Dāyabhāga* into a Nyāya-based text that attacked the *Mitākṣarā* school's theory of janmasvatva and the Mithilā school's philosophical theories of ownership.

2.B.1: Delimiting Dādihātvarthatā: Navya-Nyāya Techniques in Dāyabhāga Commentaries

In commenting on Jīmūtavāhana's definition of inheritance, Śrīnātha, Rāmabhadra and Acyuta employ two characteristically Navya-Nyāya terms; delimiter (avacchedaka) and pervaded-ness (vyāpyatva).⁵⁷ As the *Dāyabhāga* commentarial tradition developed, it became inflected increasingly by a technical Navya-Nyāya idiom. In Dbh 2.4-5, Jīmūtavāhana defines dāya as "something given" (dīyate).⁵⁸ Jīmūtavāhana notes that:

and the use of 'to give' (in this case) is secondary because of the similarity of result (between the primary and secondary meanings): namely, the production of ownership for someone else preceded by the extinction of the svatva of people who have died or 'gone forth' or the like."⁵⁹

But, relates Jīmūtavāhana, "dead people and the like do not (formally) abandon that (ownership)."⁶⁰ Consequently, "the word dāya is used in a conventional sense to refer to assets in which there is ownership (for another), contingent on a connection with the previous owner, when that (previous owner's) ownership expires"⁶¹ Whether

⁵⁷ Ingalls, *Materials for the Study of Navya-Nyāya*, 28-29 & 47-49.

⁵⁸ Rocher, *Jīmūtavāhana's Dāyabhāga*, 250: dīyate iti vyupattyā dāyaśabdaḥ.

⁵⁹ *ibid.*, 250: dadātiprayogaś ca gaunaḥ mṛtapravrajitādisvatvanivṛttipūrvakaparasvatvotpattiphalasāmyāt.

⁶⁰ *Ibid.*, 250: na tu mṛtādīnāṃ tatra tyāgo 'sti.

⁶¹ *Ibid.*, 250: tataś ca pūrvasvāmisambandhādīnāṃ tatsvāmyoparame yatra dravye [svatvaṃ] tatra nirūḍho dāyaśabdaḥ.

or not Jīmūtavāhana refers deliberately to Vijñāneśvara's definition of dāya as "an asset in which an individual gains ownership, the necessary and sufficient condition being that he be connected to the owner," it is obvious that the *Dāyabhāga's* definition of dāya as derived from √dā precludes janmasvatva *a priori*.⁶²

Jīmūtavāhana's theory of dāya as a conventional (nirūḍha) object noun derived from a secondary meaning is strained: Mitramiśra (1610-1640) and J. Duncan Derrett found it cumbersome.⁶³ The burden of logically explicating Jīmūtavāhana's views fell to his commentators.

We know from Śrīnātha's introduction to the *Tātparyadīpikā* that he envisioned himself as writing his commentaries "for the sake of my students because those who know the essence of philosophy, as if feigning not to look at an elephant, do not pay attention to smṛti, and other are too stupid to ponder words and their meanings."⁶⁴

Similarly, Śrīnātha relates in his *Vivekārṇava* that "this effort of mine is [intended] to ward off the stream of lemmings [who hold] untruths with regard to that which is partial to nyāya, the path of the wise that agrees with the meaning of the Vedas."⁶⁵

Śrīnātha, commenting on Dbh 2.4-5, characterizes the artificiality of Jīmūtavāhana's derivation of dāya as an issue of pervasion (vyāpti). He argues that it is implausible for an asset in which ownership is produced upon the extinction of the ownership of a relative to be the object (of the verb √dā) because it is impossible for there to be invariable concomitance (vyāpyatva) between an asset of a (dead) relative and the

⁶² For Vijñāneśvara's definition of dāya, see Rosane and Ludo Rocher, "Ownership by Birth," 242; *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 280: tatra dāyaśabdena yad dhanam svāmisambandhād eva nimittād anyasya svam bhavati tad ucyate.

⁶³ Rocher, *Jīmūtavāhana's Dāyabhāga*, 54 fn 5.

⁶⁴ Hazra, "Śrīnāthācāryacūḍāmaṇi of Bengal," 291, fn 57: gajanimīlanavan na manaś ciram dadhati darśanatattvavidaḥ smṛtau / padapadārthavicārajaḍāḥ [pare] tad aha śiṣyahitāya mama śramaḥ //

⁶⁵ R.C. Hazra, "Śrīnātha Ācārya-Cūḍāmaṇi: A Smṛti-Writer of Bengal, *ABORI* 32 (1951): 34-52, 46; fn 1: śrutyarthasaṁvādinī yo budhānām naiyāyike vartmani pakṣapātaḥ / tatrāsātām gaḍḍarikāpravāhabhramāpanodāya mama śramo 'yam //

secondary meaning of ‘to give’ that is derived from ‘it is given.’⁶⁶ Consequently, explains Śrīnātha, “‘it is given’ means, figuratively, the state of possessing the result produced by the meaning of the verbal root (√dā).”⁶⁷ Śrīnātha’s son, Rāmabhadra, summarizes his father’s argument (whom he calls guru) using the Navya-Nyāya concept of delimitation:

My father argued that the verbal root and nominal suffix (of dāya) are (both) secondary.⁶⁸ 1) because ‘to give’ cannot mean, in its primary sense, the death of a relative or the like, as will be derived from ‘it is given’; and 2) because of the absence of logical concomitance between that (figuratively derived meaning) and the assets and the like (of the relative). In truth, however, √dā means (in its primary sense) an intention ‘this (this asset) is not mine,’ whose result is the production of ownership for another, and because of the impossibility of that [meaning of the verbal root] in the present circumstances, ‘to give’ means, figuratively, the set of things beginning with the death of a relative and the like, which are merely activities whose result is the production of ownership for someone else (preceded by the destruction of the previous owner’s ownership). Consequently, the nominal suffix is certainly primary because there exists invariable concomitance (between it and) an action in the form of possessing the fruit brought about by that (death and the like) which is the delimiter of (√dā) verbal root-meaning-ness.⁶⁹

Delimitation to establish logical concomitance is a quintessential Navya-Nyāya technique, but the argument that this technique is used to support is a quintessential theory of Gauḍa Dharmaśāstra: upamasvatva. It would be impossible to argue, as Vijñāneśvara does, for a theory of ownership by birth if dāya is derived from the verbal root √dā, because ‘to give,’ - in its primary or in its secondary meaning -

⁶⁶ *Dāyabhāga*, ed., H. Chatterjee, 28; *Dāyabhāgaṭīppaṇī* on Dbh 2.4-5: dīyata ityādi vakṣyamāṇalakṣaṇayā dadātyarthasya sambandhidhanavyāpyatvāsambhavāt sambandhisvatvoparamajanyasvatvakadravyasya karmatvāghaṭanāt ity āha dīyata ityādi.

⁶⁷ *Ibid.*, 28; *Dāyabhāgaṭīppaṇī* on Dbh 2.4-5: dīyate iti dhātvarthajanyaphalabhāgitvopalakṣito ‘rtha ityāha dīyata ityādi.

⁶⁸ Secondary in the sense of having a non-literal, non-etymological meaning.

⁶⁹ *Ibid.*, 28; *Dāyabhāgaṭīppaṇī* on Dbh 2.4-5: dīyata iti vakṣyamāṇadadātyarthasya sambandhinidhanāder dadātyaśakyatvāt dhanādeś ca tadvyāpyatvābhāvāt prakṛtipratyayau gaunav iti **guravaḥ**. vastutaḥ parasvatvāpattiphalakasya ‘na mamedam’ iti saṅkalpasya dadātyarthatvāt tasya ca prakṛte ‘sambhavāt parasvatvāpattiphalakavyāpāramātraṃ sambandhimaraṇādikaṃ dadātīnā lakṣyate. dhātvarthatāvachedakatajjanyaphalaśālitvarūpakriyāvyaṅgyatvasattvāt pratyayo mukhya eva.

presupposes, necessarily, the extinction of prior ownership prior to the arising of subsequent ownership.

Acyuta, highly critical of Śrīnātha, gives a more revealing account of the derivation of *dāya* and its legal implications that is framed in terms of the delimitation of the state of being the verbal root $\sqrt{dā}$. Acyuta states “it is fair to use *dāya* in the technical sense - of something given - because there is evidence (of the use of) the *ghaṇvidhi* (an object noun derived from $\sqrt{dā}$) in the *Manusmṛti*.”⁷⁰ Acyuta explains that the reason that *Jīmūtavāhana* uses $\sqrt{dā}$ in a secondary sense is that the primary meaning of $\sqrt{dā}$ - which involves a ‘relinquishing’ (*tyāga*) conditioned by the cessation of ownership, and is the (mental) intention ‘this is not mine’ - is inappropriate (because dead people do not have mental intentions).⁷¹ Acyuta concludes by stating:

As for the delimiter of the range of the secondary usage (of the verbal root $\sqrt{dā}$), provided it is not relinquishment, the delimiter is merely the state of being an activity that serves as the cause of the ownership of another preceded by the extinction of the ownership (of the previous owner). Consequently, there is no lack of invariable concomitance, nor is it inappropriate to say that (a relative’s) assets are the object (of the verbal action ‘to give’). Therefore, *Ācārycūdāmaṇi*’s opinion - that the nominal suffix (in *dāya*) is secondary because it is merely the state of having the result produced by the meaning of the verbal root (death and the like), because: 1) if death and the like have the meaning ‘to give,’ then the verbal root $\sqrt{dā}$ is secondary; 2) in that case the asset (of a relative) is not the object (of the verbal root $\sqrt{dā}$) inasmuch as

⁷⁰ Ibid., 28; *Kumudacandrikā* on *Dbh* 2.4-5: *tathā ca saṃjñāyām api dāyo datta iti vācyam manusmṛtau ghaṇvidhāv udāhṛtatvāt*. Cf *Manusmṛti: with the Sanskrit Commentary Manvarth-Muktāvalī*, ed. by J.L. Shastri. (Varanasi: Motilal Banarsidass, 1983), 362: *idānīṃ dīyata iti dāyaḥ*. Rocher attempts to derive *dāya* through *Pāṇini* 3.1.138-140, but this is incorrect. 3.1.138-40 generates the nominal form ‘*dāya*’ from the verbal root $\sqrt{dā}$ (via a ‘*dhāñ*’ suffix), but with an agentive meaning (i.e. ‘giver’). 3.3.16-19, teach the *ghaṇ* suffix (in the sense of an action for a specific set of verbal roots) in the sense of any non-agentive verbal noun. See *Kāśīkā: Pāṇinīyāśṭādhyāyīsūtravṛttih*, ed. Anjaneya Sharma, (Haidarābāda: Saṃskṛtapariṣat, Usmāniyā Viśvavidyālayaḥ, 1969), 256-7: *padarujaviśasprśo ghaṇ* (3.3.16); *akartari ca kārake saññāyām* (3.3.19).

⁷¹ Ibid., 28:-29: *mukhyārthānupapattibījaṃ darśayati na tv [mṛtādīnām tatra tyāgo ‘sti] ity. tyāgaḥ svatvanivṛttypahitaṃ na mamedam itīcchā*.

ownership is not the delimiter (of the secondary usage of the verbal root $\sqrt{dā}$ as 'to die') - is refuted.⁷²

The crux of the debate was the logical coherence of Jīmūtavāhana's definition.

Neither Śrīnātha, Acyuta nor Rāmabhadra questioned the validity of the *Dāyabhāga*'s derivation of *dāya* because to do so would have undermined the text's broader project - defining *dāya* so as to exclude *janmasvatva*. The commentators focused on buttressing a constrained definition using the techniques of formal logic. To the extent that they disagreed, their disagreements were about the best way to render Jīmūtavāhana's arguments in accordance with Navya-Nyāya principles. In the course of time the philosophical rigor of *Dāyabhāga* commentaries grew more voluminous and the various definitions of the state of being the meaning of the verbal root $\sqrt{dā}$ became increasingly precise. By the time of Śrīkṛṣṇatarkālaṅkāra, the derivation of *dāya* as an object noun was a monument to Navya-Nyāya definitional complexity:

And thus, there is a secondary meaning, in the form of the state of being an action amenable to the production of ownership for a new owner and the destruction of the ownership of the previous owner, in common with such things as the *pravrajyā*, death of the father and the like, on the part of the verbal root ' $\sqrt{dā}$,' whose primary meaning is relinquishing, in the form of the state of relinquishing, whose fruit is the production of ownership for a new owner and the destruction of the ownership of the prior owner. Consequently, the meaning is that it is not inappropriate (to derive *dāya* this way), because the state of being an object, in the form of having that double result, in the form of the production of ownership for a new owner and the destruction of the ownership of the prior owner, which is produced by an action similar in form to

⁷² Ibid., 30: *gauṇīvr̥ttiviṣayatāvacchedakam api tyāgānyatve sati svatvanivr̥ttipūrvakāparasvatvahetubhūtavayāpāratvam eveti nānanugamaḥ na vā dhanasya karmatvānupapattiḥ. etena maraṇāder dadātyarthatve tatra dādadhātor gauṇatā, tatra svatvasyānavacchedakatayā na dhanasya karmatvaṃ dhātvarthatāvacchedakaphalabhāgitvasyaiva karmatvād iti dhātvarthajanyaphalabhāgitvamātreṇa pratyayasyāpi gauṇatety ācāryacūḍāmaṇimatam pratyuktam.*

death and the like, immediately after the death and the like of a relative, (on the part of the relative's assets) is unbroken.⁷³

Rocher may be right to emphasize the absence of Navya-Nyāya in the *Dāyabhāga* so as to warn against Navya-Nyāya being viewed, anachronistically, as the *cause* of earlier Dharmasāstric theories of upamasvatva. Colebrooke, however, was right to view the *Dāyabhāga* - as studied, commented on and situated in teacher-disciple knowledge transmissions - as invariably concomitant with the practice of Navya-Nyāya philosophy in Navadvīpa's ṭols. Although later authors such as Rāmabhadra II (likely 18th or 19th Century) rejected Rāmabhadra I's interpretation of dāya as "Śrīnātha's child's childish babble" and boasted about "breaking [the opinion of] the 'unbreakable' (Acyuta)," these late authors retained the argumentative structure inaugurated by Śrīnātha - namely, using Navya-Nyāya techniques to defend Jīmūtavāhana's derivation of dāya from √dā.⁷⁴ This brief survey of the *Dāyabhāga* commentator's increasingly Nyāya-inflected definitions of dāya attests to that intimate connection as an essential feature of a Bengali school of inheritance.

2.B.2: Svatva as Padārtha: Navya-Nyāya Theories of Ownership in *Dāyabhāga* Commentaries.

Śrīnātha, Rāmabhadra and Acyuta used their commentaries on the *Dāyabhāga* to enter into - what was for them - a contemporary and contentious debate between Maithila and Gauḍa Navya-Nāyāyikas: the philosophy of ownership. Their entry-point occurs in the first chapter of the *Dāyabhāga*, where Jīmūtavāhana

⁷³ Ibid., 30; Śrīkr̥ṣṇa on Dbh 2.4-5: tathā ca pūrvāsvāmisvatvanivṛttiparasvāmisvatvotpattiphalakatyāgatvena rūpeṇa tyāgaśaktasya dādihātoḥ pūrvāsvāmisvatvanivṛttiparasvāmisvatvotpattyanukūlavāpāratvena pitrādīmarāṇappravrajyādisādhāraṇena rūpeṇa lakṣaṇā. sambandhinidhanādyanantaram maraṇādirūpatādrśavyāpārajanyaṃ yat pūrvāsvāmisvatvanivṛttiparasvāmisvatvotpattirūpam phaladvayaṃ tacchālitvarūpam karmatvam akṣatam eveti nānupapattir iti bhāvaḥ.

⁷⁴ Ibid., 31; Rāmabhadra II on Dbh 2.4-5: iti **cuḍāmaṇībālakoktam** bālakoktam eva... etena... **acyutamataṃ** cyutam eva.

introduces a pūrvapakṣin who argues that “sons already have ownership in that (family estate) during their father’s lifetime.”⁷⁵ For the pūrvapakṣin, sons must have ownership in paternal assets because: 1) acquisition is an activity (requiring) an acquirer; 2) an acquirer is someone who has the state of being an owner that depends on an act of acquisition; and 3) it is appropriate to say that birth is indeed an act of acquisition, i.e. an activity of a son (that makes him an owner).⁷⁶

Consequently, says the pūrvapakṣin, “it has been stated, ‘sometimes birth alone (is a cause of ownership) as in the case of paternal assets.’”⁷⁷ Jīmūtavāhana’s

pūrvapakṣin, clearly a proponent of janmasvatva, whom Acyuta, Raghunandana and Śrīkrṣṇa identify with Vijñāneśvara, prompted many scholars to argue that

Jīmūtavāhana had read and attacked Vijñāneśvara’s *Mitākṣarā*.⁷⁸ It is equally likely

that Jīmūtavāhana had read the *Mitākṣarā* or that Jīmūtavāhana, as Rocher

suggests, “criticizes views that existed long before” he wrote the *Dāyabhāga*.⁷⁹

In either case, to the extent that Jīmūtavāhana’s commentators - examined above - defend janmasvatva (before rejecting it for reasons we shall see in the next subsection), they use janmasvatva to discuss the nature of svatva in a way that recapitulates, and intervenes in, contemporary debates about ownership. To the extent that the commentators reject janmasvatva (and, explicitly, the *Mitākṣarā*) they rely on various Navya-Nyāya theories of ownership as determined and as regulated by Dharmaśāstra. However, the *Dāyabhāga* commentators defend theories of

⁷⁵ Rocher, *Jīmūtavāhana’s Dāyabhāga*, 251: jīvaty eva pitari putrāṇām tatra svatvam.

⁷⁶ Ibid., 251: nanv arjayitṛvyāpāro ‘rjanam. arjanād dhīnasvāmibhāvaś cārjayitā. tena putravvyāpāro janmaivārjanam yuktam.

⁷⁷ Ibid., 251: ata evoktam kvacij janmaiva yathā pitrye dhane. Cf *Bṛhatī of Prabhākaramiśra with the Rjuvimalā of Śālikanātha*, Vol. IV, ed. S. Subrahmanyam Shastri (Madras: University of Madras Press, 1964), 962, Rj on Bṛ on Śb on Ms 4.1.2 Bṛ on Śb on Ms 4.1.2: ārjanam ca nānārūpaṃ kvacij janma, yathā paitṛkeṣu. It is almost certain that Jīmūtavāhana had read the *Rjuvimalāpañcikā*, particularly, as we shall see, given his definition of svatva in terms of yatheṣṭaviniyogārhatā.

⁷⁸ Rocher, *Jīmūtavāhana’s Dāyabhāga*, 21-24.

⁷⁹ Ibid., 24.

ownership that mirror the theories of Bengali Navya-Naiyāyikas in contrast to Maithila Naiyāyikas. In concert with the scale of Dharmaśāstra texts analyzed above, these philosophical debates concerning ownership were integral to the establishment of Navadvīpa as a center of learning - against Mithilā - in the early Sixteenth Century and they attest to the mutual influence of Navya-Nyāya and Dharmaśāstra Navadvīpa's ̥ols.

2.B.3: Navya-Nyāya Theories of Ownership

Raghunātha Śīromaṇi returned to Bengal to found the 'University of Navadvīpa' in 1514 after his 'triumph' against Pakṣadhara Mīśra in Mithilā.⁸⁰ He brought with him a philosophical tradition - Navya-Nyāya - which, in addition to a vast technical vocabulary, developed several sophisticated theories concerning the nature of ownership. Mithilā's most prominent logicians shared a theory of ownership as a quality (*guṇa*) of an asset, rather than as a distinct *padārtha*. Vardhamāna Upādhyāya (14th Century), the son of Gaṅgeśa Upādhyāya (the author of the *Tattvacintāmaṇi* and 'founder' of Navya-Nyāya), gives the first Navya-Nyāya treatment of ownership in his *Nyāyalīlāvāṭīprakāśa*.⁸¹ In a discussion of various Nyāya-Vaiśeṣika "conceptual categories" (*padārthas*), "he weighs the suggestion that *svatva* could... be an additional *padārtha*."⁸² Vardhamāna rejects a definition of ownership as usability as desired (*yatheṣṭaviniyojyatva*) for which, Kroll relates:

the theory goes, let an asset's capacity to be used as desired be a characteristic property of *svatva* as a separate *padārtha*, and let it be produced by receiving gifts and other means of acquisition, [let it] inhere in an asset, and

⁸⁰ Kroll, "A Logical Approach to Law," 101-102.

⁸¹ *Ibid.*, 45.

⁸² *Ibid.*, 46.

[let it] be conditioned by the asset's owner. And let it be destroyed by sale and other forms of alienation.⁸³

The obvious problem with this definition is that one would have to accept ownership on the part of a thief because thieves use assets as desired after they have stolen it.⁸⁴ Vardhamāna rejects another possibility: that ownership is internal (i.e. bodily or mentally located) whose external asset is its describer (nirūpaka).⁸⁵ Vardhamāna argues that Dharmaśāstra, rather than secular usage, must be the epistemic warrant for ownership.⁸⁶ According to Kroll:

Vardhamāna concludes, *svatva* must be defined as *yatheṣṭaviniyogayogyatva* (fitness for use as desired), which means that an asset acquired must be an object of those means of acquisition not opposed by law (here, *dharmaśāstra*), and is a form of certainty that it would be impossible to use an asset as desired if it were acquired by means that contrast with those means unopposed by law. Although the means of acquisition leading to *svatva* – such as purchase and receiving gifts – are actions, and are thus inconstant, being an object of those means is undeniably enduring, just as being of [sic] content of knowledge endures, though the event of knowledge itself ceases to exist. It follows, then, that one need not establish another *padārtha* to embrace the concept of *svatva*.⁸⁷

Vācaspatimiśra II, whose Dharmaśāstra works mention a Gauḍa school of law, but whose comments on inheritance in the *Vivādacintāmaṇi* mention neither

Jīmūtavāhana nor the theory of uparamasvatva, examines ownership from a Navya-

⁸³ Ibid., 50, fn 18; *Nyāyalīlāvatiṭīprakāśa*: pratigrahādijanyo dharmaviśeṣaḥ kalpyate. sa ca dhanagataḥ svāminirūpyas tasya ca vikrayādīnā nāśa iti matam. Kroll comments, in the same footnote, that “Vardhamāna does not use Pārthasārathi’s definition of *svatva* as *yatheṣṭaviniyojyatva* explicitly, but he implies as much by his subsequent refutation of the suggestion noted in this passage.”

⁸⁴ Ibid., 51, fn 19: tan na, cauryyānantaram yatheṣṭaviniyogāt tatrāpi svatvakalpanāpatteḥ.

⁸⁵ Ibid., 47-48: svatvam avāhyam eva vāhyam tu dhanam tasya nirūpakamātram. This is the basis for Rāmabhadra I’s theory of *svatva*. For describers, see Ingalls, *Materials for the Study of Navya-Nyāya*, 40-47.

⁸⁶ Ibid., 52, fn 22: śabda eva hi svatve mānaḥ. tathā hi yā kriyā krayapratigrahādiḥ svatvahetutvena dharmasāstreṇa bodhyate tata eva tadupātte dhane svatvam utpadyate.

⁸⁷ Ibid., 53, fn 24: yadvyatirekeṇa yatheṣṭaviniyogāsambhavanīścayāḥ śāstrāvīruddhatadupāyaviśayatvarūpaḥ yatheṣṭaviniyogayogyatvaḥ svatvam. tadupāyānām krayapratigrahādīnām kriyātvenāsthiratve ‘pi tadviśayatvaḥ sthiram eva. jñānanivṛttāv iva tadviśayatvam. ata eva na tadvat padārthāntaratvam.

Nyāya perspective in the *Nyāyatattvāloka*. Like Vardhamāna, Vācaspatimiśra rejects the theory of ownership as a separate conceptual category. Rather, he argues:

svatva is fitness for use as desired (*yatheṣṭaviniyogayogyatva*)... [that] has the form of an opposition to the prior absence of purchase or some similar valid means of acquisition, which motivates use of an asset in a manner unopposed by law. A thing's identity as 'sva', is its being the site of the destruction of the prior absence of a valid means of acquisition such as purchase, which enables the use of the legitimately acquired asset in a manner not contradictory to śāstra.⁸⁸

Another Maithila Nāyayika, Bhagīratha Ṭhakkura, who trained under Pakṣadhara Miśra with Raghunātha Śiromaṇi, gives, in his *Nyāyalīlāvati prakāśavivṛti*, the most sophisticated pre-Navadvīpa Navya-Nyāya theory of ownership.⁸⁹ Like Vardhamāna and Vācaspatimiśra II, Bhagīratha rejects a theory of ownership as a separate padārtha and defines ownership in terms of lawful (Dharmaśāstrically recognized) acts of acquisition.⁹⁰ Importantly, Bhagīratha notes that:

the conclusion of purchase and other legitimate acquisitive acts is really to be identified with *svatva*, and the identification of purchase, etc., as means to use, which are unopposed by law, is what endows *svatva* with uniformity.... Moreover... purchase and other legitimate acquisitive acts have as their qualifier an association with a potentially perpetual relational absence, the counterpositive of which is those means that are opposed by law, and is co-temporal with purchase or other legitimate means of acquisition.⁹¹

In short, the three theories of ownership explored by the Maithila Navya-Nāyayikas are: 1) a padārtha, characterized by usability as desired; 2) the state of being the object of a lawful act of acquisition (defined and conditioned by various

⁸⁸ Ibid., 63, fn 41; *Nyāyatattvāloka*:

śāstr[ā]viruddhaviniyogaprayojakṛbhūtakrayādiprāgabhāvavirodhitvarūpam yatheṣṭaviniyogayogyatvam svatvam. śāstrāviruddho yo viniyogaḥ sāgamasya tatprayojako yaḥ krayādiprāgabhāvasya dhvaṃsaḥ tadvattvam vastunaḥ svatvam. The translation of the second sentence is not Ethan Kroll's, but rather Lawrence McCrea's. I am very grateful for his assistance in clarifying this particularly opaque passage.

⁸⁹ Ibid., 77.

⁹⁰ Ibid., 84.

⁹¹ Ibid., 91, fn 89; *Nyāyalīlāvati prakāśavivṛti*: vastutaḥ krayādihvaṃsa eva svatvam krayādīnām ca śāstrāviruddhaviniyogopāyatvam evānugamakam[.] krayādisamānakālīnavirodhyupāyapratyogikayāvadanādisaṃsargābhāvasāhityam ca viśeṣaṇam.

attendant phenomena); and 3) an internal (bodily or ātman-residing) quality described (nirūpita) by an external asset.

Raghunātha Śīromaṇi's philosophical oeuvre overturned the established conclusions of Maithila Navya-Nāyāyikas and inaugurated a Gauḍa school of Nyāya in Navadvīpa in tandem with Śrīnāthācāryacūḍāmaṇi's similar efforts in Dharmaśāstra. Raghunātha's brazen, sophisticated attack on his Maithila forebears made his work a touchstone - for supporters and detractors - for the subsequent history of Navya-Nyāya in Bengal, Mithilā and India.⁹² One objective of this section is to assess the credibility of Vidyabhushana's claim that Raghunātha founded his 'chair' of Nyāya in 1514 at the same ṭol that Raghunandana founded a 'chair' in Dharmaśāstra.⁹³ Whether or not Raghunandana and Raghunātha studied under the same teacher or whether or not they worked in the same specific ṭol, it is clear, given the overlap between Raghunātha's theories of ownership and AcyutaCakravartin's comments on the *Dāyabhāga*, that there was a mutual influence between Gauḍa Navya-Nyāya and Gauḍa Dharmaśāstra in sixteenth century Navadvīpa.

In the *Padārthatattvanirūpaṇa*, Raghunātha advocates a theory of svatva as a padārtha because no other theory of ownership is coherent. His argument is based on three succeeding premises: 1) that ownership as usability as desired would over-extend to assets acquired through theft and violent force; 2) that legal, i.e., Dharmaśāstric passages listing valid means of acquisition or prohibiting theft require a pre-legal understanding of ownership (to prevent circularity); and 3) that traditional Nyāya-padārthas such as guṇa and dravya cannot accommodate ownership.⁹⁴ In the

⁹² See, for example, Ganeri, *The Lost Age of Reason*, 45-51.

⁹³ See note 52.

⁹⁴ Kroll, "A Logical Approach to Law," 102-103, fn 117; *Padārthatattvanirūpaṇa*: evaṃ svatvam api padārthāntaram. yatheṣṭaviniyogayogyatvaṃ tad iti cet ko 'sau viniyogaḥ. bhakṣaṇādīkam iti cet. na, parakīye 'py annādaḥ tatsambhavāt. śāstrāṇiśiddhaṃ tatheti cet kiṃ tac chāstram. parasvaṃ nādadītetyādīkam iti cet svatvāpratītau kathaṃ tatpravr̥ttiḥ. tasmāt svatvam atiriktam eva.

Nyāyalīlāvātīprakāśadīdhiti, Raghunātha explores the implications of his theory of svatva as a padārtha in relation to earlier, Maithila Nāyayikas.⁹⁵ We will see in the following sub-section that many of the specifics that Raghunātha gives about svatva (how it is created, destroyed and how it operates in the case of inheritance) draw on the Dharmaśāstric tradition that developed around the *Dāyabhāga*, but for now, the important take-away is that Raghunātha advocates a theory of ownership as a distinct conceptual category because Maithila definitions of ownership - variations on ownership as the object of a lawful means of acquisition - are either circular or defective. Additionally, Raghunātha, like Vācaspaīśra and Bhagīratha, relies on Dharmaśāstra as the epistemic warrant for the creation and destruction of ownership.

2.B.4: Theories of Ownership in the *Dāyabhāga* and *Dāyabhāga* Commentaries

Jīmūtavāhana never explicitly defines ownership in the *Dāyabhāga*, but I argue that a consistent theory of ownership as a śāstrically determined entitlement for use as desired (yatheṣṭaviniyogārhatva) can be inferred. Entitlement (arhatva), lying somewhere between yatheṣṭaviniyojyatva and yatheṣṭaviniyogayogyatva, is a bit ambiguous, but Jīmūtavāhana provides ample evidence for what he envisions as its content. In a recent dissertation, Manomohini Dutta characterized Jīmūtavāhana's "svatva... [as] closer to a strong degree of ownership over property where ownership includes a right of control over property along with transfer at pleasure."⁹⁶ In a discussion of various restrictions on the gift or sale of immovable assets (by a father or by undivided co-owners), Jīmūtavāhana notes that "the definition of what constitutes a proprietary right in any other kind of [asset], i.e., the right to dispose of

⁹⁵ Ibid., 106.

⁹⁶ Manomohini Dutta, "Inheritance, Property and Women in the *Dāyabhāga*," (PhD Dissertation, U.T. Austin, 2016), 106-7. Unfortunately, Dutta's attempt to establish a 'latent svatva' on the part of sons in ancestral assets ignores the application of the principle of *factum valet*.

it as one pleases (yatheṣṭaviniyogārhatva), applies in this case as well.”⁹⁷

Elsewhere, Jīmūtavāhana argues that to posit that heirs, on the death of their relative, acquire ownership over the entire estate - and then replace that ownership with various new ownerships over specific assets - “would be inept in that the result of ownership, i.e., the right to use what one owns as one wishes (yatheṣṭaviniyoga), would not follow.”⁹⁸

Jīmūtavāhana implies that ownership is produced by śāstric means in two places in the *Dāyabhāga*. First, when Jīmūtavāhana rejects the suggestion that sons become owners by birth alone (which the commentators ascribe to Vijñāneśvara), he argues that: “there are no grounds to accept that birth in and of itself brings about proprietary rights, for birth does not appear in any Text as a form of acquisition.”⁹⁹ Second, when Jīmūtavāhana rejects the suggestion that ownership can accrue to the agent of an act of acquisition (hence, birth as a means of sons’ ownership), he states that “there is nothing wrong with the notion of one person acquiring a proprietary right by way of an act performed by someone else: the practice has its roots in the Texts.”¹⁰⁰ Jīmūtavāhana’s formulation of birth not being found in any text as a form of acquisition (janmanaḥ arjanarūpatayā smṛtau anadhigamāt) evokes the formulation of ownership (as a pūrvapakṣa) in the *Mitākṣarā* as śāstraikasamadhigamyā.¹⁰¹

In discussing Jīmūtavāhana’s pūrvapakṣa (that sons become owners by birth) the *Dāyabhāga* commentators explain the pūrvapakṣin’s views in accordance with

⁹⁷ Rocher, *Jīmūtavāhana’s Dāyabhāga*, 75 & 263: yatheṣṭaviniyogārhatvalakṣaṇasya svatvasya dravyāntara ivātrāpy aviṣeṣāt.

⁹⁸ Ibid., 55 & 250: yatheṣṭaviniyogaphalābhāvenānupayogāc ca.

⁹⁹ Ibid., 59 & 252: janmaiva svatvam iti pramāṇābhāvāc ca arjanarūparūpatayā janmanaḥ smṛtāv anadhigamāt.

¹⁰⁰ Ibid., 59 & 252: anyavyāpāreṇānyasya svatvam aviruddham śāstramūlatvād asya.

¹⁰¹ *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 281: tatra śāstraikasamadhigamyam iti tāvad uktam...

Navya-Nyāya theories of ownership (often drawn from Raghunātha and his Maithila predecessors) and they use a śāstric theory of ownership to reject ownership by birth as a secular (laukika) phenomenon. In his comments on DBh 1.12-14, Śrīnātha gives the formulation “by birth alone” the infamous South Asian “side-eye” (kaṭākṣa) but he explores the implications of such a view.¹⁰² Śrīnātha, arguing for the pūrvapakṣin, states that “one should not say that because of the absence of birth (after the termination of the act of birth), if birth is a cause of ownership then (a son) will not have ownership after he is born.”¹⁰³ For, says Śrīnātha, “there is no obstacle with regard to ownership, even in (assets) that will come about (after birth) because ownership has been described by the śāstra as usability as desired, whose form is discernible from the śāstra, even at the time of the birth of a son, insomuch as it is delimited by the state of being an asset of the father.”¹⁰⁴ Śrīnātha eventually rejects the purported śāstric statement of ownership by birth as inauthentic (pramāṇābhāva), but his defense of janmasvatva (insomuch as a son’s ownership is known from the śāstra and is delimited by the state of being a father’s asset) shows a clear reliance on Navya-Nyāya.¹⁰⁵ Śrīnātha’s comments formed the basis for other *Dāyabhāga* commentators’ rumination on the philosophical nature of ownership, but they do not appear to refer to Vardhamāna, Vācaspatimiśra or Raghunātha’s specific arguments.

Acyuta uses the problem of ownership by birth (and Śrīnātha’s theory of delimitation by the state of being a father’s asset) as a vehicle to attack Maithila

¹⁰² *Dāyabhāga*, ed. Bhārata Candrasīromaṇi, 20; *Dāyatīpannī*: janmata eva svatvam iti yat **kaṭākṣam**.

¹⁰³ Ibid., 21: na ca janmanaḥ svatvahetutve paścājjātasya pitṛdhane katham svatvaṃ tadānīṃ janmābhāvād iti vācyam.

¹⁰⁴ Ibid., 21: svatvasya yatheṣṭaviniyojyatvena śāstragamyatvarūpatayā putrajanmakāla eva pitṛdhanatvāvachchedenaiva śāstreṇa tathātvādhānāt utpatsyamāne ‘pi svatve bādhakābhāvād.

¹⁰⁵ For the rejection of janmasvatva, see ibid., 25: at[h]āha janmanaiveti, ato ‘tra pramāṇābhāvāt...

theories of ownership. In his defense of janmasvatva, Acyuta defends Raghunātha Śiromaṇi's theory of svatva as a padārtha against Bhagīratha Ṭhakkura's (and Vardhamāna Upādhyāya's) theory of ownership as the state of being the object of a lawful means of acquisition. Like Raghunātha, Acyuta advocates his theory of svatva as a padārtha by rejecting any definition of ownership in terms of lawful acquisition.

Acyuta introduces the metaphysical problems with janmasvatva first:

In the statement 'by birth alone,' 'birth' means the posterior absence of a momentary relation, not merely a momentary relation. Consequently, there is the unwanted consequence that there will be an absence of ownership on the part of a son in an asset of a father that will be (acquired after birth) because there is an absence of 'birth' in the form of a momentary relation afterward.¹⁰⁶

Acyuta's point seems to be that it is difficult to postulate birth as a cause of ownership because birth is a momentary event. If a father acquires an asset after a son is born, that son would have no ownership in the asset then acquired. Acyuta offers a more thorough explanation of Śrīnātha's view - that he rejects:

As for the opinion of Ācāryacūḍāmaṇi - that there is no obstacle to (a son's) ownership with regard to an asset of a father that will be (acquired after birth) because we know from the śāstra that the asset (of the father) is usable by him (the son) insomuch as it is delimited by the state of being an asset of the father, because ownership is knowable (from the śāstra) as usability as desired - no. It is inappropriate to say that birth itself is (a form of) acquisition, with regard to ownership (which would occur) even before birth, because we know from śāstra that a father's assets would be usable by the son even when a son is not yet born.¹⁰⁷

Acyuta's rejoinder to Śrīnātha recapitulates the Navya-Nyāya argument that defining ownership in terms of usability as desired is over-extensive insomuch as

¹⁰⁶ Ibid., pg 22; *Kumudacandrikā*: janmaiveti janmātra ādyakṣaṇasambandhadhvamso nādyakṣaṇasambandhamātram abhihitam ato bhāvīpitṛdravye putrasya tadānīm ādyakṣaṇasambandharūpajanmābhāvāt svatvābhāvaprasaṅgaḥ.

¹⁰⁷ Ibid., pg 22: yat tu svatvasya yattheṣṭaviniyojyatvena gamyarūpatayā putrajanmakāle eva pitṛdravyatvāvacchedenaiva dravyam asya yattheṣṭaviniyojyam iti śāstreṇa bodhanāt utpatsyamānapitṛdravye svatve bādhakābhāva ity ācāryacūḍāmaṇimatam tan na[.] putrānūtpattidaśāyām api pitṛdravyam putreṇa viniyojyam iti śāstreṇa bodhanāt janma[naḥ] prāg api svatve janmaivārjanam ity anupapatteḥ.

virtually all assets, regardless of circumstances, can be used as desired.¹⁰⁸ Acyuta, however, is not content to define ownership as Vardhamāna, Vācaspatimiśra and Bhagīratha do - in terms of being the object of a valid means of acquisition. Like Raghunātha, Acyuta argues that such definitions are circular because they define ownership using śāstric passages that themselves depend on an understanding of ownership.¹⁰⁹ Unlike Raghunātha, Acyuta engages in a lengthy rejection of Bhagīratha's theory that ownership is qualified by a perpetual relational absence (saṃsargābhāva).¹¹⁰ Acyuta writes that:

As for (the idea) of some - let ownership be the opposite of that of which there is no use as desired: namely; 1) the state of possessing a relational absence by virtue of such things as being the subject of a means (of acquisition) opposed to that which is not opposed by śāstra (and); 2) that occurs at the same time as the state of being the subject of a means (of acquisition) that is not contradicted by the śāstra - that is not correct.¹¹¹

Acyuta's objection is twofold. First, "because farming is contradictory to the śāstra inasmuch as it is prohibited for Brāhmaṇas in times of non-calamity, (ownership of such a sort) would not apply to assets obtained through that (method, generally speaking).¹¹² Second:

if one were to say that the state of being contradictory to the śāstra is delimited by a delimiter, namely the state of being a means (of acquisition), then, because even theft is not contradictory to the śāstra inasmuch as the injunction 'hungry for three days he should take/steal money from a non-Brāhmaṇa' (Yāj. 3.43.1) is delimited by a delimiter, namely the state of being a

¹⁰⁸ See Vardhamāna's comments about food in Kroll, "A Logical Approach to Law," 51-2.

¹⁰⁹ Ibid., 22: kim ca "svāmī rikthakrayasamvibhāgaparigrahādhiḡameṣv" ityādi **gautamavacanam**ūlabhūtaśrutāv anvayabodhe sati yatheṣṭaviniyojyatvena śāstragamyatvajñāne śaktigrahāt svapadāt tu tadupasthitiḡ tasyāṃ ca sthitau tadanvayabodha ity anyonyāśrayāt. Cf Raghunātha's views in note 94.

¹¹⁰ See note 91.

¹¹¹ Ibid., 22: yat tu tadvyatirekeṇa yasya yatheṣṭaviniyogābhāvaḡ śāstrāvirodhitadupāyaviṣayakatvakālīnaṃ śāstrāviroddhayāvattadvirodhyupāyaviṣayatvādinā saṃsargābhāvavattvaṃ svatvam iti ke cit tad asat.

¹¹² Ibid., 22: anāpadi kṛṣer brāhmaṇasya niṣiddhatvena śāstravirodhitvāt tadutpannadraye 'vyāpteḡ.

means (of acquisition) having the form of theft, (ownership of such a sort) would apply only to assets acquired through that (theft).¹¹³

Therefore, says Acyuta, “the wise accept that ownership is a distinct padārtha, ownership-ness (svatvatva) is a particular indivisible imposed property (akhaṇḍopādhi) and the delimiter of (ownership’s) definition-ness is knowability from śāstra as usability as desired.”¹¹⁴ When Acyuta turns to “that passage of Gautama written in the *Mitākṣarā*, namely, ‘by birth alone (sons) obtain ownership,’” he argues that if it is authentic, then it refers to either: 1) sons who are in-utero when their father dies; or 2) sons, as opposed to other relatives, who obtain their father’s assets because they have ownership in their progenitor’s estate, by virtue of their relationship (to their father), produced merely by birth, when his ownership is destroyed.¹¹⁵ The statement, “sometimes, birth alone (as in paternal assets),” that, says Acyuta, “is from a different text,” is “a secular authority.”¹¹⁶ What Acyuta implies is that this supposed śāstric passage - that undergirds the theory of janmasvatva - is secular and consequently we can reject janmasvatva because ownership - as defined by Acyuta - is śāstragamyā and not lokasiddha.

Acyuta’s defense and rejection of janmasvatva reveals the close interconnection between *Dāyabhāga* commentators and Gauḍa Navya-Nāyāyikas.

¹¹³ Ibid., 22: upāyatāvachchedakāvachchedena śāstravirodhivivakṣaṇe bubhuṣitastry ahaṃ dhānyam abrahmaṇād dhared iti cauryasyāpi vihitatvena cauryarūpopāyatāvachchedakāvachchedena śāstrāvirodhivāt tadupāttadravyamātre ‘tivyāpteḥ

¹¹⁴ Ibid., 22: tasmāt svatvam **padārthāntaram svatvatva akhaṇḍopādhiviśeṣaḥ** yatheṣṭaviniyojyatvena śāstragamyatvam iti lakṣyatāvachchedakam eveti maṇīṣibhir bhāvyam. For akhaṇḍopādhis, see Ingalls, *Materials for the Study of Navya-Nyāya*, 41-2. Śrīkrṣṇa follows Acyuta and svatva as padārtha became the standard narrative for later *Dāyabhāga* commentators.

¹¹⁵ Ibid., 26: utpattyaivārthaṃ svāmitvāl labhetetyācāryā iti **mitākṣarālikhitagotamavacanam** mūlam yasmin garbhasthe pitrādir mṛtas tatparam evety āśayaḥ vastutas tv ayam evārthaḥ pitṛsvatvoparame ‘ṅgajatyasya śukrajatyasya śutrūjatvahetubhūtenotpattimātrasambandhenānyasambandhādihikena janakadhane putrāṇāṃ svāmitvāt taddhanam putro labhate nānyaḥ sambandhī ity ācāryā manyate iti.

¹¹⁶ Ibid., 26: kvacid iti **granthāntare**, janmaiveti laukikapramāṇikaṃ vākyam ity arthaḥ. Acyuta appears to be referring to Śālikanātha here. See *Bṛhatī of Prabhākaramiśra with the Rjvimalā of Śālikanātha*, Vol. IV, ed. S. Subrahmanyam Shastri (Madras: University of Madras Press, 1964), 962, Rj on Bṛ on Śb on Ms 4.1.2 Bṛ on Śb on Ms 4.1.2: ārjanaṃ ca nānārūpaṃ kvacij janma, yathā paitṛkeṣu

Acyuta's comments do more than reject janmasvatva on the basis of its lack of śāstric support - they attempt to enter into Nyāya debates about the nature of ownership and defeat Maithila Nāyāyikas such as Bhagīratha.

Like Acyuta, Rāmabhadra uses Jīmūtavāhana's pūrvapakṣa in DBh 1.12-14, which he calls "the censured opinion of a confused person" to offer his own definition of ownership.¹¹⁷ Rather than defend Raghunātha, Rāmabhadra takes an inchoate idea from Vardhamāna - that ownership is internal and that it is described by external assets - and tests this theory of ownership against the *Dāyabhāga*'s model of inheritance. Rāmabhadra defends his father, Śrīnātha, from Acyuta's criticisms and notes that the over-extension of ownership even before the birth of a son "would apply even to the position that ownership is a distinct conceptual category."¹¹⁸ In truth, says Rāmabhadra, "svatva is the describer of svāmya, which arises immediately after birth."¹¹⁹ In his comments on DBh 8-9, Rāmabhadra describes how this distinction between svāmya and svatva (ownership and property) can explain the sequence of a prior owner's death, ownership through inheritance and usability after partition. Rāmabhadra relates that:

in truth, svatva is not a distinct conceptual category located in an asset. Rather, svāmya is located in the soul and an asset is merely its describer. As for describer-ness, it is a particular peculiar-relation as in the case of the absence of knowledge and the like.¹²⁰ Thus, after a father dies, all (of the sons) acquire svāmitva in the slaves and the like (the assets of the estate), but in the course of time, that (asset) will either be, or not be, a describer of this or that (person's) svāmitva. This is just like how the absence of a pot may or may not have a relation with the ground depending on whether the pot is removed

¹¹⁷ Ibid., 21; *Dāyabhāgavivṛti*: pitrādīti etena janmaiva svatvahetuḥ iti mataṃ **calato** dūṣitam.

¹¹⁸ Ibid., 21: padārthāntaraṃ svatvam iti pakṣe tv ayam api doṣo bodhya iti **sampradāyaḥ**.

¹¹⁹ Ibid., 21: vastutaḥ svāmyanirūpakatvaṃ svatvaṃ svāmyotpattir eva janmānantaram.

¹²⁰ *Dāyabhāga*, ed., H. Chatterjee, 74: vastuto dhananiṣṭhaṃ na svatvaṃ nāma padārthāntaraṃ kintv ātmaniṣṭhaṃ svāmyaṃ dhanam tannirūpakamātraṃ, nirūpakatvaṃ tu jñānābhāvādīnām iva svarūpasambandhaviśeṣaḥ. For the particular peculiar-relation, see Ingalls 40-41.

or not.¹²¹ According to Naiyāyika reasoning, *svatva* is merely a describer of *svāmitva* and there is the popular belief that it is contradictory for two people to have *svatva* (in the same asset) at the same time. So, having accepted that (*svatva*) is *svāmitva*-describer-ness, (we say) *svāmitva* arises immediately after the death of the father, etc., even with reference to (that in which) an obstruction, etc. will arise (during partition). But with regard to the production (of the obstruction) in an object of property, the state of being a describer is inferred as “this is his.”¹²²

Rāmabhadra’s theory of *svāmitva* as described by *svatva* may be taken from an earlier (now lost) Nyāya work, but it seems equally likely that, like Acyuta, Rāmabhadra had read Vardhāmana, Bhagīratha, Vācaspatimiśra and Raghunātha Śiromaṇi’s works on *svatva* and decided to articulate his own understanding of ownership. Like Acyuta and Śrīnātha, Rāmabhadra uses the theory of *janmasvatva* as an entry point into a discussion of *svatva*/*svāmitva* and he uses that discussion to advance a theory of ownership that was rejected by Maithila Nāyāyikas.

To conclude, Śrīnātha, Acyuta and Rāmabhadra (as well as Śrīkr̥ṣṇa and Raghunandana) attest to the nexus between Navya-Nyāya and Dharmaśāstra that was the hallmark of the *Dāyabhāga*-centered school of inheritance that emerged in 16th century Navadvīpa. It is true that Jīmūtavāhana did not ground his text in Navya-Nyāya reasoning, but it is a mistake to ignore the contemporaneous development of a *Dāyabhāga* commentarial tradition and the emergence of Navadvīpa as a center of Nyāya *and* Dharmaśāstra. Raghunātha’s founding of Navya-Nyāya in Navadvīpa had a discernible impact on the Dharmaśāstric hermeneutics of his colleagues: Śrīnātha, Acyuta, Rāmabhadra, Raghunandana and every subsequent commentator on the *Dāyabhāga* employ Navya-Nyāya

¹²¹ Ibid., 74: *tathā ca pitṛmaraṇāt sarveṣāṃ svāmitvaṃ dāsyādau jāyate kālābhede tu tasya tattatsvāmitvasya nirūpakatvam anirūpakatvañ ca ghaṭābhāvasyeva ghaṭāpasāraṇānapasāraṇayor bhūtalasambandhitvāsambandhitve.*

¹²² Ibid., 74: **naiyāyikanaye** *svāmitvanirūpakam eva svatvam, ekadobhayasvatvavirodhapravādaś ca. svāmitvanirūpakatvam ādāya ata evotpatsyamānanibandhādāv api pitṛādimaraṇānupadam eva svāmitvaṃ jāyate. dravyotpattau tu nirūpakatvaṃ tasyedam iti dhyeyam.*

terminology and Navya-Nyāya theories of ownership to demonstrate that it is logically impossible to defend a theory of ownership by birth. The commentators also intervene in philosophical debates concerning the nature of ownership. In short, Bengali efforts to develop a regionally specific cluster of Dharmaśāstric texts and arguments coincides - conceptually and chronologically - with Bengali efforts to develop a scale of Nyāya texts with regard to ownership.

Figure 2 illustrates the Gauḍa scale of theories of ownership. As in Figure 1, the chart is organized in chronologically descending order. Horizontal rows relate an author's name, principal text(s) and theory of ownership.

2.C: The *Dāyabhāga*-Commentators' Influence on Navya-Nyāya

In the previous section I demonstrated that pre-Navadvīpan Nyāya techniques and discussions of ownership played a key role in the articulation of the *Dāyabhāga* as a central text for a Bengali school of Dharmaśāstra. In this section I address the influence of Śrīnātha, Rāmabhadra, Acyuta and Raghunandana on the works of fellow Navadvīpa Naiyāyikas that treat the topic of ownership. I argue that the roughly contemporaneous shift of Navya-Nyāya discussions of ownership from Mithilā to Bengal and emergence of a Nyāya-inflected commentarial tradition of the *Dāyabhāga* (and its embedding in a Gauḍa scale of Dharmaśāstra texts) produced a discernible shift in the way in which Naiyāyikas approached ownership as a topic of philosophical inquiry. I contend that the *Dāyabhāga*'s theory of death as a cause of ownership became a ubiquitous feature of the theories of ownership of Raghunātha Śīromaṇi, Rāmabhadra Sarvabhauma (Bengal, late 16th - early 17th Century), Jayarāma Nyāyapñcānana (Bengal/Benares, 17th Century) and Gadādhara Bhaṭṭācārya's (mid 17th Century). Moreover, Jīmūtavāhana, the *Dāyabhāga* and *Dāyabhāga*-commentarial arguments appear in the writings of these logicians:

Figure 2: The Gauḍa Scale of Navya-Nyāya Texts

(Name & Location)	(Treatise)	(Theory of Svatva)
Rāmabhadra I (Navadvīpa, 1510-1570)	Dāyabhāgavivṛti	svāmyam ātmaniṣṭham. dhananiṣṭham tannirūpakatvaṃ svatvam.
Acyutacakravartin (Navadvīpa, 1510-1570)	Dāyabhāgasiddhānta- kumudacandrikā	svatvam padārthāntaram. yatheṣṭaviniyojyatvena śāstragamyatvam. svatvatva akhaṇḍopādhiviśeṣaḥ.
Śrīnāthācāryacūḍāmaṇi (Navadvīpa, 1475-1525)	Dāyatīpannī	svatvaṃ yatheṣṭaviniyojyatvena śāstragamyatvarūpaṃ.
Raghunāthaśiromaṇi (Navadvīpa, 1460-1540)	Padārthatattvanirūpaṇa/ /	svatvam api padārthāntaram. tac ca pratigrahopādāna- krayapitrādīmarāṇair janyate dānādibhiś ca nāśyate.

1514: Emergence of Navadvīpa (Raghunātha Śiromaṇi Founds ‘Chair in Nyāya)

Bhagīratha Ṭhakkura (Mithilā, 15th-16th Centuries)	Nyāyalīlavatīprakāśavivṛti	krayādihvaṃsaḥ svatvaṃ krayādisamānakālīnavirodhyupāya- pratiyogikayāvadanādisaṃsargābhāva - sāhityaṃ
Vācaspatimiśra II (Mithilā, 1425-1480)	Nyāyatattvāloka	śāstr[ā]viruddhaviniyogaprayojakībhūta- krayādiprāgabhāvavirodhitvarūpaṃ yatheṣṭaviniyogayogyatvaṃ svatvam.
Vardhamāna Upādhyāya (Mithilā, 14th Century)	Nyāyalīlavatīprakāśa	śāstrāviruddhatadupāyaviśayatvarūpaṃ yatheṣṭaviniyogayogyatvaṃ svatvam.

Acyuta’s explanation of birth as a coefficient cause of ownership and

Raghunandana’s principle of *factum valet* are incorporated into the Gauḍa Navya-
scale of Navya-Nyāya texts and are carried to Benares through mobile networks of
Naiyāyikas in the seventeenth century.

This section argues, *pace* Kroll, that Raghunātha, Rāmabhadra Sarvabhauma, Jayarāma and Gadādhara Bhaṭṭācārya imply that the concept of *svatva* is dependent on Dharmaśāstra. These Naiyāyikas explicitly state that death and the like is the cause of ownership on the part of relatives, employ examples from the *Dāyabhāga* and, to the extent that they posit ownership as metaphysically independent of Dharmaśāstra, they rely on the Dharmaśāstra (and its accepted means of acquiring ownership) as the source of valid knowledge of ownership. Consequently, it would be extremely difficult, logically speaking, to accept Raghunātha's theory of ownership as a *padārtha* brought into existence through śāstrically recognized means of acquisition and retain Vijñāneśvara and Śālikanātha's legal theory of ownership by birth as a secularly recognized means of acquisition.

2.C.1: Upamasvatva in Post-Raghunātha Navya-Nyāya

Raghunātha's *Padārthatattvanirūpaṇa* marks a sea-change in the Navya-Nyāya approach to *svatva* as studied in Navadvīpa: upamasvatva becomes a śāstric means of acquiring ownership. The metaphysics of inheritance appears, tangentially, as a minor concern in pre-Raghunātha (and pre-*Dāyabhāga*) Navya-Nyāya literature. For example, in the *Nyāyalīlāvātīprakāśavivṛti*, Bhagīratha assuages fears that a dead father's ownership would continue to reside in his assets and notes that:

his very death, which would motivate use on the part of his sons and other relatives, would block the continuation of his *svatva*.¹²³

Vācaspatimiśra advocates a similar position in the *Nyāyatattvāloka* - that the death of a father, interposed on the continuum of his former means of acquisition does not

¹²³ Kroll, "A Logical Approach to Law," 92, fn 91; *Nyāyalīlāvātīprakāśavivṛti*: maraṇasyaiva putrādiviniyogaprayojakasya vyavadhāyakatvād.

motivate śāstric use - but these two comments are the extent of pre-Raghunātha discussions of upamasvatva.¹²⁴

Kroll comments that Raghunātha, in postulating the padārtha of svatva, “appears to make the tacit concession that people know where and when *svatva* exists through legal texts, and that their cognition of *svatva* is shaped by the legal world in which they live.”¹²⁵ Raghunātha argues that “ownership is created by acceptance, finding, purchase and the death of a father and the like and it is destroyed through gift and the like.”¹²⁶ Raghunātha’s implicit reasoning is subtle: to the extent that ownership is limited to those means of acquisition mentioned in the śāstras (i.e. the sutras of Gautama or the smṛti of Manu) inheritance (ṛktha, dāya, etc.) must be understood as the death of one’s relative. This is precisely Jīmūtavāhana’s opinion (as interpreted by Acyuta and Raghunandana). In the *Nyāyalīlavatīprakāśadīdhiti*, Raghunātha gives an account of the moving parts of this theory of inheritance: “[a] the death of a father, or [b] the destruction of his *svatva* produced by his death, occurring in either [b] the things that were his or [a] that are the substratum of that *svatva* that was destroyed with him, produces his sons’ *svatva*.”¹²⁷ Raghunātha does not cite the *Dāyabhāga* nor does he name Jīmūtavāhana explicitly, but his comments imply an awareness of and enthusiasm for the theory of upamasvatva that Jīmūtavāhana’s commentators were in the process of making a hallmark of Gauḍa Navya-Nyāya.

¹²⁴ Ibid., 64-5, fn 44; *Nyāyatattvāloka*: krayāder maraṇavyavadhāpitasya śāstrīyavinīyogaprayojakatvābhāvād vikrītavad asvatvāt.

¹²⁵ Ibid., 103, fn 118: pramāṇaṃ ca tatra parasvaṃ nādadītetyādikaṃ śāstram eva.

¹²⁶ Ibid., 103, fn 118: tac ca pratigrahopādānakrayapitrādīmarāṇair janyate dānādibhiś ca nāśyate.

¹²⁷ Ibid., 116, fn 140; *Nyāyalīlavatīprakāśadīdhiti*: (A) pitrādīmarāṇaṃ (B) tajjanyasvatvavināśo vā (A) svanāśyasvatvāśraye (B) svāśraye vā putrādeḥ svatvajanakam. Kroll appears to miss the chiasmic structure of this sentence.

Rāmabhadra Sārvabhauma, another Navadvīpan Navya-Naiyāyika, rejects Raghunātha's theory of *svatva* as a *padārtha* (in favor of a syncopated pair of qualified absences), but he retains the theory of ownership as *śāstrically* determined and of death as a *śāstric* means of acquisition.¹²⁸ In the

Padārthatattvavivecanaprakāśa, Rāmabhadra writes that:

because death consists of the ultimate conclusion, death itself, in some cases, when qualified by the prior absence of sale and the like on the part of the heirs, or the conclusion of the instant that constitutes the substratum of death, so qualified, can be said to constitute *svatva*.¹²⁹

Jayarāma and Gadādhara, two later Bengal-trained logicians, give similar views about *upamasvatva*.¹³⁰ Although, as we shall see, Raghunātha and his later interlocutors would disagree with various opinions of Jīmūtavāhana about the details of *upamasvatva* (alienability of undivided shares, the nature of post-parental and pre-partition ownership), they all defend the broad thesis of the *Dāyabhāga*: ownership is limited to the *śāstra* and sons acquire ownership in a paternal estate only after the death (or legal death) of the previous owner.

2.C.2: Two Theories from the *Dāyabhāga* in Navya-Nyāya Literature

Jayarāma and Gadādhara defend two related positions from the *Dāyabhāga* (and its attendant commentaries): 1) birth as a coefficient cause of ownership; and 2) the principle of *factum valet* (by which a father can dispose of immovable assets without his sons' consent). The appearance of these positions in post-Raghunātha Navya-Nyāya discussions of ownership suggests that the *Dāyabhāga* and its commentaries influenced and were influenced by contemporaneous Navya-Nyāya theories of ownership.

¹²⁸ For Rāmabhadra's biography, see *Ibid.*, 123.

¹²⁹ *Ibid.*, 128, fn 162; *Padārthatattvavivecanaprakāśa*: tatra maraṇasya ca dhvaṃsātmakatayā vikrayādiprāgabhāvaviśiṣṭaṃ tad eva kvacit *svatvaṃ* tadadhikaraṇakṣaṇadhvaṃso vā.

¹³⁰ *Ibid.*, 152 & 205-6.

2.C.2.1: The *Mitākṣarā*, In-Utero

In the *Dāyabhāga*, Jīmūtavāhana argues that “as for the Text: ‘In some cases birth in and of itself,’ it describes the situation in stages: the son’s birth first brings about the father-to-son relationship; the father’s death later brings about the son’s proprietary right.”¹³¹ We saw, earlier, that Acyuta and Raghunandana reject this ‘Gautama’ quote as inauthentic.¹³² Acyuta, however, makes an argument that appears to be unique in Dharmaśāstra: “to the extent that the statement of Gautama written in the *Mitākṣarā* is authentic, it pertains to a son who is in-utero when his father dies.”¹³³ However, Acyuta rejects this interpretation by arguing - like Raghunandana - that birth might be a coefficient cause of a son’s ownership insomuch as it allows a son - and no other relative - to inherit after the death of his father.¹³⁴

Gadādhara, however, clearly read Acyuta’s commentary. In an elaborate discussion of inheritance he argues that:

Gautama is quoted in the *Mitākṣarā* as saying, ‘One obtains ownership of wealth by birth.’ That dictum of Gautama, logicians (*prāmāṇika*-s) are alleged to have argued, applies to specific instances, such as where a son is still in the womb when his father dies, and means that such a son can acquire wealth – e.g., paternal assets – through birth alone.¹³⁵

Kroll notes that Gadādhara refers to Vijñāneśvara, the *Mitākṣarā* and the *Dāyabhāga* in other places in the *Vādavāridhi*, but he does not realize that Gadādhara’s interpretation of the *Mitākṣarā* is taken from *Dāyabhāga* - as mediated by Acyuta. Gadādhara defends Jīmūtavāhana’s theory of upamasvatva, so it

¹³¹ Rocher, “Jīmūtavāhana’s *Dāyabhāga*,” 59 & 252: kvacij janmaiveti ca janmanibandhanatvāt pitāputrasambandhasya piṭṛmaraṇasya ca svatvakāraṇatvāt paraṃparayā varṇanam.

¹³² See notes 99 & 105.

¹³³ See note 115.

¹³⁴ See note 115.

¹³⁵ Kroll, “A Logical Approach to Law,” 229, fn 81: ata evotpat(t)yaivārtha(svāmitva(m)) labhata iti **mitākṣarāyām gotamaḥ** yasmin garbhasthe pitā mṛtas tasyaiva tadviṣayatvāt ata eva ca kvacij janmaivārjanaṃ tathā pi(trya)dhanam iti pravadanti **prāmāṇikāḥ**.

comes as no surprise that he would have been influenced by *Dāyabhāga* commentators and that he would label Acyuta a logician (pramāṇika).

2.C.2.2: *Factum Valet, Validated*

One of the most famous statements in the *Dāyabhāga* occurs in a discussion of a partition initiated by a father during his lifetime (2.20-34). Several smṛti verses appear to prohibit a father (or indeed, joint or divided male landowners) from alienating ancestral, immovable assets without the consent of their agnatic relatives. Jīmūtavāhana argues that - based on the principle that ownership entails usability as desired - in truth, sales of immovable (even ancestral) assets by fathers may be immoral (adharmya) but not void.¹³⁶ The reason, says Jīmūtavāhana, is that “no deed once done can be changed even by a hundred Texts.”¹³⁷ In effect, Jīmūtavāhana’s argument is limited to a defense of the logical implications of upamasvatva: if fathers alone are owners of assets (self acquired or ancestral) during their legal lifetime, then it follows, logically, that the transactions that they make with their property must be legally effective (even if they are inequitable). This theory is often compared to the Roman Law maxim, “*quod fieri non debuit factum valet*” (what ought not to have been done is valid when done).¹³⁸ In colonial Anglo-Hindu law, *factum valet*, as applied to inequitable uses of property, became a hallmark of the ‘Bengal School.’¹³⁹ One reason for this is that the principle became a favorite topic for *Dāyabhāga* commentators and Navya-Naiyāyikas.

In his *Dāyabhāgavyākhyāna*, Raghunandana addresses the obvious objection to the principle of *factum valet*: if ownership is śāstraikasamadhigamya, how could

¹³⁶ Rocher, “Jīmūtavāhana’s *Dāyabhāga*,” 73-5 .

¹³⁷ Ibid., 75 & 264: na tu dānādyaṇiṣpattiḥ vacanaśatenāpi vastuno ‘nyathākaraṇāśakteḥ.

¹³⁸ Ludo Rocher, “Jīmūtavāhana’s *Dāyabhāga* and the Maxim *Factum Valet*,” in *Studies in Hindu Law and Dharmaśāstra*, ed. Donald Davis (New York: Anthem Press, 2014): pp. 305-13, 309.

¹³⁹ Ibid., 309.

an alienation of ancestral assets - in defiance of śāstric restriction - be legally effective? Raghunandana writes that “*factum valet* means that when a Brāhmaṇa is killed, the absence of killing is enjoined by a specific śāstric statement, namely, ‘do not kill a Brāhmaṇa,’ but not that it (the killing) is not able to be done. Rather, it informs us of sin.”¹⁴⁰ An opponent points out, plausibly, that “killing is a secular act, so it cannot be prevented (by the śāstra), but because ownership is discernible from the śāstra alone, how can (a sale, etc.) be accomplished when (that sale, etc.) is prohibited?”¹⁴¹ Raghunandana, like Jīmūtavāhana, appears to defend the validity of a father’s sale or gift of ancestral, immovable assets based on a definition of ownership as usability as desired.¹⁴²

The principle of *factum valet* would in the following century become a major point of contention between the followers of the *Mitākṣarā* (Kamalākaraḥṭṭa, Śaṅkarabhaṭṭa, etc.) and the Navya-Naiyāyikas, so it comes as no surprise that one of the defining features of post-Raghunātha Navya-Nyāya treatments of ownership is an endorsement of the theory. Pre-Raghunātha Naiyāyikas (and Raghunātha) argued that because śābda (pramāṇa) is the source of knowledge about ownership, Vedic (śāstric) prohibitions concerning a father’s alienation of ancestral immovable assets without the consent of his sons would prevent said alienations from having legal effect. Vardhamāna argues that:

Although there may be ownership (in an asset), a prohibition on the use (of that asset) as desired (is based on) the Veda. For this reason, Vyāsa (author of an eponymous smṛti) recalls a restriction (based on the Veda) against such

¹⁴⁰ *Dāyabhāga*, ed., Bhāratacandra Śiromaṇi, 67; *Dāyabhāgavyākhyāna* on Dbh 2.29-31: vacanaśatenāpīti, brāhmaṇaṃ na hanyād iti viśeṣavacanena brāhmaṇe hate hananābhāvo dhriyate na vā tat kartuṃ na śakyate. kim tarhi? pratyavāyeṇa jñāpyata iti.

¹⁴¹ *Ibid.*, 67: nanu vadhasya laukikatvāt tadaniṣpattir aśakyā svatvasya vedaikavedyatvāt katham niṣedhe tatsiddhir.

¹⁴² *Ibid.*, 68: vyavahāramātrāsiddhau svatvasyāsiddhiḥ syāt viniyogārhatvābhāvāt. Raghunandana notes (page 67) that this logic applies to a partition made by a father: pitṛkṛtam iva.

things as (a father's) gifting, selling or mortgaging (of immovable assets) without the consent of (his) sons.¹⁴³

Jayarāma, however, uses Jīmūtavāhana's reasoning to defend the validity of a father's gift of immovable, ancestral assets. In the *Svatvanirūpaṇa*, Jayarāma argues that: "according to the author of the *Dāyabhāga*, (with respect to a father's gift, etc. of all of his property) gift and the like occurs (is legally valid)."¹⁴⁴ Jayarāma also uses the *Dāyabhāga* to frame the question of sales of hereditary property by undivided heirs. He writes:

in truth, in Jīmūtavāhana's opinion, because the casting of lots in the form of small metal balls manifests *svatva* for heirs, even when [the estate] has not yet actually been divided, a person has *svatva* only in his particular portion, and not in those of his brothers... and, as a consequence, can give, sell, or otherwise alienate only his particular portion of the ancestral [estate].¹⁴⁵

Jayarāma quotes neither Raghunandana nor Acyuta, but his comments give credence to Acyuta's interpretation of DBh 2.27-32 as a rejoinder to Caṇḍeśvara, etc.'s opinions that fathers and undivided heirs may not alienate the entire estate or their portion of the estate, respectively.¹⁴⁶ If Acyuta and Raghunandana's commentaries represent the moment when the *Dāyabhāga* was read as a Dharmaśāstra/Nyāya response to a Maithila Dharmaśāstra/Nyāya cluster of opinions, then it is unsurprising that Jayarāma, trained in Navadvīpa by Rāmabhadra Sārvabhauma, would use Jīmūtavāhana's opinions to reject a Maithila perspective on the legal validity of properties in which one might have (śāstrically established) legal ownership that is constrained by a pious, śāstric restriction. At the very least,

¹⁴³ My translation. For the text of the *Nyāyalīlāvatiṭīprakāśa*, see Kroll, "A Logical Approach to Law," 52-3, fn 23: ata eva svatve saty api yatheṣṭaviniyoganiṣedho 'pi śābda eva... ity anena sutānām asammatāu dānavikrayādiniṣedhaḥ smaryate. Kroll's translation of this passage is not quite accurate.

¹⁴⁴ My translation. See *ibid.*, 146, fn 16: **dāyabhāgakṛtas**... jāyata eva tatra dānādi(.)

¹⁴⁵ *Ibid.*, 146, fn 17: vastuto **dāyabhāgakṛnmate** guḍikāpātādeḥ svatvavyaṅjakatvād avibhakte [']pi svāṃśe svasyaiva svatvaṃ na tu bhrātraṃtarasya svāṃśasyaiva dānavikrayādikaṃ(.)

¹⁴⁶ *Dāyabhāga*, ed., H. Chatterjee, 67; *Kumudacandrikā* on Dbh 2.27-32 iti **caṇḍeśvarādyanumoditam** apakartum āha na ceti.

Jayarāma's comments demonstrate that by the 17th Century the *Dāyabhāga* had risen from an obscure Dharmaśāstric text to an authority for Bengali Navya-Naiyāyikas with an interest in legal questions.

2.D: Conclusion: Schools of Dharmaśāstra in Late Navya-Nyāya

In the *Vādavāridhī*, Gadādhara Bhaṭṭācārya frames a debate concerning the specific proprietary rights of sons after the death of the father in terms of Maithila and Gauḍa schools of thought. Gadādhara notes that:

Scholars from Mithilā... are the proponents of a single, collective *svatva* being first produced. According to them, after the death of a father or other relative, in each and every asset a single *svatva*, dependent on all the heirs, is first produced. Then, by partition, that collective *svatva* is destroyed, and other *svatva*-s, occurring exclusively in accordance with the heirs' shares, are produced... Jīmūtavāhana, however, claims that... each heir acquires *svatva* in the very portion that is determined to be his ultimately through the casting of lots, or some other means.¹⁴⁷

Kroll argues, correctly, that although Gadādhara mentions and rejects the *Mitākṣarā*'s theory of ownership by birth, the “conflict is not between the so-called *Dāyabhāga* and *Mitākṣarā* schools of thought... [but between either] divergent views on *dharmaśāstra* among Mithilā-based and Bengali writers... [or more probably between] divergent views of *naiyāyika*-s belonging to the Mithilā-based and Bengali schools of *nyāya*.”¹⁴⁸ It is important not to miss the extent to which, at least in Bengal, scholars of Nyāya and Dharmaśāstra lived in a shared institutional and intellectual space. In truth, that shared institutional milieu served as a catalyst for a mutually influential dialectic between Gauḍa Dharmaśāstrins who wrote commentaries on Jīmūtavāhana's *Dāyabhāga* and post-Raghunātha, Navadvīpa Navya-Naiyāyikas.

¹⁴⁷ Kroll, “A Logical Approach to Law,” 240-9, fn 95 & 107; *Vādavāridhī*: sāmudāyikasvatvavādinō **maithilāḥ** pitrādīmaraṇottaraṃ sarveṣv eva pitrādīdhaneṣu sarvvabhāginirūpitam ekaṃ svatvaṃ prathamato jāyate paścād vibhāgena tatsāmudāyikasvatvaṃ vināśya yathāñśamātravṛttisvatvāntarāny utpādyante... **dāyabhāgakṛtas** tu maraṇādījanyapitrādisvatvanāśāt sarveṣv eva taddhaneṣu na sarvvabhāgināṃ svatvotpattiḥ kin tu guṭikāpātādinā vastugatyā yasya yo ‘ñśo nirṇīto bhaviṣyati tatraivāñśe tasya svatvam utpādyate(.)

¹⁴⁸ Ibid., 272-3.

To conclude, let us return to Colebrooke's characterization of Jīmūtavāhana as "the founder" of the Bengal school of inheritance as the "author of the doctrine which it has adopted."¹⁴⁹ This chapter has focused less on the mysterious origins of Jīmūtavāhana and the *Dāyabhāga* than on the circumstances of its *adoption* by Bengali śāstrins in the ṭols of Navadvīpa. It is clear that the *Dāyabhāga* became a quintessentially Bengali text at the same time that Bengali paṇḍits began to assert a distinct 'Gauḍa' school of thought in Dharmaśāstra. The development of a Gauḍa school of Dharmaśāstra coincides with the emergence of Navadvīpa as a center of Navya-Nyāya and as a rival to Mithilā.

A natural consequence of these dual developments is a connection between the jurisprudence of *Dāyabhāga* commentators such as Acyutacakravartin and Raghunandana Bhaṭṭācārya and the theories of ownership of Navya-Naiyāyikas such as Raghunāthaśiromaṇi, Rāmabhadra Sarvabhauma and Jayarāma. The most notable feature of *Dāyabhāga* commentarial literature is the elaborate use of Navya-Nyāya terminology in support of Jīmūtavāhana's sometimes counter-intuitive interpretations of smṛti - for example, the derivation of dāya from √dā - and the articulation of various Navya-Nyāya-derived concepts of ownership (as a padārtha, or svāminirūpakatva).

Of course, to say that Bengali Dharmaśāstrins and Navya-Naiyāyikas shared a cluster of concepts and opinions on the issues of ownership and inheritance is not the same as proving the existence of a 'Bengal School' of Dharmaśāstra. Unlike the medieval *Mitākṣarā* 'school' - in which a discernible Dharmaśāstra/Mīmāṃsā nexus developed in the wake of Vijñāneśvara - the *Dāyabhāga* school was tied to specific educational institutions and specific disciple/son/student/rival modes of transmission.

¹⁴⁹ H.T. Colebrooke, *Two Treatises*, v.

Moreover, the regional specificity of interest in the *Dāyabhāga* was linked to the efforts of Navadvīpa logicians and Dharmasāstrins to fashion a comprehensive, internally consistent, 'Gauḍa' body of legal and philosophical literature. This body of literature - a scale of texts - served as a rejoinder to the works of Vācaspati II and other famous Mathila authors and reinforced Navadvīpan paṇḍits' efforts to establish the reputation of their emerging academic institutions.

The *Mitākṣarā* and its theory of janmasvatva occupied an important place in the early literature of the Bengal school as an intellectual whipping boy. Śrīnātha and Rāmabhadra were keen to reject janmasvatva and Raghunandana and Acyuta went so far as to quote the *Mitākṣarā* by name before rejecting its arguments. The Bengali Dharmasāstrins, probably influenced by the Navya-Nyāya theory of ownership as epistemically dependent on śāstra, rejected janmasvatva and went to great lengths to defend upamasvatva in their technical philosophical idiom, but their polemic appears to have been directed more at Mithilā than at Vijñāneśvara. That is to say, the founding of the Bengal school had Mithilā as its target. The *Mitākṣarā* was 'collateral damage.' In the following chapter we shall see that Jayarāma, Gadādhara and other Navadvīpa-trained Naiyāyikas brought the arguments and texts of the Bengali school to Benares, where they were encountered by Mahārāṣṭrian Mīmāṃsakas - for whom upamasvatva was an anathema.

Chapter 3: The Bhāṭṭa School of Benares

Vārāṇasī, 1657.

Seventy-seven learned Brāhmaṇa scholars, paṇḍits from Vārāṇasī's most illustrious priestly families, gathered in the southern pavilion of the Kāśīviśveśvara temple. The scholars, speaking as joint representatives of India's five southern (Drāvida) and eastern (Gauḍa) lineages, issued a letter of judgement (nirṇayapatra) declaring the Devarsis, a marginalized clan of Mahārāṣṭrian Brāhmaṇas, to be fully-fledged Brāhmaṇas worthy of respect and of ritual purity.¹⁵⁰ This adjudicative assembly (Brāhmaṇasabhā) evokes an image of a resplendent, if ephemeral, moment when the holiest temple in India's most sacred city hosted a pan-Indian community of scholars whose piety and orthodoxy was matched only by their learning and authority. By 1669, the Kāśīviśveśvara temple lay in ruins, many scholars had ventured to other cities and Vārāṇasī's golden age of Sanskrit learning had faded.¹⁵¹

The 1657 letter of judgement's pretenses of a unified body of southern and eastern paṇḍits belie the contentious, competitive scholarly milieu of early modern Vārāṇasī: a 'university town' in which families of scholars endeavored to embody orthodox religiosity and to win patronage by debating the intricacies of traditional Sanskrit jurisprudence (Dharmaśāstra), scriptural hermeneutics (Mīmāṃsā), and other śāstric disciplines with their rivals. It was, as evocatively described by Madhav

¹⁵⁰ Rosalind O'Hanlon, "Letters Home: Banaras Pandits and the Maratha Regions in Early Modern India," *Modern Asian Studies*, 44:2, (2010): pp. 201-240, 229-234.

¹⁵¹ For the destruction of the Kāśīviśveśvara temple, see Richard Eaton, "Temple Desecration and Indo-Muslim States," *Journal of Islamic Studies*, 11:3, (2000): 283-319. For the decline of Vārāṇasī's paṇḍit community, see Rosalind O'Hanlon, "Speaking from Śiva's Temple: Banaras Scholar Households and the Brahman 'Ecumene' of Mughal India," *South Asian History and Culture*, 2:2, (2011): pp. 253-277, 267.

Deshpande, a “cheek to jowl” environment in which claims of solidarity were checked by regional and disciplinary divisions.¹⁵²

This chapter examines a Dharmaśāstric debate that divided two of the most famous paṇḍits from the 1657 Vārāṇasī assembly - Gāgābhaṭṭa (1600-1685) and Jayarāma Nyāyapañcānana (active 17th Century) - across regional and disciplinary lines: the intertwined problems of inheritance (dāya) and ownership (svatva). In the previous two chapters I charted two divergent trends in classical Sanskrit jurisprudence. The first trend, beginning with Vijñāneśvara’s 11-12th century *Mitākṣarā*, saw the development of a school of legal thought in which the male members of extended families held assets in joint, coparcenary trusts (apratibandhadāya). Vijñāneśvara’s school of thought, which runs against the grain of a literal reading of Dharmaśāstra texts, required two interpolations: a theory of birth as a cause of ownership on the part of sons and grandsons (janmasvatva) and a related theory of ownership as a secular phenomenon - whose means of production were not limited to those mentioned explicitly in Dharmaśāstra. Prābhākara-Mīmāṃsā texts such as Śālikanātha’s *Ṛjuvimalāpañcikā* and Bhavanātha’s *Mīmāṃsānayaviveka* functioned as philosophical touchstones for Vijñāneśvara and the followers of the *Mitākṣarā* school of jurisprudence.

The second trend, beginning with the founding of the ‘University’ of Navadvīpa in Bengal in the early sixteenth century, led to the emergence of a school of legal thought in which a family’s patriarch exercised sole and (virtually) unlimited control over joint family assets. Sons and grandsons acquired ownership in ancestral assets only on the death (legal or biological) of the family patriarch (upamasvatva).

¹⁵² Madhav Deshpande, “Disagreement without disrespect’: transitions in a lineage from Bhaṭṭoji to Nāgeśa,” *South Asian History and Culture*, 6:1 (2015): pp. 32-49, 33.

Followers of this school, which developed via a commentarial tradition on the *Dāyabhāga* of Jīmūtavāhana (date unknown; 12th-15th centuries), defended a theory that ownership was a non-secular, śāstric matter. In contrast to the *Mitākṣarā* school, the followers of the *Dāyabhāga* school followed a Navya-Nyāya (new logic) philosophical tradition that had developed in Navadvīpa in tandem with the *Dāyabhāga* commentarial tradition. Moreover, these commentators linked their theory of upamasvatva with a series of other legal opinions into a comprehensive Bengali (Gauḍa) scale of Dharmaśāstra texts. Until the early seventeenth century, followers of these two schools of thought were not in contact (or in conflict); largely because the *Dāyabhāga* and Navya-Nyāya were virtually unknown outside of eastern India. By the early 16th century, the migration of Bengali scholars to Vārāṇasī introduced paṇḍits from northern and southern India to a new, sophisticated jurisprudence that contradicted and competed with the tenets of the *Mitākṣarā* school. A vigorous, often acrimonious debate - which gave birth to two distinct, regionally specific schools of Hindu law - followed.

This chapter examines the reception of *Dāyabhāga* jurisprudence and Navya-Nyāya theories of ownership in the Dharmaśāstra and Mīmāṃsā writings of the Bhaṭṭa family of Mahārāṣṭrian Deśastha Brāhmaṇas who led the southern community of paṇḍits in Vārāṇasī between the sixteenth and seventeenth centuries. Contemporary scholarship acknowledges the Bhaṭṭas' wide influence on Dharmaśāstra, Mīmāṃsā Vedānta, Vyākaraṇa, and Bhakti in sixteenth and

seventeenth century Vārāṇasī.¹⁵³ The Bhaṭṭas are known most for their Mīmāṃsā writings' heavy use of Navya-Nyāya terminology and for their participation in many of the Brāhmaṇa assemblies (Brāhmaṇasabhās) that met in Vārāṇasī in the sixteenth and seventeenth centuries.¹⁵⁴ I argue that these two factors are intertwined inexorably: the Bhaṭṭas' legacy as the acme of southern Brāhmaṇism can be attributed to their vigorous defense of traditional Dharmaśāstra from a rival Bengali school of law. They accomplished this in three ways. First, the Bhaṭṭas crafted a comprehensive scale of Dharmaśāstra texts that weighed and that rejected the opinions of prominent eastern and Bengali Dharmaśāstrins such as Vācaspatimiśra II (actually a Maithila author), Śūlapāṇi Upādhyāya, Raghunandana Bhāṭṭācārya and Śrīnāthācāryacūḍāmaṇi (on subjects as diverse as festivals, meat-eating, and the legal validity of irreligious transactions) and that contrasted the views of these Bengalis with those of southerners. Second, with regard to inheritance specifically, the Bhaṭṭas defended the *Mitākṣarā* school's theory of janmasvatva and its attendant legal implications from the objections of Bengali Dharmaśāstrins. Finally, the Bhaṭṭas, in their Mīmāṃsā writings, adopted Navya-Nyāya techniques to advocate a

¹⁵³ For a general overview of the Bhaṭṭas and their works, see Sheldon Pollock, "New Intellectuals in Seventeenth Century India." *The Indian Economic and Social History Review* 38, no. 1 (2001): 1-31. For Dharmaśāstra, see Ananya Vajpeyi, "Śūdradharmā and the legal treatments of caste," in Timothy Lubin, Donald Davis, and Jayanth Krishnan Eds., *Hinduism and Law: An Introduction*, (Cambridge, 2010): 154-166; Rosalind O'Hanlon, Gergely Hidas and Csaba Kiss, "Discourses of caste over the longue durée: Gopīnātha and social classification in India, ca. 1400– 1900," *South Asian History and Culture*, 6:1, (2015): 102-129; Madhav M. Deshpande, "Kṣatriyas in the Kali Age? Gāgābhāṭṭa & His Opponents," *Indo-Iranian Journal*, 53 (2010): 95-120; and Theodore Benke, "The Śūdrācāraśiromaṇi of Kṛṣṇa Śeṣa: A 16th Century Manual of Dharma for Śūdras" (PhD Dissertation, University of Pennsylvania, 2010). For Vedānta, see Christopher Minkowski, "Advaita Vedānta in Early Modern History," in *Religious Cultures in Early Modern India: New Perspectives*, ed. Rosalind O'Hanlon and David Washbrook. Special Volume of *South Asian History and Culture* 2.2 (2011): 205-31.

¹⁵⁴ For the Bhaṭṭas' Mīmāṃsā, see Lawrence McCrea, "Playing with the System: Fragmentation and Individualization in Late Pre-Colonial Mīmāṃsā," *Journal of Indian Philosophy*, 36, (2008): 575-585; Lawrence McCrea, "Novelty of Style and Novelty of Substance in Seventeenth Century Mīmāṃsā," *Journal of Indian Philosophy* 30.5 (2002): 481–494; and Bogdan Diaconescu, "On the New Ways of the Late Vedic Hermeneutics: Mīmāṃsā and Navya-Nyāya," *Asiatische Studien: Zeitschrift der Schweizerischen Asiengesellschaft*, LXVI, (2012): 261-307. For their role as southern Brāhmaṇas, see O'Hanlon, "Speaking from Shiva's Temple," 261-2.

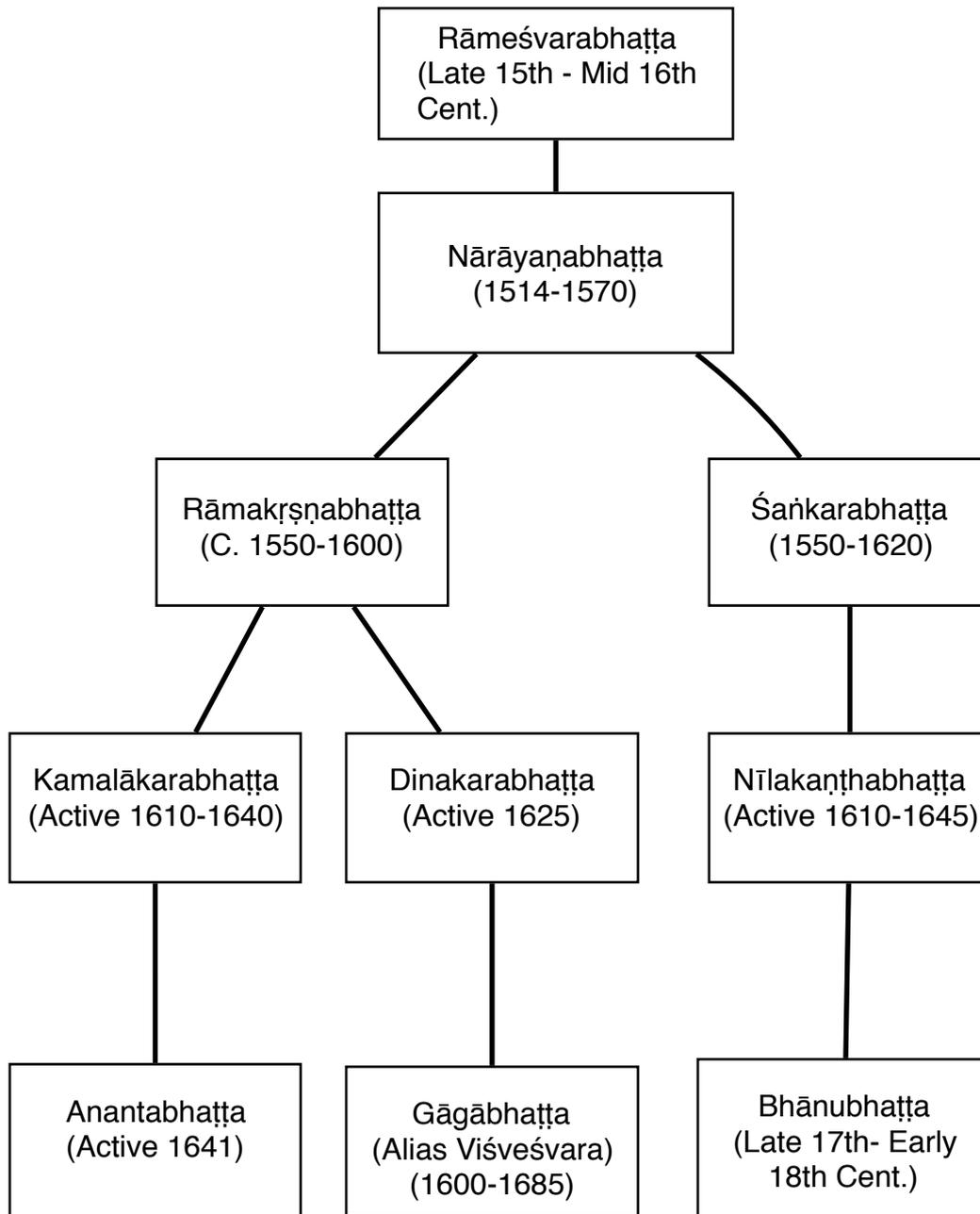
theory of ownership as a secularly created causal capacity (śakti) in contrast to Bengali theories of ownership as a śāstrically determined conceptual category (padārtha) or as a qualified absence (viśiṣṭābhāva). I argue that the Bhaṭṭas' philosophical arguments concerning the metaphysics of ownership were linked to their jurisprudential arguments concerning the theory of patrilineal coparcenary trusts. Both of these positions, in turn, were implicated in the broader attempt by the Bhaṭṭas to frame their śāstric writings as a facet of their identity as exemplary southern Brāhmaṇas.

The chapter makes three interventions with regard to my broader thesis concerning Henry Colebrooke's colonial-era formulation of schools of Hindu law (in which the *Dāyabhāga* and the *Mitākṣarā* served as the founding texts of eastern and southern India): a) that the Vārāṇasī Bhaṭṭas' Dharmaśāstra writings mark the juncture at which the *Mitākṣarā* was identified with a distinct geographical region of India (albeit in a schematized fashion); b) that the Bhaṭṭas' defense of the *Mitākṣarā* against the *Dāyabhāga* was part of a broader encounter with Bengali Navya-Nyāya and Dharmaśāstra; and c) that the Bhaṭṭas' interventions in caste-politics in early modern Mahārāṣṭra contributed to the Bhaṭṭas' Dharmaśāstra texts' enduring popularity in the Marāṭhā state.¹⁵⁵ In short, I argue that although the *Mitākṣarā*, and its Mīmāṃsā-inflected theory of ownership by birth, served as the central text in an influential school of Dharmaśāstric thought from the medieval period, the challenge of the *Dāyabhāga*, and its Navya-Nyāya-inflected theory of ownership, precipitated a southern/eastern Dharmaśāstric schism that gave rise to Colebrooke's theory of schools of Hindu law. Colebrooke noted the "considerable weight" of "eminent

¹⁵⁵ For Colebrooke's formulation of schools of law, see Ludo Rocher, "Schools of Hindu Law," in Donald Davis, Edited, *Studies in Hindu Law and Dharmaśāstra*. New York: Anthem Press, 2014: 119-141.

writers” such as “Camalācara [sic] at Benares” and “the *Mayūc’ha* [sic] [of Nīlakaṇṭhabhaṭṭa] among the *Marahāttas*” and characterized these authors’ defense of the *Mitākṣarā* as a school of thought opposed to the *Dāyabhāga*.¹⁵⁶ He also noted

Figure 1: Patrilineal Family Tree of Selected Bhaṭṭas



¹⁵⁶ H.T. Colebrooke, *Two Treatises on the Hindu Law of Inheritance*, (Calcutta: Hindoostanee Press, 1810), iv.

that the difference in legal opinion between the *Mitākṣarā* school and the *Dāyabhāga* school could be attributed to the relative prevalence of Mīmāṃsā and Navya-Nyāya in southern and in eastern India respectively.¹⁵⁷ The recent hostility which Colebrooke's analysis has aroused warrants closer investigation.

I trace the Dharmaśāstra and Mīmāṃsā works of the Vārāṇasī Bhaṭṭas over four generations: Nārāyaṇabhaṭṭa (1513-1570), Śaṅkarabhaṭṭa (1550-1620), Rāmakṛṣṇabhaṭṭa (1550-1600), Kamalākarabhaṭṭa (active 1610-1640), Nīlakaṇṭhabhaṭṭa (active 1610-1645), Gāgābhaṭṭa (1600-1685) and Bhānubhaṭṭa (16th-17th centuries).¹⁵⁸ Figure 1, below, shows the family tree of the Bhaṭṭas whose work I analyze.¹⁵⁹ The chapter is divided into three sections, each of which explores a facet of the Bhaṭṭas' identity as paradigmatic southern Brāhmaṇa Mīmāsakas and their rivalry with Bengali Naiyāyikas. The first section examines the paṇḍits of the Kāśīviśveśvara temple and their role as arbiters of caste in India's pan-Indian "Brāhmaṇa ecumene."¹⁶⁰ The Bhaṭṭas, in traveling to royal courts for śāstric debates, in leading Brāhmaṇasabhās at the Kāśīviśveśvara temple and in raising the caste status of Shivaji at the Marāṭhā court positioned themselves and their Dharmaśāstric writings as the authoritative custodians of pious, southern conduct (śiṣṭācāra).

¹⁵⁷ Sir Thomas Strange, *Elements of Hindu Law: Referable to British Judicature in India Vol. 1.*, (London: Payne and Foss, 1825), 314.

¹⁵⁸ For Bhaṭṭas Nārāyaṇa, Kamalākara, and Nīlakaṇṭha, see P.V. Kane, Kane, *A History of Dharmaśāstra, Vol. 1. Part 2.* 2nd Edition (Poona: Bhandarkar Oriental Research Institute, 1975), 903-7, 925-37, & 937-941 respectively. For the family in general, see James Benson, "Śaṅkarabhaṭṭa's Family Chronicle: The *Gādhivamśavarṇana*," in Axel Michaels (ed.), *The Pandit: Traditional Scholarship in India* (Delhi: Manohar Publishers, 2001): 105-118 and Haraprasad Shastri, "Dakshini Pandits at Benares," *Indian Antiquary*, 41, (1912): 7-13.

¹⁵⁹ For a complete Bhaṭṭa family tree, see Śaṅkarabhaṭṭa, *Dharma-Dwaita-Nirṇaya: or Dharmic Alternatives Solved*, ed. J.R. Gharpure (Bombay: Office of the Collection of Hindu Law Texts, 1943), 3.

¹⁶⁰ For the Brāhmaṇa Ecumene, see O'Hanlon, "Speaking from Shiva's Temple," 254.

In this second section I explore the Bhaṭṭas as an extended “scholar household” and attend to the “scholarly habitus” revealed in their textual corpus.¹⁶¹ I examine their works’ colophons, overlap of topics and parallel passages, mutual references, attacks on Bengalis, and argumentative consistencies. I argue for a sociological model of knowledge in which the Bhaṭṭas’ individual intellectual contributions are delimited by a larger family unit, with its broad consistency in Mīmāṃsā methodology, in Dharmaśāstric jurisprudence and in anti-Bengali polemic.

The third section takes up the twin topics of ownership and inheritance, particularly in relation to the challenge presented by the *Dāyabhāga* school and Navya-Nyāya philosophy. I explore the intricacies and intersections of several Bhaṭṭas’ Mīmāṃsā and Dharmaśāstra works that discuss ownership and inheritance. I focus on Kamalākarabhaṭṭa’s *Vivādatāṇḍava* and *Mīmāṃsākutūhala* and I argue that Kamalākara’s philosophical arguments against a Navya-Nyāya theory of ownership in the *Mīmāṃsākutūhala* dovetail with his arguments against Jīmūtavāhana, Raghunandana and Śūlapāṇi’s Bengali model of inheritance in the *Vivādatāṇḍava*. I examine the works of Kamalākara’s father, Rāmakṛṣṇabhaṭṭa, and Gāgābhaṭṭa, and illuminate a shared theory of ownership - argued against a Bengali-Navya-Nyāya theory of ownership - underlying their models of inheritance. Kamalākara’s contribution on svatva is thus highly suggestive of a moment in Indian intellectual history in which the well-known Mīmāṃsā-Dharmaśāstra nexus was complicated by a rival Nyāya-Dharmaśāstra nexus. In the previous chapter we saw that the followers of Jīmūtavāhana’s *Dāyabhāga* defended a Navya-Nyāya based theory of ownership as a padārtha, that is produced by those methods of acquisition

¹⁶¹ Christopher Minkowski, Rosalind O’Hanlon & Anand Venkatkrishnan, “Social history in the study of Indian intellectual cultures?” *South Asian History and Culture*, 6:1, (2015): 1-9, p. 3.

that are recognized by the śāstra. In the following chapter we shall see that the Bhaṭṭas' defense of the *Mitākṣarā* as part of a broader southern/eastern, Mīmāṃsā/ Navya-Nyāya debate led directly to H.T. Colebrooke's formulation of *Mitākṣarā* and *Dāyabhāga* schools of law in 1810.

3.A: The Bhaṭṭas, a Social History

In this section I take up the social history of the Bhaṭṭa family. Drawing on contemporary micro-histories of Brāhmaṇa politics of early modern South Asia, I trace the rise of the Bhaṭṭa family from relative obscurity to the pinnacle of Vārāṇasī's Brāhmaṇa immigrant community and to the royal court of Shivajī Bhonsle (1674-1680). First, I set the stage by outlining the changes and challenges of the early modern Brāhmaṇa 'ecumene' of Mughal North India and its reliance on a division of Brāhmaṇas into five southern and five eastern groupings. Second, I analyze the increasing importance of the Bhaṭṭas in three areas of activity between 1500 and 1700 A.D: a) śāstric disputations at various royal courts, particularly in the house of Rājā Ṭoḍar Mal in Delhi (≈1560-1580); b) the Brāhmaṇasabhās that assembled in the Kāśīviśveśvara temple (≈1580's-1669); and c) direct involvement in the Marāṭhā polity in such matters as the coronation of Śivaji and the adjudication of caste-rights (1674). The thrust of my argument is that the Bhaṭṭas became *the* superlatively orthodox Brāhmaṇas of Mahārāṣṭra through their long-term participation (as 'southerners') in a pan-Indian encounter between Brāhmaṇas who adhered to a 'five southern' (pañca Drāvida) and 'five eastern' (pañca Gauḍa) classificatory scheme.¹⁶² With regard to my broader thesis, I argue that the Bhaṭṭa family's strong identification with a specific region - Mahārāṣṭra - in contrast to

¹⁶² For this scheme, see Madhava Deshpande, "Panca Gauda Panca Dravida: Contested Borders of a Traditional Classification," in *Anantaṃ Śāstram: Indological and Linguistic Studies in Honour of Bertil Tikkanen*, ed. Klaus Karttunen (Helsinki: Finish Oriental Society, 2010): pp. 29-58.

another region - Bengal - played a crucial role in the identification of their jurisprudential school as quintessentially Mahārāṣṭrian.

3.A.1: Early Modernity and the Brāhmaṇa Ecumene

The Bhaṭṭa family's rise to prominence in the social politics of the early modern Brāhmaṇa ecumene combined two trends: an increasing attachment to royal patronage, from Delhi and from Mahārāṣṭra; and a concomitant effort to promote the family's 'brand' of southern Brāhmaṇism against a rival, eastern (Bengali) brand.

One of the central questions of 'Sanskrit Knowledge Systems on the Eve of Colonialism', an ongoing project of contemporary scholars of Indian intellectual and social history, is the extent to which pre-colonial India experienced a modernity analogous to that of the West.¹⁶³ For many, the distinguishing feature of early modernity in South Asia is a "connectedness" between various areas of the subcontinent and the networks of royal patronage and śāstric knowledge production that accompanied it.¹⁶⁴ Rosalind O'Hanlon, drawing from the work of Christopher Bayly, argues that Mughal India's Brāhmaṇa 'ecumene' was characterized by intense, pan-Indian competition for the patronage of royal and imperial courts.¹⁶⁵ Patronage took many forms, including rewards for victory in public disputations, commissioning Sanskrit treatises, founding Maṭhas (pedagogical foundations), or

¹⁶³ For a general account of early modernity, see John Richards, "Early Modern India and World History," *Journal of World History* 8.2 (1997): 198-203. For contrasting perspectives on the issue, see Sheldon Pollock, "Pretextures of Time," *History and Theory* 46, no. 3 (October 2007): 336-383; and *The Ends of Man at the End of Premodernity* (Amsterdam, 2005), and Parimal Patil, "The Historical Rhythms of the Nyāya-Vaiśeṣika Knowledge-System," in *Periodization and Historiography of Indian Philosophy*, ed. Eli Franco (Wien: Sammlung de Nobili, Institut für Südasien-, Tibet- und Buddhismuskunde der Universität Wien, 2009): 91-126; and Dipesh Chakrabarty, "The Muddle of Modernity," *American Historical Review* 116.3 (2011): 663-675.

¹⁶⁴ See O'Hanlon, "Letters Home," 201. Cf. Sanjay Subrahmanyam, "Connected Histories: Notes Towards a Reconfiguration of Early Modern Eurasia," *Modern Asian Studies*, 31.3 (1997): 735-762.

¹⁶⁵ O'Hanlon "Speaking from Shiva's Temple," 254.

granting the income from lands.¹⁶⁶ Vārāṇasī was ideally situated to benefit from this early modern pan-Indian connectivity:

The consolidation from the early sixteenth century of successor states to the Bahmani and Vijayanagar kingdoms meant a proliferation of large and smaller courtly centres in southern and central India with patronage to offer. In the north, the decade of the 1570s saw the consolidation of Akbar's state and the emergence of an expansive new Mughal cultural strategy, drawing in the ambitious and talented from different regional and religious traditions and promoting exchange between them. Set between these northern and southern networks, Banaras seems to have attracted a new wave of intellectual specialists in the sixteenth and seventeenth centuries.¹⁶⁷

The “critical mass” of Sanskrit scholars who came to Vārāṇasī and royal courts in search of patronage resulted in an incredible heterogeneity: Brāhmaṇas from all over India, with diverging philosophical methodologies, ritual practices, religious commitments and vernacular languages, who had interacted with each other in only limited ways, found themselves, suddenly and acutely, in contact, communication and competition.¹⁶⁸ This cultural and intellectual heterogeneity had two effects that influenced the Bhaṭṭas' work decisively. First, “this competitive landscape... impelled many into radical re-assessments of their own intellectual traditions”, led to a “greater systematization of schools of thought” and contributed to a “broadening of arenas for argument and the creation of new disciplinary protocols for scholars to use within them.”¹⁶⁹ Second, “at the center of this process lay a novel system of classification”: the Pañca Gauḍa/Pañca Drāviḍa scheme.¹⁷⁰ O'Hanlon notes that:

Until the early centuries of the second millennium, Brahman families across the subcontinent identified themselves by their *sakha*, or branch of Vedic learning, and their *gotra*, or exogamous patriliney. The new classification drew

¹⁶⁶ Ibid., 254-257.

¹⁶⁷ O'Hanlon “Letters Home,” 202.

¹⁶⁸ O'Hanlon, “Speaking from Shiva's Temple,” 261.

¹⁶⁹ Minkowski, *et al*, “Social History,” 6.

¹⁷⁰ Rosalind O'Hanlon, “Contested Conjunctures: Brahman Communities and ‘Early Modernity’ in India,” *American Historical Review* 118.3 (2013): pp. 765-787, 777.

on the strengthening of regional identities, which in some cases was clearly associated with particular vernacular languages. It placed all of India's Brahmans within one of ten great groupings, the five or *panca gauda* in northern India and the five or *panca dravida* in the south.¹⁷¹

Madhav Deshpande has explored the pre-history of this classificatory scheme, but for the Bhaṭṭas and other paṇḍit families, it proved “useful in offering a ‘portable’ Brahman identity in an age when Brahmans increasingly traveled in search of patronage and employment.”¹⁷² We shall see that in the mid-seventeenth century, the “Brahman assemblies in Banaras”, dominated by the Bhaṭṭas, “invoked the classification as a means of offering authoritative judgments in disputes about identity and ritual entitlement brought to them from Brahmans in... [other] regions.”¹⁷³

3.A.2: Enter the Bhaṭṭas

Unlike most of India's famous paṇḍit families, who “were, as is well known, frequently averse to situating themselves in historical time and social space,” we know a substantial amount about the Bhaṭṭa family, thanks to a combination of copious manuscript colophons, family chronicles, letters of judgment (from Vārāṇasī), Marāṭhā history and a substantial body of secondary scholarship from the 19th and 20th centuries.¹⁷⁴ In the early sixteenth century, before they ascended to the apex of the Brāhmaṇasabhās of Vārāṇasī Kāśīviśveśvara temple (indeed, before the temple was even rebuilt), the Bhaṭṭas were merely one of many families of itinerant scholars traveling India in search of patronage and power.¹⁷⁵ They secured this patronage and power by defeating their eastern rivals in public debates and in rebuilding the Kāśīviśveśvara temple in Vārāṇasī. According to the *Gādhivaṃśavarṇana*, a chronicle of the Bhaṭṭa family written by Śaṅkarabhaṭṭa

¹⁷¹ Ibid., 777.

¹⁷² Ibid., 778.

¹⁷³ Ibid., 778.

¹⁷⁴ Minkowski, *et al*, “Social History,” 2.

¹⁷⁵ O'Hanlon, “Letters Home,” 217-220.

(Nārāyaṇabhaṭṭa's son), Rāmeśvara, the family's patriarch, left his college (Maṭha) in Paithan, Mahārāṣṭra and traveled India (including a visit to Vijayanagar) in order to teach grammar and Vedānta before settling in Vārāṇasī in the early sixteenth century.¹⁷⁶ There, Rāmeśvara gathered a coterie of students, many of whom would obtain fame later as Vedāntins, logicians and Mīmāṃsakas (including Mādhava Sarasvatī and Maheśa Ṭhakkura).¹⁷⁷

The story of the Bhaṭṭas' ascendancy in the Brāhmaṇa ecumene of Mughal India begins truly with Nārāyaṇabhaṭṭa, born in 1514 en route to Vārāṇasī.¹⁷⁸ Nārāyaṇabhaṭṭa established the family's reputation in two ways: 1) he participated actively in inter-regional Brāhmaṇa disputes at various centers of power in the Mughal realm; and 2) he convinced a local Muslim ruler (never named) to rebuild the Kāśīviśveśvara Temple (destroyed during the previous century) that would later host Vārāṇasī's Brāhmaṇa assemblies. We know relatively little about the latter event, but the *Gādhivaṃśavarṇana* goes into great detail about Nārāyaṇabhaṭṭa's skill and fame in defeating 'eastern' (Gauḍa) paṇḍits in debates at royal courts in Orissa and in Delhi.¹⁷⁹ In both cases, prominent individuals had hired Brāhmaṇas from across India to debate and to compile Dharmasāstra anthologies and Nārāyaṇabhaṭṭa, at least as Śaṅkara tells it, triumphed in these debates. In Orissa, the Gajapati King Pratāparudra, the lord of Utkala, invited various paṇḍits to debate Dharmasāstric

¹⁷⁶ See Benson, "Śaṅkarabhaṭṭa's Chronicle."

¹⁷⁷ Ibid., 112.

¹⁷⁸ Ibid., 111.

¹⁷⁹ References to the well-known legend of Nārāyaṇabhaṭṭa tend to be modern. See for example the praśāvika (introduction) to the printed edition of the *Prayogarātna*. Nārāyaṇabhaṭṭa, *Prayogarātna*. (Bombay: Nirṇayasāgara Press, 1915). For an early modern reference, see Divākarabhaṭṭa's *Dānahārāvalī* in *Indian Office Sanskrit Manuscripts Part II*, 547: Srīrāmeśvarasūrisūnur abhavan **nārāyaṇākhyo** mahān / yenākari avimukte suvidhinā viśveśvarasthāpanā // cf Benson, "Śaṅkarabhaṭṭa's Chronicle," fn 19.

law.¹⁸⁰ Śaṅkarabhaṭṭa's description of the debate attests to the competition and contrast between southern and eastern paṇḍits: "having debated with the easterners for a continuous month, he led the noble southern school to victory."¹⁸¹ This passage introduces a theme that distinguished the Bhaṭṭa family for the following century: securing fame and patronage by defending a southern school of thought from an eastern school of thought. Unfortunately, Śaṅkarabhaṭṭa gives no information concerning Nārāyaṇabhaṭṭa's opponents in Orissa.

Śaṅkarabhaṭṭa writes that soon afterwards, Nārāyaṇabhaṭṭa was invited to the house of Toḍaramala, the Mughal Emperor Akbar's finance minister, where he triumphed, once again, in a Dharmaśāstric debate against his eastern rivals.¹⁸² This time, Śaṅkarabhaṭṭa states that these rival paṇḍits hailed from Mithilā and Bengal and that they were headed by one Vidyānivāsa.¹⁸³ Vidyānivāsa Bhaṭṭācārya, a nephew of Vāsudeva Sarvabhauma (a founder of Navadvīpan Navya-Nyāya), was a prominent Bengali logician who enjoyed considerable financial support from the Amber Rajputs and from the Mughal court.¹⁸⁴ This debate concerned the eating of meat in the Kaliyuga, a practice endorsed ubiquitously and rejected vociferously by

¹⁸⁰ Benson, "Śaṅkarabhaṭṭa's Chronicle" 112; O'Hanlon, "Letters Home," 219-220. Cf. Chandrika Panigrahi "Muktimandap Sabha of Brahmans, Puri," in Nirmal Bose ed., *Data on Caste in Orissa* (Calcutta: Anthropological Survey of India, 1960): pp. 179–192. For Pratāparudra's history, see Kane, *HDS 1.2.*, 869-879.

¹⁸¹ Ibid., 112: **prācyair** vivādam anīsaṃ pravīdhāya māsaṃ **śrīdākṣiṇātyamatam** ūrjitataṃ nināya.

¹⁸² For Rāja Toḍarmal, see Kane, *HDS 1.2.*, 907-914. Toḍarmal commissioned a Dharmaśāstra digest, the *Toḍarānanda*, to which Nārāyaṇabhaṭṭa likely contributed. For the Vyavahāra section (that does not, unfortunately, cover dāya) see *Vyavahārasaukhya*, ed. Ludo Rocher (Florence: Società Editrice Fiorentina, 2016).

¹⁸³ Benson, "Śaṅkarabhaṭṭa's Chronicle," 113, fn 12: dillīśvarākhilamahākaraṇādhikāriśrī**toḍarasya** samitau ca jigāya sarvān / **vidyānivāsamukhamaithilagauda**vindūn śrāddhe kalau palaniṣedhavivāda eṣaḥ //

¹⁸⁴ For Vidyānivāsa, see Jonardon Ganeri, *The Lost Age of Reason: Philosophy in Early Modern India 1450-1700* (Oxford: Oxford University Press, 2011), 75-79.

eastern logicians and southern Mīmāṃsakas respectively.¹⁸⁵ Nārāyaṇabhaṭṭa devoted an entire treatise, the *Kaliśrāddhemāṃsadānavicāra*, to defeating wicked (Bengali) Brāhmaṇas “whose tongues are eager for the taste of meat.”¹⁸⁶

Of course, Nārāyaṇabhaṭṭa wrote numerous treatises on Mīmāṃsā and Dharmaśāstra and trained a variety of students (including his sons Rāmakṛṣṇa and Śaṅkara). The *Gādhivāṃśavarṇana* reveals how the Bhaṭṭa family’s rise to prominence in Vārāṇasī can be associated with the two distinguishing features of the early modern Brāhmaṇa ecumene that O’Hanlon describes eloquently: competition for royal patronage and an increasing interest in regional systems of classification. Vidyānivāsa’s appearance as an opponent at the house of Rāja Ṭoḍarmal appears to be the first encounter between a Bengali Navya-Naiyāyika and a Māhārāṣṭrian Mīmāṃsaka. Moreover, Nārāyaṇabhaṭṭa’s textual production appears to have been influenced by considerations of regional rivalry: his polemical treatise on eating meat evinces an awareness of Bengali customs and appears intent on repudiating them for the sake of enhancing the prestige of southern Brāhmaṇism’s emphasis on vegetarianism.

Before turning to the social politics of the Brāhmaṇa assemblies of the Kāśīviśveśvara temple, let us return to Nārāyaṇabhaṭṭa’s “involvement, probably during the 1580s, in the rebuilding of Banaras’s great temple to Siva.”¹⁸⁷

¹⁸⁵ Vidyānivāsa’s son, Viśvanātha Nyāyapañcānana (who signed a letter of judgement in Vārāṇasī in 1657) wrote the *Māṃsatattvaviveka*, a defense of eating meat in Śrāddhas: *Māṃsatattvaviveka*, ed. Gopinātha Kavirāja (Benares: Vidyāvilāsa Press, 1927), 29: iti mahāmahopādhyāyaśrīvidyānivāsabhaṭṭācāryātmaśaśarmakṛtaḥ. For Bengali Naiyāyikas and Dharmaśāstrins’ longstanding defense of eating meat in Śrāddhas, see Laugākṣi Bhāskara’s *Tarkakaumudī*, cited in Samuel Wright, “History in the Abstract: ‘Brahman-ness and the Discipline of Nyāya in Seventeenth Century Vārāṇasī,” *Journal of Indian Philosophy* 44.5 (2016): pp. 1041-1069.

¹⁸⁶ Benson, “Śaṅkarabhaṭṭa’s Chronicle,” 113: māṃsarasaloluparasana. Cf *A Descriptive Catalogue of Sanskrit Manuscripts in the Library of the Calcutta Sanskrit College*, Vol II, No 462, p. 417.

Bhānubhaṭṭa has a similar rejection of meat eating in his *Dvaitanirṇayasiddhāntasaṅgraha*, ed. Gopināth Kavirāja (Benares, Sarasvatī Bhāvana No 75., 1937), pp. 117-119: tasmād yajñātirikte śrāddhāv api kalau māṃsam na bhoktavyaṃ yajamānenāpi na deyam iti dik.

¹⁸⁷ O’Hanlon, “Letters Home,” 219.

Nārāyaṇabhaṭṭa's pilgrimage guide, the *Tristhalīsetu*, contains a compilation "a selection and arrangement of passages from the *Kāśīkāṇḍa*," a fourteenth century anthology praising the city of Vārāṇasī, that functioned, likely, as something of a spiritual blueprint for the reconstructed Kāśīviśveśvara temple. O'Hanlon argues that Nārāyaṇabhaṭṭa's:

arrangement of passages from the *Kāśīkhaṇḍa*... seems deliberately to emphasise the theme of 'southern'-ness. The Mukti mandapam, associated with the kinds of study that Brahmans in particular undertake, is the 'southern' mandapam, *dakṣiṇamaṇḍape*, just as many of the Brahmans who now deliberated there were themselves 'southerners.'¹⁸⁸

Intriguingly, Nārāyaṇabhaṭṭa's *Tristhalīsetu* takes a polemical tone towards easterners, particularly Vācaspatimiśra II (although not in a discussion of the Kāśīviśveśvara temple).¹⁸⁹ In short, the most prominent instances in which Nārāyaṇabhaṭṭa sought to elevate the fortunes of southern Brāhmaṇas - Dharmaśāstric debates and the Kāśīviśveśvara temple - were linked to textual polemics against eastern rivals.

3.A.3: Speaking from Śiva's Temple

Between 1583 and 1669, the Kāśīviśveśvara temple, reconstructed through Nārāyaṇabhaṭṭa's intervention, became the meeting-place for a series of Brāhmaṇa assemblies (Brāhmaṇasabhās) that issued letters of judgment (nirṇayapatras) regarding caste-oriented disputes in Mahārāṣṭra. The Bhaṭṭa family and their Dharmaśāstra texts played a prominent role in these assemblies. The letters of

¹⁸⁸ Ibid., 219. The *Tristhalīsetu*'s description of the Muktimanḍapa of the Kāśīviśveśvara temple (Anandāśrama Press, 1915) mentions the southern pavilion twice (in sixteen verses), and emphasizes the recitation of Dharmaśāstra in that pavilion.

¹⁸⁹ See Richard Salomon, *The Bridge to the Three Holy Cities: The Sāmānya-praghaṭṭaka of Nārāyaṇabhaṭṭa's Tristhalīsetu*, Critically Edited and Translated, (Delhi: Motilal Banarsidass, 1985): xviii. Nārāyaṇabhaṭṭa's *Tristhalīsetu* repeatedly labels the views of Vācaspatimiśra II's *Tirthacintāmaṇi* as eastern 'prācyā' and rejects them at length. Salomon concludes that "it seems therefore that there was a rather strong rivalry between NB and his followers in Benares on the one hand, and Vācaspati and his colleagues (including Gaṇeśvara Miśra) in Mithilā on the other."

judgement are remarkable in that they attest to the Bhaṭṭas' and other Vārāṇasī-based Brāhmaṇas' interest in serving as authorities in pan-Indian disputes between Brāhmaṇas. The letters also reveal that southern Mīmāṃsakas and eastern Navya-Naiyāyikas in Vārāṇasī portrayed themselves as a unified body for the purposes of lending authority to these letters of judgement, even if they also fought among themselves about issues of diet, ritual and property. Analyzing four letters of judgement, I advance two points: that the Vārāṇasī Brāhmaṇasabhās provided a vehicle through which the Bhaṭṭas and their texts came to exercise considerable influence in Mahārāṣṭra; and that this influence was predicated on the strategic deployment of the five southern and five eastern classificatory scheme. With reference to the classificatory scheme, O'Hanlon writes that:

Drawing on older universalizing geographies of Brahman identity in this new Mughal context, they addressed their letters of judgement to Brahman communities across the 'gauḍa' and 'drāviḍa' regions of northern and southern India and appealed explicitly to a 'we' of the pious and discerning, the 'good people' of the Brahman śiṣṭa.¹⁹⁰

The Bhaṭṭas and their texts' authoritativeness exists in a productively tautological relationship. The Bhaṭṭas claim to embody southern Brāhmaṇical piety because of the authority of their textual production. Conversely, the Bhaṭṭas' texts claim authority through their authors' status as exemplary (śiṣṭa) southern Brāhmaṇas. Both aspects of their Brāhmaṇa piety - the textual and the habitual - support the Bhaṭṭas' role as arbiters of caste at the Kāśīviśveśvara assemblies.¹⁹¹

Minkowski and O'Hanlon note that:

At one level, the contemporary discussion of these matters was set within long-established parameters of Hindu judicial discourse. Here, both ācāra or inherited and customary practice, and śāstric textual models determined the

¹⁹⁰ O'Hanlon, "Speaking from Shiva's Temple," 255.

¹⁹¹ For the 'productive tautology' between the śiṣṭācāra of Dharmaśāstrins and the Dharmaśāstric authority of śiṣṭācārins, see Donald Davis, "Dharma in Practice: Ācāra and Authority in Medieval Dharmaśāstra," *Journal of Indian Philosophy* 32 (2004): pp. 813-830, 818-19.

dharma of a person or group. The two determinants were understood to be mutually constitutive: the ācāra of good people was in conformity with their dharma as set out in the śāstras, while the śāstras affirmed that ācāra defined in this way was a prime source for knowing a person's dharma.¹⁹²

The first nirṇayapatra, issued in 1583, reveals that from their inception, the Brāhmaṇasabhās used the southern/eastern classificatory scheme and were attended by Bengali Navya-Naiyāyikas.¹⁹³ Two Devarukhe Brāhmaṇas (a sub-class of Brāhmaṇas often looked down on by their regional peers) from the Koṅkana region of Mahārāṣṭra sought confirmation of fully fledged, "six karman" status as Brāhmaṇas from "Banaras's whole assembly of Brahmins."¹⁹⁴ The list of signatories to the letter of judgement does not include any of the Bhaṭṭa family, possibly because the claimants were seeking redress from the abuses of Anantabhaṭṭa (no relation), one of Rāmeśvarabhaṭṭa's students.¹⁹⁵ However, the list divides the signatories according to northern and southern divisions of Brāhmaṇas: "Sesa Krsnabhata pandit, head of the Maharashtra, Gopibhatta, head of the Gurjaras, Vidyānivāsa, head of the Gaudas, Raghupati Upadhyaya, head of the Tailabhaktas" and so on.¹⁹⁶ Śeṣakṛṣṇa, the head of the Mahārāṣṭrians was a famous grammarian and Dharmasāstrin (with connections to the Bhaṭṭa family) and Vidyānivāsa Bhaṭṭācārya was Nārāyaṇabhaṭṭa's principal Bengali rival from the disputation in Delhi.¹⁹⁷

By 1630, the Bhaṭṭas and their Dharmasāstric texts appear for the first time in letters of judgment. One feature of this moment - that O'Hanlon, Minkowski and Deshpande relate without comment - is that the Bhaṭṭas' participation coincides with

¹⁹² Christopher Minkowski and Rosalind O'Hanlon, "What Makes People Who They Are? Pandit Networks and the Problem of Livelihoods in Early Modern Western India," *Indian Economic Social History Review* 45 (2008): 381-416, p. 385.

¹⁹³ O'Hanlon, "Letters Home," 220.

¹⁹⁴ *Ibid.*, 221: samasta kāśīkara brāhmaṇa. For a succinct account of the karmans, see Wright, "History in the Abstract," 1044.

¹⁹⁵ *Ibid.*, 222. The *Gādhivamśavarṇana* lists an Anantabhaṭṭa as one of Rāmeśvara's students (in the 1530's).

¹⁹⁶ *Ibid.*, 221.

¹⁹⁷ For Śeṣakṛṣṇa, see Benke, "The Śūdrācāraśiromaṇi of Kṛṣṇa Śeṣa."

the use of the southern/eastern classification as a way to label abnormal Brāhmaṇa practices in *Mahārāṣṭra*. In 1630, some Sarasvatī Brāhmaṇas living in Bombay (though originally from the Koṅkana in Mahārāṣṭra), who had attracted the ire of the local Brāhmaṇas, appealed to the Brāhmaṇasabhā of Vārāṇasī for confirmation of their six-karman status.¹⁹⁸ The letter of judgement cites Kamalākarabhaṭṭa as an authority and declares that the Sarasvatīs “are part of the gauda category of Brahmins, and to be honoured within their own caste.”¹⁹⁹ In 1631 the whole of Vārāṇasī’s Drāviḍa community gathered to issue a letter of judgement on behalf of a Sarasvatī Brāhmaṇa who wished to head an important pedagogical foundation (Maṭha) in Mahārāṣṭra. It opens:

In the city of Visvesvara, the whole community of the excellent Pancadravidas, that is to say, Dravidas, Andras, Karnatakas, Maharastras and Gurjaras, these who live in the seven cities, send greetings to the Pancadravidas and Pancagaudas who live in the region of the Sahyadri mountains of the Daksina Desa.

The letter concludes that the Sarasvatīs belong to the “eastern” (Gauḍa) category of Brāhmaṇas and that, consequently, their deplorable practices such as eating fish are not impediments to Brāhmaṇa-hood.²⁰⁰ The letter is signed by Kamalākarabhaṭṭa, his brother Lakṣmaṇa and several members of the Śeṣa and Dharmādhikara families - prominent Vārāṇasī Mahārāṣṭrians.²⁰¹ While the letter of judgement, written by and directed to southern Brāhmaṇas, ostensibly supports the Sarasvatīs’ claims to Brāhmaṇa-hood, it does so with an apparent pejorative connotation: to the extent that the Sarasvatīs - warts and all - are Brāhmaṇas, they are easterners. While subtle, this distinction suggests that as the embodiment of

¹⁹⁸ O’Hanlon, “Letters Home,” 224-5.

¹⁹⁹ *Ibid.*, 224.

²⁰⁰ *Ibid.*, 225-226.

²⁰¹ *Ibid.*, 227.

southern Brāhmaṇism, the Bhaṭṭas could establish the boundaries of southernism, even as they determined who was a Brāhmaṇa in a more general sense.

A letter of judgement from 1657, the last before the destruction of the Kāśīviśveśvara temple in 1669, reinforces the Dharmasabhās' trend toward a southern/Bhaṭṭa influence. In the letter, "all the families and castes of Maharastra, Karnataka, the Konkan, the Tailanga region, and of the Dravida and other places" agree that the Devarukhes (the maltreated Brāhmaṇas from the 1583 letter) are surely unimpeachable Brāhmaṇas.²⁰² The letter's signatories include Gāgābhaṭṭa and Nīlakaṇṭhabhaṭṭa and three Bengali logicians: Jayarāma Nyāyapañcānana, Govinda Śarmin (Vidyānivāsa Bhaṭṭācārya's son) and Raghudeva Nyāyālaṃkāra.²⁰³ The Bengali Navya-Naiyāyikas' participation in the Brāhmaṇasabhā suggests that Bengali Navya-Naiyāyikas and their works were well-known to the Bhaṭṭas (whose own writings demonstrate a familiarity with Navya-Nyāya techniques).

The cooperation in the Brāhmaṇasabhās between the Bhaṭṭas and Bengalis - who were rivals a generation earlier - belies deep seated divisions between them on matters of Dharmasāstra, Mīmāṃsā and Navya-Nyāya.²⁰⁴ Anantadeva, a signatory to the 1657 letter of judgement and a prominent Mahārāṣṭrian Dharmasāstrin in his own right, gives an evocative description of this conflict in his satirical play, the *Kṛṣṇabhakticandrikānāṭaka*. In his work on the Deva family, Anand Venkatkrishnan translates a memorable passage concerning "upstart" logicians (tārkika):

They study the new logic (navyaṃ nyāyam), attend academic conferences puffed with conceit, boldly criticize even the revered elders (śiṣṭān), and take their seats at the head of the table. If anyone starts to speak of scripture, they

²⁰² Ibid., 229-30, cf Minkowski and O'Hanlon, "What Makes People," 404-9.

²⁰³ Ibid., 230-233. Ganeri, *The Lost Age of Reason*, 78. For Raghudeva and his *Padārthakhaṇḍanavyākhyā*, see Ethan Kroll "A Logical Approach to Law" (PhD diss., University of Chicago, 2010), 129-30.

²⁰⁴ For cooperation between Bengali logicians and Mahārāṣṭrian Navya-Naiyāyikas, see Wright, "History in the Abstract."

give each other meaningful glances, roll their eyes sarcastically, and abuse that person to no end.²⁰⁵

Even as the Brāhmaṇasabhās of the Kāśīviśveśvara temple offered a venue for the Bhaṭṭas to define themselves as exemplary southern Brāhmaṇas and to intervene in caste-related disputes from Mahārāṣṭra, the Sabhā was a contentious place where the Bhaṭṭas' claims to śiṣṭācāra might be called into question: Bengalis like Vidyānivāsa or Jayarāma might appeal to their Navya-Nyāya techniques to support the epistemic truth of a determination of caste or to mock the opinions of the Mahārāṣṭrian Mīmāṃsakas.

3.A.4: Back to the Motherland - The Bhaṭṭas in the Court of Śivaji

The final period of the Bhaṭṭas' rise to prominence in Mahārāṣṭra coincides with the destruction of the Kāśīviśveśvara temple in 1669 and the coronation of Śivaji as Chatrapati in 1674. With their place in Vārāṇasī appearing untenable, the Bhaṭṭas grew dependent, increasingly, on patronage from the emerging Marāṭhā empire. In this subsection, I analyze three events that led directly to the Bhaṭṭas' texts' strong identification with Mahārāṣṭra in the early modern and colonial periods: 1) the Bhaṭṭas' intervention in the determination of non-Brāhmaṇa caste identity in Mahārāṣṭra; 2) Gāgābhaṭṭa and Anantabhaṭṭa's coronation of Śivaji in 1674; and 3) the subsequent adoption of the Bhaṭṭas' Dharmaśāstra texts by the legal system of the Marāṭhā empire. The thrust of the argument is that the Bhaṭṭas, having successfully branded their family and their scholarly work as paradigms of southern Brāhmaṇism (vis-a-vis a pañca Gauḍa pañca Drāviḍa scheme) at the Kāśīviśveśvara temple, were able to integrate themselves into the Marāṭhā state that

²⁰⁵ Anand Venkatkrishnan, "Ritual, Reflection, and Religion: the Devas of Banaras," *South Asian History and Culture*, 6:1 (2015): pp. 147-171, 153: navyaṃ nyāyam adhītya saṃsadam upāgatya smayāveśataḥ śiṣṭān apy avamatya dhṛṣṭamatayaḥ prauḍhāsaneṣv āsate | śāstraṃ vakti yadaiva kaścana tadā te 'nyonyam udvīkṣitair bhrūkṣepair hasitais tathopahasitair enaṃ tiraskurvate.

“assimilated Sivaji and his war for independence to the level of an all-India struggle between *dharma* and the *mleccha* armies of the Mughals... [and that] invoked... the principle of a singular and universal *dharma*.”²⁰⁶

In 1669 the Mughal Emperor Aurangzeb ordered the destruction of the Kāśīviśveśvara temple for reasons that are not entirely clear.²⁰⁷ There are, however, two possibilities that related to the Bhaṭṭas’ rising fortunes in Vārāṇasī. First, Dārā Shukoh, Aurangzeb’s brother and rival to the Mughal throne (who was executed for apostasy in 1659), had patronized some of Vārāṇasī’s leading paṇḍits, some of whom, including Jayarāma Nyāyapañcānana, had strong connections to the Kāśīviśveśvara temple and the Brāhmaṇasabhās.²⁰⁸ Second, the Mahārāṣṭrian faction of the Kāśīviśveśvara temple became increasingly close to Śivajī after he “staged his first direct assault on the Mughal imperial forces 1657.”²⁰⁹ As Śivajī’s rebellion began to carve out a self-consciously Sanskritized state, Śivajī found himself burdened with the “kingly function of keeping the orders of local castes in their place.”²¹⁰ It seems that the Bhaṭṭas and other Mahārāṣṭrian Brāhmaṇas living in Vārāṇasī were quite happy to assist Śivajī in carrying out this duty.

In 1664 Gāgābhaṭṭa led a delegation of paṇḍits from Vārāṇasī to the town of Rājapūra in the Koṅkana area of Mahārāṣṭra at Śivajī’s direct request.²¹¹ The letter of judgement that Gāgābhaṭṭa and his colleagues issued (in support of the Sarasvatī Brāhmaṇas whose fortunes appear not to have improved after the 1630 and 1631 rulings in Vārāṇasī) is remarkable because it contains an elaborate praise poem

²⁰⁶ O’Hanlon, “Contested Conjunctures,” 780.

²⁰⁷ O’Hanlon, “Speaking from Shiva’s Temple,” 267.

²⁰⁸ Ganeri, *The Lost Age of Reason*, 14-21. For connection between the Mughal court and Vārāṇasī, see Audrey Truschke, *Culture of Encounters: Sanskrit at the Mughal Court* (New York: Columbia University Press, 2016), pp. 27-63.

²⁰⁹ O’Hanlon, “Letters Home,” 234.

²¹⁰ O’Hanlon, “Letters Home,” 235.

²¹¹ Minkowski and O’Hanlon, “What Makes People Who they Are?” 393-4.

(praśāsti) to Śivajī that emphasizes that the assembly of paṇḍits have come to Mahārāṣṭra on Śivajī's behalf.²¹² As in the 1630 and 1657 Vārāṇasī assemblies, the paṇḍits at Rājapūra based their judgement on a series of Dharmaśāstra texts weighted heavily in favour of the Bhaṭṭas. Dharmaśāstra texts include:

Smṛtikaustubha, the great digest of dharmasāstra compiled by Ananta Deva; the *Dinakarodyota*, a compendious work on dharma begun by Gaga Bhatta's father Dinakara and completed by Gaga himself; the *Bhagavantabhskara*.²¹³

By 1664, the Bhaṭṭas had risen from leaders of the southern assembly of Vārāṇasī Brāhmaṇas to agents of the Hindu king of Mahārāṣṭra and arbiters of caste in his domains. The Bhaṭṭas did not adjudicate caste disputes between Brāhmaṇas. Rather, they took an interest in another caste whose status was of tremendous concern to Śivajī: the scribal caste (*Kāyasthas*).²¹⁴ Kāyasthas, with their eponymous scribal skills and relatively high ritual status, benefited tremendously from the vast expansion of paper-based bureaucracy in early modern India, particularly in Mahārāṣṭra.²¹⁵ However, the Cāndrasenīya Kāyastha Prabhus, an influential caste of Mahārāṣṭrian scribes, appear to have attracted the envy of their local Brāhmaṇa counterparts who “had hitherto commanded more exclusive possession of scribal skills” and lucrative positions in the Marāṭhā bureaucracy.²¹⁶ The debate between the Mahārāṣṭrian Brāhmaṇas and the Kāyasthas took the form of a caste dispute: whether or not the Kāyasthas were Śūdras (low caste) or Kṣatriyas (higher caste).

In the 1670's Balajī Avajī, Śivajī's personal secretary, appealed to Gāgābhaṭṭa to defend the Kāyasthas' status of Kṣatriyas - worthy of ritual

²¹² Ibid., 394.

²¹³ Ibid., 395.

²¹⁴ Rosalind O'Hanlon, “The Social Worth of Scribes: Brahmins, Kayasthas and the Social Order in Early Modern India,” *Indian Economic Social History Review*, 47.4 (2010): 563-95, p. 566.

²¹⁵ Ibid., 577-8.

²¹⁶ Ibid., 566.

entitlements and unworthy of maltreatment from the Mahārāṣṭrian Brāhmaṇas.²¹⁷

Drawing on his uncle Kamalākaraḥṭṭa's Dharmasāstra treatise on Śūdras, the Śūdrakamalākara, Gāgābhaṭṭa crafted the 'Light on the Dharma of Kāyasthas' (*Kāyasthadharmapradīpa*).²¹⁸ The *Kāyasthadharmadīpa* praises Śivajī as:

an ocean of compassion, destroyer of yavanas, saviour of Brahmins from Aurangzeb, who struck fear into the hearts of the kings of Golconda, Bijapur and Delhi. [Whose] father, Sahaji, had emerged as the new embodiment of Kṣatriya dharma and Kṣatriya families, afflicted by the terror of Parasurama, have found shelter beneath Sivaji's royal umbrella.²¹⁹

Gāgābhaṭṭa argues that there are Kṣatriyas in the current age (Kaliyuga, albeit in seed form) and that the Kāyasthas are indeed Kṣatriyas.²²⁰ Here we see the Bhaṭṭas becoming increasingly associated with Mahārāṣṭra: Gāgā crafts the *Kāyasthadharmadīpa* for a specific patron associated with the Marāṭhā court.

The epitome of the Bhaṭṭas' connection with Mahārāṣṭra and the Marāṭhā polity's use of Dharmasāstra to legitimize its rule as the salvation of Brāhmāṇic Dharma is Gāgābhaṭṭa and Anantabhaṭṭa's consecration of Śivajī as a Chakravartin in 1674 (soon after Aurangzeb's destruction of the Kāśīviśveśvara temple in 1669). For Gāgābhaṭṭa and other Vārāṇasī-based Mahārāṣṭrian Brāhmaṇas:

with their already established traditions of dependence on a Sanskrit religious culture, and the prestigious meeting place of their Banaras peers now reduced to ruins, Sivaji's rebellion against Mughal power offered something very different: the chance to assert the values of Brahman religious orthodoxy as fundamental to the new Maratha state.²²¹

For Gāgābhaṭṭa, the consecration of Śivajī represented an ideal opportunity to: 1) to prove that Śivajī was a Kṣatriya, rather than a Śūdra (thereby upholding

²¹⁷ Ibid., 585.

²¹⁸ Ibid., 585.

²¹⁹ Ibid., 586.

²²⁰ For the particulars of this argument, see Deshpande, "Kṣatriyas in the Kali Yuga."

²²¹ O'Hanlon, "Contested Conjunctions," 779-80.

traditional Brāhmaṇic Varṇāśramadharmā); and 2) to compile an authoritative Dharmaśāstric manual for the Vedic consecration of Cakravartins.²²² Gāgābhaṭṭa accomplished these tasks by appealing, again, to his uncle's Dharmaśāstric oeuvre, particularly the *Śūdrakamalākara* and the *Rājyābhiṣekaprayoga* (a manual on the consecration of kings).²²³

In the following century, the Marāṭhā empire developed a legal system that enshrined many of the Bhaṭṭas' Dharmaśāstra texts as authoritative treatises on matters of caste and ritual entitlements.²²⁴ The Peshwas, Brāhmaṇa prime ministers of the Marāṭhā empire, who "inherited the task of mediating conflicts between Maharashtra's Brahman communities and of pressing and persuading all of them to adhere to common norms of conduct appropriate to the śiṣṭa," relied on Bhaṭṭa Dharmaśāstra texts, particularly Kamalākaraḥṭṭa's *Nirṇayasindhu* and *Śūdrakamalākara*, in their administration of western India (even when arguing against some of the Bhaṭṭas' more 'progressive' views on caste).²²⁵

In short, the phenomena of early modernity in Mughal India - an expansion of paper-based bureaucracies, increasingly interconnected networks of trade and communication, and a proliferation of lucrative opportunities for winning patronage - provided an opportunity for the Bhaṭṭa family of Vārāṇasī to craft and to market an identity as exemplary *southern* Brāhmaṇas in contrast to various eastern rivals. In doing so, the Bhaṭṭas ensured that their Dharmaśāstric texts were studied, copied and followed in Mahārāṣṭra. Their texts were localized to western India and Vārāṇasī

²²² O'Hanlon, "Social Worth of Scribes," 585; Deshpande, "Kṣatriyas," 96-102.

²²³ Deshpande, "Kṣatriyas," 98-99.

²²⁴ See O'Hanlon, speaking from Śiva's Temple," 268.

²²⁵ Ibid., 268; O'Hanlon and Minkowski, "What Makes People?" 411; Deshpande, "Kṣatriyas," 109.

because of the family's prestige there and because subsequent networks of paṇḍits continued to read and to transmit these texts.²²⁶

3.B: A Family Affair - Knowledge Production in the Scholar Family

In this section I examine the Bhaṭṭas as an extended scholar household and attend to the scholarly habitus revealed in their textual corpus. One distinguishing feature of the Bhaṭṭas' śāstric oeuvre is continuity: of topics, methodology, opinion and polemic. Bhaṭṭa authors such as Kamalākarabhaṭṭa and Gāgābhaṭṭa write treatises on a shared series of topics in Mīmāṃsā and in Dharmaśāstra. They use a similar style of identification - tracing their pedigree to Nārāyaṇabhaṭṭa - in their texts' colophons. They quote one another's work (often positively, though sometimes critically), defend a series of opinions that are broadly similar, and utilize a remarkably consistent Mīmāṃsā technique. The Bhaṭṭas also carry on a polemic against Bengali and Maithila Dharmaśāstrins and Navya-Naiyāyikas such as Vācaspatimiśra II, Śūlapāṇi Upādhyāya and Raghunandana Bhaṭṭācārya. I argue for a sociological model of knowledge in which the Bhaṭṭas' individual intellectual contributions are delimited by a larger family unit that can be characterized as a Bhaṭṭa school of thought. In that sense, the Bhaṭṭa family's collective śāstric corpus might be conceived, meaningfully, as a series of works that together form a composite whole: as a Bhaṭṭa scale of texts.

Minkowski and O'Hanlon link the habitus of scholar households like those of the Bhaṭṭas with the socio-political trends of Indian early modernity - particularly the competitive marketplace of ideas - discussed in the previous section:

Banaras became home to an unusually large and diverse collocation of scholar households... For such families, it was above all the scholar household that shaped the education and frequently the career opportunities

²²⁶ Evidenced in no small part by the prominence of the Bhaṭṭas' texts amongst the paṇḍits hired by the agents of the British East India Company in the Eighteenth Century.

of Sanskrit intellectuals. It offered a way to maximize family intellectual and pedagogical resources and to accumulate the libraries necessary for high-level intellectual work.... [It] forged the two kinds of affiliation that mattered most in Sanskrit intellectual culture: that between fathers and the sons they educated, and that between teachers and their students, often brought into the scholar household to study alongside the family's own sons.²²⁷

The thrust of my argument is that the distinguishing features of the Bhaṭṭa school of thought are linked. The Bhaṭṭas' proclivity for defending the arguments of other family members, combined with a common Navya-Nyāya-inflected Mīmāṃsā methodology and with a multi-generational polemic against Gauḍa paṇḍits, meant that Jīmūtavāhana's theory of upamasvatva and Raghunāthaśiromaṇi's theory of svatva as a padārtha were viciously and systematically rejected in the Bhaṭṭas' Dharmaśāstra and Mīmāṃsā writings.

3.B.1: The Textual Structure of the Bhaṭṭa School: Topics and Colophons

The Bhaṭṭas' texts mirror the tightly-knit and socially savvy image of the family revealed in the nirṇayapatras. The family was the essential unit for the Bhaṭṭas' śāstric arguments: their interest in commenting on their relatives' works restricted the scope of topics they discussed and positions they took and provided a venue for inter-family dispute and intra-family competition. A hallmark of the Bhaṭṭas, like the influential Devas, is the great pride in their illustrious lineage that these immigrant Brāhmaṇa families express in the introductions to their śāstric writings. Successive generations of the Bhaṭṭa family commented on the works of their forebears, rewrote earlier treatises, completed partially finished compendia or wrote texts for the benefit of their children.²²⁸ We find a remarkable continuity of Dharmaśāstra topics -

²²⁷ Minkowski, *et al*, "Social History in the Study of Indian intellectual cultures?" 3.

²²⁸ To note a few instances, Gāgābhaṭṭa completed his father Dinakarabhaṭṭa's uncompleted Dharmaśāstra digest, the *Dinakaryoddyota*. Nīlakaṇṭha's discussion of divyas in the *Vyavahāramayūkha* borrows heavily from a similar discussion in Nārāyaṇabhaṭṭa's *Divyānuṣṭhānapaddhati*. Gāgābhaṭṭa copied much of Kamalākara's *Rājyābhiṣekaprayoga* when compiling the *Rājyābhiṣekapaddhati*, the handbook for royal consecration he used when crowning Śivājī Bhonsle in 1674.

Śraddhā, Tīrtha, Vyavahāra, Ācāra - that each member of the Bhaṭṭa family wrote on in their turn. The Bhaṭṭas' voluminous Dharmaśāstric production was matched by an equally large number of Bhāṭṭa and Prābhākara-Mīmāṃsā treatises.²²⁹ Lawrence McCrea notes that Vārāṇasī based Dharmaśāstrins, particularly the Bhaṭṭa family, “wrote on Mīmāṃsā as well and this growing professional convergence between the two fields is perhaps related to the shift toward more overtly critical methods in the Dharmaśāstra literature of the period.”²³⁰

A survey of colophons from manuscripts of the Bhaṭṭas' works reveals the tight connections between the individual members of the family. The colophons demonstrate that as the family's fame grows, its members attach greater significance to their pedigree and they use their colophons to emphasize the relationship between the Mīmāṃsā acumen of their ancestors and the authority of their Dharmaśāstric opinions. For example, Nārāyaṇabhaṭṭa identifies himself rather modestly in his colophons as “clever Nārāyaṇa, son of Rāmeśvara,” or as “Nārāyaṇabhaṭṭa, son of the learned, noble Rāmeśvara.”²³¹ Nārāyaṇabhaṭṭa's sons Rāmakṛṣṇabhaṭṭa and Śaṅkarabhaṭṭa give lengthy and more colorful accounts of themselves that center on Nārāyaṇabhaṭṭa and Mīmāṃsā. Rāmakṛṣṇabhaṭṭa calls himself “Rāmakṛṣṇabhaṭṭa, son of noble Nārāyaṇa, the blessed, learned, noble crown jewel and the son of the blessed Rāmeśvara, whose feet are accustomed to

²²⁹ For a list of these Mīmāṃsā texts, see Diaconescu, “On the New Ways.”

²³⁰ Lawrence McCrea, “Hindu Jurisprudence and Scriptural Hermeneutics,” in *Hinduism and Law: An Introduction*, eds. Timothy Lubin, Donald Davis, and Jayanth Krishnan (Cambridge: Cambridge University Press, 2010): 123-136, p. 134.

²³¹ *Descriptive Catalogue of the Government Collections of Manuscripts Deposited at the Deccan College, Poona* ed. N.D. Banhatti (Bombay: The Government of Bombay, 1916) p. 76, no 79 (140/1886-92), *Ārāmotsargapaddhati*, fol. 9a: **bhaṭṭarāmeśvarasuto bhaṭṭanārāyaṇaḥ** sudhīḥ. Ibid., 169, no 207 (218/1879-80), *Antyeṣṭipaddhati*, fol 50b: iti **śrībhaṭṭarāmeśvarasūrisūnūnārāyaṇabhaṭṭena**.

praise.”²³² At the end of his *Dharmadvaitanirṇaya*, Śaṅkarabhaṭṭa describes himself baroquely as:

Śaṅkarabhaṭṭa, son of the blessed Nārāyaṇabhaṭṭa, sovereign of the empire of non-dual (Vedānta) and Mīmāṃsā, chief of those who have crossed to the farthest shore of Vyākaraṇa, Mīmāṃsā, and Nyāya.²³³

The colophons of these Dharmasāstric works reflect and construct the Bhaṭṭa family: as the custodians of proper Mīmāṃsā and Dharmasāstra. They emphasize the continuity of a patrilineal line and they use Nārāyaṇabhaṭṭa as a touchstone for future Bhaṭṭas’ acumen in śāstra. Kamalākarabhaṭṭa, who describes himself as the son of Rāmakṛṣṇa and the grandson of Nārāyaṇa, emphasizes the skill of his ancestors in Mīmāṃsā.²³⁴ Kamalākara praises his father Rāmakṛṣṇa as the “helmsman on the vast ocean of Bhaṭṭa Mīmāṃsā, also the divulger of secrets in all of the other śāstras.”²³⁵ The colophons connect the Bhaṭṭas’ biological and pedagogical lineages. For example, Nārāyaṇabhaṭṭa notes that he learns the smṛtis

²³² Ibid., 416, no 479 (362/1891-5), *Jīvatpitrkakaravyasamcaya*, fol. 40a: iti śrīmadvīnduvandyapādaśrīrāmeśvarabhaṭṭasūnuśrīmadvidvanmukutaṃāṇīkyāśrīnārāyaṇasūnurāma kṛṣṇabhaṭṭa

²³³ *Dharma-Dwaita-Nirṇaya*, 147:

śrīmadpadavākyapramāṇapārāvāravārīṇadhurīṇamīmāṃsādvaitasāmrājyadhuraṃdharaśrībhaṭṭanā rāyaṇātmajabhaṭṭaśaṅkara. I am grateful for Lawrence McCrea’s kind assistance in deciphering the compound “padavākya[pra]māṇa.”

²³⁴ See for example, Kamalākarabhaṭṭa’s *Rājyābhīṣekhapaddhati*, *Descriptive Catalogue, Deccan College*, 10-11, no 1113 (295/1887-91), fol. 15b: iti

śrīmīmāṃsakarāmākṛṣṇabhaṭṭātmajamahāmahopādhyāyakaṃalākaraḥ; Bori 324. Also see ibid, 342, no 376 (586/1882-3), *Gotrapravarānirṇaya*, fol 35a: iti

śrīmadrāmeśvarabhaṭṭasūrisunūnārāyaṇabhaṭṭātmajamimāṃś[ic]akaśrīrāmākṛṣṇabhaṭṭasutadin akaraḥāṭṭānujaśrīkaṃalākaraḥ

²³⁵ Kane *HDS*, 1.2, 925: yo bhaṭṭatantragahanārṇavakarṇadhārah śāstrāntareṣu nikhileṣv api marmabhattā. yo ‘tra śramah kila kṛtaḥ kaṃalākareṇa prīto ‘munāstu sukṛtī budharāmākṛṣṇa. This occurs at the end of the second pariccheda of the *Nirṇayasindhu*.

and śāstras at the feet of his father and one of Nīlakaṇṭhabhaṭṭa's favorite ways of identifying himself is as the son of a distinguished Mīmāṃsaka.²³⁶

By the fourth generation of Vārāṇasī Bhaṭṭas - Gāgā, Ananta and Bhānu - the colophons read like elaborate genealogies. Take for example Gāgābhaṭṭa's closing remarks at the end of the *Vyavahāraḥkaṇḍa* (a text begun by his father). Gāgābhaṭṭa remarks that:

so ends the *Vyavahāraḥkaṇḍa* in the *Dinakarodyota*, completed by Viśveśvabhaṭṭa, alias Gāgābhaṭṭa, son of Dinakarabhaṭṭa, son of the blessed Rāmakṛṣṇabhaṭṭa, son of the venerable, blessed, learned Nārāyaṇabhaṭṭa, whose pair of lotus feet are colored red by the rubies in the crowns (of kings).²³⁷

Kamalākara's son Anantabhaṭṭa gives a similar, effusive account of his ancestry in the *Rāmakaḥpadrūma*.²³⁸ In short, the remarkable continuity of topics in the Vārāṇasī Bhaṭṭa corpus (especially in Dharmaśāstra and Mīmāṃsā) that we saw earlier was matched by an equally remarkable continuity of self-identification in these texts' colophons. Of course, as the Bhaṭṭas became more famous in the pan-Indian Brāhmaṇa ecumene, and in Mahārāṣṭra in particular, their genealogical accounts grew grandiose. The habitus of the Bhaṭṭa scholar family forms an interlocking,

²³⁶ Nārāyaṇabhaṭṭa takes pride in having acquired his remarkable training in Mīmāṃsā and Dharmaśāstra at the feet of his father. See *The Bridge to the Three Holy Cities*, 2: śāstreṣv adhītī pitur eva yaḥ śrūtīḥ smṛtīḥ samālocya ca deśarītīḥ / **nārāyaṇas** tattanayo 'vimukte tīrthatrayīsetum asau vidhatte. For Nīlakaṇṭhabhaṭṭa and consistent identification of Śaṅkara as a Mīmāṃsaka, see H.P. Shastri, *A Descriptive Catalogue of Sanskrit Manuscripts in the Government Collection Under the Care of Asiatic Society of Bengal* Vol 3. (Calcutta: Asiatic Society of Bengal, 1917), pg 149, Ms no 5725/2046, *Samayamayūkha* colophon:

śrījagadgurubhaṭṭan**nārāyaṇas**ūrisūnupaṇḍitaśīroratnamīmāṃsakas**āṅkarabhaṭṭāt**majabhaṭṭanī**lakaṇṭh[a]**; and ibid., pg 150, Ms. no 4460/2047, *Nītimayūkha*, Opening verses: virodhimārgadvayadarśanārthaṃ dvedhā babhūvātra paraḥ pumān yaḥ / śrīśaṅkaro bhaṭṭa ihekakṛtyo mīmāṃsakādvaitam urīcakāra.

²³⁷ *Descriptive Catalogue, Deccan College*, 61 no 614 (502/1883-4) *Vyavahāraḥkaṇḍa*, fol. 105a: iti śrīmadvidvanmukuṭamāṇikyamarīcipimjarītapadadvandvāravindaśrīmannārāyaṇabhaṭṭasūrisūnuśrī madrāmakṛṣṇāt**majadinakarabhaṭṭas**ūnugāgābhaṭṭaparanāmakaviśveśvarabhaṭṭapūrṇite dinakarodyote vyavahāraḥkaṇḍam samāptam.

²³⁸ Ibid., 13-14, no 1117 (236/1884-7), *Rāmakaḥpadrūma*, fol. 78a:

śrīmatpadavākyapramāṇapārāvarapārīṇaśrīmannārāyaṇabhaṭṭasūrisūnuśrī**rāmakṛṣṇabhaṭṭas**utaśrī **majjagadgurukamalākarakabhaṭṭāt**majānantabhaṭṭa.

intertextual chain that connects pan-Indian competition with inter-generational self-fashioning.

3.B.2: Bhaṭṭa Intertextuality: Citations and Arguments

The linkages between multiple generations of Bhaṭṭas - seen in the paratextual features of their writings - extend to the content of their works. The thick intertextuality of multiple Bhaṭṭa Dharmaśāstra and Mīmāṃsā writings suggests that the Bhaṭṭa corpus might be viewed as a single, integrated meta-text. By this I mean that reading, for example, Nīlakaṇṭhabhaṭṭa's *Vyavahāramayūkha* requires one to meander into his father Śaṅkarabhaṭṭa's *Dharmadvaitanirṇya*, his grandfather Nārāyaṇabhaṭṭa's *Divyānuṣṭsānapaddhati*, and his cousin Kamalākarabhaṭṭa's *Nirṇayasindhu*. The Bhaṭṭas signal their familial intertextuality in various ways: by identifying a certain argument as "the Bhaṭṭa opinion," by noting that "this is my father's opinion," by citing parallel passages verbatim, by pointing the reader to another family member's text "for more information on this topic" or by invoking a Mīmāṃsā theory elaborated in another text. The Bhaṭṭas do not always agree with one another, but this pattern of intertextuality sets the boundaries of a discernible school of thought that proved hostile to certain Bengali ideas.

In the *Nirṇayasindhu*, Kamalākarabhaṭṭa uses many of these patterns of citation. One way he identifies the siddhāntin (conclusion) to a Dharmic dilemma (often drawn in contrast to a 'Gauḍa' opinion) is to add "iti bhaṭṭa" to an opinion.²³⁹ In other places, he states that "as for what the Gauḍas have said, this was soiled by my grandfather's feet in the *Prayāgavidhi* (in his *Tristhalīsetu*)."²⁴⁰ Discussing the atyantakarman, Kamalākara writes that "to know about such things as the giving of a

²³⁹ See his comments on impurity on the eleventh day after the death of a Brahman (ekādaśa). *Nirṇayasindhu*, ed. N.R. Ācārya, (Mumbai: Nirṇayasāgara, 1949), 418: iti **bhaṭṭāḥ**.

²⁴⁰ Ibid., 391: yat tu **gaudāḥ**... ity āhuḥ, taddūṣaṇam **pitāmahacaraṇaiḥ prayāgavidhau**.

cow for the purpose of crossing the Vaitariṅī, see the *Antyeṣṭapaddhati* composed by (Nārāyaṇabhaṭṭa).²⁴¹ Kamalākara occasionally argues against Nārāyaṇabhaṭṭa (on relatively small matters).²⁴² He cites his cousin Nīlakaṅṭha's views from the *Vyavahāramayūkha* (that fathers have no ownership in their sons) in a discussion of adopted sons (dattakaputra).²⁴³ Kamalākara's reasoning, which was endorsed later by Gāgābhaṭṭa in the *Bhāṭṭacintāmaṇi*, is based on a close reading of the *Mīmāṃsāsūtras*. He writes that:

As for the discussion of the Viśvajit (sacrifice in which one gives away all of one's 'own') in the sixth (chapter of the *Mīmāṃsāsūtras*), there is a doubt concerning the gift (of a son) *as a son* because sons and the like are referred to, using the word 'own,' in the sense of *relative*. It is not possible to give (a son) in the sense of *progeny*, but it is possible to give (a son) in the sense of servant. Therefore, (a father) certainly has ownership, i.e. entitlement for use as desired (in his son), and someone who says otherwise is a fool indeed.²⁴⁴

Kamalākara's comments reveal the fine distinctions that Mīmāṃsā reasoning can bring to Dharmaśāstric debates, and Gāgābhaṭṭa adopted them in his *Bhāṭṭacintāmaṇi* (whose theory of ownership was indebted to Kamalākara). The Bhaṭṭas' Mīmāṃsā would grow increasingly inflected by Navya-Nyāya, so that Gāgābhaṭṭa's *Bhāṭṭacintāmaṇi* uses a great deal of Navya-Nyāya terminology and quotes the opinions of the logicians (Navya-Nāyayikas) with as much regularity as

²⁴¹ Ibid., 402: daśadānavaitariṅīdhenūkrāntidhenudānādi **bhaṭṭakṛtāntyeṣṭipaddhatau** jñeyam.

²⁴² See Kane, *HDS I.2*, 935.

²⁴³ For the debate, see Kane *HDS*, 932-3; *Vyavahāramayūkha*, ed. P.V. Kane, (Delhi, Amar Press, 2009), 58: nanu svīyagavādi jananeva svabhāryāyām utpattiyā kanyāputrādāv api svatvaṃ syāt. iṣṭāpattau **viśvajiti** sarvasvaṃ dadātīti vihite sarvasvadāne kanyāputrādīdānāpattiyā kanyāputrādi na deyam iti **śāṣṭha**siddhāntavirodha iti cen na. Nīlakaṅṭha bases his reasoning on the Pārthasārathimīśra's *Tantrarātna*: ata eva putrādīnām dānaṃ gauṇam iti **tantrarātne mīśrāḥ**.

²⁴⁴ *Nirṇayasindhu*, 185: yat tu viśvajidadhikaraṇaṃ **śaṣṭhe**, tatra putrādīnām jñāitvena svasābdavācyatvāt putratvena dānam āśaṅkyā nirākṛtaṃ; janyapumstvasya dānenāniṣpatteḥ. dāsatvena dānam bhavaty eva. tasmād yatheṣṭavinīyogārhatvaṃ svatvaṃ bhavaty eva. putre svatvābhāvaṃ vadan... mūrkhā eva. See chapter 1 for a discussion of the Viśvajit sacrifice, Mīmāṃsā and ownership. In brief, one of Śābara's pūrvapakṣins argues that it may be reprehensible to give away one's relatives as slave, but one could do so nevertheless. The siddhāntin accepts that the sin of the action is sufficient to obviate the application of injunction - to give away everything - with regard to one's relatives.

he quotes his father's *Bhāṭṭadinakara* (a commentary on Pārthasārathimiśra's *Śāstradīpikā*).²⁴⁵

Another feature of the Bhaṭṭa school of thought - exemplified in the *Nirṇayasindhu* but apparent in much of the Bhaṭṭas' texts - is a consistent polemic leveled against easterners. From Nārāyaṇabhaṭṭa to Gāgā and Bhānubhaṭṭa, the views of the Bhaṭṭas are contrasted with rivals including Vācaspatimiśra (and Miśrāḥ more generally), Śūlapāṇi Upādhyāya, Raghunanda Bhaṭṭācārya and a string of Navadvīpan and Maithila Navya-Naiyāyikas (especially Raghunātha Śiromaṇi). It appears that the Bhaṭṭas were among the first non-Bengali paṇḍits to encounter the Gauḍa school of Navadvīpan Dharmaśāstra and Navya-Nyāya and their method of dealing with this school was to reject it in a way that emphasized the superiority of their status as exemplary southern śiṣṭācāryas. One way in which the Bhaṭṭas offer a comprehensive response to the Gauḍas takes the form of multi-generational polemics. Take for example Nārāyaṇabhaṭṭa's debate with Vidyānivāsa in the house of Ṭoḍar Mal. Nārāyaṇabhaṭṭa argued that eating meat in Śraddhās was prohibited - contrary to the Bengali love of meat - a polemic that his treatise on meat eating, the *Kalīśrāddhemāṃsadānavicāra*, examined at length.²⁴⁶ Śaṅkarabhaṭṭa and Bhānubhaṭṭa adopt a similarly polemical tone in their discussion (and rejection) of

²⁴⁵ *Bhāṭṭacintāmaṇi: Tarkapāda*, ed. Śukla, Sūryanārāyaṇa (Benares: Chowkhamba Sanskrit Series Office, 1933). For his father, see pp. 54, 63-4, 72 & 103. For Naiyāyikas, see pp. 23, 35, 71, & 80 (among many others).

²⁴⁶ See note 37.

meat eating during śrāddhas in their *Dharmadvaitanirṇaya* and *Dvaitanirṇayasiddhāntasaṅgrahaḥ* respectively.²⁴⁷

In the *Nirṇayasindhu*, Kamalākara uses the term Gauḍa, consistently, to identify positions with which he disagrees and that he contrasts with southern, or Bhaṭṭa opinions as conclusions.²⁴⁸ Bihani Sarkar, in charting the proselytization of Durgāpūja in the Gauḍa school of Dharmaśāstra, reveals that Kamalākara Bhaṭṭa is the first Southern Dharmaśāstrin to refer to the Durgāpūjā literature of Raghunandana, Śūlapāṇi and Śrīnāthācāryacūḍāmaṇi.²⁴⁹ Sarkar notes that Kamalākara brackets the foreignness of these texts by referring to them as ‘Gauḍa’, but Madhav Deshpande adds further that Kamalākara contrasts these Gauḍa texts with southern rituals.²⁵⁰ Kamalākara’s attacks are individually quite small - and none of them concern ownership or inheritance - but when they are taken collectively and in conjunction with the other Bhaṭṭas’ polemics, a clear pattern emerges: Kamalākara and his family’s encounter with the Gauḍa school of Dharmaśāstra was one of resistance, rejection and self-identification, *via negativa*. The appearance of

²⁴⁷ Derrett argues that Śaṅkarabhaṭṭa and Bhāṇubhaṭṭa’s discussion of Dattāpradānika (non-delivery of a gift) in the *Dharmadvaitanirṇaya* and *Dharmadvaitanirṇayasamgraha* rejects the theory of *factum valet* developed by Jīmūtavāhana and his Gauḍa followers (in Dharmaśāstra and Navya-Nyāya). See J.D. Derrett, “Prohibition and Nullity: Indian Struggles with a Jurisprudential Lacuna,” *Bulletin of the School of Oriental and African Studies*, 20.1 (1957): 203-215. This is a plausible assertion, particularly because it dovetails with the rejection of meat eating. See note 37. Kamalākara and Nīlakaṇṭha reject the principle of *factum valet* in their discussions of vibhāga initiated by a father, so this may well be an additional facet of the Bhaṭṭa school of jurisprudence that developed in opposition to the Gauḍa school.

²⁴⁸ See for example, *Nirṇayasindhu*, 391 (cited in note 91); 417: yac ca **gauḍagranthe...** iti mūrkhoktiḥ parāstā vacanād āśaucamadhya iva tatrāpy avirodhāt; 418: **śūlapāṇiḥ smārtagaudaś** ca parāstah; 423: **gauḍas** tu... iti śūlapāṇiḥ... tan maurkhyakṛtam.

²⁴⁹ Bihani Sarkar, “The Rite of Durgā in Medieval Bengal: An Introductory Study of Raghunandana’s *Durgāpūjātattva* with Text and Translation of the Principal Rites,” *Journal of the Royal Asiatic Society* 22.2 (2012): 325-390, pp. 333-335.

²⁵⁰ Ibid., 333. *Nirṇayasindhu*, **krtyatattvārṇavodāhṛtavacanāt...** iti **tithitattve...** iti gauḍāḥ. **dākṣiṇātyās** tu. Cf Deshpande, “Pañca Gauḍa.” For other references to Śrīnāthācāryacūḍāmaṇi, see pages 129 and 189. Nīlakaṇṭhabhaṭṭa describes himself rather modestly in the colophon of his *Nītimayūkha* as “the (crown) jewel of the learned (bhaṭṭa) lineage, the garland of the Southern (tradition).” See Julius Eggeling, *Catalogue of the Sanskrit Manuscripts in the Library of the India Office, Vol. 1* (London, 1887), pp. 428, #1444: vibudhakulamāṇir **dākṣiṇātyāvataṃso bhāṭṭaḥ śrīnīlakaṇṭhaḥ...**

Śrīnāthācāryacūḍāmaṇi, the first commentator on Jīmūtavāhana's *Dāyabhāga* and a Navya-Naiyāyika of Navadvīpa, as a pūrvapakṣin in Kamalākara's *Nirṇayasindhu* suggests that the hostile response to Jīmūtavāhana and Raghunātha seen in the Bhaṭṭas' works of inheritance and ownership was part of a broader anti-Bengali trend in the Bhaṭṭa school of thought.

3.C: Ownership and Inheritance in the Bhaṭṭa Corpus

Having sketched a portrait of the Bhaṭṭas as a tightly knit family of Mīmāṃsā trained Dharmaśāstrins and as southern rivals to eastern paṇḍits, I turn to their understanding of ownership and inheritance and I unravel the ways in which the Bhaṭṭas defended Vijñāneśvara's *Mitākṣarā* from Jīmūtavāhana's *Dāyabhāga*. In the first chapter of this thesis, I traced the development of a *Mitākṣarā* school of Dharmaśāstric thought that argues for: 1) a theory of sapratibandhadāya and apratibandhadāya (inheritance with and without an obstruction, respectively); 2) sons and brothers' ownership in a joint family trust from birth (janmasvatva); 3) ownership as a secular matter rather than as a śāstric matter (laukika); and 4) ownership, i.e. fitness for use as desired (yatheṣṭaviniyogayogyatva), as a quality (guṇa) of an asset that need not entail the actual use of an asset. I argued that the *Mitākṣarā* school of Dharmaśāstric thought is inextricably linked with theories of ownership that are articulated in the Prābhākara school of Mīmāṃsā. I concluded that the medieval Dharmaśāstrins who followed the *Mitākṣarā*'s jurisprudential arguments - Madanasimha chiefly - drew on the writings of medieval Prābhākara-Mīmāṃsakas, particularly Bhavanātha (author of the *Nayaviveka*). In the previous chapter we saw that the Dharmaśāstrins who followed the jurisprudence of Jīmūtavāhana's *Dāyabhāga* oppose each of the *Mitākṣarā*'s signature views and that they defend the *Dāyabhāga* using Navya-Nyāya philosophical techniques.

I examine the Dharmaśāstra and Mīmāṃsā works of three Bhaṭṭas: Rāmakṛṣṇa, Kamalākara and Gāgābhaṭṭa. I argue that the Bhaṭṭas defend the *Mitākṣarā* against what they perceive as attacks from Bengali Dharmaśāstrins and Navya-Naiyāyikas. The Bhaṭṭas defend the *Mitākṣarā*'s theory of janmasvatva by arguing against Bengali authors in Dharmaśāstra and in Navya-Nyāya. First, Rāmakṛṣṇabhaṭṭa's *Vibhāgatattvavicāra* (an Examination of the Nature of Partition) reveals that the Bhaṭṭas are followers of the *Mitākṣarā*'s theory of janmasvatva and apratibandhadāya.²⁵¹ Rāmakṛṣṇabhaṭṭa defends Vijñāneśvara's theory of janmasvatva from opponents whom he characterizes as deficient in their knowledge of Mīmāṃsā. Second, Kamalākara's discussion of ownership and inheritance in two of his most famous works - the *Vivādatāṇḍava* (the Dance of Legal Dispute) and the *Mīmāṃsākutūhala* (Inquiry into Ritual Hermeneutics) - suggests that the Bhaṭṭas are the first Dharmaśāstrins to respond to a *Dāyabhāga* school of thought.²⁵² In the *Vivādatāṇḍava*, Kamalākara argues for a theory of svatva as a secularly produced and religiously regulated fitness for use as desired (yatheṣṭhavinyogayogyatva) in order to defend the 'southern' view of inheritance developed in the *Mitākṣarā* against the eastern views of Jīmūtavāhana's *Dāyabhāga*. There, he refers to various theories of ownership that he explores in the *Mīmāṃsākutūhala*. Kamalākara engages in a complicated treatment of these theories of svatva in the idiom of Navya-Nyāya in the *Mīmāṃsākutūhala*, where he rejects two Navadvīpan Navya-Naiyāyikas' definitions of svatva based, in part, on their incongruity with the theory of janmasvatva developed in the *Vivādatāṇḍava*. I

²⁵¹ *Vibhāgatattvavicāra*. Asiatic Society Library Manuscript #1064. I would like to thank Bihani Sarkar for helping me to acquire a copy of this manuscript.

²⁵² Kamalākara's *Mīmāṃsākutūhala*, ed. Paṭṭābhirāma Śāstrī (Varanasi: Sarasvatībhavanagranthamālā No. 123, Sampurnanand Sanskrit University, 1987); *Vivādatāṇḍava: Dāyabhāga Portion*, ed. Herambha Chatterjee, *Our Heritage* 7:2, 1-23; 8:2, 25-37; 11:1, 39-50; 13:1, 51-58, (1959-65); ed. & trans. (Gujarati) M.N. Dvivedī. (Baroda: Lakṣmīvilāsa Press, 1901).

argue that Kamalākara crafts a distinctly southern scale of texts whose Mīmāṃsā and Dharmaśāstra arguments offer a consolidated rejoinder to the Gauḍa scale of texts that are outlined in the previous chapter.

Third, I turn to Gāgābhaṭṭa's theories of ownership and inheritance in two of his works - the *Vyavahāraḥaṇḍa* (legal section) and the *Dānakāṇḍa* (gift section) of his Dharmaśāstra compendium, the *Dinakarodyota*.²⁵³ I show that Gāgābhaṭṭa quotes Kamalākara's arguments at length in both texts and that his arguments rely on the theory of ownership developed by Kamalākara. In doing so, I argue that Kamalākara's scale of texts was not a one-off. Rather, it was adopted and extended by subsequent members of the Bhaṭṭa family so that the *Dāyabhāga/Mitākṣarā* debate became a hallmark of Vārāṇasī and Mahārāṣṭrian Dharmaśāstra.

The thrust of my argument is that the Bhaṭṭas are the first Dharmaśāstrins to attack a *Dāyabhāga* school of thought and to characterize that school of thought as antithetical to southern Brāhmaṇism and Mīmāṃsā philosophy. When taken in conjunction with the Bhaṭṭa family's efforts to portray themselves as southern rivals to eastern paṇḍits in Vārāṇasī - analyzed above - Kamalākara's arguments about ownership and inheritance - arguments that combine a Mīmāṃsā/Navya-Nyāya debate about metaphysics and a *Mitākṣarā/Dāyabhāga* debate about janmasvatva - are highly suggestive of a moment in Indian intellectual history in which the well-known Mīmāṃsā-Dharmaśāstra nexus was rivaled by a competing Navya-Nyāya-Dharmaśāstra nexus.

3.C.1: The *Mitākṣarā* as a Bhaṭṭa text: Rāmakṛṣṇabhaṭṭa's *Vibhāgatattvavicāra*

²⁵³ *Dānadīnakarodyota*, Bhandarkar Oriental Research Institute Ms. No 613 (82/1895-8); *Vyavahāradīnakarodyota*, BORI Ms. No 613 (37/1866-8).

The *Vibhāgatattvavicāra* is the earliest existing Dharmaśāstra work from the Bhaṭṭa family that discusses inheritance. In the text, Rāmakṛṣṇabhaṭṭa argues, vociferously, in defense of Vijñāneśvara. Rāmakṛṣṇabhaṭṭa was a Dharmaśāstrin and Mīmāṃsaka who died young, probably sometime in the mid 16th Century.²⁵⁴ Rāmakṛṣṇa's period of literary activity is just at the cusp of reception of the *Dāyabhāga* in Vārāṇasī. In the *Dāyatattva* he makes three arguments that reveal the extent of the Bhaṭṭas' adherence to the *Mitākṣarā*'s theory of janmasvatva and to the *Mīmāṃsānayaviveka*'s theory of ownership as secular: 1) he attacks the opponents of Vijñāneśvara (Jīmūtavāhana or Raghunandana?) as ignorant of Mīmāṃsā; 2) he argues that women and adopted sons acquire ownership by 'birth' (in the metaphorical sense of the word); and 3) he defends women's right to apratibandhadāya by dissociating inheritance rights from sacrificial entitlements (a characteristically Mīmāṃsā-inflected argument). Although this does not prove that Rāmakṛṣṇa targets the *Dāyabhāga* school explicitly, it demonstrates the importance of the *Mitākṣarā* to the Bhaṭṭa family - whose characteristic feature is a shared body of Dharmaśāstra.

Rāmakṛṣṇa opens the *Vibhāgatattvavicāra* with an accusation:

The authoritative statements pertaining to the division of inheritance have been determined by Vijñāneśvara and others learned in the essence of Mīmāṃsā logic. However, some fools, (Jīmūtavāhana and the like)? ignorant of the essence of such logic, hold false opinions in reference to their (the authoritative statements') performance. Because of this they make logically fallacious indictments (of Vijñāneśvara's opinions).²⁵⁵

²⁵⁴ See Diaconescu, "On the New Ways," 285; and Kane *HDS* 1.2, 925. The *New Catalogus Catalogorum* does not list any Mīmāṃsā texts authored by Rāmakṛṣṇa.

²⁵⁵ *Vibhāgatattvavicāra*, fol 1b: vibhāgaviṣaye mīmāṃsānyāyatattvābhijñāvijñāneśvarādibhir nirṇīte 'pi vākyārthe nyāyatattvābhijñā mūḍhā dūṣaṇābhāsodbhāvena tadanuṣṭhāne vipratipadyante. tannirāsāya nyāyānurodhena vijñāneśvarādyabhimato vākyārtha ujjvalīkriyate. tatra vibhāgo d(v)ividhaḥ apratibandha-sapatibandhadāyaviṣayatvena.

Rāmakṛṣṇa immediately makes explicit the connection between the *Mitākṣarā* - and its theory of two-fold *dāya* - and Mīmāṃsā reasoning.²⁵⁶ Unfortunately, Rāmakṛṣṇa's polemic does not extend beyond his opening salvo. The remaining 26 folios are devoted to a relatively calm explanation of Rāmakṛṣṇa's theory of inheritance. Rāmakṛṣṇa does not seem keen to replicate his opponents' theories as *pūrvapakṣins*. He does, however, foreground ownership by birth as an essential feature of his system of inheritance. In a discussion of women's inheritance rights, Rāmakṛṣṇa notes that "this division involving women certainly pertains to direct inheritance (the coparcenary trust)."²⁵⁷ Rāmakṛṣṇa's argument is that a man's wives - like his sons - may take a share of the estate when it is divided (before or after their husband's death). Rāmakṛṣṇa's reasoning involves an expansion of 'birth' as a secularly recognized means of acquiring ownership. He writes that:

Being a wife, like being a son is a cause of (acquiring) ownership. There is the convention that sons have ownership by birth. But one should not err and (postulate) an inequality (between sons and) a wife's based on (a wife's) lack of birth from their husband. Because there would be the unwanted consequence that adopted sons and the like would not have ownership because they lack birth (from their adopted father). But if one were to think that adopted sons' ownership (arises) immediately after the death of their adopted father - just like in the cause of the indirect inheritance of daughters and the like - there would then be the problem of *svatva* arising from partition with reference to partition (made by) the adopted son and the like while the father is alive. Therefore, because of the prohibition of ownership (arising) from partition, because ownership is stated (to arise) by birth, it is understood that the word 'birth' has the metaphorical meaning of all the causes of ownership. And that (cause of ownership) is birth in the case of a natural son,

²⁵⁶ For Rāmakṛṣṇa's division of *dāya*, see *ibid.*, fol 1b: *tatra prathamah putrādīnām pitrādīdhanaviṣayaḥ janmanā svatvāt tasya. dvitīyo duhitrādīnām pitrādīdhanaviṣayaḥ. tasya pitrādīmarāṇānantaram svatvāt. Cf chapter 1, fn 19: Mitākṣarā on Yājñavalkyasmṛti 2.114: sa ca dvividhaḥ apratibandhaḥ sapratibandhaś ca. tatra putrāṇām pauṭrāṇām ca putratvena pautratvena ca pitṛdhanam pitāmahadhanam ca svam bhavatīty apratibandho dāyaḥ. pitṛvyabhrātrādīnām tu putrābhāve svāmyabhāve ca svam bhavatīti sapratibandho dāyaḥ.*

²⁵⁷ *Ibid.*, fol 17b: *ayaṃ ca strīvibhāgo 'pratibandhadāyaviṣaya eva.*

adoption in the case of an adopted son and also marriage for a wife. Therefore, as with sons, it is proved that a wife's inheritance is direct.²⁵⁸

The theory of ownership by birth forms an essential facet of Rāmakṛṣṇa's theory of inheritance. Janmasvatva allows Rāmakṛṣṇa to approach a thorny issue of inheritance - concerning a wife as an heir - by expanding the semantic range of the term 'birth.' Rāmakṛṣṇa's theory relies on an implicit argument: marriage's inclusion as a cause of ownership is based, at least partly, on birth's recognition as a secular means of acquiring ownership.

Rāmakṛṣṇa makes his reliance on Mīmāṃsā theories of ownership as a secular matter explicit in a defense of the *Mitākṣarā*. He writes that:

As for those who expectorate filth onto the *Mitākṣarā*, and say that assets are for the purpose of the sacrifice and that the purpose of the sacrifice is for assets and pleasure, they do not understand the lesson of Mīmāṃsā. In the fourth chapter (of the *Mīmāṃsāsūtras*) the acquisition of assets is proved to be *puruṣārtha* and not *kratvartha*.²⁵⁹

Jīmūtavāhana, Raghunandana and other Bengali Dharmasāstrins do not make the argument that the acquisition of assets serves the purposes of the sacrifice, but Rāmakṛṣṇabhaṭṭa's harsh comments attest to the vehemence with which the Bhaṭṭas adhered to the Mīmāṃsā and Dharmasāstric implications of Vijñāneśvara's *Mitākṣarā*. We saw in the first chapter of this thesis that the fourth *adhyāya* of the *Mīmāṃsāsūtras* (and commentary thereon) are the location where Mīmāṃsakas defended theories of ownership as secular and of birth (and marriage)

²⁵⁸ Ibid., fol 18a: putratvasyeva bhāryātvasyāpi svatvahetutvāt. na ca janmanā putrāṇām svatvam iti vyavahārād bhāryāyās ca bhartṛto janmābhāvād vaiṣamyam iti bhramitavyam. dattakādiputrāṇām api janmābhāvenāsvatvaprasaṅgāt. yadi tu sapratibandhadāya iva duhitrādīnām piṭṛmaraṇānantaram eva dattakādīnām svatvam iti manyeta tato jīvati pitari dattakādivibhāge vibhāgāt svatvāpattiḥ. tasmād vibhāgāt svatvaniṣeddhū[?] janmanā svatvasyoktatvād janmapadasya sakalasvatvahetūpalakṣanārthatvam avagamyate. sa caurase putre janma dattakādiṣu tūpādānādi evam bhāryāyā api pariṇayanam... tena putravadbhāryāyā apy apratibandha eva dāya iti siddham.

²⁵⁹ Ibid., fol 13b: yat tu kaś cin **mitākṣarā**dūṣaṇavyasatī dravyasya yajñārthatvam yajñārthasyāpi cārthakāmārthatvam āhā, etam mīmāṃsādhy[ā]ya[m] na vidhur... tatra hi **caturthe** dravyārjanasya kratvarthatvanirāsenā puruṣārthatvam sādhitam.

as a cause of ownership.²⁶⁰ Taken together with his expansion of janmasvatva and his opening polemic, Rāmakṛṣṇabhaṭṭa's appeal to the theory of acquisition as puruṣārtha speaks to the existence of a Mīmāṃsā/Dharmaśāstra nexus at the heart of the Bhaṭṭa family's model of inheritance. The *Vibhāgatattvavicāra* may be the earliest extant rejoinder to the *Dāyabhāga*. If not, Kamalākarabhaṭṭa's *Vivādatāṇḍava* (a text modeled on the *Vibhāgatattvavicāra*), is the earliest rejoinder to the *Dāyabhāga*.

3.C.2: Kamalākarabhaṭṭa: The Founder of the Bhaṭṭa School of Inheritance

Kamalākara was one of the most prolific paṇḍits of the Bhaṭṭa family. He wrote treatises on, among other things, Mīmāṃsā, Dharmaśāstra, Vedānta, and Alaṅkāraśāstra, many of which have attracted significant attention from colonial and contemporary scholars.²⁶¹ Kamalākarabhaṭṭa may have been influenced by his father Rāmakṛṣṇabhaṭṭa's defense of the *Mitākṣarā*, but he is certainly the founder of a Bhaṭṭa school of inheritance - opposed to the *Dāyabhāga* school of inheritance. This is because he crafted a scale of Dharmaśāstra and Mīmāṃsā texts that acknowledged and rejected the Dharmaśāstra and Navya-Nyāya theories of ownership and inheritance that were promulgated by eastern paṇḍits from Navadvīpa and Vārāṇasī. We saw earlier that Kamalākarabhaṭṭa's *Nirṇayasindhu* - likely the first treatise outside of Bengal to acknowledge the writings of Śrīnāthācāryacūḍāmaṇi - takes a generally hostile attitude to 'Gauḍa' opinions, so the anti-Bengali thrust of his opinions regarding ownership and inheritance dovetail with his broader project of promoting the Bhaṭṭa brand of southern Brāhmaṇism against a rival eastern brand of Brāhmaṇism.

²⁶⁰ See section 2.2.A: 'Ownership in Śabara's *Bhāṣya*' in chapter 1 of this thesis.

²⁶¹ See note 9.

Figure 2, below, outlines Kamalākarabhaṭṭa's scale of texts. The figure charts the various texts that are arranged hierarchically in Kamalākarabhaṭṭa's work. The table is arranged horizontally to display the nexus between legal and philosophical treatise: i.e. the *Vivādatāṇḍava* and the *Mīmāṃsākutūhala* share a common theory of ownership. Columns one and three list the treatises whose opinion Kamalākara supports (typically ownership by birth and ownership as a secular phenomenon) while columns two and four list the linked Dharmaśāstra and Navya-Nyāya (or Mīmāṃsā) texts that are rejected. The chart is arranged vertically to display the chronological levels of Kamalākara's scale of texts - with higher texts coming later than lower texts. | The texts in each vertical column are linked, so that Kamalākara's *Vivādatāṇḍava* amounts to a defense of the *Mitākṣarā* against the *Dāyabhāga*.

3.C.2.A: A Scale of Smṛtis: Svatva in the *Vivādatāṇḍava*

The *Vivādatāṇḍava*, Kamalākara's treatise on legal procedure, discusses topics such as the qualification of a judge, the form of a plaint, replies and punishments and the eighteen titles of law (vivādapadas), which include the division of inheritance, sale without ownership, failure to pay wages and so on.²⁶² The chapter of dāyavibhāga has been published twice; once in complete edition with a Gujarati introduction and translation (1901) and once as the chapter concerning dāyavibhāga only. Both editions suffer from numerous typographical errors. The *Vivādatāṇḍava* appears to be a later work in Kamalākara's corpus. He closes the text by boasting of having written more than twenty works on topics including Bhāṭṭa and Prābhākara-Mīmāṃsā, Vedānta, grammar, and the *Nirṇayasindhu*.²⁶³ Kamalākara's discussion of

²⁶² For the history and importance of the eighteen vivādapadas see P.V. Kane, *A History of Dharmaśāstra*, Vol. 3. 2nd Edition (Poona: Bhandarkar Oriental Research Institute, 1973), 248-258.

²⁶³ *Vivādatāṇḍava*, 1901 ed., 731.

Figure 2: Kamalākarabhaṭṭa's Scale of Texts (Circa 1640)

I.	II	III	IV
Dharmaśāstra Texts		Mīmāṃsā Texts	
	Opponent's Dharmaśāstra		Opponent's Philosophy
<i>Vivādatāṇḍava</i> (Kamalākara)	<i>Dāyabhāga/Dāyatīpannī</i> (Jīmūtavāhana/Srīnāthācārya)	<i>Mīmāṃsākutūhala</i> (Kamalākara)	<i>Padārthatattvanirūpaṇa</i> (Raghunāthaśiromaṇi)

University of Navadvīpa Founded 1513

<i>Madanaratnapradīpa</i> (Madanasimharāja)	<i>Mīmāṃsānayaviveka</i> (Bhavanātha)
Dhāreśvara/Smṛtisaṅgraha (Pūrvapakṣins in Madanaratnapradīpa)	<i>Mīmāṃsātantraratna</i> (Pārthasārathimiśra)
<i>Mitākṣarā</i> (Vijñāneśvara)	<i>Ṛjuvimalāpañcikā</i> (Śālikanātha)
<i>Manubhāṣya</i> (Medhātithi)	<i>Śābarabhāṣya</i> (Śābara)
<i>Smṛtis/Dharmasūtras</i>	<i>Mīmāṃsāsūtras</i>

svatva occurs in the first few pages of the *Dāyaprakaraṇa*, the section of the *Vivādatāṇḍava* devoted to determining the law of inheritance.²⁶⁴

Kamalākara's discussion of ownership and inheritance in the *Vivādatāṇḍava* is remarkably similar to the discussion of ownership and inheritance in the *Madanaratnapradīpa* (15th century A.D.).²⁶⁵ Both authors argue for a theory of ownership as a secularly produced quality of an asset, namely fitness for use as desired (yatheṣṭhavinyogayogyatva). Both authors rely on the *Mīmāṃsānayaviveka* (11th Century) account of ownership's metaphysics to defend a secular theory of

²⁶⁴ Pages 1-9 of the 1959 edition and pages 277-291 of the 1901 edition.

²⁶⁵ For the dates and historical context of the *Madanaratna* see Kane, *HDS* I.2, 804-809.

ownership. Moreover, both authors combine these two arguments to defend a theory of a son's ownership in a family trust by birth. We saw in the first chapter of this thesis that the *Madanaratnapradīpa*, with its strong affinity with the *Mīmāṃsānayaviveka*, was the pinnacle of the medieval *Mitākṣarā* school: a school of thought that combined a defense of janmasvatva with a theory of svatva as a laukika phenomenon.

Kamalākara's innovations in the *Vivādatāṇḍava* are twofold. First, Kamalākara applies the *Madanaratnapradīpa*'s arguments - originally leveled against Dhāreśvara and Saṃgrahakāra - to attack Jīmūtavāhana and his commentators (Raghunandana and Śūlapāṇi) and to defend the Bhaṭṭa family's southern views of inheritance developed in the *Mitākṣarā* against the eastern views of the *Dāyabhāga*. Kamalākara places Vijñāneśvara and Madanasimha in opposition to Jīmūtavāhana and Raghunandana. This is highly suggestive of an understanding on Kamalākara's part of distinct 'schools of thought' in Dharmaśāstra discussions of dāyabhāga. Second, Kamalākara lists three possibilities for svatva's ontological status: a śakti, a padārtha or the state of being the object of a legal transaction, vyavahāraṣayatā. This signals an awareness of Navadvīpan, Navya-Nyāya debates concerning ownership that developed in tandem with the *Dāyabhāga* commentarial tradition and which advocated a theory of upamasvatva and of ownership as a śāstric phenomenon. We shall see that Kamalākara's preference for ownership as a śakti - as opposed to a padārtha - is connected to his defense of ownership as a secular phenomenon, his theory of ownership as usability as desired and his broader polemic against the *Dāyabhāga* school of thought.

Kamalākara's brief treatment of inheritance in the *Vivādatāṇḍava* undermines Jīmūtavāhana systematically: he defends a definition of dāya amenable to the

Mitākṣarā theory of janmasvatvavāda; he divides dāya into obstructed and unobstructed dāya; he discusses the secular nature of svatva; and he uses this discussion to reject Jīmūtavāhana’s theory of uparamasvatva. Having attacked Jīmūtavāhana’s theory of ownership by partition, Kamalākara concludes that, “therefore, there is [on the part of sons] secular ownership existent prior to partition which is divided into [individual] shares at the time of partition.”²⁶⁶

Kamalākara offers three definitions which implicitly contradict the *Dāyabhāga*’s definition, defended by Raghunandana and others, that dāya “indicates those items in which a person acquires proprietary right when the prior owner’s right lapses, the acquisition of this right being contingent on the new owner being related to the prior owner.”²⁶⁷ Kamalākara’s definitions of dāya do not entail the lapse of a prior owner’s proprietary right as a precondition for the acquisition of a proprietary right on the part of a new owner. First (following *Nāradaśmṛti* 13.1) Kamalākara defines dāyabhāga, the division of inheritance, as “when sons undertake the division of paternal assets.”²⁶⁸ Kamalākara expands this definition and argues that “paternal” refers to “parents” (i.e. mother and father), that this entails a relation which is a cause of ownership, and that “sons’ refers to “grandsons, brothers and sons and the like.”²⁶⁹ Kamalākara’s second definition, taken from the *Nighaṇṭu*, states that “the sages declare dāya to be paternal possessions fit for division” and clarifies the definition’s meaning as “dāya is an asset fit for division which becomes someone else’s property

²⁶⁶ *Vivādatāṇḍava*, 1959 ed., 9: tena vibhāgapūrvam sad eva laukikam svatvam vibhāgād aṃśeṣu paricchidyate.

²⁶⁷ *Dāyabhāga*, 1.5., pg., 55: See I.S. Pawate, *Dāya-Vibhāga: or, the Individualization of Communal Property and the Communalization of Individual Property in the Mitakshara Law*. Second Edition (Dharwar: Karnatak University, 1975) p. 23 for Balambhaṭṭa’s insistence in the *Balambhaṭṭī* that the *Mitākṣarā* definition of dāya undermines the view of the easterners (prācyā), 23.

²⁶⁸ *Vivādatāṇḍava*, 1: vibhāgo (a)rthasya paitrasya putrair yatra prakalpyate / dāyabhāga iti proktaṃ vyavahārapadam budhaiḥ.

²⁶⁹ *Ibid.*, 1: pitror idam paitram. idam svatvanimittasambandhiparam. putrapadam pautrabhrāṭṭrādiparam. Compare with *Mitākṣarā*, 197. tatra dāyaśabdena yad dhanam svāmisambandhād eva nimittād anyasya svam bhavati.

because they have a connection to the owner.”²⁷⁰ Kamalākara identifies the *Madanaratna* and also the *Smṛtisaṃgraha* as his source for his third definition of *dāya* and states: “an asset which comes from the father and an asset which comes from the mother is called *dāya*.”²⁷¹ Following Vijñāneśvara almost verbatim, Kamalākara states that *dāya* is of two kinds: with an obstruction (*sapratibandhadāya*) and without an obstruction (*apratibandhadāya*).²⁷²

Next, Kamalākara defends the scriptural and moral legitimacy of this definition of *dāya* by following the *Madanaratnapradīpa*’s assertion that birth is a śāstrically and a secularly established method of acquisition. Kamalākara accomplishes this by situating his two-fold division of *dāya* within *smṛti* and by postulating ownership as something extra-śāstric. Kamalākara argues that according to the ‘Gautama’ birth is a canonical means of acquisition.²⁷³ He locates *apratibandhadāya* in the canonical sūtras of Gautama and argues that *apratibandhadāya* and *sapratibandhadāya* relate to Gautama’s *ṛktha* (inheritance) and *saṃvibhāga* (division) respectively.²⁷⁴

Kamalākara, following the *Madanaratnapradīpa*, appears to hedge his bets when he argues that Gautama’s restrictions on acquisition are actually *anuvādas*, statements of something that has already been stated.²⁷⁵ That is, he undermines the legal force of the śāstric restriction even as a attempt to locate birth within them. He also deploys two arguments culled from the *Mīmāṃsānayaviveka* (that appear in the

²⁷⁰ *Vivādatāṇḍava*, 1: *dāyo vibhāgārhadravyaṃ, anyadīyaṃ dravyaṃ svāmisambandhigāmīty arthaḥ*. Cf *Vyavahāramayūkha*, 59.

²⁷¹ *Ibid.*, 1: *pitṛdvārāgatam dravyam māṭṛdvārāgatam ca yat / kathitam dāyaśabdena tadvibhāgo (a)dhunocyate*. See *Madanaratna*, 321 (who also cites the *Smṛtisaṃgraha*).

²⁷² *Vivādatāṇḍava*, 1. Compare *Mitākṣarā* 197, lines 2-3.

²⁷³ *Ibid.*, 2: *utpattyaivārthasvāmitvam labhate ity ācāryā iti gautamokteś ca*. For the emergence of this apocryphal sūtra in the Prābhākara school of Mīmāṃsā and in the *Mitākṣarā* school of Dharmasāstra, see chapter 1 of this thesis. See chapter 2 for the Navadvīpan response.

²⁷⁴ *Vivādatāṇḍava*, 2: *apratibandho dāya ṛktham tena janmnaiva svatvam. sapratibandho dāyaḥ saṃvibhāgaḥ*. *Ṛktha* is an estate which passes to the family members of a deceased person. *Saṃvibhāga* is the process by which individuals divide a communal property into individual portions either while the former owner/s is/are alive or when they have died.

²⁷⁵ *Ibid.*, 4: *gautamoktis tu lokasiddhānām evānuvādaḥ*. See Pawate, *Dāyavibhāga*, 207-211.

Madanaratnapradīpa). The *Madanaratnapradīpa*, following the *Nayaviveka*, argues that “acquisition, such as by birth, is known from the [secular] world and consequently, Dharmaśāstra, like Vyākaraṇaśāstra, merely compiles [for the sake of propriety] activities which are the subject of people’s everyday usage.”²⁷⁶ Further, *svatva* is not the use of an asset as desired, but an asset’s fitness for use as desired.²⁷⁷ Invoking the metaphor of a seed in a granary, the *Madanaratna* argues that even though one might not be able to use an asset as one would like because of a śāstrically enjoined necessity such as supporting one’s family, one is still the legal owner of the asset by virtue of having acquired it (through a valid method of acquisition).²⁷⁸ Similarly, while a seed stored in a dry granary may not produce sprouts, it is capable of producing sprouts by virtue of its being a seed.

Kamalākara uses the argument that Gautama’s list of methods of acquisition is based on real-world usage to refute an objection which Jīmūtavāhana makes against *janmasvatva*: that *smṛti* nowhere lists birth as a means of acquisition.²⁷⁹ Kamalākara calls Jīmūtavāhana a fool because he ignores the sūtras of Gautama (based on secular practice) delineating birth as a cause of ownership and dividing *dāya* into two kinds.²⁸⁰ There is an implicit idea undergirding Kamalākara’s refutation

²⁷⁶ *Madanaratnapradīpa: Vyavahāravivekodyota*, ed. P.V. Kane, (Bikaner: Anup Sanskrit Library), 324-325: uktaṃ caitan **nayaviveke** prābhākaramatāmbujaprabhākareṇa **bhavanāthēna** - lokasiddham vārjanam janmādi, ata evānidamprathamalokadhīviṣayatā sthite nibandhanārthā smṛtir vyākaraṇādismṛtivad iti. Cf *Mīmāṃsānayaviveka*, Vol III, ed. S Subrahmanya Shastri (New Delhi: Rashtriya Sanskrit Sansthan, 2004), 47: ata evānidamprathamalokadhīviṣayavyvasthiti nibandhanārthā smṛtiḥ vyākaraṇādismṛtivat. Cf *Vivādatāṇḍava*, 4: yathā vyākaraṇe lokasiddham eva sādhu, uktañ ca **mahābhāṣye** sadanvākhyānāc chāstrasyeti.

²⁷⁷ Ibid., 325: na ca yatheṣṭaviniyojyatvam svatvam iti vayam brūmaḥ. kiṃ tarhi yatheṣṭaviniyogayogyatvam. Cf *Vivādatāṇḍava*, 5: yac ca yatheṣṭaviniyogayogyatvam iti **nayaviveka madanaratne** ca, na hi suvarṇatvādinā krayahetutvam kiṃ tu svatvenaiva.

²⁷⁸ Ibid., tac ca [svatvam] śāstreṇa kuṭumbabharaṇādiviniyoganiyamanena viniyogāntaraviṣayatām alabhamānasyāpy arjitatvaprayuktam asty eva. yathā kutaścid dhetoḥ ankurōtpādanam akurvato ‘pi kuśūlādīsthitasya bījasya bījatvaprayuktam ankurōtpādanayogyatvam.

²⁷⁹ *Vivādatāṇḍava*, 6-7: yat tu **jīmūtavāhanādayaḥ** pūrvasvāmini mṛte parasya svaṃ dāyaḥ. tac ca svatvam svāmināśād vibhāgād vōtpadyate na tu putrāder janmanā svatvam tasya svatvahetuṣv apāṭhāt yatheṣṭaviniyogābhāvenānupayogāc ca.

²⁸⁰ Ibid., 7: te sarvatra sapratibandhasyaiva dāyasya sattvāt rikthasamvibhāgayor bhedābhāvāt **gautamavirodhāt** pūrvoktayuktivirodhān mūrkhā eva.

of Jīmūtavāhana on this point: Gautama’s list of the means of acquisition is based on a secular practice which recognizes birth and two kinds of dāya (ṛktha/apratibandha and saṃvibhāga/sapatibandha). The definition of svatva as yatheṣṭaviniyogayogyatva also appears to be an important, if implicit, rejoinder to Jīmūtavāhana’s assertion that sons lack yatheṣṭaviniyoga in their living father’s estate.²⁸¹

Kamalākara does not directly respond to this argument, but a conception of svatva as yatheṣṭaviniyogayogyatva supports a theory of inheritance in which a son and father may have svatva in an asset but have limited rights of alienation.²⁸² The force of the argument is thus: Jīmūtavāhana and his followers want svatva to be produced only from śāstric sources. For them, birth and apratibandhadāya are not sources of svatva in canonical smṛtis. Even if one were to say that sons had some right to their father’s assets, Devala and others prohibit sons from using those assets as they would please (yatheṣṭaviniyoga). Kamalākara uses the *Nayaviveka* to argue that śāstric texts are based on local usage and they can therefore be understood to accommodate his understanding of apratibandhadāya. His theory of svatva as the *fitness* for use as desired allows him to say that sons have svatva even if that does not entail a substantive right to *use* their property.

²⁸¹ Jīmūtavāhana does not make this argument in the *Dāyabhāga*. He rejects the argument that sons have svatva but not svātantrya, *Dāyabhāga* 1.16. He seems to adopt yatheṣṭaviniyoga as the characteristic of svatva in *Dāyabhāga* 1.8. See *Jīmūtavāhana’s Dāyabhāga: The Hindu Law of Inheritance in Bengal*, ed. & trans. Ludo Rocher (Oxford: Oxford University Press, 2002), 55: “to posit that initially one has a proprietary right in the entire estate and that this right is canceled later... would be inept in that the result of ownership, i.e., the right to use what one owns as one wishes, would not follow.”

²⁸² See, for example, Kamalākara’s take on Devala 1563: “After their father’s death his sons may partition his assets; for they do not own it as long as he is alive and competent.” Kamalākara interprets this verse as preventing a son from spending his father’s self-acquired property on things such as gambling. *Vivādatāṇḍava*, 3: iti tat pitrarjite svātantryaniṣedhārtham, na paitāmahe pūrvatāpi kṛtādinīṣedhārtham eva na tu dharmavyaye iti vakṣyāmaḥ.

The issue of janmasvatva provides a framework for Kamalākara’s subsequent defense of positions on inheritance that are opposed to Jīmūtavāhana (such as a son’s right to force a father to partition) and thus lies at the heart of Kamalākara’s polemic. As Kamalākara develops his extended theory of dāyabhāga after his section on the nature of ownership and its sources he repeatedly attacks Jīmūtavāhana and his followers. In a discussion of the rights of primary and secondary mothers (those without sons), Kamalākara singles out “Jīmūtavāhana, Śūlapāṇi, Smārtagaṇḍa (Raghunandana) and the like” for censure.²⁸³ The same list of authors, with the addition of the *Vivādacintāmaṇi*, appears a few pages later as a pūrvapakṣin.²⁸⁴ Kamalākara uses Vijñāneśvara as an authority in rejecting Jīmūtavāhana’s claim that a father is always entitled to an extra share of ancestral assets during a division.²⁸⁵ Direct rejections of Jīmūtavāhana as well as implicit polemic against his school of thought form the basic structure of the chapter on dāyabhāga. In a discussion of a verse attributed to Bṛhaspati establishing an equality of shares between fathers and sons, Kamalākara argues that Jīmūtavāhana’s interpretation is the result of “his being blinded by hatred of the *Mitākṣarā*.”²⁸⁶

Kamalākara makes a brief reference to the Nyāya philosophy of ownership in the *Vivādatāṇḍava*. This proves that he was aware of what were ongoing debates, especially in Nyāya, concerning svatva. He notes, immediately after defining sapratibandhadāya as a svatva which arises only in the absence of the son of an object’s former owner, that Raghunātha Śiromaṇabhaṭṭācārya defines svatva as a

²⁸³ *Vivādatāṇḍava*, 14: ūrdhvaṃ tu saputrāṇām evāṃśo nāputrāṇām iti **jīmūtavāhanaśūlapāṇismārtgaṇḍādayaḥ prācyāḥ**. “The easterners such as Jīmūtavāhana, Śūlapāṇi and Smārtagaṇḍa (Raghunandana) hold that only ‘mothers’ with sons and not ‘mothers’ without sons are entitled to a share of the inheritance.”

²⁸⁴ *Vivādatāṇḍava*, 1901 ed, 305 & 307.

²⁸⁵ *Ibid.*, 313.

²⁸⁶ *Ibid.*, 318. tan **mitākṣarā**pradveṣajāndhyakṛtaṃ.

separate conceptual category (padārtha).²⁸⁷ Kamalākara also states “others say that ownership is the fact that something may be the subject of a legal transaction or a particular capacity.”²⁸⁸ Kamalākara mentions a similar list of possibilities in the

Dānakamalākara:

and some say that ownership is (an asset’s) fitness for being the subject of a cognition: ‘this is mine.’ Śiromaṇibhaṭṭācārya (says that ownership) is merely another conceptual category while others, such as Devala, (say that ownership is) a particular causal potentiality.²⁸⁹

These statements signal an awareness of an extensive series of debates, about svatva that were carried out by Bengali Navya-Naiyāyikas in Navadvīpa and in Vārāṇasī. Indeed, we saw in the previous chapter that the earliest *Dāyabhāga* commentators - Śrīnāthācāryacūḍāmaṇi and Acyutacakravartin - lived and worked alongside Raghunātha Śiromaṇi. Given the convergence between Navya-Nyāya discussions of ownership, *Dāyabhāga* commentarial literature and the emergence of a Gauḍa school of Dharmaśāstra (rivaling the Bhaṭṭas’ southern school of thought), Kamalākaraḥṭṭa’s reference to Raghunāthaśiromaṇi in a polemic against Jīmūtavāhana is hardly coincidental. With an eye towards these debates, we may turn to Kamalākara’s metaphysical understanding of svatva in the *Mīmāṃsākutūhala*.

3.C.2.B: The Metaphysics of Ownership: Svātvaśakti in the *Mīmāṃsākutūhala*

The *Mīmāṃsākutūhala*, a brief investigation of the principal metaphysics of Mīmāṃsā, engages with several novel discussions in early modern śāstric debate. Examples include the relationship between Bhakti and Mīmāṃsā and the denotative

²⁸⁷ *Vivādatāṇḍava*, 3. tatra svatvaṃ padārthāntaram iti **śiromaṇibhaṭṭācāryāḥ**.

²⁸⁸ *Vivādatāṇḍava*, 3. svam iti vyavahāraṇiṣayatvaṃ śaktiviṣayatvaṃ vā. The 1901 edition seems to have a more persuasive reading: “śaktiviṣeṣa” 279.

²⁸⁹ *Dānakamalākara*, Bhandarkar Oriental Research Institute Ms. No 575 (103/Visrama (1)) fol 2a: svatvaṃ ca svam iti buddhiviṣayatvayogyatetyeke. padārthāntaram eveti **śiromaṇibhaṭṭācāryāḥ** śaktiviṣeṣa ityanye **devalo** ‘pi.

capacity of vernacular languages.²⁹⁰ Another novel topic addressed in a relatively short section of this text is *svatva*. Kamalākara quotes from the works of Raghunātha Śiromaṇi and Rāmabhadra Sarvabhauma, two prominent Naiyāyikas from Navadvīpa whose treatises on ownership combine a defense of *upamasvatva* with a view of ownership's causes as determined by *Dharmaśāstra*.²⁹¹ Kamalākara rejects these logicians' theories and argues for a metaphysics of *svatva* which coincides with the conclusions of the *dāyabhāga* section of his *Vivādatāṇḍava*. For Kamalākara, *svatva* is a śakti, a particular causal capacity, neither a *padārtha* nor a qualified *abhāva*. The *Mīmāṃsākutūhala* provides a unique glimpse into the state of *svatva* debates in the early seventeenth century amongst Nyāya-influenced Mīmāṃsakas. It also reveals that Navya-Nyāya debates concerning ownership were a significant challenge to the *Mitākṣarā*'s theory of inheritance and warranted a sustained analysis in a Nyāya-inflected Mīmāṃsā idiom.

Kamalākara begins his discussion of *svatva* in the *Mīmāṃsākutūhala* by weighing Raghunātha Śiromaṇi's arguments from *Padārthatattvanirūpaṇa* - that *svatva* is a *padārtha* which is cognized as a connection between an individual and an object, namely, "this is his."²⁹² *Yatheṣṭaviniyogayogyatva* cannot be a valid definition of *svatva* because someone else's food might be *fit* to eat and food is, generally, fit to eat before *and* after sale and purchase.²⁹³ Raghunātha argues that the use of *Dharmaśāstric* injunctions such as "don't take someone else's things" to support the

²⁹⁰ For Kamalākara's rejection of Kauṇḍa Bhaṭṭa, a 'New Grammarian's' attempt to posit *bhāṣābhidhānaśakti*, and Kamalākara's defense of *Bhakti*, see Pollock, "New Intellectuals," 3-31. For an analysis of Kamalākara's defense of the "jñānakarmasamuccaya," see Anand Venkatkrishnan, "Mīmāṃsā, Vedānta, and the Bhakti Movement" (PhD Dissertation, Columbia University, 2015), 176.

²⁹¹ For Raghunātha and Rāmabhadra, see Kroll, "A Logical Approach to Law," 98-100 & 123-124.

²⁹² *Mīmāṃsākutūhala*, 28: tathā hi - caitrasyedaṃ dhanam iti dhanavṛttiś caitrasambandhaḥ pratīyate.

²⁹³ *Ibid.*, 28: na ca yatheṣṭaviniyogayogyatvaṃ tat, viniyogo hi na bhakṣaṇādikaṃ, parakīye tatsambhavāt... kiñca yogyatvaṃ nāma na dhanasvarūpaṃ, tasya krayavikrayādeḥ prāg ūrdhvañ ca sattvāt.

definition of svatva as yatheṣṭaviniyogayogyatva are circular because they rely on an understanding of svatva themselves.²⁹⁴ Rather, svatva must be a padārtha of its own which is created by acts such as purchase and a father's death and destroyed through acts such as sale.²⁹⁵ All of this follows Raghunātha's *Padārthatattvanirūpaṇa* almost verbatim.²⁹⁶ Kamalākara, parroting Raghunātha, asks "how then can a son have ownership in his father's assets while his father is alive?"²⁹⁷ Raghunātha asks how, if one only acquires ownership on the death or relinquishment of its previous owner, there could there be a division of preexisting property.²⁹⁸

Kamalākara answers both objections by appealing to the *Mitākṣarā*: he states that sons have a proprietary right in their father's assets because those assets are apratibandhadāya and because Vijñāneśvara, etc., argue that svatva is secular.²⁹⁹ Kamalākara's arguments are intriguing because his objection to a theory of svatva as a padārthāntara is predicated on his commitments in Dharmaśāstra. Kamalākara is unwilling at this stage in the argument to accept a definition of svatva which relies on the Dharmaśāstra to determine its causes (śāstraikādhigamya), because that contradicts Vijñāneśvara's formulation of svatva as ungoverned by śāstra. Kamalākara's argument is not particularly convincing without taking into account his defense of Vijñāneśvara in the *Vivādatāṇḍava*. However, if we, like Kamalākara,

²⁹⁴ Ibid., 28: na ca śāstrāṇiṣiddham bhakṣaṇādikaṃ viniyogaḥ. parasvaṃ nādadīta ityādisāstrasya hi svatvāpratītau katham pravṛtīḥ? tatas ca parasparāśrayaḥ.

²⁹⁵ Ibid., 29: tac ca pratigrahakrayapitrādīmaraṇair janyate. dānavikrayādyaiś ca nāśyate.

²⁹⁶ Kroll, "A Logical Approach to Law," 98-99 & 103: evaṃ svatvam api padārthāntaram. yatheṣṭaviniyogayogyatvaṃ tad iti cet ko 'sau viniyogaḥ. bhakṣaṇādikaṃ iti cet. na, parakīye 'py annādaḥ tatsambhavāt. śāstrāṇiṣiddham tatheti cet kiṃ tac chāstram. parasvaṃ nādadītetyādikaṃ iti cet svatvāpratītau katham tatpravṛtīḥ. tasmāt svatvam atiriktam eva. pramāṇaṃ ca tatra parasvaṃ nādadītetyādikaṃ śāstram eva. tac ca pratigrahopādānakrayapitrādīmaraṇair janyate dānādibhiś ca nāśyate. kāraṇānām ekaśaktima[t]tvāt kāryāṇām vaijātyād ca kāryakāraṇabhāvanirvāhaḥ iti dik.

²⁹⁷ *Mīmāṃsākutūhala*, 29: katham tarhi pitṛjīvane taddhane putrasya svatvam?

²⁹⁸ Ibid., 29: katham tarhi svasya sato vibhāgaḥ?

²⁹⁹ Ibid., 29: tasyāpratibandhadāyatvāt... laukikaṃ hi svatvam iti vijñāneśvarādayaḥ.

accept apratibandhadāya as a given fact, then the rejection of Raghunātha becomes more persuasive.

Next, Kamalākara weighs Rāmabhadra Sārvabhauma's arguments from a commentary on the *Padārthatattvanirūpaṇa*, the *Padārthatattvavivecanaparakāśa*. Rāmabhadra argues that svatva is best understood through the padārtha of abhāva, or absence. He defines svatva as the completion of acts such as purchase which produce svatva, qualified by the prior absence of acts such as sale which destroy svatva, or the prior absence of acts such as sale and donation which destroy svatva qualified by the completion of acts such as purchase which create svatva.³⁰⁰ Rāmabhadra assumes, like Raghunātha, that a single capacity (śakti) can produce and destroy various instances of svatva, but dispenses with svatva as a padārtha by postulating svatvatva (property-ness) as an indivisible imposed property (akhaṇḍopādhi).³⁰¹ The thrust of Rāmabhadra's argument is that because we conventionally describe the completion of purchase as creating ownership and the completion of sale as destroying ownership, one would need to postulate a super-padārtha, svatvatva, if svatva was a padārtha. It is simply easier in his opinion to postulate a single svatva and different abhāvas.³⁰² Rāmabhadra's position is not

³⁰⁰ Ibid., 29: paramate svatvasya yāni nāśakāni vikrayādīni teṣāṃ prāgabdhāvaviśiṣṭāḥ svatvotpādakāḥ krayapratigrahādihvaṃsāḥ taddhvaṃsaviśiṣṭā vā vikrayādānaprāgabdhāvāḥ svattvaṃ.

Compare to the *Padārthatattvavivecanaparakāśa*, p. 84, cited in Kroll, "A Logical Approach to Law," 128: tathāpi yathoktaviniyogārhatvāder apāstatayā kim idaṃ svatvam iti cet[.] kvacid vikrayaprāgabdhāvaviśiṣṭakrayā[di]vināśḥ kvacit ca dānādiprāgabdhāvaviśiṣṭaḥ[.] pratigrahādihvaṃsa eva[.] tathā pratigrahādeḥ pūrvaṃ na tathā pratyayaḥ pratigrahādihvaṃsavirahāt dānādyanantaram ca na svatvavyavahāras tatprāgabdhāvavirahāt[.] tatra maraṇasya ca dhvaṃsātmakatayā vikrayādiprāgabdhāvaviśiṣṭaṃ tad eva kvacit svatvaṃ tadadhikaraṇakṣaṇadhvaṃso vā.

³⁰¹ *Mīmāṃsākutūhala*, 29: nāśe jāter abhāve (a)py akhaṇḍopādihayaḥ kāryatāvacchedakāḥ, nānāvaijātyāpekṣayaikaśakter eva laghutvāt. Compare Kroll, 127.

³⁰² *Mīmāṃsākutūhala*, 29: ādyam ādāya svattvotpattiḥ, dvitīyam ādāya naṣṭam iti ca vyavahārah, bhinne svatve svatvatvam api bhinnam upeyam, tadvaraṃ klpteṣu dhvaṃseṣu svatvam eva kalpitam iti. Compare Kroll, "A Logical Approach to Law," 129. "It is unclear whether Rāmabhadra is talking about postulating *svatvatva* or is actually considering a *padārtha* of *svatvatva*. What is written above reflects this study's belief that Rāmabhadra likes the imposed properties *svatvatva* and *svatvanāśatva*, and may still believe in Raghunātha's *śakti* theory."

entirely clear, but it appears that he argues for a theory of svatvatva (as well as svatvanāśatva) as akhaṇḍopādhis and svatva as inhering in various forms of abhāva generated by actions which share a single śakti to produce svatva.

Kamalākara's objections are threefold. First, following his criticism of Raghunātha, he argues that a theory of svatva as a completed action qualified by a prior absence would not be able to account for a son's proprietary right in his father's estate.³⁰³ Neither Raghunātha nor Rāmabhadra, Bengalis from Navadvīpa, support a son's right by birth and Kamalākara immediately rejects a theory which prohibits a son's right by birth.³⁰⁴

Next, Kamalākara argues that Rāmabhadra's definition of svatva "suffers from a lack of generality (ananugamagrasta) because there is no way to distinguish [between a dhvaṃsa qualified by a prāgabhāva or a prāgabhāva qualified by dhvaṃsa] (vinigamanāvirahāt)."³⁰⁵ For Kamalākara, it is unduly complicated to postulate svatva as accomplished through the inherence of different absences in an asset because it is far simpler to postulate svatva as inhering in an asset.

Kamalākara argues that "[such a definition] is throttled by its [svatva's] accomplishment [sādhana] through the inherence [samavāya] of different absences [bhinnābhāva] in a material locus [adhikaraṇa]." After all, "it is simpler to postulate a distinct svatva than to postulate svatva on the part of manifold completions [dhvaṃsas]."³⁰⁶ Kamalākara ends his critique with a brusque "fine, whatever" (astu

³⁰³ *Mīmāṃsākutūhala*, 29: tad etat pitryapitāmahadhane putrasya svatve (a)vyāptam. Kamalākara offers no warrant for this assertion.

³⁰⁴ Kroll, "A Logical Approach to Law," 128. Rāmabhadra argues that "because death consists of the ultimate conclusion, death itself, in some cases, when qualified by the prior absence of sale and the like on the part of the heirs, or the conclusion of the instant that constitutes the substratum of death, so qualified, can be said to constitute *svatva*."

³⁰⁵ *Mīmāṃsākutūhala*, 29. Generality, anugama, and its opposite, ananugama, are difficult to translate. For a brief overview, see C. Goekoop, *The Logic of Invariable Concomitance in the Tattvacintāmaṇi: Gaṅgeśa's Anumitinirūpaṇa and Vyāptivāda* (Dordrecht: D. Reidel, 1967), 131.

³⁰⁶ *Ibid.*, 29: nānādhvaṃsānām svatvakalpanāpekṣayā bhinnasvatvasyaiva laghutvād adhikaraṇabhinnābhāvasamavāyasāadhanena galahastitañ ca.

yathā tathā).³⁰⁷ Rather, he says, it is extremely clear that svatva is placed inside the conceptual category of śakti, a particular potentiality, for how else could one account for such things as the creation of the svatva of one person upon the abandonment of the svatva of another person?³⁰⁸ Kamalākara favours a theory of svatva as a śakti. His cousin, Nīlakaṇṭha, also argues that ownership “is a kind of causal capacity arising from purchase, acceptance (of a gift) and the like... [and] that purchase and the like are the causes of ownership is understood from secular usage alone and not from śāstra.”³⁰⁹

Kamalākara’s philosophical approach to svatva attempts to bring his understanding of dāya in alignment with the metaphysics of Mīmāṃsā. He is not content merely to apply Mīmāṃsā rules of interpretation to ambiguities and controversies in Dharmaśāstra. Instead it appears that he wants to advance a definition of svatva which could be applied consistently across disciplines without compromising its conceptual coherence. For Kamalākara it is important that svatva as a causal capacity be both logically efficient and legally accommodating. Kamalākara’s rejection of svatva as an conceptual category for reasons of logical coherence is buttressed by its inability to account for sons’ coexistent svatva in a family estate. This is not surprising given that Kamalākara’s opponents such as Raghunātha and Rāmabhadra employed their logical studies of svatva to reject the *Mitākṣarā*’s system of dāya in favor of Jīmūtavāhana’s.

Kamalākara’s engagement with Navya-Nyāya in the *Mīmāṃsākuṭūhala* thus represents a necessary adjunct to his defense of (and Vijñāneśvara’s) extra-śāstric

³⁰⁷ Ibid., 26.

³⁰⁸ Ibid., 26: tathāpy atikṣālyamānaṃ svatvaṃ śaktikukṣinikṣiptam eva, katham anyathā svatvatyāgaparasvattvādikam sambhaved iti. Kamalākara also discusses śakti in the *Mīmāṃsākuṭūhala*, 12-14.

³⁰⁹ *Vyavahāramayūkha*, 59: tac ca [svatvaṃ] krayapratigrahādijanyaḥ śaktiviśeṣaḥ. tatkāraṇatā tu krayādīnāṃ lokavyavahārād eva gamyate na śāstrāt.

theory of svatva in the *Vivādatāṇḍava*. Kamalākara's encounter with Raghunātha and Rāmabhadra may also help us to understand the importance of his polemic against Jīmūtavāhana within the context of Benares' competitive intellectual milieu. Śrīnāthācāryacūḍāmaṇi, Raghunātha Śiromaṇi and Raghunandana were all contemporaries in Navadvīpa and their approaches to ownership and inheritance show a remarkable consistency of thought. We saw earlier that Kamalākara quoted and rejected a Gauḍa school of Dharmaśāstra - and Śrīnāthācārya in particular - at length in his *Nirṇayasindhu* and that the Bhaṭṭa family generally took a hostile attitude toward Gauḍa Dharmaśāstrins and Navya-Naiyāyikas.³¹⁰ Further, Kamalākara's father, Rāmakṛṣṇabhaṭṭa, was a staunch defender of the *Mitākṣarā*, so an attack on the family's favorite treatise on inheritance - particularly by upstart Bengali logicians - would have presented a threat to the superiority of the Bhaṭṭa's status as exemplary southern Brāhmaṇas.

This debate occurred *across disciplines* - Kamalākara's Mīmāṃsā and Dharmaśāstra writing are inexorably linked. The Mīmāṃsā/Dharmaśāstra nexus that formed the core of the medieval *Mitākṣarā* school was rivaled in the 17th century by the rise of a competing Navya-Nyāya/Dharmaśāstra nexus in Bengal. Kamalākara's limited adoption of the Navya-Nyāya idiom in his *Mīmāṃsākutūhala* would have demonstrated that he too could argue within and against a difficult and prestigious discursive register. If Rāmabhadra's *Padārthatattvavivecanaprakāśa* presented the latest and greatest discussion of svatva, then we might understand why Kamalākara was keen to summarize and reject it. Similarly, if Jīmūtavāhana and Raghunandana's comments on dāya presented a hitherto unaddressed polemic against the *Mitākṣarā* in Dharmaśāstra, it would make sense that Kamalākara and

³¹⁰ See notes 91-93.

his father would devote their energies to responding to them.

3.C.3: Ownership and Inheritance According to Gāgābhaṭṭa

If Kamalākarabhaṭṭa was the principal intellectual champion of the Bhaṭṭa family's southern brand, Gāgābhaṭṭa, alias Viśveśvarabhaṭṭa was its chief salesperson. Gāgābhaṭṭa, like his uncle Kamalākarabhaṭṭa, was a polymath who wrote on virtually every subject in Dharmaśāstra and Mīmāṃsā.³¹¹ Unlike Kamalākara, Gāgābhaṭṭa took a direct interest in politics. He traveled to Mahārāṣṭra on at least two occasions, one of which was to perform Śivajī's coronation in 1674.³¹² Gāgābhaṭṭa's sojourns were integral to the Marāṭha state's adoption of Bhāṭṭa Dharmaśāstra as the śāstric root of its legal system. Like other members of the Bhaṭṭa family, Gāgābhaṭṭa quotes extensively from his forebears - often without identifying his sources. Gāgābhaṭṭa had a particular preference for Kamalākarabhaṭṭa's Dharmaśāstric works.³¹³ Gāgābhaṭṭa adopts two of Kamalākarabhaṭṭa's signature arguments: a polemic against the *Dāyabhāga*'s theory of upamasvatva; and a discussion of ownership that rejects Navya-Nyāya theories of ownership as regulated by the śāstra.

I examine three of Gāgābhaṭṭa's works - the *Vyavahāra* and *Dānakāṇḍas* of the *Dinakarodyota* and the sixth adhyāya of *Bhāṭṭacintāmaṇi* - and I advance two arguments.³¹⁴ First, Gāgābhaṭṭa's Dharmaśāstric arguments follow Kamalākarabhaṭṭa's comments in the *Vivādatāṇḍava* and in the *Mīmāṃsākutūhala* and attest to the Bhaṭṭas' nexus between Navya-Nyāya-inflected Mīmāṃsā and

³¹¹ Gāgā completed his father's *Dinakarodyota* - a comprehensive Dharmaśāstra anthology divided into subject-specific kāṇḍas. He wrote commentaries on the *Mīmāṃsāsūtras* (*Bhāṭṭacintāmaṇi* and *Kusumāñjali*) and he wrote a verse summary of portions of the *Mīmāṃsāsūtras* after the *Tarkapāda*.

³¹² See sections 3.1.C-D, above.

³¹³ For example, he draws on the *Dānakamalākara*, the *Śūdrakamalākara*, and the *Rājyābhīṣekhapaddhati*.

³¹⁴ *Bhāṭṭacintāmaṇi*, Bhandarkar Oriental Research Institute Ms. No 613 37/1866-8.

southern Dharmaśāstra. Second, Gāgābhaṭṭa's arguments suggest that a hostility to a Gauḍa school of inheritance was an enduring feature of the Bhaṭṭa family's Dharmaśāstra corpus - and not a one-off from Kamalākarabhaṭṭa.

3.C.3.A: Inheritance in the *Vyavahārakāṇḍa* of the *Dinakarodyota*

In the *Vyavahārakāṇḍa* of the *Dinakarodyota*, Gāgābhaṭṭa argues against a series of assertions that, while never identified with Jīmūtavāhana explicitly, are clearly modeled on the *Dāyabhāga*. Gāgābhaṭṭa defines the division of inheritance (vibhāga) as “the division into separate (shares) of that (paternal) estate.”³¹⁵ Further, “This definition extends to a partition (made by) sons, because sons, grandsons and the like have that (ownership before partition) in as much as ownership is produced in the assets of the father and the like by birth alone.”³¹⁶ Gāgā gives two warrants for this assertion, which he attributes to the author of the *Mitākṣarā*: secular convention and the occurrence of restrictions on a father and grandfather's independent ownership when they have grandsons (and sons).³¹⁷

According to others, Gāgā relates, “division is the making of separate (shares, which) gives birth to the production of ownership.”³¹⁸ For them, this is “because that (ownership on the part of sons) arises from division alone in as much as a son does not have ownership in the assets of (his) father, etc., before partition.”³¹⁹ For these opponents - almost certainly defenders of the *Dāyabhāga* - śāstra is the source of knowledge about ownership's causes. They argue that one does not hear of birth as

³¹⁵ *Dānakāṇḍa*, fol. 111a: atha vibhāgākhyam vivādapadam nirūpyate. tallakṣaṇam uktaṁ **nāredena**. vibhāgo 'rthasya paitrasya putrair yatra prakalpyate/ dāyabhāga iti proktam tadvivādapadam budhaiḥ. tasya svasya pṛtak[k]araṇavibhāgaḥ.

³¹⁶ *Ibid.*, fol 111a: na ca putrasya pitur dravye svatvābhāvāt putravibhāge avyāptiḥ. putrapautrādīnām **utpatyaiva** pitrādidravye svatvotpatyā tatsattvāt. This is a reference to the apocryphal sūtra of Gautama.

³¹⁷ *Ibid.*, fol 111a: loke tathaiva vyavahārāt. evaṁ ca sthāvarasyaiva sarvasya na pitāmaha iti pautrasatve 'pi svatve pitṛpitāmahayo svātantryaniṣedha upapadyata iti **mitākṣarākārah**.

³¹⁸ *Ibid.*, fol 111a: anye tu svatvotpatijanapṛthakkaraṇam vibhāgaḥ. This of course is the position taken by the Gauḍa school.

³¹⁹ *Ibid.*, fol 111a: pit[r]ā[d]idravye putrasya vibhāgāt pūrve svatvābhāvena vibhāgād eva tadutpatteḥ.

a cause of ownership in smṛti passages from Gautama (which list various causes of ownership).³²⁰ Gāgābhaṭṭa's pūrvapakṣin pins his argument on a śloka attributed to Yājñavalkya that states that "a father is not the master of all immovable assets," which while intuitively a statement that supports janmasvatva, is read by Jīmūtavāhana and his followers as the inverse.³²¹ Gāgā's opponent parrots Jīmūtavāhana when they state that "one should certainly not ask 'if partition produces fitness for use as desired (i.e., ownership), how could that (ownership) arise for a single son (after the death of his father) in so much as there is no partition (by that son).'"³²² In truth, says the opponent, "in that case, the death of the father alone produces that (ownership for the son)."³²³ Having summarized Jīmūtavāhana's arguments succinctly, Gāgābhaṭṭa instructs the reader to consider the examination of ownership and the like in his *Dānakāṇḍa*.³²⁴

3.C.3.B: Ownership in the *Dānakāṇḍa* and in the *Bhāṭṭacintāmaṇi*

Gāgābhaṭṭa opens the *Dānakāṇḍa* with a definition of giving (dāna) as an activity amenable to the production of the ownership of another (preceded by) the cessation of the svatva (of the previous owner).³²⁵ Before Gāgābhaṭṭa turns to the definition of ownership, he reproduces an argument from Kamalākarabhaṭṭa's *Dānakamalākara* to the effect that Raghunandana Bhaṭṭācārya's assertion in the

³²⁰ Ibid., fol 111a: svāmīrikthakrayasaṃvibhāgaparigrahādhiḡameṣv ityādismṛtiṣu svatvajanakatvenāśravaṇāt. The connection between śāstra and ownership is implied.

³²¹ Ibid., fol 111a: ata eva maṇimuktāpravālānām sarvasyaiva pitā prabhur iti putrasatve pituḥ svātantryānuvāda upapadyate. Cf *Dāyabhāga*, 2.22-4: māṇimuktāpravālānām sarvasyaiva pitā prabhur / sthāvarasya tu sarvasya na pitā na pitāmahaḥ // A quintessential feature of the *Dāyabhāga* school is to read against the straight-forward spirit of the verse - that fathers and grandfathers may dispense with *all* of their movable property, but not *all* of their immovable property - and argue that the repetition of 'all' (sarvasya) in the second line iterates a father and grandfather's absolute independence with regard to their property. Nīlakaṇṭha and Kamalākara read this verse as restricting a father's powers of alienation over *all* kinds of property severely.

³²² Ibid., fol 111b: na caivaṃ vibhāgasya yatheṣṭaviniyogayogyatājanakatayā ekaputrasya vibhāgābhāvena katham tadutpattir iti vācyam. Cf *Dāyabhāga* 2.12.2.

³²³ Ibid., fol 111b: pitādimaraṇasyaiva tatra tadutpadam. Cf *Dāyabhāga* 1.3.

³²⁴ Ibid., fol 111b: svatvādinirūpaṇam matkṛtadānakāṇḍe tu saṃdhyeyām.

³²⁵ *Dānakāṇḍa*, fol 1b: dānatvaṃ tu svatvadhvaṃsaparasvatvotpatyanukūlavypāratvam.

Śuddhitattva - that ownership of an unaccepted gift returns to the giver - is mistaken.³²⁶ For Gāgā, like Kamalākara, the polemic against Gauḍa authors is ubiquitous. Gāgābhaṭṭa opens his discussion concerning ownership itself by turning to the problem of the Viśvajit sacrifice from the sixth adhyāya of the Mīmāṃsāsūtras.³²⁷ Gāgābhaṭṭa introduces a pūrvapakṣin who argues that:

with regard to the gift of a son or a daughter, that is giving in the secondary sense because: 1) it is impossible to destroy that (sva relationship to the son or to the daughter) inasmuch as that svatva (personal relationship) is not distinct from the state of being a son or a daughter. After all, the śiṣṭas wouldn't use the word 'mine' with reference to a gift of that (child of theirs).³²⁸

Gāgābhaṭṭa responds by claiming that birth (utpatti) is cause of ownership for (or with reference to) sons and daughters and that the gift of a son or daughter is a gift in the primary sense because giving destroys that - proprietary - svatva.³²⁹

Gāgābhaṭṭa appeals, implicitly, to secular convention when he adds that “ the recognition ‘the given daughter is not my sva’ is experienced (by everyone) from the wives (of lowly) shepherds’ to the wives of paṇḍits.”³³⁰ Gāgā’s terse analysis appears to posit a theory of janmasvatva on the part of a father in his children and on the part of children in their father’s assets.

Gāgābhaṭṭa, citing Kamalākara’s *Dānakamalākara*, notes that “svatva is the state of being the object of the cognition ‘mine,’ fitness for use as desired or,

³²⁶ *Dānakāṇḍa*, fol 2b: yat tu tatra dātuḥ svatva[m] punarutpadyata iti **smārṭtabhaṭṭācācāryāḥ**. tan na. Cf *Dānakamalākara*, fol 2a: yat tu **śuddhitattve** sampradānāgrahe tyāgāmaṣṭam [this is a bit unclear] api dātu svatvam punar utpadyate. iti smārṭta. tan na.

³²⁷ See note 95.

³²⁸ Ibid., fol 3a-b: kanyāputradāne tu putratvakanyātvātiriktasvatvābhāvena tannāsāsamḥbhavāt. pratigrahītur yatheṣṭaviniyogyatvarūpasvatvotpādāsamḥbhavāt ca na mukhyadānatvam. ata eva taddānena mameti śabdaprayogaṃ nācaranti śiṣṭā ity āhu.

³²⁹ Ibid., fol 3b: evam putrakanyayor api **utpatter eva** svatvajanakatāstu. tasya dānena nāsān mukhyam eva dānatvam. This appears to be a reference to Gautama’s apocryphal sūtra. See note 124.

³³⁰ Ibid., fol 3b: ata eva dattā kanyā na mama svam iti pratītir āgopālāṅganam ā[e]paṇḍitam ānubhāvīkī. See *Monier-Williams’ Sanskrit Diction*, 126 for a similar usage of ā+(caste) to denote a range of castes.

according to (Raghunātha) Śiromaṇi, a distinct padārtha.”³³¹ In his discussion of the Viśvajit sacrifice in the sixth adhyāya of the *Bhāṭṭacintāmaṇi*, Gāgā repeats his triple definition of ownership.³³² However, Gāgā does not include svatva in his list of padārthas in his *Bhāṭṭacintāmaṇi*, so his reference to Raghunātha is not likely one of acceptance.³³³ Gāgābhaṭṭa employs Navya-Nyāya terminology (especially delimiter - avacchedaka) to distinguish between proprietary and familial relationships (although as we saw above, birth may establish a proprietary *and* a familial relationship). In what appears to be an echo of Kamalākarabhaṭṭa and Nīlakaṇṭhabhaṭṭa’s theory of ownership as a śakti, Gāgābhaṭṭa frames the difference between a familial and a proprietary relation in terms of śakyatā - capacity.³³⁴

Returning to the *Dānakāṇḍa*, Gāgābhaṭṭa appears, at first blush, to support Raghunātha’s opinion that ownership’s causes are limited to those causes mentioned in Dharmaśāstra explicitly.³³⁵ Gāgā, like Kamalākara and Madanasimha, argues that apratibandha and sapratibandhadāya are mentioned by Gautama explicitly.³³⁶ Gāgā, however, does not seem content to defend janmasvatva by appealing to its instantiation in smṛti alone. Rather, he turns to a secular theory of ownership, by appealing to Mīmāṃsā again. He states that “if theft, etc., are also

³³¹ Ibid., fol 3b: svatvaṃ ca svam iti buddhiviśayatvaṃ. yattheṣṭavinivogyatvaṃ vā padārthāntaram iti **śiromaṇi**.

³³² *Bhāṭṭacintāmaṇi*, fol 22b-23a: svatvaṃ ca svam iti buddhiviśayatvayatheṣṭavinivogyatvaṃ vā padārthāntaram ity anye.

³³³ The fourth adhyāya of the *Bhāṭṭacintāmaṇi* - in which Gāgābhaṭṭa almost certainly gives his preferred definition of ownership - is not available to me at present. However, the Tarkapāda of the *Bhāṭṭacintāmaṇi* lists seven padārthas, so it seems likely that he rejected Raghunātha’s theory of svatva as padārtha. *Bhāṭṭacintāmaṇi*, 17: evaṃ ca dravyaguṇakarmasāmānyasamavāyaśaktyabhāvāḥ sapta padārthāḥ.

³³⁴ Ibid., fol 23a: svaśabdasya vācyatāvacchedakadhatatvādinānā[?]. tena nānārtho ‘pi śakyatāvacchedakabhedāt. The manuscript of the *Bhāṭṭacintāmaṇi* that is available to me appears to be corrupt in many places. As I understand this passage, differences in śakyatā are what delimit the different meaning of the word sva - when used in reference to one’s children and family. I hope to examine the fourth adhyāya of the *Bhāṭṭacintāmaṇi* at a later date.

³³⁵ *Dānakāṇḍa*, fol 3b: tasyotpādakāni svāmī rikthakrayasaṃvibhāgaparigrahādhiḡgameṣv iti **gautamenoktāni**.

³³⁶ Ibid., fol 3b: sapratibandho dāyo ri[kth]am yathā mātāmahadhane dauhitrasya tatputrapratibandhāt. apratibandho dāyaḥ saṃvibhāgaḥ. yathā pitṛdhane putrasya.

means of producing ownership, then (the only difference is that) inheritance, etc., are dharmic.”³³⁷ An opponent scoffs at the proposition that theft and the like - prohibited by the śāstra - might be a means of acquiring ownership, but Gāgābhaṭṭa responds that there is no contradiction between being a means of acquiring ownership and being prohibited by the śāstra.³³⁸ This is a startling admission and Gāgābhaṭṭa justifies it by paraphrasing the Prābhākara-Mīmāṃsā school’s understanding of the restrictions on acquiring ownership from fourth adhyāya of the *Mīmāṃsāsūtras*. Gāgā concludes that these (restrictions regarding ownership) are puruṣārtha, so a man sins if he gives or sacrifices, etc., with assets acquired by means prohibited (by the śāstra), but the gift, etc. is (legally) valid.³³⁹

Gāgābhaṭṭa’s reasoning about ownership and its causes in the *Dānakāṇḍa* supports his defense of the *Mitākṣarā* explicitly and implicitly. He attempts to locate apratibandhadāya and sapatibandhadāya in the *Gautamadharmasūtras* explicitly. He makes two implicit arguments that are far more persuasive. First, he argues that ownership by birth is rooted in everyday experience. Second, he argues that śāstric restrictions concerning acquisition do not have the force of law. I doubt very much that Gāgābhaṭṭa endorsed a view of theft as a cause of ownership (something Kamalākara and virtually every advocate of a secular theory of ownership reject vociferously). Rather, Gāgābhaṭṭa appears to argue that Dharmaśāstra does not determine what is or is not a legally valid means of acquiring ownership. That, as Kamalākara and Madanasimha argue, is best left to the secular world. Taken together, Gāgābhaṭṭa’s defense of the *Mitākṣarā* in the *Vyavahārakāṇḍa* - from the

³³⁷ Ibid., fol 3b: yady api cauryādayo ‘pi svatvotpattyupāyāḥ santi. tathāpi rikthādīnām dharmyatvaṃ.

³³⁸ Ibid., fol 3b: nanu cauryādīnām niṣiddhatayā katham svatvopāya iti cen na. niṣiddhatvasvatvopāyatvayor avirodhāt.

³³⁹ Ibid., fol 4a: ata eva teṣā[m] puruṣārthatām... tena niṣiddhopāyārjitena dānayāgādyanuṣṭhāne puruṣasya pratyavāyo na dānādivaiguṇyam. See chapter 1 for the nature of puruṣārtha and kratvārtha and its relationship to the *Mitākṣarā* school of thought.

attacks of an opponent very much in Jīmūtavāhana's mould - and his rejection of Raghunātha's theory of ownership - as determined by the śāstra - in the *Dānakāṇḍa* are linked. They form, like Kamalākarabhaṭṭa's arguments in the *Vivādatāṇḍava* and *Mīmāṃsākutūhala*, a comprehensive, Bhaṭṭa rejoinder to a Gauḍa school of thought. That Bhaṭṭa rejoinder continues the Mīmāṃsā/Dharmaśāstra nexus formed by the medieval *Mitākṣarā* school of thought but responds to new opponents from Bengal.

3.D: Conclusion

The broad, far-reaching developments - an expansion of paper-based bureaucracies, trans-national networks of pilgrimage and trade, etc. - that contemporary scholars associate with early modernity brought Brāhmaṇas from northern and southern India into contact and into conflict in places like Vārāṇasī. These battles for patronage and prestige seem to have produced colloquy and competition, particularly between Mahārāṣṭrian Brāhmaṇas like the Bhaṭṭas and Bengali Brāhmaṇas like the Bhaṭṭācāryas. The Bhaṭṭas were keen to portray themselves as pious exemplars of southern Brāhmaṇism and as Mīmāṃsā specialists. To an extent, this self-representation entailed a polemic against eastern, Bengali logicians. To a greater extent, this rivalry succeeded in raising the Bhaṭṭas and their texts to the apex of fame and influence, particularly in Śivajī's nascent Marāṭhī state.

Clearly, the Bhaṭṭas' defense of their family's ideas and the interlocking, intertextual nature of their textual corpus reveals a tightly-knit scholar family. One aspect of that family identity appears to be a systematic, critical response to the Gauḍa school of Dharmaśāstra that had emerged in Navadvīpa in the sixteenth century and that spread to Vārāṇasī from Bengali émigres such as Vidyānivāsa, Jayarāma Nyāyapañcānana and Raghudeva Bhaṭṭācārya.

If Śrīnāthācārya founded a Gauḍa school of thought by combining theories of upamasvatva (from Jīmūtavāhana's *Dāyabhāga*), śāstrically determined svatva (from Raghunāthaśiromaṇi's *Padārthatattvanirūpaṇa*) and miscellaneous religious festivals (from Śūlapāṇi, among others), the Bhaṭṭa family seem to have developed a rival, Bhaṭṭa school of thought that covered śraddhā, inheritance, ownership and virtually every conceivable topic in Dharmaśāstra. Ownership and inheritance were one crucial aspect of this debate. Kamalākarabhaṭṭa in particular defended the *Mitākṣarā* - of which his father was a keen advocate - by arguing against the *Dāyabhāga* and against the *Padārthatattvanirūpaṇa*. He was followed by Gāgābhaṭṭa, and possibly by Nīlakaṇṭhabhaṭṭa.

Kamalākara's selection of Rāmabhadra and Jīmūtavāhana for particular censure represents a continuation of the Bhaṭṭa family's debates against Bengali logicians who competed with them for prestige in the city of Vārāṇasī. We saw before that the *Dāyabhāga* may have risen to prominence in the sixteenth century when Śrīnāthācārya began to teach the text in his ṭol in Navadvīpa to pupils including Raghunandana.³⁴⁰ We also saw that Raghunandana held the 'chair' in smṛti at the same ṭol as Raghunātha Śiromaṇi.³⁴¹ We know little about Rāmabhadra Sārvabhauma, but he was "reported to have headed a famous ṭol, presumably somewhere in Navadvīpa, and to have instructed the great scholars Mathurānātha Tarkavāgīśa, Jayarāma Nyāyapañcānana, and Jagadīśa Tarkālaṅkāra."³⁴² Jayarāma Nyāyapañcānana and Raghudeva Bhaṭṭācārya, a scholar of logic who wrote on svatva, were Gauḍa signatories of the 1657 Banaras letter of judgement also signed by Nīlakaṇṭha and Gāgābhaṭṭa.³⁴³ These Bengali authors typically

³⁴⁰ Rocher, "Schools of Hindu Law," 125.

³⁴¹ Kroll, "A Logical Approach to Law," 101-102.

³⁴² Ibid., 123.

³⁴³ Ibid., 139.

rejected janmasvatva in their work on svatva and some, like Raghudeva, also wrote works on Dharmaśāstra.³⁴⁴

If the 1657 letter of judgement is authentic it implies an uninterrupted, if indirect, chain of transmission from early *Dāyabhāga* commentaries to Kamalākara's social milieu. Śrīnāthācārya taught the *Dāyabhāga* to Raghunandana, who worked in the same academy as Raghunātha. Rāmabhadra commented on Raghunātha's work, perhaps at the same ṭol in Bengal where Raghunandana taught the *Dāyabhāga*. Rāmabhadra wrote on svatva and taught Jayarāma Nyāyapañcānana and Raghudeva, who also wrote on svatva and Dharmaśāstra and lived in Varanasi alongside the Bhaṭṭas. Śaṅkarabhaṭṭa attributed enormous importance to Nārāyaṇabhaṭṭa's defeat of the leading Pandits of eastern India in Orissa and Delhi and svatva and dāya would have been exceptionally potent places for Kamalākara to continue Nārāyaṇabhaṭṭa's legacy.³⁴⁵

In short, the Bhaṭṭas' defense of the *Mitākṣarā* in the seventeenth century represents the first time that the *Mitākṣarā* was read *against* Jīmūtavāhana's *Dāyabhāga* and against a Bengali school of Dharmaśāstra more generally. The medieval *Mitākṣarā* school followed contemporary developments in Prābhākara-Mīmāṃsā texts, but its opponents were essentially the same as those in the *Mitākṣarā*. At the same time, the Bhaṭṭas localized the *Mitākṣarā* as the root text of Vārāṇasī, of southern, Mahārāṣṭrian Brāhmaṇas, and of Mīmāṃsakas. The Bhaṭṭas argue that ownership is best understood as a śakti that is produced by secularly recognized means of acquisition - such as birth, adoption, or marriage - and that does not always entail actual use as desired. We shall see in the following chapter

³⁴⁴ For Raghudeva, see Kroll, "A Logical Approach to Law," 130.

³⁴⁵ O'Hanlon, "Letters Home," 217-218. Also see Shastri, "Dakshini Pandits at Benares," 9-10.

that in the eighteenth century H.T. Colebrooke encountered a thriving Mahārāṣṭrian and Vārāṇasī school of thought that continued to defend the *Mitākṣarā* against more recent Bengali logicians' critiques and that appealed to the Bhaṭṭas' texts as authoritative works on inheritance and ownership.

Chapter 4: Anglo-Hindu Schools of Law

In 1810, Henry Thomas Colebrooke (1765-1837), a judge of the Superior Civil Court of Bengal and Professor of Sanskrit and Law at Fort William College in Calcutta, completed the most influential English translation of Sanskrit Dharmaśāstra works in the history of Western Indology, *Two Treatises on the Hindu Law of Inheritance: Jimutavahana and Vijnaneshwara*.¹ In his preface to *Two Treatises*, Colebrooke argued that Jīmūtavāhana's *Dāyabhāga* (12th-15th Centuries) and Vijñāneśvara's *Mitākṣarā* (11th-12th Centuries) are:

the two standard authorities of the *Hindu* law of inheritance in the school of *Benares* and *Bengal* respectively; and considerable advantage must be derived to [sic] the study of this branch of law, from access to those authentic works, in which the entire doctrine of each school... is supported, may be seen at one view... by exhibiting in an exact translation the text of the author with selected glosses of his commentators or from, the works of other writers of the same school.²

Colebrooke's thesis: that regional schools of Hindu law (in Bengal, Bihar, Benares, Bombay and Madras), which originated from the conflicting opinions of Jīmūtavāhana and Vijñāneśvara and took concrete form in the polemical commentaries of early modern Sanskrit exegetes in Bengal and Vārāṇasī, shaped the subsequent development of Anglo-Hindu personal law in Colonial and Post-Colonial India.³ Over the course of the nineteenth century, colonial Indologists and their native collaborators added to Colebrooke's legal schematic by recovering and translating the commentaries and works associated with the Bengali and

¹ H.T. Colebrooke, *Two Treatises on the Hindu Law of Inheritance* (Calcutta: Hindoostanee Press, 1810). For a biography of Henry Colebrooke, see Rosane and Ludo Rocher, *The Making of Western Indology: Henry Thomas Colebrooke and the East India Company* (London: Routledge, 2012).

² *Ibid.*, iii.

³ Rocher and Rocher, *The Making of Western Indology*, 115. Indeed, in 1868, the Privy Council laid down "that schools of Hindu law be a key consideration in judicial decisions."

Vārāṇaseya schools of inheritance.⁴ The orientalists' philological endeavors coincided with the expansion and consolidation of a colonial legal system that attempted to codify and to regulate the personal property of its Hindu (and Muslim) subjects - ostensibly in an effort to promote a liberal political economy.⁵

Colebrooke's formulation of schools of Hindu law and, more generally, Anglo-Hindu law have been subjected to withering critiques from two groups of contemporary scholars: historians and Sanskritists. Historians and anthropologists including Bernard Cohn, Neeladri Bhattacharya and Nandini Bhattacharya Panda contend that Colonial jurists - misled by enthusiastic orientalists - erred in viewing Dharmaśāstra, the scholastic texts of learned Brāhmaṇas, as the authoritative, customary law applicable to Hindus of all castes.⁶ Moreover, these scholars argue that distinctly European conceptualizations of religion, law and sacred texts lay at the heart of the British construction of Hinduism and Hindu Law as stable categories that could be recovered from careful textual study.⁷ For the historians, Dharmaśāstra in

⁴ After the publication of *Two Treatises* in 1810, Colebrooke arranged the printing of the *Mitākṣarā*, the *Mānavadharmasāstra* (with Kullūkabhaṭṭa's commentary), the *Dāyabhāga* (with Śrīkrṣṇa's commentary), and *Vīramitrodaya* (1812-15). Henry Borradaile (attached to the Bombay Court) published an edition and translation of the *Vyavahāramayūkha* in 1827.

⁵ See, among others, David Washbrook, "Law, State and Agrarian Society in Colonial India," *Modern Asian Studies* 15.3 (1981): pp. 649–721. For the later implications of religious personal law for religion, gender and the state in India, see Eleanor Newbigin, *The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community* (Cambridge: Cambridge University Press, 2013).

⁶ Bernard Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996); Neeladri Bhattacharya, "Remaking Custom: the Discourse and Practice of Colonial Codification," in *Tradition, Dissent and Ideology: Essay in Honour of Romila Thapar*, eds. R. Champakalakshmi & S. Gopal (New Delhi: Oxford University Press, 1996): pp. 20-51; Nandini Bhattacharya-Panda, *Appropriation and Invention of Tradition: The East India Company and Hindu Law in Bengal* (New Delhi: Oxford, 2008). Also see Raymond Schawb, *The Oriental Renaissance: Europe's Rediscovery of India and the East, 1680-1880* (New York: Columbia University Press, 1984), and P.J. Marshall, *The British Discovery of Hinduism in the Eighteenth Century* (Cambridge: Cambridge University Press, 1970).

⁷ Christi Merrill, "The Afterlives of Panditry: Rethinking Fidelity in Sacred Texts with Multiple Origins," in *Decentering Translation Studies*, eds. Judy Wakabayashi & Rita Kothari (Amsterdam: John Benjamin, 2009): pp. 75-94. For 'Hinduism' as a discursive object, see Ronald Inden, *Imagining India* (Oxford: Blackwell, 1990).

general and regional Dharmaśāstra *a fortiori* cannot be used to determine Hindu custom because Dharmaśāstra is not law.

Sanskritists, especially Ludo Rocher and Donald Davis, accept the proposition that Dharmaśāstra constitutes neither positive law nor a record of Hindu custom, but they add a further criticism of Anglo-Hindu law: that a close reading of Dharmaśāstra cannot support Colebrooke's formulation of schools of Hindu Law.⁸ Davis characterizes Colebrooke's theory of schools of Hindu law as "a phony, artificial creation," while Rocher argues for an ambiguous theory of Dharmaśāstric "school[s] of thought."⁹ Rocher accepts Colebrooke's selection of the *Dāyabhāga* as the representative Bengali Dharmaśāstric text on inheritance as warranted - provided that one accepts its purely academic status.¹⁰ Rocher notes, however, that "the choice of the *Mitākṣarā* puzzles me... [because] I personally think that the lawbook for 'the others' [the paṇḍits of Mithilā and, subsequently, Vārāṇasī] did not matter too much."¹¹ Strangely, Rocher admits that "there is no doubt that... there is *some* underlying regional unity... [in Dharmaśāstric texts because] when it comes to such basic principles as the role of the joint family manager, it makes sense to speak of 'the' Maithilas and of 'the'... Gauḍas... but, as far as anything beyond the general principles is concerned, pure individual sophistry prevails."¹²

One problem for Rocher, Davis, and Cohn is that their expertise in well-trodden, much read historical accounts of early colonial orientalism and Anglo-Hindu

⁸ Ludo Rocher, "Schools of Hindu Law," in *Studies in Hindu Law and Dharmaśāstra*, ed. Donald Davis (London: Anthem, 2014): pp. 119-128; Ludo Rocher, "Changing Patterson of Diversification in Hindu Law," in *Studies in Hindu Law and Dharmaśāstra*, ed. Donald Davis (London: Anthem, 2014): pp. 129-144; Donald Davis, *The Spirit of Hindu Law* (Cambridge: Cambridge University Press, 2010): pp. 89-107. Also see Rocher and Rocher, *The Making of Western Indology*, 112-116. Davis' assertion that Colebrooke "made up" these schools in 1825 is mistaken. The preface to *Two Treatises* (1810) makes a claim for the existence of schools of Hindu law fifteen year earlier.

⁹ Rocher, "Schools of Hindu Law," 127.

¹⁰ *Ibid.*, 125.

¹¹ Ludo Rocher, "Changing Patters," 138.

¹² *Ibid.*, 137.

jurisprudence far outweighs their knowledge of the original Sanskrit manuscripts from which that colonial jurisprudence emerged. Ironically, this criticism - that British administrators' ignorance (or contempt) of the paradigms of traditional Sanskrit Dharmaśāstra created a skewed theory of regional schools of Hindu law - has been accepted by many contemporary scholars without consulting the large number of Sanskrit legal digests in the archives of the East India Company. This chapter tests the accuracy of these criticisms by examining, for the first time, under-studied, early colonial digests of Sanskrit jurisprudence against the historical backdrop of the rise of British political hegemony in India, the development of Western Indology, and the collaboration of indigenous scholars of Sanskrit jurisprudence.

This chapter traces the construction of Hindu Schools of Law in Colonial India between 1772 and 1825. The chapter examines three digests of Sanskrit Dharmaśāstra that were compiled at the behest of the East India Company and whose English translations were utilized by British jurists in colonial courts: the *Vivādārṇavasetu* (translated in 1776 as *A Code of Gentoo Laws*), the *Vivādabhaṅgārṇava* (translated in 1795-6 as *A Digest of Hindu Law on Contracts and Successions*), and the *Vyavahārabālabhaṅgī* (which served, I argue, as the impetus for Colebrooke's *Two Treatises*). I accept that the basic premise of Anglo-Hindu Law - that Dharmaśāstric legal treatises encapsulate local custom - suffers from fundamental flaws. I argue, however, that the colonial era Dharmaśāstra digests articulate discernible, regionally specific schools of jurisprudential thought regarding ownership and inheritance.

The treatises do this, I contend, by recapitulating and by enhancing the eastern and southern scales of Dharmaśāstra texts that developed originally in Navadvīpa and Vārāṅasī in the seventeenth century. On the one hand the

Vivādārṇavasetu and the *Vivādabhaṅgārṇava*, compiled by teams of Bengali logicians, synthesize and defend the *Dāyabhāga*'s Bengali (Gauḍa) theories of ownership by the cessation of the ownership of the previous owner (uparamasvatva), ownership as discernible from the śāstra alone (śāstraikagamyatva), and a Sanskrit version of *factum valet* (what ought not to have been done is valid when done) against the opinions of Maithila rivals (often utilizing the formal techniques of Navya-Nyāya philosophy).¹³ On the other hand, the *Vyavahārabālabhaṅgī* - compiled by a Mahārāṣṭrian Mīmāṃsaka - synthesizes and defends the *Mitākṣarā*'s southern (Dākṣiṇātya) theories of ownership by birth (janmasvatva) and of ownership as secular (laukika) against the *Dāyabhāga* and logicians identified as Bengali (Prācyā, Gauḍa, etc.). Colebrooke's collaboration with Bālabhaṅga marks an important, and unacknowledged juncture in the history of Anglo-Hindu jurisprudence: when the Gauḍa/Mithilā debates found in the *Vivādārṇavasetu* and the *Vivādabhaṅgārṇava* were recalibrated as a debate between Gauḍa/Vārāṇaseya paṇḍits concerning the *Dāyabhāga* and the *Mitākṣarā*.

Conceiving of Dharmaśāstra as positive law and positing the existence of regionally specific schools of Dharmaśāstric jurisprudential philosophy constitute two independent propositions. In accepting the first proposition and rejecting the second proposition, I argue that Colebrooke's formulation of schools of law - particularly his formulation of Dharmaśāstric theories of ownership and inheritance as rooted in the *Dāyabhāga* and *Mitākṣarā* - constitutes a logical and an appropriate understanding of the state of Dharmaśāstra that he encountered directly in the Dharmaśāstra

¹³ Jīmūtavāhana argues that certain transactions involving property must be legally effective even if they are inequitable. This theory is often compared to the Roman Law maxim, "*quod fieri non debuit factum valet*" (what ought not to have been done is valid when done). For the history of this doctrine, see John Derrett, "Factum Valet: The Adventures of a Maxim," in *Essays in Classical and Modern Hindu Law: Anglo-Hindu Law* (Leiden: Brill, 1977): pp. 1-24.

anthologies compiled for the British and through his collaboration with Bengali, Maithila and Mahārāṣṭrian paṇḍits. Further, Colebrooke's hypothesis that Navya-Nyāya and Mīmāṃsā theories of ownership lie at the heart of the division of *Dāyabhāga* and *Mitākṣarā* schools of Sanskrit jurisprudence is supported by the *Vivādārṇavasetu*, the *Vivādabhaṅgārṇava*, and the *Vyavahārabālabhaṭṭī*'s discussions of ownership and inheritance.

In the previous two chapters I traced the development of Gauḍa, Maithila and Dākṣiṇātya schools of Dharmaśāstric thought. In the first of these two chapters, I argued that a distinctly Bengali school of jurisprudence emerged in Navadvīpa, Bengal, in the early sixteenth century. Navadvīpan Dharmaśāstrins, including Śrīnāthācāryacūḍāmaṇi (late 15th Century/early 16th Century), Rāmabhadra I (16th Century), and Acyutacakravartin (16th Century), combined Jīmūtavāhana and Śūlapāṇi's (14th-15th Centuries) Dharmaśāstric works into a comprehensive scale of Dharmaśāstric texts that rivaled a similar Maithila scale of Dharmaśāstric texts which developed in Mithilā during the fifteenth century. I argued that the emergence of a Bengali scale of Dharmaśāstric texts coincided, geographically and chronologically, with the emergence of a Navadvīpan, Bengali school of Navya-Nyāya. In their commentaries on the *Dāyabhāga*, Dharmaśāstrins such as Śrīnāthācāryacūḍāmaṇi, Rāmabhadra, and Acyutacakravartin deployed Navya-Nyāya theories of ownership to defend Jīmūtavāhana's jurisprudence and to reject Vijñāneśvara's theory of ownership by birth. In turn, Navadvīpan-trained Navya-Naiyāyikas, including Rāmabhadra Sārvabhauma (16th-17th Centuries) and Jāyarāma Nyāyapañcāna (17th Century), developed metaphysical accounts of ownership that accepted the

conclusions of *Dāyabhāga* school *a priori* and that attacked several Maithila theories of ownership.¹⁴

In the second of the two chapters, I examined the reception of *Dāyabhāga* jurisprudence and Navya-Nyāya theories of ownership in the Dharmaśāstra and Mīmāṃsā writings amongst Mahārāṣṭrian Brāhmaṇas in the city of Vārāṇasī in the sixteenth and seventeenth centuries. I argued that for the Bhaṭṭa family of Vārāṇasī, prominent Mīmāṃsakas and Dharmaśāstrins who identified themselves as exemplary southern Brāhmaṇas, Gauḍa Dharmaśāstrins and their Navya-Nyāya philosophy constituted a significant threat. My contention is that the Bhaṭṭas' characterization of the *Mitākṣarā* as a quintessentially southern, Mīmāṃsā-inflected treatise on inheritance led to the formation of a distinct school of Dharmaśāstric thought centered on Vārāṇasī and Mahārāṣṭra. This school of thought, developed in the commentarial writings of successive members of the Bhaṭṭa family, including Rāmakṛṣṇabhaṭṭa, Kamalākarabhaṭṭa, Nīlakaṇṭhabhaṭṭa and Gāgābhaṭṭa (16th-18th Centuries), deployed Mīmāṃsā theories of ownership and inheritance against Navya-Nyāya ones.¹⁵ By the close of the seventeenth century, one can speak of two complex, comprehensive schools of Dharmaśāstric thought, inflected by Mīmāṃsā and Navya-Nyāya philosophy, centered around pedagogical networks in Vārāṇasī and Navadvīpa, taking paradigmatically divergent approaches to the problem of inheritance, and emanating from commentarial literature on the *Mitākṣarā* and *Dāyabhāga* respectively.

This chapter makes the broad claim that the schools of Dharmaśāstric thought that developed in the sixteenth and seventeenth centuries endured through the

¹⁴ For more information concerning these authors, see Chapter 2 of this thesis.

¹⁵ For the life, writings, and politics of the Bhaṭṭa family, see chapter 2 of this thesis.

eighteenth century. Additionally, the chapter argues that many of the paṇḍits who assisted British orientalist and jurists in the compilation of Dharmaśāstra digests and in the construction of Anglo-Hindu law followed the classificatory and pedagogical scheme of regionally specific *Dāyabhāga/Mitākṣarā* schools of Dharmaśāstra. In doing so, the chapter makes two significant interventions in contemporary scholastic debates concerning the history of Dharmaśāstra and law in colonial India. The first intervention takes aim at a shibboleth of modern studies of Dharmaśāstra: that the division of Dharmaśāstric discussions of inheritance into Gauḍa, Vārāṇasī, Maithila, Dākṣiṇātya and Drāviḍa schools is alien to Dharmaśāstra as a discipline. I argue that although the construction of a Drāviḍa school of law was likely an unwarranted byproduct of British legal and orientalist overreach, the Dharmaśāstra compendia of the eighteenth century and the earlier intellectual history of ownership and inheritance support a model of schools of Sanskrit jurisprudence. In this sense, the chapter functions as a capstone to the thesis' broad argument that Rocher and Davis' opposition to Colebrooke is at least partly incorrect and that scholars ought to attend to the ways in which considerations of regional identity, pedagogical lineage, and disciplinary commitments inflected the intellectual history of jurisprudence in ancient and early modern India.

The second intervention addresses the more pervasive (and pernicious) claims that: a) the advent of European colonialism precluded the further innovation of traditional Sanskrit learning; b) that the paṇḍits who assisted European orientalists were patients, rather than agents in the launching of Western Indology; and c) that the artifacts of these orientalist/paṇḍitic encounters are the discursive objects of

hegemonic knowledge systems and record the trauma of colonialism.¹⁶ In the context of the history of Dharmaśāstra during the colonial era, these connected claims find their purest expression in Bhattacharya-Panda's assertion that "the pandits [who crafted colonial Dharmaśāstra anthologies] were not fellow inventors of Hindu law."¹⁷ Bhattacharya-Panda's broad thesis, that the discussions of ownership and inheritance in the *Vivādārṇavasetu* and in the *Vivādabhaṅgārṇava* reflect eighteenth century British preoccupations with the rights and the regulations of Bengali Zamindaris (whose taxes fueled the East India Company's coffers) relies on the assumption of a fundamental epistemic rupture between pre-colonial and colonial Dharmaśāstric practices.

In Bhattacharya-Panda's defense, there are certain places in the colonial digests where, as we shall see, common law concepts (such as guardianship proceedings and royal primogeniture) make novel appearances in Dharmaśāstric digests, but she, like Rocher and Davis, misses the great continuities between the *Vivādārṇavasetu* and the *Vivādabhaṅgārṇava*'s theories of ownership and inheritance and Jīmūtavāhana's *Dāyabhāga* and between the *Vyavahārabālabhaṭṭī* and the *Mitākṣarā*. In an influential rejoinder to the Saidian wave crashing on Indology in the 1990's, Rosalind O'Hanlon and David Washbrook argue that:

In fact, there is much to suggest that some at least of what we now call 'colonial knowledge' about India emerged from the late eighteenth century as the jointly authored product of officials of the East India Company and of their

¹⁶ For a) the 'death of Sanskrit' hypothesis, see Sheldon Pollock, "The Death of Sanskrit," *Comparative Studies in Society and History* 43.2 (2001): pp. 392-426; Sheldon Pollock, "New Intellectuals in Seventeenth Century India," *Indian Economic and Social History Review* 38.1 (2001): pp. 3-31; and Sudipto Kaviraj, "The Sudden Death of Sanskrit Knowledge," *Journal of Indian Philosophy* 33 (2005): pp. 119-42. For b) see Bhattacharya-Panda, *Appropriation and Invention of Tradition*, esp. 1-11. For the best example of c), regarding caste, see Nicholas Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton: Princeton University Press, 2001).

¹⁷ Bhattacharya-Panda, *Appropriation and Invention*, 92.

chosen and interested Indian informants... to overlook their participation in projects of colonial knowledge not only ignores a considerable body of evidence; it also deprives us of important insights into continuities from the pre-colonial period, and hence into reasons why the 'essentialised knowledges' of early colonialism appeared to find such ready recognition among some at least of their Indian audiences.¹⁸

John Duncan Derrett has analyzed the British patronage of traditional Dharmaśāstrins in early colonial Bengal, but Rosane Rocher has led the way in reconstructing the histories of the paṇḍits who worked for the East India Company.¹⁹ Rosane Rocher's argument, that simplistic, dichotomous narratives of privileged imperial knowers and their passive discursive objects elide - in the context of Anglo-Hindu law - individual paṇḍits and make it considerably more difficult to excavate those paṇḍits' unique continuities with and contributions to the history of traditional Sanskrit jurisprudence.

Following Rosane Rocher's call for "historians of Orientalist scholarship to recover in as rich texture as possible the bicultural nature of its production and rise," this chapter is divided into three sections. Each section examines a colonial-era Dharmaśāstra digest from three angles: 1) the objectives of the East India Company officials in commissioning the digest; 2) the backgrounds of, and the relationships between, the paṇḍits who compiled the digest and the orientalist translators who translated the digest; and 3) the degree to which the theories of ownership and inheritance articulated in the Sanskrit digests and English translations give an authentic portrait of traditional Sanskrit Dharmaśāstra at the time and support the historical existence

¹⁸ Rosalind O'Hanlon and David Washbrook, "Histories in Transition: Approach to the Study of Colonialism and Culture in India," *History Workshop* 32 (1991): pp. 110-127, 115.

¹⁹ John Derrett, "The British as Patrons of the Śāstra," in *Religion, Law and the State in India* (London: Faber & Faber): pp. 225-273. Rosane Rocher, "Weaving Knowledge: Sir William Jones and Indian Pandits," in *Objects of Enquiry: The Life, Contributions, and Influences of Sir William Jones, 1746-1794*, eds. Garland Cannon & Kevin Brine (New York: NYU Press, 1995): pp. 51-79; Rosane Rocher, "The Career of Rādhākānta Tarkavāgīśa, an Eighteenth-Century Pandit in British Employ," *Journal of the American Oriental Society* 109.4 (1989): pp. 627-633. For a similar project in nineteenth century Bengal, see Brian Hatcher, "Sanskrit and the Morning After: The Metaphorics and Theory of Intellectual Change," *Indian Economic and Social History Review* 44.3 (2007): pp. 333-361.

of the conception of regional schools of Dharmaśāstric thought. In doing so, I trace the development of Western Indology alongside the expansion of British law in India and alongside the increasing participation of traditional paṇḍits in European pedagogical and legal institutions.

The first section examines the *Vivādārṇavasetu*, ‘A Bridge Over the Ocean of Litigation,’ compiled at the behest of Governor Warren Hastings in 1773 by a team of eleven Bengali paṇḍits from the court of Rāja Kṛṣṇacandra of Navadvīpa, Bengal (1728–1782). The section attends to the ways in which Hastings’ Judicial Plan of 1772 sought to validate Company rule by recovering indigenous, Hindu theories of ownership and inheritance from Dharmaśāstric sources and by enforcing them through the newly established Ṣadr Dīwānī ‘Adālat (Superior Civil Court). *Contra* Bhattacharya-Panda, Derrett and Ludo Rocher, I argue that the *Vivādārṇavasetu* articulates a theory of ownership and inheritance very much in conformity with the Gauḍa followers of the *Dāyabhāga* and very much contrasted with the opposing views of Maithila Dharmaśāstrins and the *Mitākṣarā*. Indeed, the compilers of the *Vivādārṇavasetu*, themselves Bengali logicians trained in Navadvīpa, advance a cluster of opinions that are characteristic of the scale of Dharmaśāstra texts that I reconstructed in the second chapter of this thesis: ownership arising for sons on the death of their father, ownership in joint assets held severally, and ownership as a virtually unrestrained right to alienate as desired (even in contravention of śāstric restrictions).

The second section examines the *Vivādabhaṅgārṇava*, ‘An Ocean of Resolutions to Litigation,’ compiled by Jagannātha Tarkapañcānana, Rādhākānta Tarkavāgīśa and a team of paṇḍits between 1788 and 1794 under the supervision of Sir William Jones. The section explores the connections between the dramatic

expansion of European Sanskrit studies via the Asiatic Society (founded by Jones in 1784) and the strong desire of British-Indian jurists (including William Jones) for increased accuracy and certainty with regard to Hindu jurisprudence. *Pace* Rocher, I argue that the *Vivādabhaṅgārṇava* demonstrates a clear emphasis on the Bengal school, against the *Mitākṣarā* and against Mithilā based authors. It adds to the *Vivādārṇavasetu* by combining the juridical opinions of the Dharmaśāstrins who follow the *Dāyabhāga* with a series of Navya-Nyāya philosophical arguments culled from late *Dāyabhāga* commentators (such as Śrīkr̥ṣṇa Tarkālaṅkāra) and logicians (such as Gadādhara Bhaṭṭācārya). Moreover, by attending to the personal histories of Jones' paṇḍit informers, Jagannātha, Rādhākānta and Savoru Trivedi, I demonstrate that a theory of regional schools of Dharmaśāstra (particularly with regard to ownership and inheritance) influenced the compilation of the *Vivādabhaṅgārṇava*. The section concludes with the argument that the complex philosophical discussions of ownership in the *Vivādabhaṅgārṇava* and their application in support of the legal opinions of the *Dāyabhāga* school demonstrate the strong continuity between the *Vivādabhaṅgārṇava* and the Navya-Nyāya-inflected Dharmaśāstra of the seventeenth century Navadvīpan school of Bengal.

The third section explores Henry Thomas Colebrooke's translation of the *Vivādabhaṅgārṇava*, his relationship with Rādhākānta Tarkavāgīśā, his collection of Sanskrit manuscripts in Vārāṅasī, his encounter with Bālabhaṭṭa Pāyaguṇḍe there, and his formulation of schools of the Hindu law of inheritance in 1810. I argue that Colebrooke's interaction with Bālabhaṭṭa (via the latter's compilation of the *Dharmaśāstrasamgraha* and the *Vyavahārabālabhaṭṭī*) and his collaboration with the paṇḍits of the Benaras Sanskrit College in 1797 led to his encounter with a series of southern, Vārāṅasī and Mahārāṣṭrian Dharmaśāstra treatises (including the

Vīramitrodaya, Kamalākarabhaṭṭa's *Vivādatāṇḍava* and Nīlakaṇṭhabhaṭṭa's *Vyavahāramayūkha*) that articulate a distinctly southern, Mīmāṃsā-inflected view of ownership and inheritance that identifies and rejects, explicitly, the *Dāyabhāga* as an eastern, Bengali treatise. Colebrooke's deep immersion in traditional, contemporary Sanskrit learning in the later eighteenth century, rather than random chance, a desire for symmetry with Islamic schools of law, or the Company's mercurial political interests, led him to identify a *Dāyabhāga/Navya-Nyāya/Bengal* and *Mitākṣarā/Mīmāṃsā/Vārāṇasī* divide as the core basis of regional schools of law.

In short, I argue that Hastings, Jones and Colebrooke's paṇḍits - Bāṇeśvara, Jagannātha and Bālabhaṭṭa - shaped the course of the development of the Hindu law of inheritance in colonial India. The paṇḍits did this, I contend, because of their strong sense of continuity with the pedagogical institutions in which they were trained - Nyāya ṭols in Navadvīpa (or Triveṇī) or in extended Mahārāṣṭrian scholar households in Vārāṇasī. While it was logical and appropriate for the orientalist to follow these patterns of schools of thought in Bengal, Mithilā, and Vārāṇasī, the distinction between Vārāṇaseya and Mahārāṣṭrian (Bombay) schools of Dharmaśāstra and the construction of a Drāviḍa (Madras) school of Dharmaśāstra were unwarranted. By way of conclusion, I examine the arguments of two of Colebrooke's earliest critics, A.C. Burnell, and James H. Nelson, and I defend their vociferous complaint that the construction of a Drāviḍa school of Dharmaśāstra constituted a gravely mistaken assumption.

A timeline of Anglo-Hindu law appears in figure 1. The timeline, divided into three sections, charts the expansion of company rule, the development of Western Indology and the state of paṇḍitry in the late eighteenth and early nineteenth centuries.

Figure 1: Timeline of Anglo-Hindu Law (1772-1864)

A. Expansion of Company Rule in India

- 1757 - Battle of Plassey
- 1765 - East India Company acquires the Diwānī of Bengal, Orissa and Bihar
- 1772 - Warren Hastings assumes the Governorship of EIC, introduces Judicial Plan of 1772
- 1772 - Şadr Dīwānī 'Adālat (Superior Civil Court) established
- 1774 - Supreme Court of Judicature at Fort William established.
- 1781 - Hindu litigants admitted to the Supreme Court for matters of inheritance and contract
- 1786 - Cornwallis appointed Governor General
- 1793 - Permanent Settlement, John Shore appointed Governor General
- 1795 - Government of Bengal and Bihar extended to Benares
- 1798 - Richard Wellesley appointed Governor

B. The Development of Western Indology

- 1776 - Halhed's *Code of Gentoo Laws* published in London
- 1783 - William Jones arrives in Calcutta as a Puisne Judge of the Supreme Court, Henry Colebrooke arrives as a writer for the EIC
- 1784 - Jones founds the Asiatic Society in Calcutta
- 1788 - Jones' plan for a *Digest of Hindu Law* accepted by Cornwallis
- 1791 - Benares Sanskrit College founded by Resident Jonathan Duncan
- 1794 - Jones Translates *Manusmṛti*, dies in Calcutta
- 1795 - Colebrooke tasked with translating the *Vivādabhaṅgārṇava* and appointed judge and magistrate of Mirzapur
- 1797 - Colebrooke visits Benares and hires Bālabhaṭṭa Pāyaguṇḍe, proposes a new digest
- 1797-8 - Colebrooke's *Digest of Hindu Laws* published
- 1800 - College of Fort William (for Oriental Laws and Language) founded
- 1801 - Colebrooke appointed Puisne Judge of Superior Court and professor of Sanskrit at the College of Fort William
- 1810 - Colebrooke's *Two Treatises* published
- 1811-1815 - *Mānavadharmasāstra*, *Dāyabhāga*, *Mitākṣarā*, and *Vīramitrodaya* published by Bāburāma's Sanskrit Press in Calcutta.
- 1827 - Henry Borradaile Publishes Translation of *Vyavahāramayūkha*

C. Paṇḍits in the Company's Employ

- 1773 - Bāṇeśvara Vidyālaṅkāra and ten Bengali paṇḍits hired to compile the *Vivādārṇavasetu*
- 1783 - Rādhākānta Tarkavāgīśa composes the *Purāṇārthaprakāśa* for Warren Hastings
- 1785 - Rāmalocana Vaidya of Navadvīpa hired as Jones' first paṇḍit
- 1787 - Rādhākānta Tarkavāgīśa of Navadvīpa meets William Jones
- 1788-1794 - Jagannātha Tarkapañcānana, *et al.*, compiles the *Vivādabhaṅgārṇava*
- 1789 - Sarvoru Trivedi compiles the *Vivādasārṇava* for William Jones
- 1791 - Kāśīnātha Upādhyāya appointed Principal of Benares Sanskrit College
- 1794 - Rādhākānta and Sarvoru Trivedi appointed to the Şadr Dīwānī 'Adālat
- 1797 - Bālabhaṭṭa Pāyaguṇḍe crafts a commentary and digest for Colebrooke.
- 1803 - Rādhākānta dies. Jagannātha Tarkapañcānana's grandson, Ghanaśyāma, appointed as a paṇḍit to the Supreme Court in Calcutta in his place.
- 1864 - Paṇḍit Assistants to Company and Crown Courts dismissed.

4.A: First Steps (1765-1787)

In 1765, Robert Clive obtained the *diwānī* (the formal right to collect revenue) with regard to the provinces of Bengal, Bihar, and Orissa, from the Mughal Emperor Shah Alam II (r. 1759-1806) for the British East India Company.²⁰ The duty to adjudicate legal disputes came along with the right to collect revenue from these provinces, and, consequently, Company officials found themselves responsible for maintaining the pre-colonial, Mughal legal system.²¹ In earlier times, when the company styled itself as a Zamindar, its agents were responsible for adjudicating relatively minor civil and criminal matters amongst its native populations and a system of royal, Mayoral courts exercised jurisdiction over British subjects in India.²² The Mughal legal system governing native Indians was of distinctly Islamic character, but it expressly recognized the right of Hindus to “settle disputes... according to their own laws and customs.”²³

After seven years of chaotic, turbulent rule, the Bengal government, at the behest of Governor Warren Hastings, adopted “A Plan for the Administration for Justice in Bengal” and established an integrated hierarchy of civil courts (*Dīwānī* ‘*Adālat*s), culminating in the *Ṣadr Dīwānī* ‘*Adālat*, to which Hindus and Muslims could appeal.²⁴ The key innovation in Hastings’ “Judicial Plan” was that “in all suits regarding inheritance, marriage, caste, and other religious usages, or institutions, the laws of the Koran with respect to Mahometans and those of the *Shaster* with respect

²⁰ Derrett, “The British as Patrons,” 229.

²¹ *Ibid.*, 229.

²² G.C. Rankin, “Civil Law in British India before the Codes,” *58 L. Q. Rev.* 58.4 (1942): 467-482.

²³ *Ibid.*, 229. For an overview of the Company’s earlier legal responsibilities, see Bhattacharya-Panda, *Appropriation and Invention*, pp. 36-47.

²⁴ Rosane Rocher, “The Creation of Anglo-Hindu Law,” in *Hinduism and Law: An Introduction*, eds. Timothy Lubin, Donald Davis, and Jayanth K. Krishnan (Cambridge, 2010): pp. 79-88, 78-9; Atul Chandra Patra, *The Administration of Justice under the East India Company in Bengal, Bihar and Orissa* (New Delhi: Asia Publishing House, 1962); M.P. Jain, *Outlines of Indian Legal History* (Bombay: Tripathi, 1966). Islamic criminal law was administered through *Ṣadr Faujdari Adālat*s.

to the Gentoos shall be invariably adhered to.”²⁵ The Plan called for the appointment of paṇḍits as advisers to the various courts. As the British administrators lacked any knowledge of Sanskrit, these paṇḍit ‘law officers’ were tasked with consulting the Dharmaśāstras and rendering letters of judgement (vyavasthās) that gave an established conclusion on the points of Hindu law relevant to a given case.²⁶ Unsurprisingly, the judges of the Ṣadr Dīwānī ‘Adālat (including Warren Hastings) found the apparent malleability of opinions of the vyavasthās deeply troubling and in 1773 the Company commissioned the compilation of “Code of Gentoo Laws” to settle legal disputes amongst Hindus.²⁷

This section argues that the resulting Dharmaśāstra digest, the *Vivādārṇavasetu*, articulates a theory of ownership and inheritance distinctly in line with the school of thought that developed through commentaries on Jīmūtavāhana’s *Dāyabhāga* in Navadvīpa, Bengal, in the seventeenth and eighteenth centuries. The section argues that paṇḍits hired to craft the *Vivādārṇavasetu*, many of whom were trained in Navya-Nyāya and Dharmaśāstra in Navadvīpa, contrasted the theories of the *Dāyabhāga* school with the opinions of the Maithila school in the resulting legal anthology. The first seeds of the British formulation of schools of Dharmaśāstra with regard to ownership and inheritance were sown by Bengali paṇḍits who recapitulated the Gauḍa/Mithilā rivalry which, as we saw in chapter two of this thesis, marked the founding of Navadvīpa as a centre of Navya-Nyāya and Dharmaśāstra.

²⁵ George Forrest, *Selections from the Letters, Dispatches and Other State Papers Preserved in the Foreign Department of the government of India, 1772-1785, Vol 2.* (Calcutta, Government Press, 1890), 290, cited in Derrett, “The British as Patrons,” 232 fn 2. Cf. Rosane Rocher, “The Creation of Anglo-Hindu Law,” 79.

²⁶ Derrett, “The British as Patrons,” 234. A collection of vyavasthās from Vārāṇasī appear in *Sanskrit Documents: Being Sanskrit Letters and Other Documents Preserved in the Oriental Collection at the National Archives of India*, eds. Surendranath Sen & Umesha Mishra (Allahabad: Ganganatha Jha Research Institute, 1951).

²⁷ Rosane Rocher, *Orientalism, Poetry, and the Millennium: the Checkered Life of Nathaniel Brassey Halhed, 1751-1830* (Delhi: Motilal Banarsidass, 1983), 48-49.

My analysis rejects Bhattacharya-Panda's contention that the *Vivādārṇavasetu's* notions of property "involved deviations [from traditional Dharmaśāstra] that constituted an invention of tradition" as over broad.²⁸ Despite the weaknesses of Nathaniel Halhed's translation (produced by means of a Persian paraphrase), and despite the British courts' methodological mistake of treating Dharmaśāstra as an accurate representation of an essentialized Hindu culture, the *Vivādārṇavasetu's* paṇḍits accomplished their task - to summarize the juridical opinions of learned Brāhmaṇas in Bengal according to their principal Dharmaśāstras. We shall see in the following sections that although William Jones and Henry Colebrooke criticized Halhed's translation of the *Vivādārṇavastu*, they did read the Sanskrit text of the digest. Its basic scheme of contrasting Jīmūtavāhana with Mithilā compelled them to seek out the paṇḍits, texts and opinions of other schools of Dharmaśāstra.

4.A.1: Warren Hastings' Judicial Plan of 1772, A Rule of Property in Bengal

Before turning to the *Vivādārṇavasetu* and the background of its Brāhmaṇa compilers, it is important to attend to the fundamental errors inaugurated by Hastings' Judicial Plan of 1772: that the Dharmaśāstras constitute the sources of Hindu law and that a dynamic, evolving jurisprudential tradition could be fixed, permanently, by its consolidation into digests. Much has been written about the dangers of viewing Dharmaśāstra as law. Paṇḍits, as Ludo Rocher and others have noted, might often be called upon to render opinions on various legal disputes, to adjudicate caste, to assign ritual penances, and to perform consecrations, but they

²⁸ Bhattacharya-Panda, *Appropriation and Invention*, 89.

were neither lawyers nor judges.²⁹ The core of the misunderstanding lay in the company officials' assumption of the relatively stable divisions between ecclesiastical and secular jurisdictions in Britain, where matters of inheritance, adoptions, marriage and the other 'religious' issues were resolved by biblical interpretation.³⁰

Christi Merrill argues that "Hastings made the straightforward assumption that there were sacred texts in India that would offer a source for interpretation comparable to ecclesiastical authorities in British law."³¹ If a British distinction between secular and ecclesiastic jurisdictions set the stage for the creation of Hindu law, the emerging orientalist project, which "saw ancient texts as the source of authentic knowledge about immemorial custom and tradition," ensured that, with regard to Hindus, Dharmaśāstra would serve as its script, and paṇḍits - soon to be framed as 'jurists' and as 'lawgivers' — would be its actors.³² Indeed, it seems that one of Hastings' primary motivations in commissioning the *Vivādārṇavasetu* was to stave off British Home interference in the legal affairs of the Company by proving that Hindus had legal codes of their own (and thus did not require the introduction of British civil law).³³

Bhattacharya-Panda, like Bernard Cohn, links the misreading of Dharmaśāstra as law with the East India Company's efforts to identify and to enforce stable proprietary rights after the Bengal Famine of 1770, but her assumption that Dharmaśāstric discussions of property rights are British interpolations requires

²⁹ Ludo Rocher, "Law Books in an Oral Culture: the Indian Dharmaśāstra," in *Studies in Hindu Law and Dharmaśāstra*, ed. Donald Davis (London: Anthem, 2014): pp. 103-117; Derrett, "The British as Patrons," 229-231. Derrett makes the odd assertion that "*dharmaśāstra* supplied actual rule of law in a wide variety of contexts."

³⁰ Merrill, "The Afterlives of Pandity," 79. Also see Rachel Sturman, "Property and Attachments: Defining Autonomy and the Claims of Family in Nineteenth-Century Western India," *Comparative Studies in Society and History* 47.3 (2005): pp. 611-637.

³¹ *Ibid.*, 79.

³² Bhattacharya, "Remaking Custom," 22.

³³ Rosane Rocher, "Orientalism, Poetry, and the Millenium," 52-3.

further attention.³⁴ From 1765 onwards, but particularly after 1772, the Company attempted to analyze and to enforce - with debatable levels of success - an orderly rule of property in Bengal and in India more broadly.³⁵ For Hastings, and later, for William Jones and Henry Colebrooke, the codification of Hindu law through Dharmaśāstra was a vital means for securing native Indians' rights to property - and company rule. In 1773, Hastings wrote to Lord Chief Justice Mansfield to inform him that the *Vivādārṇavasetu* (in English translation) served as:

proof that the inhabitants of this land are not in the savage state in which they have been unfairly represented... and as a specimen of the principles which constitute the rights of property among them.³⁶

However, the *Vivādārṇavasetu*'s compilers' interest in ownership and inheritance most certainly did not come from Hastings' direct intervention. As we shall see, Bhattacharya-Panda's core thesis, that an "emphasis on property was no part of the Hindu tradition... [and] the effort to secure property rights on the basis of that 'tradition', especially Dharmaśāstra, was a central feature of the Company's invention of 'Hindu law'" ignores the vibrant history of ownership and inheritance in classical, medieval and early modern Dharmaśāstra.³⁷

4.A.2: Gauḍas and Maithilas in the *Vivādārṇavasetu*

In 1773, Warren Hastings arranged for the compilation of a digest of Hindu laws. Rāja Rājavallabha, the Diwan of Khalsa, secured the services of eleven

³⁴ Bernard Cohn, "Law and the Colonial State in India," in *History and Power in the Study of Law: New Directions in Legal Anthropology*, eds. June Starr & Jane F. Collier (Ithaca: Cornell University Press, 1989): pp. 131-152; Bhattacharya-Panda, *Appropriation and Invention*, 36-88. As Cohn notes, Hastings was keen to disprove the prevailing assumption in London that India was a lawless despotism by demonstrating that India had an "ancient constitution" embodied, "from remotest antiquity" in Dharmaśāstric texts.

³⁵ The best work on the subject is unquestionably Faisal Chaudry, "A Rule of Proprietary Right for British India: From Revenue Settlement to Tenant Right in the Age of Classical Legal Thought," *Modern Asian Studies* 50.1 (2016): pp. 345-384. Also see Ranajit Guha, *A Rule of Property for Bengal: An Essay on the Idea of Permanent Settlement* (Paris: Mouton, 1963). For a withering indictment of the Company's 'Rule of Property,' see Washbrook, "Law, State and Agrarian Society."

³⁶ Rosane Rocher, "Orientalism, Poetry and the Millenium," 54.

³⁷ Bhattacharya-Panda, *Appropriation and Invention*, 71.

paṇḍits, most of whom held some connection with the court of Rāja Kṛṣṇacandra Roy of Navadvīpa.³⁸ Several of the paṇḍits were accomplished logicians and/or Dharmaśāstrins: Bāṇeśvara lectured in Navya-Nyāya in Navadvīpa, Rāmagopāla taught Navya-Nyāya at Rājākṛṣṇacandra's court and authored a Dharmaśāstra treatise on purification (the *Śuddhinirṇaya*) and Kṛṣṇacandra Sārvabhauma composed a comprehensive Dharmaśāstra digest, the *Navyadharmapradīpa*, which he dedicated to Rāja Kṛṣṇacandra.³⁹ The paṇḍits labored on their treatise at Fort William in Calcutta between 1773 and 1775. The result, the *Vivādārṇavasetu*, was promptly translated (paraphrased) into Persian so that Nathaniel Halhed, one of Warren Hastings' protégés, could render the text into English.⁴⁰ In 1776, the Company published Halhed's translation in London, to much fanfare as *A Code of Gentoo Laws: Or, Ordinations of the Pundits, from a Persian Translation, Made from the Original, Written in the Shanscrit Language*.⁴¹ The *Code* satisfied metropolitan demands for proof that Hindus possessed written laws and inaugurated European interest in Sanskrit language and literature, but it failed to settle Hindu law decisively or to make much of an impact on the practice of Hindu law in India.⁴²

Of course, the distinguishing feature of the *Code* is its translation via a Persian paraphrase that deviates substantially from the Sanskrit original (usually in

³⁸ Rosane Rocher, "Orientalism, Poetry and the Millenium," 49. The paṇḍits were: (1) Bāṇeśvara Vidyālaṅkāra, (2) Kṛṣṇajīvana Nyāyālaṅkāra, (3) Rāmagopāla Nyāyālaṅkāra, (4) Vīreśvara Tarkapañcānana, (5) Kṛparāma Tarkasiddhānta, (6) Kṛṣṇakeśava Tarkālaṅkāra, (7) Kṛṣṇacandra Sārvabhauma, (8) Sītārāma Bhaṭṭa, (9) Kālīśaṅkara Vidyāvāgīśā, (10) Gaurīkānta Tarkasiddhānta, and (11) Śyāmasundara Nyāyasiddhānta.

³⁹ *Ibid.*, 49.

⁴⁰ *Ibid.*, 49.

⁴¹ Nathaniel Halhed, *A Code of Gentoo Laws: Or, Ordinations of the Pundits, from a Persian Translation, Made from the Original, Written in the Shanscrit Language* (London: Printed for the East India Company, 1776).

⁴² Rosane Rocher, "Orientalism, Poetry and the Millenium," 54-62. Admirers included Jeremy Bentham, while James Mill was its chief detractor. Derrett, "The British as Patrons of the Śāstra," 241, notes that "the Board at Murshidabad relied on the *Code* in 1779, Sir William Jones relies upon it in a judgement from 1788, and we find it relied upon as late as 1791." Rocher and Derrett also note that court paṇḍits cite the *Vivādārṇavasetu* as one among many Dharmaśāstric treatises.

simplifying complicated śāstric passages) and was almost universally dismissed by later scholars of Sanskrit.⁴³ Derrett, working only from the English *Code*, questions the authenticity of the *Vivādārṇavasetu* in relation to pre-colonial dharmaśāstranibandhas.⁴⁴ Ludo and Rosane Rocher, however, working from Colebrooke's personal Sanskrit copy of the *Vivādārṇavasetu*, admire its fidelity - in style if not in the selection of topics - to contemporaneous nibandhas.⁴⁵ Indeed, J.H. Nelson, a vocal critic of Colebrooke's formulation of 'schools of Hindu law,' argues that, despite the *Code*'s many flaws, the Sanskrit *Vivādārṇavasetu* gives an accurate portrait of Dharmaśāstra "before opinions had been expressed upon these matters by Englishmen; before any... treatise... had been declared to be the 'paramount authority,' and before the existence of 'schools of law.'"⁴⁶ Ironically, Ludo Rocher concedes that the *Vivādārṇavasetu*'s defense of Jīmūtavāhana and characteristically Bengali theories of ownership and inheritance support the "existence of schools of Hindu law" (inasmuch as these schools are academic in nature).⁴⁷

The compilers of the *Vivādārṇavasetu* crafted a text that draws on the principal treatises of the Bengal school, articulates a relatively concise summary of the *Dāyabhāga* and contrasts those views with the followers of Mithilā. The *Vivādārṇavasetu* contains little Mīmāṃsā, scant Navya-Nyāya, and has little to say about the philosophical nature of ownership - issues that are ubiquitous in the early modern Sanskrit jurisprudence of inheritance. In this sense, the *Vivādārṇavasetu* reads like a pared-down introductory treatise.

⁴³ Ibid., 62. We shall see in the following sections how the Sanskrit *Vivādārṇavasetu* influenced Jones and Colebrooke.

⁴⁴ Derrett, "The British as Patrons," 240-241.

⁴⁵ Rosane Rocher, *Orientalism, Poetry, and the Millennium*, 51.

⁴⁶ J.H. Nelson, *Prospectus of the Scientific Study of the Hindu Law* (London: Kegan Paul & Co, 1881), 14. Cf Rosane Rocher, *Orientalism, Poetry, and the Millennium*, 63-4.

⁴⁷ Rocher, "Schools of Hindu Law," 120-121.

In the opening verses of the *Vivādārṇasetu*, the treatise's compilers list the texts that they consulted:

Caṇḍeśvara, Dhāreśvara, Viśvarūpa, the author of the *Mitākṣarā* (Vijñāneśvara) and Halāyudha. Also, Śrīkr̥ṣṇa, Vācaspati(miśra), the author of the *Dharmaratna* (Jīmūtavāhana), Śrīkara, Śūlapāṇī, Govinda, Lakṣmīdhara, the author of the [*Dharma*]tattva (Raghunandana), Ācāryacūḍāmaṇi and (Kullūka)bhaṭṭa. Having consulted these author's statements carefully, we compose a treatise called the breakwater of the ocean of litigation.⁴⁸

Although Halhed's paṇḍits drew on a wide variety of sources, the bulk of the later, more sophisticated texts belong to Bengalis such as Śūlapāṇi, Jīmūtavāhana and Raghunandana, and the Navadvīpan commentators Ācāryacūḍāmaṇi and Śrīkr̥ṣṇa (whose arguments the compilers deploy against Caṇḍeśvara and Vācaspatimiśra II).⁴⁹ Halhed's list, however jumbled and however-much bearing the resemblance of a Dharmaśāstric grab-bag, indexes the texts that the *Vivādārṇasetu* attempts to organize into a coherent whole. The Gauḍa school of Dharmaśāstra is represented by Śrīkr̥ṣṇa Tarkālaṅkāra, Śrīnāthācāryacūḍāmaṇi, Raghunandana, Jīmūtavāhana, and Śūlapāṇi, while the Maithila authors Vācaspatimiśra I and Caṇḍeśvara appear alongside Vijñāneśvara and a bevy of earlier digest writers. As we shall see, the compilers often privilege the opinions of Bengalis - particularly Śrīkr̥ṣṇa - and in so doing, recapitulate the scale of texts of the early Gauḍa school - examined in the second chapter of this thesis.

Halhed's translation misses many of the śāstric intricacies of the original Sanskrit anthology, particularly the *Vivādārṇasetu*'s preference for the theories of

⁴⁸ *Vivādārṇasetu*, India Office Library Ms. No 1506/3145a, fol 1b: **caṇḍeśadhāreśvaraviśvarūpā mitākṣarākārahalāyudhau ca śrīkr̥ṣṇavācaspatidharmaratnakṛtas tathā śrīkaraśūlapāṇī / govindalakṣmīdharatattvakārā ācāryacūḍāmaṇinā ca bhaṭṭaḥ**. vākyāni caiṣāṃ suvimṛśya kūrmo granthaṃ **vivādārṇavabhañjanākhyam**. The instrumental 'ācāryacūḍāmaṇinā' appears to be *metri causa*. A note on emendations: all bracketed material in the footnotes in this chapter reflect additions - rather than subtractions - to the extant manuscripts. There are very few defective passages in the various manuscripts in Colebrooke's collection.

⁴⁹ Halhed, *A Code of Gentoo Laws, Vol I*, p. 27-8.

uparamasvatva and *factum valet* that Jīmūtavāhana develops in the *Dāyabhāga*. The first notable feature of the *Vivādārṇavasetu*'s adherence to a Gauḍa school of jurisprudence is its extensive citation of the *Dāyabhāga* concerning the definition of dāya and vibhāga (inheritance and division). The *Vivādārṇavasetu*'s chapter on inheritance opens with a quote from the *Nāradaśmṛti*.⁵⁰ The compilers gloss this verse by turning to the *Dāyabhāga*. They write that: "In the above verse, the 'paternal estate,' that has come from the father, is something in which ownership (for the sons, etc.) arises, contingent on the death or loss of caste of the father, etc."⁵¹ The compilers reproduce Jīmūtavāhana's derivation of the word inheritance (dāya) from the verbal root √dā, to give. They write that:

The word 'inheritance' is derived in the passive sense as 'something given,' and this is a secondary use of the verbal root 'to give' because of the similarity in the result (between the primary and secondary verbal usage), namely, the production of ownership for another person preceded by the destruction of the ownership (of the previous owner) who has died, gone forth, etc. Thus, the word 'inheritance' is used in a technical sense to refer to that asset in which there is ownership, contingent on a relationship with a prior owner, when the ownership of the prior owner ceases.⁵²

We saw in the second chapter of the thesis that Jīmūtavāhana's derivation of the word dāya from √dā constitutes one of the major unifying features of the school of jurisprudence that developed in Navadvīpa. This passage signals that the *Vivādabhaṅgārṇava*, from its outset, will follow the *Dāyabhāga*'s theory of uparamasvatva.

⁵⁰ *Vivādārṇavasetu*, fol 28b: vibhāgo 'rthasya pitryasya putrair yatra prakalpyate, dāyabhāga iti proktaṃ vyavahārapadam budhaiḥ. Cf. Rocher, *Dāyabhāga*, 249.

⁵¹ *Vivādārṇavasetu*, fol 28b: pitṛta āgatam pitryam piṭṛmarāṇapātityādyadhīnajātasvatvakam iti yāvat. Cf. *Dāyabhāga*, 249: piṭṛta āgatam pitryam. tac ca piṭṛmarāṇopajātasvatvam ucyate.

⁵² *Vivādārṇavasetu*, fol 28b: dīyata iti vyuṭpat[ti]yā dāyaśabdo[.] dadātiprayogaś ca gauṇaḥ mṛtapravrajitādisvatvanivṛttipūrvakaparasvatvotpattirūpaphalasāmyāt[.] tatas ca pūrvasvāmināḥ svatvoparame pūrvasvāmisambandhādhiṇaṃ yatra dravye svatvaṃ tatra nirūḍhadāyaśabdaḥ. Cf. *Dāyabhāga*, 250.

The *Vivādārṇavasetu* appears, at first blush, to militate against a hallmark of the Gauḍa school of inheritance: the principle of *factum valet*.⁵³ The compilers of the text argue, implicitly, for the principle of *factum valet* in a passage that appeals to Jīmūtavāhana's theory of ownership as a 'hard' right to use an asset as desired and that rejects the *Mitākṣarā*'s theory of ownership by birth. The *Vivādārṇavasetu* introduces the problem of a father's rights to alienate self-acquired and ancestral assets in a discussion of a division of property performed during the lifetime and at the discretion of a father (pitṛkṛtavibhāga).⁵⁴ The *Vivādārṇavasetu* notes that a statement from the *Viṣṇusmṛti* permits a father to divide his self-acquired assets as he wishes, but not ancestral assets because a son and a father have equal ownership with respect to them.⁵⁵

Like Jīmūtavāhana, the *Vivādārṇavasetu*'s compilers circumvent śāstric restrictions on a father's right to alienate ancestral assets by appealing to a definition of ownership as an entitlement for use as desired (yatheṣṭaviniyogārha[tā])⁵⁶ and by quoting an apocryphal verse from the *Yājñavalkyasmṛti* (which appears first in Vijñāneśvara's *Mitākṣarā*): "the father is master of gems, pearls, and corals, all of it; neither the father nor the grandfather is master of immovable assets, all of them."⁵⁷

⁵³ Bhaṭṭācārya-Panda argues that the Company officials' preference for equal division amongst sons in Bengal accounts for the *Vivādārṇavasetu*'s apparent rejection of *factum valet*. See *Appropriation and Invention*, 105-7. Bhaṭṭācārya-Panda is mistaken, see Chapter 2, Section XI of the *Code* for numerous statements authorizing a father to make unequal distributions of ancestral and self-acquired property. For the importance of the principle of *factum valet* in Anglo-Hindu law, see Ludo Rocher, "Jīmūtavāhana's *Dāyabhāga* and the Maxim *Factum Valet*," in *Studies in Hindu Law and Dharmaśāstra*, ed. Donald Davis (New York: Anthem Press, 2014): pp. 305-13.

⁵⁴ *Vivādārṇavasetu*, fol 39a: atha pitṛkṛtavibhāgo nirūpyate.

⁵⁵ *Vivādārṇavasetu*, fol 39a: pitā cet putrān vibhajet tasya svecchā svayamupātte 'rthe[.] paitāmahe tu pitāputrayos tulyaṃ svāmyam iti **viśṇuvacanāt**. asyārthaḥ. pituḥ svārjite 'rthe yāvad eva grhītum i[c]chat[y] ardhabhāgadavayaṃ trayam vā tatsarvaṃ tac ca śāstrānumataṃ na tu paitāmahaṃ. Cf *Dāyabhāga*, 261.

⁵⁶ *Vivādārṇavasetu*, fol 39a: prabhuḥ svecchayā yatheṣṭaviniyogārhaḥ. Cf *Dāyabhāga*, 263: yatheṣṭaviniyogārhatvalakṣaṇasya svatvasya dravyāntara ivātrāpy aviśeṣāt.

⁵⁷ *Vivādārṇavasetu*, fol 40a: maṇimuktāpravālānām sarvasyaiva pitā prabhuḥ / sthāvarasya samastasya [sarvasya in the *Mitākṣarā*] na pitā na pitāmahaḥ iti **yājñavalkyīyāc** ca. Cf *Dāyabhāga*, 73 & 262.

Jīmūtavāhana and the *Vivādārṇavasetu* argue that the repetition of the word “all” implies that a father may sell or give *some*, or *most* of the immovable ancestral assets provided that he makes provisions for the maintenance of his family.⁵⁸

Jīmūtavāhana hangs his argument for *factum valet* - where a father’s gift or sale of ancestral assets is in contravention of śāstric requirements - on the peg of ownership as an entitlement to use as desired. If a father has ownership (prabhutva) in ancestral, immovable assets by virtue of Yājñavalkya’s verse on gems, pearls and corals, then his transactions, even those made in contravention of śāstric restrictions, must be legally valid.⁵⁹ The *Vivādārṇavasetu* never goes quite so far, but it certainly follows and quotes Jīmūtavāhana in its rather wide interpretation of a father’s rights of ownership.

The *Vivādārṇavasetu* argues against janmasvatva and for a father’s extensive, nearly unencumbered rights of ownership, but it also juxtaposes those views with the views of the Miśras (Miśrāḥ), the Maithilas. For example, the *Vivādārṇavasetu* distinguishes between “Śrīkrṣṇatarkālāṅkāra, Smārṭtabhaṭṭācārya and Jīmūtavāhana” and “the Miśras” on the topic of a childless wife’s right to inherit the divided or undivided immovable assets of her deceased husband.⁶⁰ The

⁵⁸ *Vivādārṇavasetu*, fol 40a: atra maṇimuktāpravālānām ity upādāya punaḥ sarvasyety upādānaṃ sarveṣām bhūmyāditritayabhinnasuvārṇādīdravyāṅām dānādiṣu pituḥ svācchandyārthaṃ - tatrāpi sarvasyety upādānāt sarvasya kuṭumbavartanahetor dānādiniṣedhaḥ[.] kuṭumbavarttanāvirodheyasthāvarāder na dānādiniṣedha iti **dāyabhāga**. Cf *Dāyabhāga*, 262-3: maṇimuktādyupādāya punaḥ sarvasyety upādānāt sarveṣām bhūmyādivyatiriktānām dānādiṣu pituḥ prabhutvaṃ na sthāvaranibandhadravayāṅām. tatrāpi sarvasyety upādānāt sarvasya kuṭumbavartanahetor dānādiniṣedhaḥ kuṭumbasyāvaśyam bharaṇīyatvāt.

⁵⁹ *Dāyabhāga*, 263-4. See chapter 2 of this thesis for a thorough account of Jīmūtavāhana’s argument.

⁶⁰ *Vivādārṇasetu*, 29a: eṣām abhāve vibhaktāvibhaktāsthāvarādīdhane patnī adhiḥkāriṇīti **śrīkrṣṇatarkālāṅkārasmarṭtabhaṭṭācāryajīmūtavāhanaprabhrtayaḥ** prāhuḥ. vibhaktadhane patnī adhiḥkāriṇī. avibhaktadhane bhrātrādayaḥ krameṇādhiḥkāriṇaḥ patnī tu grāsāchādanabhāginīti **miśrāḥ**. Without going into extraordinary detail, this difference of opinion turns on a point of law: whether united brothers (after the death of their father) own joint assets severally or communally. The Bengalis, who hold that the property is owned severally, allow for a childless wife to act as her husband’s heir.

Vivādārṇavasetu compares Śrīkr̥ṣṇa and Jīmūtavāhana with the Mīśras, or with Caṇḍeśvara (another Maithila), regularly.⁶¹ Many of these specific instances of drawing poignant distinctions between Bengalis - Jīmūtavāhana, *et. al.* - and Maithilas - Vācaspatimiśra and the like - do not appear in Halhed's translation, but many do. There is no mention of the *Mitākṣarā*'s theory of ownership by birth, nor is there any mention of Navya-Nyāya and Mīmāṃsā theories of ownership. Indeed, there is virtually no discussion of ownership as a category. However, the basic contours of the Gauḍa school of jurisprudence are unmistakable: upamasvatva and its manifold implications in constructing a comprehensive law of inheritance.

To conclude, the arguments that appear in the *Vivādārṇavasetu* correlate, rather nicely, with the social and intellectual backgrounds of the paṇḍits who compiled it. The text is regrettably thin on details - a fact much lamented by Jones and Colebrooke - and we shall see that this accounted for its relative uselessness to the paṇḍits and judges of the Ṣadr Dīwānī 'Adālat (and later to the Supreme Court) and for the compilation of the *Vivādabhaṅgārṇava* in 1788-94. Even the bare-bones arguments of the *Vivādārṇavasetu* demonstrate, however, that its compilers crafted a simple, if clear, scale of Dharmaśāstra texts on inheritance, in which, following Raghunandana and Śrīkr̥ṣṇa's commentaries, the *Dāyabhāga* is read, anachronistically, as a rejoinder to Vācaspatimiśra and Caṇḍeśvara. We shall see in the next section that Jones and Colebrooke followed the interwoven threads of ownership, inheritance and schools of jurisprudence to a logical conclusion in the following decades of the eighteenth century.

4.B: The Search for Certainty (1787-1794)

⁶¹ See, for example fol 33b: iti **vivādaratnākarakāradhṛtamanuvacanāc** ca.... apatyānām putrāṅām tadamśinī putrasya samāṃśinī... iti **caṇḍeśvarah. jīmūtavāhanena** tu... For further examples, see Rocher, "Schools of Hindu Law," 120-121.

In 1783, William Jones (1746-1794) arrived in Calcutta to take up a position as a puisne judge of the Supreme Court (then the Supreme Court of Judicature at Fort William). He founded the Asiatic Society within months. In doing so, Jones integrated two intertwined processes in the history of the British encounter with India: the development of Hindu law and the birth of Sanskrit studies amongst Europeans.⁶² Jones' significant contributions to Indology - translations of Kālidāsa's *Śakuntalā* (1789) the *Mānavadharmasāstra* (1794) and a host of articles and poetry on classical Indian subjects - were matched by a long and productive tenure on the Calcutta Supreme Court. Although most known as a founder of modern Indo-European philology, his most influential contribution - lionized in the dedicatory inscription on the memorial to Jones erected in the chapel of University College, Oxford by Robert Chambers - is his role in compiling digests of Hindu and Islamic law for the Company and Crown's courts in India.⁶³

When William Jones arrived in India, the Supreme Courts' confidence in its paṇḍit assistants had reached a nadir. Jones' initial interest in Sanskrit sprang from a desire to achieve an independent knowledge of Hindu law.⁶⁴ In 1788, Jones assembled a team of pandits, hired as representatives of the schools of Mithilā and Bengal, and nominally under the leadership of Jagannātha Tarkapañcānana of Triveṇī, to compile a digest of Hindu laws on contract and succession.⁶⁵ Two

⁶² For Jones' life and works, in relation to law and Sanskrit, see Rosane Rocher, "Weaving Knowledge: Sir William Jones and Indian Pandits," in *Objects of Enquiry: the Life, Contributions, and Influences of Sir William Jones, 1746-1794*, eds. Garland Cannon & Kevin Brine (New York: NYU Press, 1995): pp. 51-79. For a general biography of Jones, see Garland Hampton Cannon, *The life and mind of Oriental Jones: Sir William Jones, the Father of Modern Linguistics* (Cambridge: Cambridge University Press, 1990).

⁶³ For more on Robert Chambers, particularly his role in creating the Jones memorial, see Thomas M. Curley, *Sir Rober Chambers: Law, Literature, and Empire in the age of Johnson* (Madison: University of Wisconsin Press 1998), pp. 434-436. For the *Al Sirajiyah*, translated as a *Digest of the Mohammedan Law of Inheritance* (1792), see John Strawson, "Islamic Law and English Texts," *Law and Critique* 6.1 (1995): pp. 21-38.

⁶⁴ Rosane Rocher, "Weaving Knowledge," 54.

⁶⁵ *Ibid.*, 61-2.

Sanskrit digests emerged from the project: the *Vivādasārāṇava* (never translated, but intended to represent the opinions of the paṇḍits of Mithilā), and the *Vivādabhaṅgārāṇava* (translated as a *Digest of Hindu Law* in 1801, and intended to represent the opinions of the paṇḍits of Bengal). Unlike the *Vivādārṇavasetu* and the *Vivādasārāṇava*, the *Vivādabhaṅgārāṇava* is a vast work that fills three mighty volumes - under whose weight a Sanskritist's back often buckles. The *Vivādabhaṅgārāṇava* offers intricate, Navya-Nyāya-inflected discussions of all of the traditional titles of law, vivādapādas, (minus those related to crime): succession, sale without ownership, joint ventures, boundary disputes, rescission of sale, etc.⁶⁶

This section argues that the *Vivādabhaṅgārāṇava* articulates a distinctly Bengali theory of ownership and inheritance that combines Navya-Nyāya philosophical reasoning with *Dāyabhāga* legal principles. The *Vivādabhaṅgārāṇava* combines the *Dāyabhāga* principles of upāmasvatva and *factum valet* with the Navya-Nyāya theory of ownership as produced by the modes of acquisition mentioned explicitly by the śāstra and with the principle that the ownership of one person is an obstructor (bādhaka) to the coordinate ownership of others. The *Vivādabhaṅgārāṇava* combines these principles into a sophisticated, comprehensive model of contract and succession, and uses and contrasts the arguments of late commentators on the *Dāyabhāga* (Śrīkr̥ṣṇa Tarkālaṅkāra and Candrasekhara Vācaspati Bhaṭṭācārya) with the opinions of Maithila paṇḍits and the author of the *Mitākṣarā*. Consequently, the *Vivādabhaṅgārāṇava* demonstrates the existence of: a) a close connection between Navya-Nyāya philosophy and the Bengali *Dāyabhāga* school of jurisprudence; b) regional schools of thought regarding inheritance; and c) a suggestive, if vague, connection between Mīmāṃsā theories of ownership and the

⁶⁶ For the vivādapādas, see Davis, *The Spirit of Hindu Law*, 77-81.

Mitākṣarā's theory of ownership by birth. Taken together, these points suggest that the Navya-Nyāya/Dharmaśāstra nexus that I explored in the second chapter of the thesis flourished during the late eighteenth century in Bengal.

This section attends also to the complex relationships that Jones developed with his paṇḍit informants, teachers and collaborators as he began his study of Sanskrit, as he interpreted points of Hindu law from the bench of the Supreme Court, and as he oversaw the compilation of the *Vivādabhaṅgārṇava*. Jones kept detailed notes on his interactions with various paṇḍits, and coupled with native narratives of the colonial encounter, these reveal substantial details about the lives of paṇḍit collaborators such as Rādhākānta Tarkavāgīśa and Jagannātha Tarkapañcānana. Indeed, I contend that the regional and philosophical predilections of Jones' paṇḍit collaborators led Jones to patronize the *Vivādabhaṅgārṇava* and the *Vivādasārṇava* as the codifications of Gauḍa and Maithila schools of the Hindu law of inheritance. Of course, the power dynamics between Jones and his paṇḍits were grossly unequal. The compilation of the *Vivādabhaṅgārṇava*, though prompted and inflected by indigenous distinctions between schools of jurisprudential thought, is embedded in the Company's broader telos of transforming native knowledge systems into the objects of a colonial epistemic apparatus.⁶⁷

My analysis of William Jones, his paṇḍits, and the *Vivādabhaṅgārṇava* militates against Bhattacharya-Panda's rather bizarre assertion that the elaborate discussions of ownership in the *Vivādabhaṅgārṇava* constitute the direct impositions of British common-law concepts into the Sanskrit tradition.⁶⁸ My analysis also argues against Arindam Chakrabarti and Rajiv Malhotra's use of the William Jones memorial

⁶⁷ A process depicted elegantly by Cohn in *Colonialism and Its Forms of Knowledge*.

⁶⁸ Bhattacharya-Panda, *Appropriation and Invention*, 209-224.

to articulate their criticisms of Western Indology.⁶⁹ With regard to my broader thesis - that the scheme of Hindu schools of law pre-dates European colonization and that these schools develop due to Mīmāṃsā and Navya-Nyāya theories of ownership - I conclude the section by noting that the closer encounter of Europeans with Indian paṇḍits was tied to the emerging view of Hindu jurisprudence as divided into regional schools of thought. Jones' interest in schools of jurisprudence at the "Universities" of Navadvīpa, Mithilā and Vārāṇasī and Colebrooke's exposure to a Benares school of Dharmaśāstra were not merely the product of European fantasy. It was the result of a genuine, if unequal exchange between scholars of two different intellectual traditions - English common law and Indian Dharmaśāstra.

4.B.1: William Jones, Rādhākānta Tarkavāgīśa, and Jagannātha Tarkapañcānana

It is difficult to overemphasize William Jones' importance in the founding of Western Indology. It is equally difficult to overemphasize the importance of William Jones' practical considerations as a sitting judge of the Supreme Court to his interest in the study of Sanskrit. We shall see that for Jones, despite the clear, considerable joy that he derived from his research into the history and literature of Sanskrit (and other Indic languages), his primary ambition was to bring order and reliability to the judgements of the Supreme Court by minimizing the court's reliance on its paṇḍit advisors.⁷⁰ The story of Jones' introduction to Sanskrit learning is the story of the birth of Sanskrit studies in the West, but it is also a story of law: of the search for original and authoritative treatises on the Hindu law of inheritance. Of course, Jones' route to proficiency in Sanskrit involved a large caste of characters: paṇḍits and

⁶⁹ Arindam Chakrabarti, "Introduction," *Philosophy East and West*, 51.4, *Nondualism, Liberation, and Language: The Infinity Foundation Lectures at Hawai'i, 1997-2000* (2001): pp. 449-451; Rajiv Malhotra, *The Battle for Sanskrit* (New Delhi: Harper Collins, 2016).

⁷⁰ Derrett, "The British as Patrons," 242-3.

Vaidyas, Bengalis and Maithilas, philosophers, Dharmaśāstrins, grammarians and astronomers. Jones' path meandered into drama - his 1789 translation of *Śakuntalā* inaugurated the study of Indian drama in Europe - and into theology. Oddly, no one has connected Jones' immersion in paṇḍit intellectual culture with the emergence of the concept of schools of Hindu law amongst British jurists and orientalist in India. The reason for this lacuna, I argue, is that insufficient attention has been paid to the paṇḍits with whom Jones worked or to the Sanskrit digests that these paṇḍits compiled.

Jones arrived in Calcutta in 1783 with no knowledge of, and little interest in, Sanskrit.⁷¹ A wariness of the paṇḍit assistants to the Supreme Court piqued Jones' interest in Sanskrit, which, as Rosane Rocher notes, "was not [a] scholarly interest but perceived judicial necessity."⁷² In 1785, Jones acquired a Persian translation of the *Mānavadharmasāstra*, so that he could determine the trustworthiness of the Court's paṇḍits against "the oldest book on the Hindu laws."⁷³ In a telling demonstration of his distrust of native paṇḍits, in 1785 Jones insisted that Rāmacaraṇa, a paṇḍit assistant to the Supreme Court, "read and correct a copy of Halhed's book (the *Vivādārṇavasetu*) in the original Sanscrit, and... attest to it as good law."⁷⁴ Jones wanted Rāmacaraṇa to commit to a fixed set of legal opinions (articulated in the *Vivādārṇavasetu*) from which the paṇḍit could not deviate. Derrett notes that Jones' desire to calcify the Dharmaśāstra permanently is

where the misunderstanding lay... [for] modern Islamic and Jewish scholars will at once admit that even an orthodox scholar cannot fix the *fiqh* or the

⁷¹ Rosane Rocher, "Weaving Knowledge," 54.

⁷² *Ibid.*, 54.

⁷³ *Ibid.*, 54. Cf *The Letters of William Jones, Volume 2*, ed. Garland Canon (Oxford: Clarendon Press, 1970), 664.

⁷⁴ *Ibid.*, 55. Cf *Letters*, 699.

halachah for all time. Even Maimonides did not put an end to Jewish legal scholarship.⁷⁵

In his second anniversary discourse, delivered to the Asiatic Society in 1785, Jones stressed the importance of squashing the corruption of the Court's paṇḍit assistants by compiling a reliable digest of Hindu law.⁷⁶ Jones found Halhed's *Code* wanting, so his insistence that Rāmacaraṇa attest to it "as good law" speaks volumes to his distrust of the Court's paṇḍits.⁷⁷ At this early stage Jones comes across as very much a villain: a colonial judge, keen on the imperial project, distrustful of native informants and desirous of acquiring a knowledge of Sanskrit in order to directly rule a subject people.⁷⁸

During the Court's fall vacation of 1785, Jones travelled to Navadvīpa, having heard Reverend Donald McKinnon's (a chaplain for the East India Company's army) description of "Nuddea University" at the Asiatic Society earlier in the year.⁷⁹ Jones arrived just as the paṇḍits of Navadvīpa left "to celebrate the yearly Durgāpūjā rituals for princely patrons." Consequently, he learned his first bits of Sanskrit from Rāmalocana, a Vaidya (a member of a medical sub-caste of Brāhmaṇas), who taught grammar to various pupils in Navadvīpa.⁸⁰ Rāmalocana's tuition - they read the *Hitopadeśa*, "the aphorisms of Cāṇakya," and the *Bhaṭṭikāvya* (all secular works) - seems to have equipped Jones with enough proficiency in Sanskrit for him to read a Sanskrit copy of the *Mānavadharmasāstra* by comparing it with a Persian

⁷⁵ Derrett, "The British as Patrons," 249.

⁷⁶ Rosane Rocher, "The Career of Rādhākānta Tarkavāgīśa, an Eighteenth-Century Pandit in British Employ," *Journal of the American Oriental Society* 109.4 (1989): pp. 627-633, 630.

⁷⁷ For Jones' low opinion of the *Code*, see Rosane Rocher, "Orientalism, Poetry, and the Millennium," 51.

⁷⁸ For Jones' enthusiastic embrace of empire - likely an overreaction to his early support of American independence, which had jeopardized his legal career - see Rosane Rocher, "Weaving Knowledge," 53-4.

⁷⁹ Rocher, "Weaving Knowledge," 76.

⁸⁰ *Ibid.*, 56. For the great importance that Durgāpūjā played in the formation of a Bengal school of Dharmasāstra, see chapter 2 of this thesis.

translation.⁸¹ In the summer of 1786 Jones used his knowledge of the *Mānavadharmasāstra* to overrule the opinion of one of the Supreme Court's paṇḍits.⁸²

There is an irony in Jones' inchoate knowledge of a single smṛti overriding the interpretive proficiencies of a trained paṇḍit on the assumption of the *Mānavadharmasāstra*'s superior authenticity. Rocher notes that "Jones' knowledge of Sanskrit and of an antiquarian text was being used to decide on the merits of the court pandits' opinions and thereby in effect to subvert their authority as contemporary sources of Hindu law."⁸³ At this point, Jones' relationship with Dharmaśāstra highlights what Arindam Chakrabarti characterizes as "a profound asymmetry of epistemic prestige."⁸⁴ Jones' limited encounter with the traditional Sanskrit learning of Navadvīpa appears to have left one very important imprint on his understanding of Dharmaśāstra: the importance of Jīmūtavāhana's *Dāyabhāga*. In a letter, dated October 24, 1786, he floated the idea of a new digest of Hindu laws, in which he wished to see included "*Jimut Bahun*, the best book on Inheritance."⁸⁵

Jones' dreams of a new digest and of proficiency in the Sanskrit language came dramatically closer to fulfillment when financial hardship drove Rādhākānta Tarkavāgīśa to seek employment as Jones' tutor in early 1787. Rādhākānta, born in the early eighteenth century, trained under the renowned Naiyāyika Jagannātha Tarkapañcānana of Triveṇī, Bengal.⁸⁶ He and Jagannātha were members of the court of Mahārāja Navakṛṣṇa of Sobha Bazar (1733-1797), a close associate of the

⁸¹ Ibid., 57.

⁸² Ibid., 57.

⁸³ Ibid., 57.

⁸⁴ Chakrabarti, "Introduction," 449.

⁸⁵ See Ludo Rocher, *Jīmūtavāhana's Dāyabhāga*, 20, fn 53. Cf. *Letters*, 722.

⁸⁶ Rosane Rocher, "The Career of Rādhākānta," 627.

British during the formative years of Company Rule.⁸⁷ Before encountering Jones, Rādhākānta had received patronage (in the form of tax-free land grants) from Navakṛṣṇa and from Warren Hastings.⁸⁸ Rādhākānta came to the attention of the Company's agents when he was hired by Warren Hastings (through Navakṛṣṇa, presumably) to compose the *Purāṇārthaprakāśa*, a purāṇic (ancient tales) digest that Hastings hoped could give the Company's officials a better understanding of Indian history.⁸⁹ Rādhākānta became John Shore's (a future Governor of Bengal) personal paṇḍit sometime in 1783.⁹⁰ Previously, Rādhākānta had declined a position as a paṇḍit to the Supreme Court. By 1787, however, Rādhākānta grew heavily indebted by, as Jones put it, "following the duty of Brahmans... to teach the youths of their sect... [and] to relieve those who are poor," and he sought financial stability in Jones' patronage.⁹¹

With Rādhākānta's tuition, Jones boasts his membership in "the celebrated University of *Brahmans at Navadwipa, or Nuddea*" and his stream of articles in the journals of the Asiatic Society - "On the Chronology of the Hindus" (January, 1788), "Inscriptions on the Staff of Fīrūz Shah" (March, 1788) and "On The Indian Game of Chess" (1789) - attest to Rādhākānta's influence.⁹² Rādhākānta appears to have been the one who encouraged Jones' groundbreaking translation of *Śakuntalā* (1789).⁹³

⁸⁷ For the biography of Navakṛṣṇa, see Ranji Sen, "The Emergence of a Service Elite in Bengal in the Half of the Eighteenth Century: A New Dimension of Collaboration," *Proceedings of the Indian History Congress* 36 (1975): pp. 511-522.

⁸⁸ Rosane Rocher, "The Career of Rādhākānta," 627-8.

⁸⁹ *Ibid.*, 628. Rocher notes that the Persian translation of this text was entrusted to Halhed, who never translated it into English. See I.O. Or Ms 1124.

⁹⁰ *Ibid.*, 628.

⁹¹ *Ibid.*, 629.

⁹² *Ibid.*, 629-30.

⁹³ *Ibid.*, 629.

Rādhākānta Tarkavāgīśa's association with William Jones may not have generated Jones' plans for a second digest, but it influenced the shape that the digest took. Before 1787, Jones obtained a Sanskrit copy of the *Vivādārṇavasetu* (to whose validity he forced Rāmacaraṇa to attest) and had this copy corrected by Gaurīkānta, one of the eleven paṇḍits who had created the original compilation in 1773-5.⁹⁴ Jones and Rādhākānta read the *Vivādārṇavasetu* together, likely from the beginning of their association.⁹⁵ In 1788, Jones offered his own translation of a passage from the *Vivādārṇavasetu* (augmented by a śloka from the *Mānavadharmasāstra*) in a case concerning a brother's right to alienate his share of undivided property during the lifetime of his mother.⁹⁶ We saw earlier that the *Vivādārṇavasetu* recapitulates a fairly simple version of the Gauḍa/Maithila division of schools of thought regarding inheritance that emerged first in the sixteenth century. If Jones encountered the Sanskrit version of this text with a Navadvīpan paṇḍit then it is likely that the *Vivādārṇavasetu*'s sectarian arguments contributed to Jones' desire to craft a digest of Bengali and of Maithila Dharmaśāstra, and to obtain the services of a Navya-Naiyāyika in untangling the complexities of ownership and inheritance in Sanskrit jurisprudence.

In March of 1788, Jones wrote to Governor Cornwallis to propose a new digest, "after the model of Justinian's inestimable Pandects, compiled by the most learned of the native lawyers."⁹⁷ Jones proposed hiring two paṇḍits: Rādhākānta, as a representative of Bengal, and Sarvoru Trivedi, for Mithilā. Jones justified these paṇḍits' appointment, because Rādhākānta was "highly revered by the Hindus in

⁹⁴ Rosane Rocher, "Weaving Knowledge," 63.

⁹⁵ "Letters," 797.

⁹⁶ The case was *Kistnochurn Mullick v. Ramnarain Mullick*, reported in T.A. Row, *Indian Decisions (Old Series), Vol. I, Supreme Court Reports, Bengal* (Madras: Law Printing House, 1911): pp. 178-9. Cf Rocher, "Weaving Knowledge," 63.

⁹⁷ *Letters*, 794-800. Cf Rocher, "Weaving Knowledge," 62.

Bengal” and Sarvoru, of Mithilā, was “universally esteemed in that province.”⁹⁸ It may seem a small detail, but Jones’ letter to Cornwallis suggests that Jones’ collaboration with Rādhākānta - their reading of the *Vivādārṇavasetu* and immersion in the paṇḍit culture of Navadvīpa - shaped the project’s motive as a codification of the different laws of inheritance for Bengal and for Mithilā. Jones’ letters and addresses display no interest in a Maithila school of law, or in the importance of querying the opinions of Maithila paṇḍits, until *after* he and Rādhākānta read the *Vivādārṇavasetu* together. In the course of time, the difficulties, indeed, impossibilities, of reconciling the opinions of Gauḍa and Maithila theories of ownership and inheritance became apparent, and this gave Colebrooke good reason to view the project of compiling Hindu law as an exercise in recovering the opinions of different schools of jurisprudence. Sarvoru Trivedi broke off from the main project almost immediately and completed an exclusively Maithila treatise, the *Vivādasārṇava*, in 1789.⁹⁹ The *Vivādasārṇava* is, generally speaking, a gloss of Vācaspatimiśra II’s *Vivādacintāmaṇi*, and like the *Vivādārṇavasetu*, it suffers from a stylistic brevity that limits its interest.¹⁰⁰

As the project picked up steam - and fractured along regional lines - Rādhākānta arranged for six additional Bengali paṇḍits to join Jones’ team: his teacher, Jagannātha Tarkapañcāna, Jagannātha’s son, Rāmanidhi, Jagannātha’s grandson, Ghanaśyāma, Guruprasāda, Rāmamohana and Gaṅgādhara.¹⁰¹

⁹⁸ Ibid., 798. Cf Rocher, “Weaving Knowledge,” 62.

⁹⁹ Ibid., 62.

¹⁰⁰ *Vivādasārṇava*, India Office Library Ms. No 1505/3145b. This is Colebrooke’s personal copy. The section on inheritance starts at fol. 59a. It gives a fairly typical Maithila account of inheritance: tatra dāyo nāma yad dhanam svāmisambandhahetunānyadīyam api svam bhavati tad ucyate. sa ca dvidhaḥ apratibandhaḥ sapratibandhaś ca... vibhāgo nāma dravyasamudāyaviṣayānām anekasvāmyānām tadekadeśeṣu vyavasthāpanam. The Maithila paṇḍits usually defend the coordinate ownership of sons after the death of their father, but deny them ownership during their father’s lifetime. See fol. 59b: tatra jīvati pitari mātari ca tadanicchāyām taddhanavibhāgo na bhavati.

¹⁰¹ Rosane Rocher, “Weaving Knowledge,” 62.

Jagannātha Tarkapañcānana was born in Trivenī in 1695 to Rudradeva, a prominent scholar from a long line of logicians.¹⁰² As a boy, Jagannātha mastered Navya-Nyāya in the ṭols of his uncle, Bhāvadeva Nyāyālañkāra, and Raghudeva Vācaspati, and when Jagannātha's father died in 1718, he opened his own ṭol.¹⁰³ Like Rādhākānta, Jagannātha was patronized by Rāja Navakṛṣṇa. In the early nineteenth century, William Ward noted that:

At Triveni about 28 miles north of Calcutta, is a large chauvaree, where a Brahmum named Jagunnath'hu Turku Punchannu presides. He knows a little of the Vadus, and, it is said, has studied the Vadantu, Shankhya, Patunjulu, the Naya smritee, tuntru, ulunkaru, Kavya, pooranu, and other shastrus. He is supposed to be the most learned and oldest man in Bengal.¹⁰⁴

Jagannātha's grandfather, Candraśekhara Vācaspati Bhaṭṭācārya, who flourished in the seventeenth century, wrote two Dharmasāstric treatises whose ideas appear frequently in the *Vivādabhaṅgārṇava*: the *Dvaitanirṇaya* (composed in 1640) and the *Smṛtisārasaṃgraha*.¹⁰⁵

The paṇḍits completed the bulk of the *Vivādabhaṅgārṇava* by 1792 and were dismissed promptly (with the exception of Rādhākānta who stayed on to assist Jones).¹⁰⁶ After finishing his work on the *Vivādabhaṅgārṇava*, Jagannātha returned to his home in Triveni, where he "went on teaching younger paṇḍits at his home" and received a pension of 300 rupees a month which he secured from the British authorities with Jones' assistance.¹⁰⁷ In short, Jones' thinking about the relative

¹⁰² Sinha, Samita, *Pandits in a changing environment: Centres of Sanskrit Learning in Nineteenth Century Bengal* (Calcutta: Sarat Book House: 1993), 221-222. Also see Brajendranath Banerji, *Dawn of New India* (Calcutta: M.C. Sarkar, 1927), 84-91.

¹⁰³ *Ibid.*, 222.

¹⁰⁴ William Ward, *A View of the History, Literature and Religion of the Hindus, Volume 2* (Serampore: Mission Press, 1815), 200.

¹⁰⁵ See the *New Catalogus Catalogorum: An Alphabetical Register of Sanskrit and Allied Works and Authors, Vol 6*, ed. K. Raja (Madras: University of Madras, 1971), 370.

¹⁰⁶ Rosane Rocher, "The Career of Rādhākānta," 631.

¹⁰⁷ Rosane Rocher, "Weaving Knowledge," 70. Cf Banerji, "Dawn of New India," 90. See Rosane Rocher, "The Career of Rādhākānta, 631 fn 43 for the prominent role that several of the *Vivādabhaṅgārṇava*'s paṇḍits played in Anglo-Hindu courts in the nineteenth century.

importance of various regions of Hindu law evolved from a search for the oldest, most authoritative text to an interest in the Dharmaśāstra as interpreted according to the juridical specialists of Bengal and Mithilā. Arguments concerning Vārāṇasī, the *Mitākṣarā*, or a 'Southern' Brāhmaṇical school of jurisprudence are absent from Jones' considerations. The *Mitākṣarā* and its defenders in Vārāṇasī would enter Western conversations about Sanskrit jurisprudence when H.T. Colebrooke hired Bālabhaṭṭa Pāyaguṇḍe in 1797.

4.B.2: The *Vivādabhaṅgārṇava*, An Ocean of Navya-Nyāya Jurisprudence

The *Vivādabhaṅgārṇava*, the Sanskrit treatise compiled by Jagannātha's team of Bengali, Navya-Nyāya trained paṇḍits, demonstrates a clear preference for the opinions of the Bengal school, against the *Mitākṣarā* and against Maithila authors. It adds to the *Vivādārṇavasetu* by combining the juridical opinions of the Dharmaśāstrins who follow the *Dāyabhāga* with a series of Navya-Nyāya philosophical arguments culled from late *Dāyabhāga* commentators (such as Śrīkr̥ṣṇa Tarkālaṅkāra) and logicians (such as Gadādhara Bhaṭṭācārya). The text reflects the philosophical and juridical predilections of its Navadvīpa and (Triveṇī) compilers. Indeed, the complex philosophical discussions of ownership in the *Vivādabhaṅgārṇava* and their application in support of the legal opinions of the *Dāyabhāga* school demonstrate the strong continuity between the *Vivādabhaṅgārṇava* and the Navya-Nyāya-inflected Dharmaśāstra of the seventeenth century Navadvīpan school of Bengal.

The compilers of the *Vivādabhaṅgārṇava* show a clear interest in the philosophical nature of ownership and the implications of philosophical considerations on thorny jurisprudential questions, particularly with regard to inheritance. I argue that a consistent theory of ownership as a śāstrically determined

entitlement for use as desired, that exists for only one individual at any given time, runs throughout the *Vivādabhaṅgārṇava*. I build this case through examining three juridical questions: 1) the definition of *dāya* (inheritance) and division (*vibhāga*); 2) the possibility of ownership by birth; and 3) the legal validity of a father and of undivided sons' alienation of immovable assets in contravention of śāstric regulations (*factum valet*). In each instance, the compilers of the *Vivādabhaṅgārṇava* defend Jīmūtavāhana's *Dāyabhāga* from the attacks of the "Mīśras" and/or "the author of the *Mitākṣarā*" by appealing to the commentary of Śrīkr̥ṣṇa Tarkālaṅkāra and Navya-Nyāya treatises on ownership. The cumulative weight of these arguments suggests that the *Vivādabhaṅgārṇava* articulates an identifiably Bengali, Navya-Nyāya-inflected scale of Dharmaśāstra texts that contrasts with a rival, Maithila scale of Dharmaśāstra texts primarily, and with the *Mitākṣarā*, secondarily.

The *Vivādabhaṅgārṇava*'s section on inheritance uses Śrīkr̥ṣṇatarkālaṅkāra's commentary on the *Dāyabhāga* to defend Jīmūtavāhana's theory of upamasvatva from the attacks of Raghunandana, the *Mitākṣarā*, and Vācaspatimiśra. It does this by invoking Navya-Nyāya theories of ownership as a 'blocker' (*bādhaka*) to the ownership of another. The section opens by quoting a verse from the *Nāradaśmṛiti*: "the wise call that title of law (*vivādapada*), under which a division of paternal assets is initiated by (a man's) sons, the division of inheritance."¹⁰⁸ The compilers, citing Jīmūtavāhana nearly verbatim, interpret "paternal" assets as assets in which ownership arises from the death of the father.¹⁰⁹ This definition of *dāyabhāga* accords with Jīmūtavāhana's *Dāyabhāga*, but the compilers of the

¹⁰⁸ *Vivādabhaṅgārṇava*, Bodleian Library Ms. No. 720, fol 1b: atha *dāyabhāgaḥ*. tatra **nāradaḥ**. *vibhāgo* 'rthasya pitryasya putrair yatra prakalpyate / *dāyabhāga* iti proktaṃ tad *vivādapadam* budhaiḥ. Cf *Dāyabhāga*, 249. See note 51 for a parallel passage in the *Vivādārṇavasetu*.

¹⁰⁹ *Ibid.*, fol 1b: pitṛta āgatam pitryaṃ tac ca pitṛmaraṇopajātasvatvam ucyate... iti uktvān iti **jīmūtavāhanaḥ**.

Vivādabhaṅgārṇava, assuming upamasvatva, question whether this title of law refers to the *assets* in which ownership arises subsequent to the death of a father, etc., or to the *ownership* (of the sons, etc.) that arises in respect of their father's assets when he dies.¹¹⁰ The compilers try out various possibilities, but they conclude that *dāyabhāga* is:

in fact, that distribution, participation, or ownership of the paternal estate (or wealth descending from the father in consequence of his death or the like, or, in other words, property of the deceased father) which is established or acknowledged by the sons to vest in a certain owner, as a term of law relative to ownership. Consequently, from the relation of the term, ownership itself being the title of law, the property of the estate, which belonged to a deceased owner, being vested *in another* by reason of consanguinity, is inheritance.¹¹¹

The compilers' comments presuppose that after the death of their father, sons and other relatives obtain ownership in their father's assets *severally*. If *dāya* constitutes the *ownership* that arises in a specific assets, then division constitutes the ascertainment of that ownership. The compilers write:

The act of ascertaining the *individual* right, or the ascertainment of a *separate* title, is partition, or division; for, on the death of the father, his right is divested, and a title vests in his son or other heir; and in the case of two or more sons, each son has a *several* title to the property, which shall *thereafter* be received by him: but, since that [right] is absolutely invisible, and cannot be perceived by the eyes or senses, it is ascertained by lots or the like, and argued from logical inference alone; that solely constitutes ascertainment: or the consequent act, such as distribution by casting lots or the like, is signified by the term partition.¹¹²

¹¹⁰ Ibid., fol 1b: artho dhanam pitryam pitṛtvasambandhāl[labdham] iti **smārtāḥ**. tathā ca sambandhādīn[a]svatvavaddhanasya vibhāgo vibhajanam yatra dhane kalpy[a]te taddhanam dāyabhāganāmakam. The alternative option, that it refers to ownership, appears later.

¹¹¹ Ibid., fol 2b: vastutas tu pitryasya pitṛta āgatasya pitṛmaraṇādinā vinaṣṭapitṛsvatvasyeti yāvat. tādrśasya arthasya vibhāgaḥ bhajanam [svāmitvam yatra svāmini kalpyate jñāpyate putraiḥ] [tat]svāmiviśiṣṭam vivādapadam. tathā ca viśeṣaṇatvāt svāmitvasyāpi vivādapatatvena naṣṭasvāmikadhanasya sambandhīnām svāmitvam eva dāyabhāga iti. The translation of the above passage is Colebrooke's. Henry Thomas Colebrooke, *A Digest of Hindu Law on Contracts and Successions, Volume 2* (Calcutta: Company Press, 1801), 504.

¹¹² Ibid., fol 2b-3a: atrocitate. svatvanirṇayakavyāpāraḥ svatva[viśeṣa]nirṇāyo vā vaṇṭanam sa eva vibhāgaḥ. tathā hi pitari uparate tatsvatvam naśyati tatputrādīnām ca svatvam jāyate[.] tac c[ā]nekaputrasthale yena yena putreṇa yad yad dhane sthāpsyate tatra tatraiva tasya tasya svatvam jāyate kiṃ tu tasyātīndriyatvena cakṣurādīnām [a]grāhyatvād guṭikāpātādinānumānenaiva nirṇayo bhavati sa eva nirṇayaḥ [tadanta]vyāpāro vā guṭikāpātādir vibhāgapadārthaḥ. Cf *Dāyabhāga*, 1.7-8, p. 250. The translation of the above passage is Colebrooke's. Colebrooke, *Digest, Vol. 2*, 505.

The elaborate complexity of the *Vivādabhaṅgārṇava*'s language (characteristic of Navya-Nyāya-inflected jurisprudence) obscures its relatively simple meaning: when a father dies (biologically, or legally), his relations acquire ownership in specific assets. The act of division, which one might assume *creates* ownership, or *divides* an existing ownership of various relatives, actually constitutes the act of *knowing* who already owns what asset.

Of course, this theory of individual ownership after the death of the father forms a fault line between Jīmūtavāhana and Raghunandana, the Maithilas and Vijñāneśvara. The latter hold that sons own assets jointly after the death of their father and partition replaces their joint ownership over the entire estate with ownership over particular assets within the estate. The *Vivādabhaṅgārṇava*, following Jīmūtavāhana, explains that:

after the decease of the father, and after the consequent divestiture of his property, a right is vested in his sons... there is no argument to prove the divestiture of the co-ordinate property of sons, and rise of another *several* property; although the texts, which notice partition, do suggest that *several* property, it would be difficult to establish the failure of one property and the rise of another: therefore, the property of each is established in that which will become his by lot.¹¹³

The *Vivādabhaṅgārṇava*'s compilers state Raghunandana's contrasting view (that sons acquire coordinate ownership over the entire estate after their father's death) and note, with obvious discomfort, that such an opinion is accepted by, among others, the author of the *Mitākṣarā* and Vācaspatimiśra.¹¹⁴ The compilers'

¹¹³ Ibid., fol 9a-b: putrasvatvasya piṭṛsvatvanāśānantaram eva sambhavāt piṭṛsvatvanāś[e] 'pīti vibhāgānantaram putrāṅām samudāyikasvatvanāśe svatvāntarotpattau ca pramāṅābhāvam vibhāgabodhakaśāstrāṅām eva tadbodhakatve 'pi ekasvatvanāśāparasvatvotpattikalpane gauravam iti tasmāt yatra yasya guṭikāpāto bhaviṣyati tatraiva tasya svatvaṃ kalpyate. tasya cāpratyakṣatvena niścetum aśakyatayā guṭikāpātena nirṇaya[h] kartavya[h] sa eva vibhāga[h]. The translation is Colebrooke's. See Colebrooke, *Digest*, Vol. 2, 518. Cf *Dāyabhāga*, 250.

¹¹⁴ Ibid., fol 10a: anayor matayoḥ samudayikasvatvavādis**mārtamatam** eva **harināthamitākṣarākāravācaspatimiśrabhavadevādīnām** sammatam.

discomfort is apparent because they enclose this statement with two quotations from Śrīkr̥ṣṇa's commentary on the *Dāyabhāga*: 1) that co-ordinate ownership (glossed by Colebrooke as 'property') amounts to assets in which individual shares exist, but are not yet determined, and 2) that co-ordinate ownership *of the same nature* (sajātīya) in a single asset is impossible for two individuals at the same time.¹¹⁵ Śrīkr̥ṣṇa's opinion, that co-ordinate ownerships are possible, provided they do not share a similar nature, feels very much like an awkward solution to a difficult philosophical problem. We shall see that Śrīkr̥ṣṇa and the compilers of the *Vivādabhaṅgārṇava* reject the possibility of sons and fathers holding co-ordinate ownership and that these authors allow undivided sons (i.e., sons whose father has died, but who have not yet divided the paternal estate amongst themselves) to sell their shares severally. I think that Śrīkr̥ṣṇa's solution to the Raghunandana/Jīmūtavāhana debate is to postulate something of a theoretical, sub-proprietary right of ownership for undivided heirs in the entire estate that cannot prevent any heir from alienating their individual share of the estate.

The *Vivādabhaṅgārṇava* and Śrīkr̥ṣṇa sail uncomfortably close to the wind in their attempts to harmonize the mechanics of Raghunandana and Jīmūtavāhana's theories of upamasvatva, but they appear to be following - if following roughly - a debate that Gadādhara Bhaṭṭācārya explores in the *Svatvarahasya*, a complex, Navya-Nyāya discussion of ownership.¹¹⁶ Gadādhara weighs "Gauḍa" and "Maithila" opinions concerning the collective ownership of sons in their deceased father's

¹¹⁵ Ibid., fol 10a-b: **śrīkr̥ṣṇatarkālāṅkārah** sādharmaṇadhanopaṣṭambhaśabdena [iti] anirṇīta[viśeṣa]sva[tva]dhanopaṣṭambhasyaiva bodhanāt na tatra vyavahāravirodha ity āhuḥ[.] tathā ca sati ekasmin ekadravye ekadaiva nānāsvatvas[vī]kārāt sajātīyasvatve pratisajātīyasvatvena pratibandhakatvaṃ kalpanīyam etad evoktaṃ **śrīkr̥ṣṇatarkālāṅkārah**. Cf *Dāyabhāga*, ed. Heramba Chatterjee (Howrah: Howrah Saṃskṛta Sāhitya Samāja, 1978), 35-6: Śrīkr̥ṣṇa on *Dāyabhāga* 1.5: sajātīyasvatvam prati sajātīyasvatvaṃ virodhi.

¹¹⁶ For the date and authorship of the *Svatvarahasya*, see Ethan Kroll, "A Logical Approach to Law," (PhD diss., University of Chicago, 2010), 198-203.

estate.¹¹⁷ Gadādhara accepts that in some instances, such as when a father's estate consists of a single slave or a single gold coin, sons may have co-ordinate ownership, but he concludes his argument - ambiguously - with the statement that because "there would be no opposition to the theory of the Maithila-s mentioned above (regarding a collective *svatva* for the sons upon the father's death)... it is necessary, and economical, for *svatva* generally to obstruct [the] production of another entity delimited by *svatva*."¹¹⁸

Gadādhara's argument, articulated in a Navya-Nyāya idiom and embedded in a running debate that gives few settled conclusions, leaves much to be desired. Gadādhara frames the argument as a debate between Gauḍas - represented by Jīmūtavāhana - and Maithilas. This suggests that the *Vivādabhaṅgārṇava*'s Nyāya-laden analysis of the metaphysical mechanics of upamasvatva emerges from a debate between Bengali and Maithila paṇḍits (and to a lesser extent, the *Mitākṣarā*) regarding different opinions and theories of ownership.

The compilers of the *Vivādabhaṅgārṇava* weigh and reject the theory of ownership by birth (janmasvatva). In doing so, the compilers contrast Navya-Nyāya and Mīmāṃsā theories of ownership. While they conclude - in conformity with Navya-Nyāya tradition - that the causes of ownership are limited to those modes of acquisitions stated explicitly in the smṛti, they accept the canonical status of the

¹¹⁷ Kroll, "A Logical Approach to Law," 240-251. See page 249 fn 107 for the *Svatvarahasya*'s Navya-Nyāya laden gloss of Jīmūtavāhana's *Dāyabhāga*: vikrayādimaraṇādijanyasvatvanāśotpattikṣaṇe bhrātrantarāṇām svatvam avinaṣṭam api taddhanāvṛttitasya [kā]likāvyaḥpyavṛttivāt[.] evaṅ ca svatvānavacchedakāsamaye 'p[y] ekasya vikrayādinā kret[r]ādisvatvotpattau bādhakābhāva ity āhuḥ[.] **dāyabhāgakṛtas** tu maraṇādijanyapitrādisvatvanāśāt sarvveṣv eva taddhaneṣu na sarvvabhāginām svatvotpattiḥ kin tu guṭikāpātādinā vastugatyā yasya yo 'ñśo nirṇīto bhaviṣyati tatraivāñśe tasya svatvam utpādyate[.]

¹¹⁸ Ibid., 251. See fn 111 for *Svatvarahasya*, fol 38a-b: sāmānyataḥ svatvatvāvacchinnaṃ prati svatvatvena pratibandhakasvatvasya prāguktamaithilamate 'py āvaśyakatayā tanmate 'py a[pr]atīkārāt. This comment is formally structured as a warrant (hetu), rather than as an assertion. The author of the *Svatvarahasya* links a long series of these warrants (which individually constitute assertions in their own right) when formulating his description of ownership.

apocryphal passages -attributed to the *Gautamadharmasūtras* - that the *Mitākṣarā* uses to justify janmasvatva. The compilers defeat the theory of janmasvatva by exploring the theory that the svatva of one person obstructs the svatva of another person in the same asset, generally. In doing so, the *Vivādabhaṅgārṇava*'s compilers extend a common conceptual thread - of ownership - from its definition of inheritance and division to a consideration of ownership's causes and to an analysis of janmasvata.

The *Vivādabhaṅgārṇava* introduces the question of the possibility of ownership by birth by exploring the philosophical nature of ownership itself. The *Vivādābhaṅgārṇava* quotes Jagannātha's grandfather, Candraśekharaśāstri:

does ownership belong to one of the seven padārtha's, substance, etc., or is it a distinct (padārtha)? On this issue, (my) grandfather, assuming the opinion of the Mīmāṃsakas (for argument's sake) states that as far as ownership is concerned, (ownership) is a particular saṃskāra (mental impression) that operates on this or that substance. But, he says, according to the (correct) opinion of the Naiyāikas, svāmitva (ownership from the owner's side of things) is an effect, existing in an owner, described by this or that substance, and that exists in a substance by the relation of describer-ness.¹¹⁹

The *Vivādabhaṅgārṇava* concludes that the correct definition of ownership is that of Śiromaṇibhaṭṭācārya: that ownership is a distinct padārtha.¹²⁰ The text considers several metaphysical details of ownership from within the Navya-Nyāya tradition, such as whether ownership abides in substances or in people, and whether ownership abides in qualities (such as blackness, etc.), and it concludes with a

¹¹⁹ *Vivādabhaṅgārṇava*, fol 3a-b: atra svatvam eva kiṃ dravyādisaptapadāntargatam atiriktaṃ vā. atra **pitāmahacaraṇāḥ** svatve tāvat tat[tad]dravyavṛttisaṃskāraviśeṣa iti **mīmāṃsakamatam** āsṛityāhu[h]. **naiyāyikamate** tu tattaddravyanirūpitasvāmivṛtt[y]apūrvam eva svāmitvaṃ tac ca nirūpakatāsambandhena dravyavṛttīty āhaḥ.

¹²⁰ Ibid., fol 3b: tad eva samyak na tu yatheṣṭaviniyogārhatvaṃ yatheṣṭaviniyogārhatvena śāstra[g]amyatvaṃ vā svasvatve sati yatheṣṭaviniyogaḥ yatheṣṭaviniyogārhaṃ ca svam ity ānāśrayāt, śāstreṇāpi svasvatvāspadībhūtasyaiva yatheṣṭaviniyogo bodhita iti tathāivātmāśrayāc ca. ata evātiriktaḥ padārtha eva svatvam iti **padārthatattve śiromaṇiḥ**. tasya ca saṃskāratvakalpane pramāṇābhāvāt, guṇatvādau ca pramāṇābhāvāt saptapadārthātiriktapadārthatvam iti tasyābhiprāyaḥ tac ca suvarṇarajatagavādirūpadravyavṛttīḥ. For Raghunātha's theory of ownership, see chapter 2, section 2.B.1 of this thesis. Cf. Karl Potter, *The Padārthatattvanirūpaṇam of Raghunātha Śiromaṇi*, (Cambridge, MA: Harvard University Press, 1957).

statement from Candraśekhara Vācaspati's *Dvaitanirṇaya*, that “acquisition alone is the cause of ownership and that (acquisition) is the activity of an acquirer (that is) stated in śāstra.”¹²¹

The *Vivādabhaṅgārṇava* gives no further details about this Mīmāṃsā theory of ownership. We saw in the first and third chapters of this thesis that the Mīmāṃsakas advocate a theory of ownership as a causal potentiality (śakti) or as a fitness for use as desired (yatheṣṭhaviniyogayogyatva) that is produced by modes of acquisition recognized by secular, non-śāstric communal norms. Indeed, the *Mīmāṃsānayaviveka*, one of the principal Mīmāṃsā treatises for the followers of the *Mitākṣarā* school of Dharmaśāstra, weighs a theory of ownership as a saṃskāra.¹²² The *Vivādabhaṅgārṇava*'s distinction between Mīmāṃsā and Navya-Nyāya theories of ownership prefaces a discussion of janmasvatva. This signals the compilers' awareness of the broader Mīmāṃsā/*Mitākṣarā* and Navya-Nyāya/*Dāyabhāga* debates of the seventeenth and eighteenth centuries.

Candraśekhara Vācaspati makes a concession to the proponents of ownership by birth: in the case of inheritance, acquisition is bodily, because the birth of sons and the like is itself an act of acquisition by means of the relation of being a son, or the like. This is because of the smṛti passage “sometimes acquisition by birth alone” and because of the statement of Gautama, “by birth alone he shall obtain assets.”¹²³ We saw in the second chapter of this thesis that although Jīmūtavāhana rejected these apocryphal śāstric passages as inauthentic, his followers - in

¹²¹ *Vivādabhaṅgārṇava*, fol. 4a: tatra kāraṇaṃ ki[m]. atra **pitāmahacaraṇāḥ**. arjanam eva sva[tvahetus] tac cārjanaṃ śāstroktārjayitrvyāpāra eva. See chapter 2 of this thesis for the *Dāyabhāga* school's rejection of janmasvatva - a rejection predicated on the theory that ownership's causes are limited to those stated in the śāstra.

¹²² See section 3.A of this thesis.

¹²³ *Ibid.*, fol 4a: dāyasthale tu kvacij janmaiv[ā]rjanam iti smaraṇāt utpat[ty]aivārthaṃ labheteti **gotamavacanāc** ca putratv[ād]isambandhadv[ā]rā putrādīnām utpattir evārjanaṃ tad api ca kāyikam.

Dharmaśāstra and Navya-Nyāya - tend to accept their authenticity for argument's sake.¹²⁴ From their initial textualization as a maxim of cultural usage in Śālikanātha's *Ṛjuvimalāpañcikā* (10th Century), these statements endorsing ownership by birth alone gradually gained authenticity.¹²⁵ The *Vivādabhaṅgārṇava* accepts the authenticity of these passages without giving the game away - the compilers insist that ownership is a śāstric matter and they use these statements to launch into a discussion of ownership by birth. The *Vivādabhaṅgārṇava*'s argument against janmasvatva runs as follows:

Might a son have ownership in the [assets] of his living father? That would not be a desirable outcome because it contradicts the śāstra, because the *Devalasmṛti* states that sons are asvāmya while their father exists without a blemish... Therefore, the conclusion is that (death, etc. on the part of the father) is the cause (of his sons' ownership) inasmuch as it destroys the ownership of the father.¹²⁶

This constitutes a fairly typical defense of uparamasvatva, but the *Vivādabhaṅgārṇava*'s next argument is more inspired. One might argue that if the destruction of a father's ownership in a given asset generates a son's ownership in that same asset by reason of filiation, then, when a father gives or sells any asset - an activity that involves, *a priori*, the destruction of his ownership - a son's ownership would arise and preclude the donee or purchaser from acquiring ownership.¹²⁷ The *Vivādabhaṅgārṇava*'s conclusion invokes the principle of ownership as an obstructor to defend uparamasvatva and to reject janmasvatva:

¹²⁴ See, for example, chapter 2, 3.B.1 of this thesis.

¹²⁵ *Bṛhatī of Prabhākaramiśra with the Ṛjuvimalā of Śālikanātha*, Vol. IV, ed. S. Subrahmanyam Shastri (Madras: University of Madras Press, 1964), 962, Ṛj on *Bṛhatī* on *Śābarabhāṣya* on *Mīmāṃsāsūtra* 4.1.2: arjanam ca nānārūpam kvacij janma, yathā paitṛkeṣu.

¹²⁶ *Vivādabhaṅgārṇava*, fol 4b: nanu jīvataḥ pitur dhane putrasya svatvaṃ syāt[.] na ceṣṭāpattiḥ śāstravirodhāt. pitary uparate putrā vibhajeyur dhanam pituḥ / asvāmyaṃ hi bhaved eṣāṃ nirdoṣe pitari sthite. iti **devalena** [uktam]... [maraṇādeḥ] pitṛsvatvanāśatvena hetutvam iti phalitam.

¹²⁷ *Ibid.*, fol 4b-5a: (ii.) pitṛsvatvanāśatvena hetutvam iti phalitam. brāhmaṇebhyaḥ pitrā dīyamāne dhane putrasvatvāpatter durvāratvāt. Unfortunately, the *Vivādabhaṅgārṇava* leaves much of this to be inferred by the reader.

We reply that even when some asset is not (yet) given, ownership arises for the purchaser by accepting the offer to trade and the price and for the donee by acceptance, because of the postulation that ownership blocks counter-ownership (for another person). Thus, there is no need to postulate a cause (of ownership for a son) other than the destruction of an opposing ownership (on the part of a father). If there be an opposing ownership (on the part of a donee), then the ownership of a son does not arise. Therefore, a son's lack of ownership while his father lives is what is presented as doctrine.¹²⁸

The logic, which mirrors a similar discussion in Gadādhara's *Svatvarahasya*, appears to assume that a living father's ownership blocks the ownership of his sons.¹²⁹ This constitutes another instance in which the *Vivādabhaṅgārṇava* and the *Svatvarahasya*'s views of ownership and inheritance converge: both authors employ a theory of ownership as an obstructor to defeat Maithila or *Mitākṣarā* theories of sādharmaṅsvatva and/or janmasvatva. Like the *Vivādabhaṅgārṇava*, the *Svatvarahasya* accepts the statement "by birth alone" as an authentic sūtra of Gautama, but Gadādhara writes that this refers to the progeny born from the father's male and female slaves and livestock after the father has died.¹³⁰ Generally, however, "the scribbling of the *Mitākṣarā*, viz., 'A son acquires svatva in his father's assets by his mere act of being born alone,' are unacceptable, since they are contrary to reason."¹³¹

The *Vivādabhaṅgārṇava*, following the *Svatvarahasya*, tackles an issue that lay at the heart of eighteenth century Sanskrit jurisprudence in Bengal: how to accept

¹²⁸ Ibid., fol 4b-5a: atrocyate. adatte 'pi dhane mūlyasaṃkalpasvīkārābhyāṃ kretuḥ svīkārāc ca prat[i]grahītuḥ svatv[ot]pattiyā svatvam, pratisvatva[sya] pratibandhakatvakalpanād evaṃ ca pratisvatvanāśatvena kāraṇatvāntaraṃ na kalpanīyaṃ. yadi pratisvatve sati putrasvatvaṃ na jāyate tadā tu... pitari jīvati putrasya asvāmitvam iti pratipāditam.

¹²⁹ See Kroll, "A Logical Approach to Law," 252 fn 112 for *Svatvarahasya*, fol 38b-39a: ata eva jīvati pitari taddhane 'pi putrāṅnāṃ nādhikāraḥ svatvavati svatvāntarānutpattiyā tadīyasvatvaṃ prati tadīyasvatvābhāvaviśiṣṭasya tadīyetasvatvasya pratibandhakatayā ca pitṛsvatvasatve putrasvatvotpatter asambhavāt.

¹³⁰ Ibid., 252 fn 12 for *Svatvarahasya*, fol 39a: utpattyaivārth[a]svāmitv[am] labhata iti gotamavacanasya kvacij janmaivārjanaṃ yathā pitṛdhan[a] iti prāmāṇikābhīdhānasya ca prāguktarītyā pitṛmaraṇottarajāte pitṛkadāsadāsīgavādiḥ janyāpatyaparamparārūpārthaviśayakatvāt. This interpretation strains credulity.

¹³¹ Ibid., 253 (for translation) & fn 113 for *Svatvarahasya*, fol 38b-39a: janmamātreṅnaiva putrasya pitṛdhanē svatvam utpadyata iti **mitākṣarālikhanasya** ca yuktiviruddhatvenānupādeyatvāt.

the *Mitākṣarā*'s apocryphal statements that "one becomes an owner by birth alone" without conceding that sons might obtain ownership (of any sort) in ancestral assets during the lifetime of their fathers. Various Dharmaśāstrins and Navya-Naiyāyikas developed novel solutions - Govinda Bhaṭṭācārya, for example, combines birth and a theory of counter-positives (pratiyogins) to articulate a causal sequence in which sons do not have ownership rights while their fathers live - but the core structure remains the same. Defending Jīmūtavāhana from the *Mitākṣarā*'s theory of janmasvatva (a theory connected to Mīmāṃsā theories of ownership) required Navya-Nyāya reasoning.¹³² In short, the second jurisprudential question that the compilers of the *Vivādabhaṅgārṇava* tackle continues the theme of mobilizing a Gauḍa scale of Dharmaśāstra and Nyāya texts to defeat Maithila and *Mitākṣarā* rivals.

The third jurisprudential question explored by the *Vivādabhaṅgārṇava* is the legal validity of a father's or of undivided brothers' alienation of immovable assets in contravention of śāstric regulations (*factum valet*). We saw earlier that the compilers accepted two premises: 1) that a father holds exclusive rights of ownership over ancestral assets during his lifetime; and 2) that when their father dies (legally or biologically), the brothers, if undivided, obtain ownership rights in their joint assets *severally*. A core theory of the *Mitākṣarā* school of jurisprudence is that a father's alienation of ancestral assets is legally void because his sons have ownership in those assets during his lifetime. A core theory of the Mithilā school of jurisprudence is that a single, united brother may not alienate joint assets because his brothers have co-ordinate ownership in these assets. The *Vivādabhaṅgārṇava* rejects both views

¹³² Samuel Wright, "The The Practice and Theory of Property in Seventeenth-Century Bengal," *Indian Economic and Social History Review* 54.2 (2017): pp. 147-182, 169.

and argues for the legal validity of transactions made in contravention of śāstric restrictions. The compilers defend morally suspect alienations - a principle enshrined in Jīmūtavāhana's *Dāyabhāga* and in Navya-Nyāya discourse - by appealing to philosophical debates about the nature of ownership.

The *Vivādabhaṅgārṇava* discusses the validity of śāstrically prohibited transactions in its discussion of the non-delivery of gifts (dattānapakarman).¹³³ The *Vivādabhaṅgārṇava* introduces a verse from the *Nāradaśmṛti* that states that for undivided brothers "if they give or sell their own shares (of the paternal estate) they may do as they please with all that. They are masters of their own assets."¹³⁴ An enduring question that appears frequently in seventeenth and eighteenth century Dharmaśāstra and Nyāya is whether an undivided brother's alienation of his own, or of *all* of the undivided estate is legally valid. The *Vivādabhaṅgārṇava* dispenses with the erroneous notion that one brother could alienate *all* of his and his brothers' joint assets. The compilers argue that if (a parcener) gives common, communal assets without the consent of the other parcners, then that gift is invalid indeed because the desire of one (parcener) cannot destroy ownership described by 'all.'¹³⁵

However, they argue that:

Because nothing blocks the disappearance or appearance of ownership by way of there being a desire present in the owner that is the describer of ownership in a particular gift due to a particular desire; therefore, with regard to that (individual asset), the ownership of the giver goes only to the recipient. The ownerships of the other (brothers) remain. There is, however, the accomplishment of a gift conforming to one's own share because the

¹³³ This section is missing from the Bodleian Library's manuscript of the *Vivādabhaṅgārṇava*. The Sanskrit passages quoted below are extracted from Colebrooke's copy of the *Vivādabhaṅgārṇava* held by the British Library. India Office Ms. No. 1534/1770.

¹³⁴ *Vivādabhaṅgārṇava*, fol 5a: svabhāgān yadi dadyus te vikrīṇīyur tathāpi vā / kuyur yatheṣṭam tat sarvam iśās te svadhanasya vai (*Nāradaśmṛti* 13.43).

¹³⁵ *Ibid.*, fol 5b: yadi tu samudāyadhaṇam sādharmaṇam dāyādāntarānumatiṃ vinā dadāti tadā tu dānāsiddhir eva sarvanirūpitasvatvānām ekeccayā nāsāsambhavāt.

individual ownerships of all of the brothers arise in all of the assets (severally).¹³⁶

The compilers hold that united brothers hold joint assets severally, but the question - that appeared in the *Vivādabhaṅgārṇava*'s discussion of partition - arises: do the brothers hold a fractional ownership over the entire estate collectively, or do the brothers hold a fraction of the estate individually? The compilers appear to accept that different ownerships arise in different properties for different people (when a father dies).¹³⁷ The reason, is that “in the opinion of the Naiyāyikas, there is no acceptance of the existence of a quality in two places except for conjunction.”¹³⁸

The *Vivādabhaṅgārṇava* contrasts this theory of sons holding ownership severally in their deceased father's estate with a rival theory that its compilers attribute to “the Miśras.” The Miśras argue that if a father cannot alienate joint assets, his sons or his wife (as chattel property), because he lacks *independence* (svātantrya), then logically, undivided brothers lack independence with regard to joint assets.¹³⁹ Consequently, “one infers (darśana) from Miśra's explanation that (an undivided) brother's gift of his own share from the undivided assets is void in the absence of consent from the other heirs.”¹⁴⁰ The compilers of the

Vivādabhaṅgārṇava answer that:

We say that the gift of the whole of the joint assets by one (of the undivided brothers) is void, but not a gift in accordance with his own share. For, the giver (of the whole of the assets) is not able to destroy the ownership of the

¹³⁶ Ibid., 5b: ek[ai]kecchād ekasya dānasya svatvanirūpakasvāminiṣṭhecchātvena svatvanāśajanakatāyā bādhakābhāvāt[.] tasmād atra dātuḥ svāmitvaṃ sampradānam evopagacchati. anyeṣāṃ svāmitvāni... tiṣṭhant[i]... svāmśayogyadānasiddhis tu bhavaty eva sarveṣv eva dhaneṣu sarvabhṛtṛnirūpitāni ekaikāni svatvāni jāyante.

¹³⁷ Ibid., 6a: dhanabhedāt puruṣabhedāc ca svatvāni jāyante.

¹³⁸ Ibid., 6a: **naiyāyikānām** mate tu ... samyogādyatiriktaguṇānām ubhayavṛtt[eh] [n]a svīkāraś. The text is a bit unclear in this section. The meaning - taken from Colebrooke's translation - is understandable and conforms with the legal conclusions at the end of the discussion of *factum valet*.

¹³⁹ Ibid., fol 8a: atra ca sāmānyam anekasvāmikam[.] atra sāmānyaputradāreṣu cāsvātantryād dānāsiddhir iti asvātantryaṅ ca sāmānyasya nyāyād iti ca **miśraḥ**.

¹⁴⁰ Ibid., fol 8a: atra **miśravvyākhyādarśanāt** dāyadāntarānanumatau avibhaktadhanāt svāmśadāna[m] asiddham.

others by his desire. This does not apply, however, to his own particular ownership, even when it pertains to joint assets, because one observes that activity, unobstructed, amongst partners in trade.¹⁴¹

The compilers argue for a model of the joint family as something akin to a British tenancy in common - where common property is held severally. However, the Gauḍa compilers of the *Vivādabhaṅgārṇava* add the caveat that joint families often - but not always - hold ownership in separate assets within the estate. Once again, the *Vivādabhaṅgārṇava* extends a coherent theory of ownership that it uses to undermine the arguments of its Maithila opponents.

The Gauḍas commonly argue that a father, as a sole owner of family property, may give or sell that property however he chooses, provided that he makes arrangements for the reasonable support of his family.¹⁴² This triggers a question: if a father alienates his entire estate without making arrangements for the support of his dependents, is the alienation of his estate (made in contravention of śāstric rules enjoining the support of one's dependents) legally void? For the Gauḍas, unlike for the Maithilas or for the followers of the *Mitākṣarā*, the answer is no.¹⁴³ A verse that Jīmūtavāhana and Vijñāneśvara attribute to the *Yājñavalkyasmṛti* states that:

a father is the master (prabhu) of *all* of the gems, pearls, and coral, but neither the father nor the grandfather (are the master) of the *all* of the immovable assets.¹⁴⁴

The *Mitākṣarā* reads this śloka, plausibly, as proof that sons have ownership in ancestral immovable assets (and that this ownership prevents a father or

¹⁴¹ Ibid., 8a: ekena samudāyasya sādharmaṇasya dānam asiddham na tu svāṁśayogyasya iti brūmaḥ. tathā hi dātā svecchayā parasvāmitvam eva nāśayituṃ na prāpnoti[.] na tu sādharmaṇadhanagatam api svamātrāsavāmitvam, saṃbhūyavanijāṃ avyāhata tathā vyavahāradarśaṇāt.

¹⁴² See note 58.

¹⁴³ J. D. Derrett, "Prohibition and Nullity: Indian Struggles with a Jurisprudential Lacuna," *Bulletin of the School of Oriental and African Studies* 20 (1957): pp. 203-215.

¹⁴⁴ Ibid., 13a: y[ā]jñ[avalkye] maṇimuktāpravālānāṃ sarvasyaiva pitā prabhuḥ, sthāvarasya samastasya na pitā na pitāmahaḥ. See note 59, above.

grandfather from alienating said assets).¹⁴⁵ Jīmūtavāhana argues, say the compilers of the *Vivādabhaṅgārṇava*, that:

With reference to the statement of Yājñavalkya, that is cited by Jīmūtavāhana, the ‘non-master-ness’ of the father and the grandfather is merely a statement of the absence of the necessity of performing gift and the like, in order to convey the adharma (of gift, etc.). But the meaning (of such statements) is not that gift, etc. *may* not occur. This is because, in this case (of immovable assets), as in other (classes) of assets, there is no difference in the ownership, characterized by an entitlement for use as desired (on the part of the father or the grandfather).¹⁴⁶

The *Vivādabhaṅgārṇava* and Jīmūtavāhana ground their juridical opinion - that fathers, like sons, may alienate whatever is *their* property, even if such an alienation contradicts śāstric regulations (on not alienating the family estate or on not alienating undivided, communal property) - on a theory of ownership as a firm right to alienate as desired. Jīmūtavāhana and the *Vivādabhaṅgārṇava* argue that “because there is no difference between different types of ownership, a fact cannot be made otherwise, even by a hundred (śāstric) statements.”¹⁴⁷ Śāstric statements limiting the power of fathers (with regard to ancestral assets), of undivided brothers (with regard to joint assets), of women (with regard to their ‘women’s property’) are legion in the Dharmaśāstra and the *Vivādabhaṅgārṇava* quotes several of them. The compilers conclude that these statements do not indicate that *dependence* entails that legal transactions are invalid (for these individuals with regard to property that they own).

¹⁴⁵ Rosane and Ludo Rocher, “Ownership by Birth: The *Mitākṣarā* Stand,” *Journal of Indian Philosophy* 29 (2001): pp. 241-255, 249; *Yājñavalkyasmṛti: with the Mitākṣarā of Vijñāneśvara*, ed. R.K. Panda (Delhi, Bharatiya Kala Prakashan, 2011), *Mitākṣarā* on *Yājñavalkyasmṛti* 2.114, 283; yat tu ‘bhartrā prītena’ ity ādi **viṣṇuvacanam** sthāvarasya prītidānajñāpanam tat svopārjitasyāpi putrādyabhyanuñjayaiveti vyākhyeyam. pūrvoktair **maṇimuktā**divacanaiḥ sthāvaravyatiriktasyaiva prītidānogyatvaniścayāt. The verses involving ‘gems and pearls’ read: maṇimuktāpravālānām sarvasyaiva pitā prabhuḥ / sthāvarasya tu sarvasya na pitā na pitāmahaḥ // pitṛprasādād bhujyante vastrāṇy ābharaṇāni ca / sthāvaram tu na bhujyeta prasāde sati paitṛke //

¹⁴⁶ *Vivādabhaṅgārṇava*, fol 13b: **jīmūtavāhanadhṛtayājñavalkyavacane** yad aprabhutvam uktam pituḥ pitāmahasya ca... tad adharmajñāpanāya dānādikartavyatābhāvavacanamātram. na tu dānādyaṇiṣpattyartham iti **jīmūtavāhanenoktam**... yatheṣṭaviniyogārhatvalakṣanasvatvasya dravyāntara iva atrāpy aviśeṣād. Cf *Dāyabhāga*, 262-3.

¹⁴⁷ *Ibid.*, fol 13b: vacanaśatenāpi vastuno ‘nyathākaraṇāśaktiś... svāmitvaviśeṣād. Cf *Dāyabhāga*, 264.

This, say the compilers, “is the path followed by Jīmūtavāhana and accepted by many Gauḍīyas.”¹⁴⁸ Indeed, “this is the sense of the *Smṛtisāra* (of Candrésekharā Vācaspati): the gift (by the father) with reference to all his property is valid because it is made by an owner, but the giver sins because he does not follow the restrictions (of the śāstra).”¹⁴⁹

The *Vivādabhaṅgārṇava* follows the *Dāyabhāga* and defends a theory of ownership that supports what the compilers identify explicitly as Gauḍa jurisprudence. That theory of ownership - existing for one individual at any given time and affording that individual a virtually unrestricted right to use his property as he pleases - receives a vigorous defense in contemporaneous Navya-Nyāya literature. Gauḍa jurisprudence and Gauḍa Navya-Nyāya philosophy share a common cluster of opinions on ownership, inheritance and sale: demonstrated by the close connections between Gadādhara’s *Svatvarahasya* and Jagannātha Tarkapañcānana’s *Vivādabhaṅgārṇava*.

To conclude this section, I want to return to the relationship between William Jones, the British East India Company and the paṇḍits who compiled the *Vivādabhaṅgārṇava*. The view of Arindam Chakrabarti and of Nandini Bhattacharya-Panda (shared by many) that the *Vivādabhaṅgārṇava*’s compilers were *merely* patients in the construction of Anglo-Hindu law tends to characterize the *Vivādabhaṅgārṇava* and other colonial digests as aberrations - filled with British interpolations - rather than as the products of traditional śāstric experts working within multiple epistemic worlds. Bhattacharya-Panda highlights the danger of this perspective when she quotes the *Vivādabhaṅgārṇava*’s definition of ownership and

¹⁴⁸ Ibid., fol 15b: **jīmūtavāhanā** nusārīpanthāḥ bahubhir **gauḍīyair** āsthitaḥ.

¹⁴⁹ Ibid., fol 16b: sarvasve dānaṃ siddhyata eva svāmikṛtatvāt kin tu dātuḥ pratyavāyo niṣiddhācaraṇād iti **smṛtisārasyaṅpy** abhiprāyaḥ.

concludes that the “explicit emphasis on ‘ownership’ and the unambiguous description of its nature was an innovation in Smṛti literature” and was intended to translate English legal categories into Sanskrit.¹⁵⁰ One can accept that the *use* of the *Vivādārṇavasetu* and the *Vivādabhaṅgārṇava* in Anglo-Hindu courts - to control and to replace paṇḍits - deviates from tradition, but the *content* of these digests follows traditional patterns in Dharmaśāstric intellectual history quite closely.

William Jones died in 1794, before he could translate the *Vivādabhaṅgārṇava*, but his brief encounter with Sanskrit, and with Dharmaśāstra in particular, shaped the history of Indology decisively. Although Jones’ contributions as a jurist and as a Sanskritist are each lauded and reviled - for valid, if different reasons - his role in developing Dharmaśāstric schools of ownership and inheritance has been misunderstood. It is clear that Jones’ collaboration with Bengali paṇḍits and his time spent reading the *Vivādārṇavasetu* contributed to his plans to produce digests of Bengali and Maithila schools of Dharmaśāstra. Jones assembled a team of paṇḍits with ties to Navadvīpa and with ties to Mithilā. Unsurprisingly, their efforts resulted in compilations that articulated two very different schools of thought and whose arguments mirrored those of earlier centuries and of Navya-Nyāya texts. The *Vivādabhaṅgārṇava* even hints at a disagreement between Mīmāṃsakas and Navya-Nyāyīyikas over the nature of ownership - a disagreement that shaped the juridical models of ownership that developed in Bengal and Vārāṇasī.

We shall see in the following section that Henry Colebrooke, who inherited the task of translating Jones’ treatise on inheritance, followed the logical threads of the *Vivādabhaṅgārṇava* and traced the evolution of schools of the Dharmaśāstric

¹⁵⁰ Bhattacharya-Panda, *Appropriation and Invention*, 212-4. Essentially, Bhattacharya-Panda argues that one of hallmarks of Sanskrit jurisprudence - the elegant debates about svatva - ought to be attributed to British jurisprudence.

jurisprudence of inheritance to the *Mitākṣarā/Dāyabhāga* debates of the sixteenth and seventeenth centuries.

4.C: From Two Digests to *Two Treatises* (1794-1825)

Henry Colebrooke arrived in Calcutta in 1783 to take up a post as a writer for the East India Company, and to reverse his family's ill fortune.¹⁵¹ Henry's father, Sir George Colebrooke (1729 - 1809), a sometime director of the East India Company (1767–1771 & 1772-3) and member of parliament, acquired and squandered a vast fortune through his lucrative patronage and through reckless speculation.¹⁵²

Financial desperation drove George to seek careers for his sons with the Company in India. Henry's youth and intellectual verve changed the course of Western Indology decisively. Unlike William Jones, who came to India in the same year as a fully educated adult and take a prestigious position at the Supreme Court - with a cluster of intellectual and cultural prejudices formed from years of English education - Colebrooke started at the bottom of the Company's bureaucratic pyramid.¹⁵³ During his young, formative years, Colebrooke collected Sanskrit manuscripts and studied a variety of śāstric topics - astronomy, grammar, literature and law - with traditionally trained paṇḍits from Mithilā, Bengal and Vārāṇasī. Colebrooke's Sanskrit learning blossomed alongside his career in the Company's civil service, and by 1802, he took up positions as a judge of Superior Civil Court (the Ṣadr Dīwānī 'Adālat) and as a Professor of Sanskrit and Hindu Law at Fort William College in Calcutta.¹⁵⁴

The turning point of Colebrooke's career was his appointment, after William Jones' premature death in 1794, to complete a translation of the *Vivādabhaṅgārṇava* for the benefit of the Company and Crown courts of India. Colebrooke completed his

¹⁵¹ Rocher and Rocher, *The Making of Western Indology*, 11.

¹⁵² *Ibid.*, 1-12.

¹⁵³ *Ibid.*, 13-16.

¹⁵⁴ *Ibid.*, 61-2.

translation, *A Digest of Hindu Law on Contracts and Successions* (Calcutta: Company Press, 1801), between 1795 and 1796.¹⁵⁵ For all of its faults - prolixity, a predilection for convoluted philosophical digression, idiosyncratic organization, and a lack of clear conclusions - the *Vivādabhaṅgārṇava* revolutionized the practice and theory of Anglo-Hindu law in the nineteenth century. Colebrooke's efforts to follow the *Vivādabhaṅgārṇava*'s different intellectual threads led him to pursue three related problems in the intellectual history of Sanskrit jurisprudence: 1) the regional differences in the Sanskrit jurisprudence of ownership and inheritance; 2) the philosophical biases of these regional differences; and 3) the foundational treatises of these regional schools of law. In his research, Colebrooke collaborated with paṇḍits from North India's three major centres of Sanskrit learning - Bengal, Mithilā and Vārāṅsasī - and assembled the world's most extensive collection of Sanskrit legal manuscripts. It was in consultation with these paṇḍits and on consideration of these manuscripts that Colebrooke concluded that the Sanskrit jurisprudence of inheritance contained five regionally and methodologically specific schools: Madras, Bombay, Vārāṅsasī, Mithilā and Bengal.

This section traces the many śāstric influences that shaped Henry Colebrooke's intellectual pedigree. I contend that Colebrooke's formulation of regionally specific schools of Hindu law, articulated first in 1810 in his *Two Treatises* (a translation of the *Mitākṣarā* and the *Dāyabhāga* on inheritance), reflects his deep immersion in Gauḍa, Maithila and Vārāṅaseya Dharmaśāstra paṇḍitic culture between 1785 and 1801. Specifically, I attend to the critical juncture of Jones' tenure as a judge and magistrate at Mirzapur, in the newly annexed province of Banaras

¹⁵⁵ Ibid., 34-5.

(1785-1801).¹⁵⁶ During this time, Colebrooke completed his translation of the *Vivādabhaṅgārṇava* and set about compiling a Dharmaśāstra digest of his own design.¹⁵⁷ From the vociferous, polemical debates between Gauḍas, Maithilas, and to a lesser extent, *Mitākṣarā* paṇḍits about ownership and inheritance, Colebrooke concluded that regional and philosophical considerations weighed heavily on Sanskrit jurisprudence. In attempting to extract the core jurisprudential arguments from this vast ocean of Dharmaśāstric debate, Colebrooke collaborated with a series of paṇḍits from the Banaras Sanskrit College (founded 1791). One such paṇḍit, Bālabhaṭṭa Śarman Pāyaguṇḍe (late 17th to late 18th Centuries), is likely to be the one who introduced Colebrooke to a new stream of Dharmaśāstra: that of the Bhaṭṭa family of Vārāṇasī (augmented by Mitramiśra's seventeenth century *Vīramitrodaya*).

Colebrooke's encounter with Vārāṇaseya paṇḍits and with Dharmaśāstras that defended the *Mitākṣarā*'s Mīmāṃsā-inflected theories of ownership by birth compelled him to select the *Mitākṣarā* and the *Dāyabhāga* for translation and to model his theory of schools of Hindu law on Mīmāṃsā and Navya-Nyāya based interpretations of these two core treatises. *Pace* Rocher and Davis, Colebrooke's theory that there was a *Mitākṣarā/Dāyabhāga* fault-line in Dharmaśāstra constitutes a justified and a reasonable understanding of the state of Dharmaśāstra commentaries in the eighteenth century. Colebrooke, I argue, encountered and recreated the scales of Dharmaśāstra texts fashioned in Vārāṇasī by the Bhaṭṭa and by the logicians of Navadvīpa in the seventeenth and eighteenth centuries.

This section examines two of Bālabhaṭṭa's treatises that, coupled with the arguments of the *Vivādabhaṅgārṇava*, most influenced Colebrooke's interest in a

¹⁵⁶ For the appointment, and its connection to Colebrooke's translation of the *Vivādabhaṅgārṇava*, see *ibid.*, 35-6.

¹⁵⁷ *Ibid.*, 46.

Vārāṇaseya *Mitākṣarā* school of Dharmaśāstra: the *Dharmaśāstrasamgraha* (compiled for Colebrooke in 1797) and the *Vyavahārabālabhaṭṭī*, a sub-commentary on the *Mitākṣarā* (possibly written before Bālabhaṭṭa's encounter with Colebrooke). These two treatises synthesize arguments from the Bhaṭṭa family and from the *Vīramitrodaya* to defend the theories of the *Mitākṣarā* from the opinions of the easterners (prācyāḥ). Bālabhaṭṭa's polemic against Jīmūtavāhana and other easterners recapitulates the polemic found in the writings of the Bhaṭṭa family, (which I examined in the third chapter of this thesis): a desire to defend an exemplary, southern Brāhmaṇa pedagogical lineage - built around expertise in Mīmāṃsā and Dharmaśāstra - from a rival, Bengali Navya-Nyāya, Dharmaśāstra nexus. The *Vyavahārabālabhaṭṭī*, in framing the *Mitākṣarā* as a rejoinder to the *Dāyabhāga*, completes the scheme of schools of law as a debate between three centres of learning - Vārāṇasī, Navadvīpa and Mithilā - and between two principal texts - the *Mitākṣarā* and the *Dāyabhāga*.

4.C.1: Henry Colebrooke and the Making of Western Indology

Henry Colebrooke's pursuit of his twin interests - advancement in the bureaucracy of the East India Company and proficiency in traditional Sanskrit knowledge systems - tells the remarkable tale of the British discovery (rather than invention) of Dharmaśāstric schools of jurisprudence. If the Bengali compilers of the *Vivādārṇavasetu* inspired William Jones to craft digests of Maithila and Gauḍa law, then Jagannātha and the other compilers of the *Vivādabhaṅgārṇava* drove Henry Colebrooke to search for the formative texts of the Vārāṇaseya school of law. That story - of a shift from a Maithila/Gauḍa debate to a *Dāyabhāga/Mitākṣarā* debate - takes place in Mirzapur, a small commercial city quite close to Vārāṇasī, in 1796. There, Henry Colebrooke, who had previously been immersed in Gauḍa and Maithila

Dharmaśāstra, was exposed to the vast ocean of Bhaṭṭa and other Vārāṇaseya Dharmaśāstric texts for the first time.

Colebrooke's study of Sanskrit began, in all probability, whilst he served as an assistant to the collector of Tirhut (Mithilā) between 1786 and 1789.¹⁵⁸ However, it was only in 1790, when he was appointed as registrar of Purnia, Bihar, that "Colebrooke devoted for the first time sustained attention to Sanskrit studies."¹⁵⁹ Unlike Jones, who dove headlong into Dharmaśāstra and Kāvya without a solid grasp of śāstric fundamentals, Colebrooke's first interests were grammar and astronomy: he read the *Bījagaṇita*, the *Siddhāntaśiromaṇi*, the *Prakriyākaumudī* and the *Amarakośa* with a local paṇḍit, Citrapati.¹⁶⁰ By 1794, Colebrooke gained considerable proficiency in śāstric Sanskrit and submitted his first paper, "On the Duties of a Faithful Hindu Widow" to the Asiatic Society.¹⁶¹ The paper, read by Sir William Jones during his final meeting of the Society, elevated Colbrooke's status as a competent Sanskritist, but it also generated a fair bit of controversy - since widow burning (satī) featured in the essay.¹⁶² One detail that is often overlooked is that Colebrooke's sources for his essay appear to have been drawn - either directly or indirectly - from Raghunandana's *Śuddhitattva*.¹⁶³ It seems that at the earliest stage of his career, Colebrooke was immersed in a distinctly Gauḍa Dharmaśāstric culture.

After Jones' death in 1794, Colebrooke was appointed by Governor John Shore to translate the *Vivādabhaṅgārṇava*.¹⁶⁴ In 1795, when the East India Company "extended the system of government of Bengal and Bihar to the newly

¹⁵⁸ Rosane and Ludo Rocher, *The Making of Western Indology*, 16-17.

¹⁵⁹ *Ibid.*, 21.

¹⁶⁰ *Ibid.*, 21.

¹⁶¹ *Ibid.*, 24.

¹⁶² *Ibid.*, 24-6.

¹⁶³ *Ibid.*, 25. Colebrooke follows the *Śuddhitattva*'s gloss of *ṚgVeda* 10.18.7 (where an agre is read as agneḥ).

¹⁶⁴ *Ibid.*, 34-5.

annexed province of Banaras,” Colebrooke received an appointment to a position as a magistrate of Mirzapur.¹⁶⁵ Colebrooke was pleased because this posting would afford him “ready access to the Hindu College” and its many paṇḍits.¹⁶⁶ On arriving in Mirzapur in October of 1795, Colebrooke seems to have immediately begun a correspondence with the paṇḍits of the Benares Sanskrit College and to have begun assembling a collection of Sanskrit manuscripts from the city.¹⁶⁷ Colebrooke completed his translation of the *Vivādabhaṅgārṇava* in Mirzapur in 1796.

In his preface to his translation, in which he complains that “Jagannātha has added a copious commentary, sometimes indeed pursuing frivolous disquisitions,” he gives an overview of the principal Dharmaśāstric texts.¹⁶⁸ It is here, rather than in the introduction to *Two Treatises*, that Colebrooke first formulates the theory of schools of Hindu law. He writes that the “*Dīpacalicā* by *Śūlapāṇi*... is in deserved repute with the *Garīya* [sic] school,” that the “works of Raghunandana... are highly respected by the *Gaurīya* school,” and that Jīmūtavāhana’s “chapter on Inheritance is extant, with a commentary by Śrī Crīshṇa Tercālancāra... who belongs to the *Gaurīya* school.”¹⁶⁹ Likewise, Colebrooke states that the “*Vivāda Retnācara*... Chaṇḍēśwara... the *Vivāda Chintāmeni*, *Vyavahāra Chintāmeni* and other works of Vāchespati Misra, are... much respected in the *Mit’hilā* school.”¹⁷⁰ Colebrooke’s list of texts are drawn from the *Vivādabhaṅgārṇava*, and so it comes as no surprise that he, like William Jones, would distinguish between these two principal schools.

Colebrooke makes a remarkable argument:

¹⁶⁵ Ibid., 35.

¹⁶⁶ Ibid., 35.

¹⁶⁷ Ibid., 39-41.

¹⁶⁸ Henry Thomas Colebrooke, *A Digest of Hindu Law on Contracts and Successions, Vol. 1* (Calcutta: Company Press, 1801), xi.

¹⁶⁹ Ibid., xvi-xxi.

¹⁷⁰ Ibid., xix-xx.

An excellent commentary [on the *Yājñavalkyasmṛti*] intitled [sic] *Mitācsharā*, was composed by Vijnyanēśwara, a hermit, who cites other legislators in the progress of his work, and expounds their texts, as well as those of his author, thus composing a treatise which may supply the place of a regular digest: it is so used in the province of *Benares*, where it is preferred to other law tracts.¹⁷¹

This is the first description of the *Mitākṣarā* in English (Halhed lists the *Mitākṣarā* as a text consulted by the compilers of the *Vivādārṇavasetu*) and although Colebrooke does not yet describe it as foundational to a school of law, he makes a strong association between it and the paṇḍits of Vārāṇasī. Colebrooke mentions the *Mitākṣarā* sparingly, but his comments, coming immediately after his initial encounter with the paṇḍits of the Sanskrit College of Benares, suggest a jurisprudential divide between Vārāṇasī on the one hand, and Bengal on the other.

Colebrooke's comment that the *Mitākṣarā* constitutes the paradigmatic treatise on the Dharmasāstric law of inheritance suggests that the paṇḍits of the Benares Sanskrit College privileged this text over other, eastern texts. One reason for the *Mitākṣarā*'s popularity in Vārāṇasī is the strikingly strong concentration of Mahārāṣṭrian paṇḍits in the city in the late seventeenth century. William Ward, a British missionary who recorded many features of Indian life at the end of the eighteenth century, records the names of the city's leading paṇḍits, many of whom hail from Mahārāṣṭra.¹⁷² We saw in the second chapter of this thesis that the Bhaṭṭas viewed a rigorous defense of the *Mitākṣarā*'s theory of ownership by birth and of the Prābhākara-Mīmāṃsā theory of ownership as a secular phenomenon as a key facet of the Bhaṭṭa family's status as exemplary southern Brāhmaṇas in the city of Vārāṇasī. Furthermore, the Bhaṭṭas defense of the *Mitākṣarā* was oriented against Bengali Dharmasāstrins who followed the *Dāyabhāga* and against Bengali Navya-

¹⁷¹ Ibid., xv.

¹⁷² William Ward, *A View of the History, Literature, and Mythology of the Hindoos*, Vol. 2 (London: 1822), 490-494.

Naiyāyikas who followed Raghunātha Śiromaṇi's *Padārthatattvanirūpaṇa*.

Consequently, one might expect that the Mahārāṣṭrian paṇḍits that Colebrooke encountered in Vārāṅsasī held views similar to those of their illustrious forebears, the Bhaṭṭas.

Jonathan Duncan (1756-1811), the British Resident of Benares from 1788 to 1795, founded the Benares Sanskrit College in 1791 (with the assistance of Governor Cornwallis) with the goal of:

preserving and disseminating a knowledge of Hindu Law and proving a nursery of future doctors and expounders thereof, to assist the European judges in the due, regular and uniform administration of its genuine letter and spirit to the body of the people.¹⁷³

Duncan's Kaśmīri paṇḍit, Kāśīnātha Upādhyāya, served as the first rector of the college and the "curriculum was left entirely to the teachers."¹⁷⁴ It is a pity that we do not know the curriculum for the early Benares Sanskrit College, but the combination of the Company's singular emphasis on law, the city's overwhelmingly Mahārāṣṭrian makeup, and Colebrooke's sudden interest in the *Mitākṣarā* suggests, at the very least, that the *Mitākṣarā* and very probably Bhāṭṭa Dharmaśāstra texts were studied.¹⁷⁵ Indeed, in a memorandum in 1810, Colebrooke, writes that in:

¹⁷³ George Nicholls, *Sketch of the Rise and Progress of the Benares Patschalla or Sanskrit College, Now Forming the Sanskrit Department of the Sanskrit College* (Written 1848) (Allahabad: Government Press, 1907), 1. Also see Vishnu Narain, *Jonathan Duncan and Varanasi* (Calcutta: Firma K. L. Mukhopadhyay, 1959).

¹⁷⁴ Vasudha Dalmia, "Sanskrit Scholars and Pandits of the Old School: The Benares Sanskrit College and the Constitution of Authority in the Late Nineteenth Century," *Journal of Indian Philosophy* 24 (1996): pp. 321-337. Also see Michael Dodson, "Re-Presented for the Pandits: James Ballantyne, 'Useful Knowledge,' and Sanskrit Scholarship in Benares College during the Mid-Nineteenth Century," *Modern Asian Studies* 36.2 (2002): pp. 257-298.

¹⁷⁵ Nicholls, *Sketch of the Rise*, 63 & 120. The College principal lists the *Mitākṣarā* as the Dharmaśāstra text studied for the academic year of 1820. In 1839, the College's paṇḍits answered questionnaires about their departments. In response to the question, "What kinds of Law are studied by your pupils," the paṇḍit answered "the books read in the Deccan, those read in the Western Provinces and in Bengal are studied by the students of the college (here follows the names of different works)." See *Sanskrit Documents*, #'s 1, 11, 12, 14 and 19 for examples of eighteenth century vyavasthās in which the paṇḍits of Vārāṅsasī cite the *Mitākṣarā* (primarily), *Madanaratnapradīpa*, *Viramitrodaya* and the *Vyavahāramayūkha*.

the school of Benares, the prevailing one in middle India... the *Mitācsharā* of Vijnyāneśwara... is implicitly followed... so much so, that the ordinary phraseology of references for law opinions of Pandits, from the native judges of Courts established there... required the Pandit, to whom the reference was addressed, 'to consult the *Mitācsharā*,' and report the exposition of the law, there found, applicable to the case propounded. A host of writers might be named, belonging to this school, who expound, illustrate, and defend the *Mitācsharā*'s interpretation of the law. It may be sufficient to indicate, in this place, the *Vīramitrodāya* of Mitra Miśra, and the *Vivādatāṇḍava* and other works of Camalācara.¹⁷⁶

In 1797, as Colebrooke settled into his role as a magistrate in Mirzapur, he spent his free time collecting manuscripts, preferably those that "had been much used and studied" from various paṇḍits from the city of Vārāṇasī.¹⁷⁷ In the same year, Colebrooke received permission from the Company to pursue a new digest of Hindu law that "would be much less diffuse than the digest [of Jones]."¹⁷⁸ Colebrooke hired Bāla Śarman Pāyaguṇḍe, alias Bālambhaṭṭa, to compose a new digest, the *Dharmaśāstrasamgraha*.¹⁷⁹ Colebrooke met Bālambhaṭṭa in 1786 when he procured a series of Sanskrit treatises on Pāṇinīan grammar.¹⁸⁰ Bālambhaṭṭa compiled the *Dharmaśāstra* very slowly, and Colebrooke took an unfavorable view of the anthology. Colebrooke's copy of the *Dharmaśāstrasamgraha*, which breaks off abruptly in the middle of its treatment of Vyavahāra (judicial procedure), contains a note from Colebrooke which reads:

1st May, 1800, This is little else but the *Vīramitrodāya* revised... but as *Mitra Miśra*'s work is far better than Pāyaguṇḍe is capable of producing himself, there is no reason to regret this imposition... After the experience I have had, that no Pandit is capable... to compile a digest in the form I require, I must now seriously set about compiling it myself.¹⁸¹

¹⁷⁶ T.E. Colebrooke, *The Life of H. T. Colebrooke* (London: Trübner & Co, 1873), 96.

¹⁷⁷ Rocher and Rocher, *The Making of Western Indology*, 41. Colebrooke's contacts included one Dhanapati Sūri, professor of Vedānta at the Benares Sanskrit College who composed a *Vidyāratnākara* at Colebrooke's request.

¹⁷⁸ *Ibid.*, 43.

¹⁷⁹ *Ibid.*, 47.

¹⁸⁰ *Ibid.*, 47.

¹⁸¹ Julius Eggeling, *Catalogue of the Sanskrit Manuscripts in the Library of the India Office, Vol. 1* (London, 1887), pp. 458-9, #1507.

The Dharmaśāstrasamgraha does not contain a section on inheritance, but Colebrooke's collaboration with Bālabhaṭṭa and the Vārāṇaseya paṇḍit establishment marks the juncture in which Colebrooke resolved to create a treatise of Dharmaśāstra that resulted in the *Two Treatises* in 1810.

Bālabhaṭṭa served as a conduit between Colebrooke and the Bhāṭṭa Dharmaśāstra texts of the seventeenth century that frame the Hindu law of inheritance as a southern/eastern, Mīmāṃsā/Nyāya and *Mitākṣarā/Dāyabhāga* debate. This, coupled with Colebrooke's encounter, probably through the Benares Sanskrit College, with the *Mitākṣarā*, shaped his *Two Treatises*. Bālabhaṭṭa was the son of Vaidyanātha Pāyaguṇḍa (1690-1780), and both were pupils of the famous grammarian Nāgeśabhaṭṭa (1650-1730).¹⁸² Nāgeśabhaṭṭa Kāle was a close relative of the Bhaṭṭa family (the Bhaṭṭas intermarried with the Kāles regularly) and all three paṇḍits wrote extensively on Dharmaśāstric topics.¹⁸³ In their writings, all three paṇḍits often cite the opinions of Kamalākara, Nīlakaṇṭha and Gāgābhaṭṭa (although not, to my knowledge, on inheritance) and Vaidyanātha and Bālabhaṭṭa's treatises proved influential in the contentious issue of caste identity in eighteenth and nineteenth century Mahārāṣṭra.¹⁸⁴

Bālabhaṭṭa wrote an influential, if idiosyncratic, commentary on the *Mitākṣarā*, the *Bālabhaṭṭī*, which Colebrooke relies on in his *Two Treatises* and which frames the *Mitākṣarā* as a Mīmāṃsā-inflected response to the *Dāyabhāga*.¹⁸⁵

¹⁸² See Kane, *A History of Dharmaśāstra*, Vol. 1. Part 2. 2nd Edition (Poona: Bhandarkar Oriental Research Institute, 1975), 965-6. For Bālabhaṭṭa to have still been active as a śāstrin in 1786, having studied with Nāgeśa at least 56 years earlier, he would have to have been exceptionally young when he did so.

¹⁸³ For intermarriage between the Bhaṭṭas and the Kāles, see Kane, *HDS*, 1.2, 703.

¹⁸⁴ Ibid., 968. For the role of the Pāyaguṇḍes in Mahārāṣṭra, see Madhav Deshpande, "Kṣatriyas in the Kali Age? Gāgābhaṭṭa & His Opponents," *Indo-Iranian Journal* 53 (2010): 95-100.

¹⁸⁵ Bālabhaṭṭa, *Vyavahārabālabhaṭṭī*, fasc. 5., ed. Nityanand Pant Parvatiya. (Benares: Chowkhambā Sanskrit Book Depot, 1912). All translations of the *Bālabhaṭṭī* are my own.

The *Bālabhaṭṭī*'s treatment of inheritance provides a good idea of what the section on inheritance in the *Dharmaśāstrasamgraha* would have looked like and how Bālabhaṭṭa would have explained the *Mitākṣarā* school of inheritance to Colebrooke. Bālabhaṭṭa lived in Vārāṇasī and trained under a distal member of the Bhaṭṭa family. He continued the Bhaṭṭas' signature approach to the Dharmaśāstric jurisprudence of inheritance - a defense of the *Mitākṣarā* from Gauḍa opponents. This continuity of jurisprudential thought provides the missing link between Colebrooke's *Digest* and Colebrooke's *Two Treatises* because it accounts for Colebrooke's sudden interest in the *Mitākṣarā/Dāyabhāga* debate.

4.C.2: Bālabhaṭṭa, the *Mitākṣarā*, and the *Vīramitrodaya*

If Colebrooke first encountered the *Mitākṣarā* in Vārāṇasī, it is likely that he first encountered the theory that the *Dāyabhāga* and the *Mitākṣarā* are the root treatises of two schools when he read Bālabhaṭṭa's *Bālabhaṭṭī* and when he read Mitramiśra's *Vīramitrodaya*. In this subsection I examine the treatment of ownership and inheritance in the *Bālabhaṭṭī*'s comments on the *Mitākṣarā*'s introduction to *Yājñavalkyaśmṛti* 2.114. I argue that Bālabhaṭṭa follows Kamalākara, Nīlakaṇṭha and Mitra Miśra's seventeenth century arguments - that the *Mitākṣarā* rejects the *Dāyabhāga* - and defends a southern theory of inheritance against the attacks of eastern (prācyā) rivals. Bālabhaṭṭa frames three of the *Mitākṣarā*'s arguments as responses to "the Bengalis" and he quotes the *Dāyabhāga* at length (before rejecting its opinions invariably). I examine three features of Bālabhaṭṭa's texts: 1) the definition of inheritance; 2) the Mīmāṃsā theory of ownership as established secularly; and 3) the theory of ownership by birth.

Bālabhaṭṭa glosses the *Mitākṣarā*'s definition of *dāya* as “an asset in which an individual gains ownership, the necessary and sufficient condition being that he be connected to the owner.”¹⁸⁶ He states that:

Thus (through this definition, Vijñāneśvara) distinguishes (relation) from merely other causes in the form of purchase, which are known about in (the secular) world. And ‘relation,’ namely the state of being begetter and begotten, means a relation between ‘another,’ namely sons and the like, with the owner of the asset. Therefore, what has been said by the Bengalis, that ‘the word inheritance is used in a technical sense to refer to ownership, contingent on a relationship with the previous owner of that asset (which arises) when that owner dies’ is rejected.¹⁸⁷

Bālabhaṭṭa goes on to divide *dāya* into with and without an obstruction (apratibandha and sapratibandha) categories. Bālabhaṭṭa offers some detail on why Vijñāneśvara’s definition of *dāya* rejects the opinions of the Bengalis:

Now, having stated the meaning of the word inheritance, he (Vijñāneśvara) states the meaning of the word division. The word division means the fixing, one by one, of the manifold ownership located in the sons, etc., which is described by the entire undivided assets, as pertaining to individual assets. Therefore the statement of the Bengalis, that ‘division is the determination, through the casting of lots, etc., of ownership, that has certainly arisen in the land and gold (of the estate), that exists in individual places (but that) is unrealized insomuch as it is not fit for particular transactions because of the absence of a criterion for distinguishing (one ownership from another)’ is rejected.¹⁸⁸

Bālabhaṭṭa’s strategy for explaining the comments of the *Mitākṣarā* is to place the *Mitākṣarā* in direct contrast with the *Dāyabhāga*. In the third chapter of this thesis,

¹⁸⁶ Rosane and Ludo Rocher, “Ownership by Birth,” 242; *Mitākṣarā*, 280: tatra dāyaśabdena yad dhanam svāmisambandhād eva nimittād anyasya svam bhavati tad ucyate.

¹⁸⁷ *Bālabhaṭṭī* on *Mitākṣarā*, introduction to Yāj. 2.114: dāyaśabdārthaṃ tāvad āha tatreti. nirūpaṇīye dāyabhāge ity arthaḥ. etena lokaprasiddhakrayādirūpanimittāntaramātravyavacchedaḥ. sambandhaś ca janyajanakabhāvādir dhanasvāminā sahānyasya putrāder bodhyaḥ. etena pūrvadravyasvāmisambandhādīnaṃ tatsvāmyuparame yatra dravye svatvaṃ tatra nirūḍho dāyaśabda iti **prācyoktam apāstam**. Cf *Dāyabhāga*, 250: tataś ca pūrvasvāmisambandhādīnaṃ tatsvāmyoparame yatra drave tatra nirūḍho dāyaśabdaḥ.

¹⁸⁸ *Ibid.*, 418-9: evam dāyaśabdārtham uktvā vibhāgaśabdārtham āha - vibhāgo nāmeti. avibhaktadravyasamudāyanirūpitānām anekeṣāṃ putrādiniṣṭhasvāmyānām tadekadeśeṣu samuditadravyaikadeśeṣu tadviśayatayā tannirūpitatayā vyavasthāpanaṃ viśeṣeṇa pratyekam avasthāpanaṃ yat tat bhāgaśabdavācyam, ity arthaḥ... etenaikadeśagatasyaiva bhūhirānyādāv utpannasyaiva svatvasya vinigamanapramāṇābhāvena vaiśeṣikavyavahārānarhatayā avasthitasya guṭikāpātādinā svatvavyaṅjanaṃ vibhāga it **prācyoktam apāstam**. Cf *Dāyabhāga*, 250.

we saw that Kamalākara and his family tend to summarize and reject the Gauḍas' opinions generally, but Bālamabhaṭṭa is very keen to place the primary texts (the *Mitākṣarā* and the *Dāyabhāga*) side by side.

Bālabhaṭṭa follows these comments with a lengthy gloss on the Mīmāṃsā theory of ownership as secular. He recapitulates the arguments that form the core theories of the *Mitākṣarā* school of thought that appear first in the *Mīmāṃsānayaviveka*: 1) that ownership is a secular relation between an owner and their property; 2) which is like that between an acquirer and an object acquired; and 3) that such a relationship is like the relationship between a father and son.¹⁸⁹

Bālabhaṭṭa introduces and rejects - at length - the theory (propounded by Raghunāthaśiromaṇi) that ownership is a distinct padārtha that is produced by those means of acquisition mentioned explicitly by the śāstra (which would preclude ownership by birth).¹⁹⁰ Bālabhaṭṭa concludes that ownership is “inferable from use, directly by direct perception and from secular sources, used with reference to (property) called communal and non-communal, destroyed by partition, as it is destroyed by gift and sale, and *not* produced by partition.”¹⁹¹

Bālabhaṭṭa's final conclusion, based on his aforementioned analysis of ownership, is that:

¹⁸⁹ Ibid., 424-428: tac ca svatvaṃ janmanā putratvādikavat arjanenārjakārjyayoḥ tādṛśasvatvavat svasvāmisambandharūpaṃ laukikam eva manyante vṛddhāḥ... kriyāmūlakaḥ kartṛkarmaṇoḥ sambandho lokasiddho na mānāntarāpekṣaḥ. na caivam arjanakriyāpāye tajjanyasya tasyāpy apāyaḥ. sambandhinor āśrayayoḥ sattvāt. na hi pituḥ kriyāpāye pitṛtvam apaiti... arjanaṃ nāmārjakadharmāḥ prāguktarūpas tatprayuktaḥ svasvāmibhāvaḥ sambandhaḥ. sa ca dviniṣṭhaḥ pitṛputratvavat.

¹⁹⁰ Ibid., 428-429: śāstrāniṣiddhaṃ yatheṣṭaviniyogopāyabhūtakrayapratigrahādiviṣayatvaṃ... dānādināśyasya pratigrahādijanyasya padārthaviśeṣasyaiva svīkārāt. Bālabhaṭṭa's comments ramble quite a bit, and it is difficult to extract a single, coherent thread of argument from which his opponent's theory could be described. However, the idea of a distinct padārtha, generated by śāstrically recognized sources is undeniably reminiscent of the Gauḍa school of thought.

¹⁹¹ Ibid., 431: evaṃ ca vibhāgājanyaṃ dānakrayanāśyavad vibhāganāśyaṃ sādharmaṇāsādharmaṇoktanimittaprayojyaṃ lokapramāṇapratyakṣagamyam bhogādyanumeyaṃ ca svatvam.

What has been said by the Bengalis, that: 1) because if that were the case (ownership by birth) there would be the unwanted consequence that partition would occur even without the desire of the father; 2) because there is no authority for ownership by birth alone; and 3) because birth is not stated in *smṛti* as a form of acquisition, there is no ownership (for sons) while their parents are alive, but there is ownership when they die or become outcastes,¹⁹² is rejected.

Bālabhaṭṭa's commentary on the *Mitākṣarā*'s chapter on inheritance follows this pattern of quoting and rejecting the *Dāyabhāga* wherever it and the *Mitākṣarā* differ. His Mīmāṃsā-inflected theory of ownership as secular (indeed, radically so when we consider that he thinks of ownership as directly perceptible) establishes the fundamental point of departure from the Bengalis.¹⁹³

Bālabhaṭṭa follows Kamalākara's and the other Bhaṭṭas' strategy of defending the *Mitākṣarā* from the *Dāyabhāga* by quoting the *Mīmāṃsānayaviveka*'s theories of ownership at length and of citing and rejecting Raghunāthaśiromaṇi's *Padārthatattvaśiromaṇi*, but his innovation is to cite the *Dāyabhāga* explicitly and to read the *Mitākṣarā* as rejecting the *Dāyabhāga*. Rather than defend the *Mitākṣarā* from Jīmūtavāhana's attacks, Bālabhaṭṭa reads the *Mitākṣarā* as an attack on the *Dāyabhāga* and on Navya-Nyāya theories of ownership - theories that limited ownership to being the result of methods of acquisition that are recognized by the śāstra.

The Bhaṭṭa family was not the only influence on Bālabhaṭṭa's work. As Colebrooke noted in the margins of Bālabhaṭṭa's *Dharmaśāstrasamgraha*, Bālabhaṭṭa borrowed heavily from the seventeenth century *Vīramitrodaya* of Mitra Miśra (active 1610-1640), a vast Dharmaśāstra digest commissioned by Vīrasimha

¹⁹² Ibid., 439-440: tathā sati (uparamasvatve) pitur anicchayāpi vibhāgāpatteś ca. janmanaiva svatve mātṛbhāvāc ca. arjanarūpatayā janmanaḥ smṛtāv anukteḥ... pitroḥ satoh svāmitvam eva na. nidhanapātityādau tu svāmitvam iti **prācyoktam** apāstam. Cf *Dāyabhāga*, 252.

¹⁹³ For another example of Bālabhaṭṭa rejecting the opinion of the Bengalis, see *ibid.*, 444: etena kāladvayam eva pitur icchā tannidhanam ca na tṛtīyo 'pīti mātur nivṛtte rajasīti pitāmahādīdhanaviṣayam iti **prācyoktam** apāstam.

Deva (Birsinghdeo, King of Orcha from 1605 to 1627).¹⁹⁴ We know surprisingly little about Mitra Miśra. We know that his grandfather hailed from Gwalior, that his father, Paraśurāmapaṇḍita, trained in Vārāṇasī under a guru called Candraśekhara, and that whilst preparing the *Vīramitrodaya*, he was assisted by a Maithila paṇḍit called Sadānanda.¹⁹⁵ Like Kamalākarabhaṭṭa's *Vivādatāṇḍava* and like Nīlakaṇṭhabhaṭṭa's *Vyavahāramayūkha*, the *Vīramitrodaya*'s section on inheritance militates, vociferously, against the opinions of Jīmūtavāhana, Raghunandana and other Gauḍa authors.¹⁹⁶ In the *Vīramitrodaya*, Mitra Miśra rejects Jīmūtavāhana's definition of ownership, he rejects Jīmūtavāhana's theory that only those means listed explicitly in the śāstra result in ownership, and he rejects Jīmūtavāhana's argument that partition *manifests* rights of ownership that already exist in individual assets.¹⁹⁷

The *Vīramitrodaya* summarizes the state of the jurisprudential debate between Vārāṇaseya (and Mahārāṣṭrian) Mīmāṃsakas and Navadvīpan Navya-Naiyāyikas in the seventeenth century. If Colebrooke, in his interactions with the paṇḍits of the Benares Sanskrit College, read Bālabhaṭṭa's *Bālabhaṭṭī*, Mitra Miśra's *Vīramitrodaya* and Kamalākarabhaṭṭa's *Vivādatāṇḍava*, he had excellent reason to view the Dharmaśāstric jurisprudence of inheritance as a debate between southern paṇḍits based in Vārāṇasī and eastern paṇḍits based in Navadvīpa (subdivided into Maithila and Gauḍa schools). Bālabhaṭṭa reproduces the southern scale of texts that the paṇḍits of the Bhaṭṭa family established in the seventeenth

¹⁹⁴ See Kane, *HDS*, 1.2, 941-953.

¹⁹⁵ *Ibid.*, 946-7. Sadānanda's exposure to Navya-Nyāya philosophy in Mithilā (and possibly Bengal) might account for the unusually detailed accounts of eastern ideas about ownership and inheritance in the *Vīramitrodaya*.

¹⁹⁶ *Vīramitrodaya*, ed. & trans. G.S. Śāstrī (Calcutta: Thacker, Spink & Co., 1879).

¹⁹⁷ *Ibid.*, Sec 1, paragraphs 3, 43, 49, & 55.

century and Colebrooke appears to have latched onto this scale of texts when reading Bālabhaṭṭa, Mitra Miśra and Kamalākaraḥṭṭa's works.

Colebrooke's initial encounter with Bālabhaṭṭa and the Benares Sanskrit College prompted him to pursue a new digest of Hindu laws, and towards that end he assembled an impressively comprehensive collection of Sanskrit manuscripts on the subjects of ownership and inheritance. A quick perusal of the Colebrooke collection of manuscripts in the India Office Collection at the British Library reveals a pattern in Colebrooke's thought. One finds copies of the Mahārāṣṭrian and Vārāṇaseya nibandhas (Kamalākara's *Vivādatāṇḍava*, dozens of Bengali treatises, including Gadādhara's *Svatvarahasya* and the three major colonial digests - the *Vivādārṇavasetu*, *Vivādasārṇava* and the *Vivādabhaṅgārṇava*).¹⁹⁸

Colebrooke never completed his enhanced digest of Hindu law, but in his preface to the *Two Treatises*, he writes that:

I long ago undertook a new compilation of the law of successions with other collections of *Hindu* law... its final completion and publication have been hitherto delayed by important avocations; and it has been judged mean time advisable to offer to the publick in a detached form, a complete translation of two works materially connected with that compilation.¹⁹⁹

Colebrooke's translation features copious extracts from commentaries on the *Dāyabhāga* and on the *Mitākṣarā*. These extracts, generally from Śrīkrṣṇa Tarkālaṅkāra and from Bālabhaṭṭa respectively, suggest that Colebrooke approached the *Dāyabhāga* and the *Mitākṣarā* as two principal texts whose commentators' predilection for Navya-Nyāya or for Mīmāṃsā theories of ownership led them to develop competing theories of the jurisprudence of inheritance. In this sense Colebrooke's division of the Dharmaśāstric jurisprudence of inheritance into

¹⁹⁸ See Kroll, "A Logical Approach to Law," 198-9: Colebrooke "marked on folio 13a [of the *Svatvarahasya*] his observation that, 'Propy [*sic*] & ownership is [*sic*] the same.'"

¹⁹⁹ Colebrooke, *Two Treatises*, iii.

Dāyabhāga and *Mitākṣarā* schools appears justified. Moreover, his identification of three competing regions: 1) Navadvīpa/Bengal with its theory of upamasvatva and of vibhāga as *manifesting* ownership; 2) Vārāṇasī with its theory of janmasvatva and sādharmaṇasvatva; and 3) Mithilā with its theory of upamasvatva and sādharmaṇasvatva, is supported by the Dharmaśāstric texts of the seventeenth century. Furthermore, Colebrooke's theories are supported not just by the Dharmaśāstra texts that he knew, but also by other texts with which he was not familiar. Thus, his sample of evidence fairly represented the state of pre-colonial Dharmaśāstric jurisprudence.

4.D: The Limits and Limitations of Hindu Schools of Law

Colebrooke is correct in arguing for a model of regional schools of Hindu Law inasmuch as the paṇḍits of three centers of śāstric learning in the sixteenth, seventeenth, and eighteenth centuries developed scales of Dharmaśāstric texts that they contrasted with and defended from rival scales of Dharmaśāstric texts.

Ownership and inheritance - articulated in relation to the *Dāyabhāga* and the *Mitākṣarā* - formed a key topic for these debates. Mīmāṃsā and Navya-Nyāya reasoning played an important role in the development of the *Mitākṣarā* and *Dāyabhāga* schools and in distinguishing between Gauḍa and Maithila theories of ownership and inheritance. Colebrooke makes his best argument in defense of schools of law in 1825. He writes that:

In the eastern part of India, viz. Bengal and Bahar, where the Vedas are less read, and the *Mīmāṃsā* less studied than in the south, the dialectic philosophy, or *Nyāya*, is more consulted, and is relied on for rules of reasoning and interpretation upon questions of law, as well as upon metaphysical topics. Hence have arisen two principal sects or schools, which, construing the same

text variously, deduce upon some important points of law different inferences from the same maxims of law.²⁰⁰

Of course, Warren Hastings, William Jones and H.T. Colebrooke were gravely mistaken in their assumption that Dharmaśāstra texts reflected the cultural customs and ancient laws of all Hindus. A combination of prejudice (the positive law must be found in books) and expediency (a desire to extend company rule over Indians' property) drove orientalist and judges to transform academic Dharmaśāstra into applied, positive law.²⁰¹

The misguided assumption that each region of India must, *a priori*, possess an authoritative Dharmaśāstric tradition that describes that region's essential culture drove the erroneous quest for specific sub-schools of the *Mitākṣarā*, for which virtually no evidence exists. One explanation for the theory of four sub-schools of Hindu law, articulated first by Justice Syed Mahmud in 1887, is that Colebrooke patterned Hindu law on Islamic law (with its Shia and Sunni branches).²⁰² Another, equally plausible possibility is that the subdivision of schools of Hindu law followed the expansion of the Company's rule in the provinces (or presidencies) of Banaras, Bombay and Madras in the late eighteenth and early nineteenth centuries.²⁰³

Colebrooke lists the principal texts associated with each school: 1) the *Vivādacintāmaṇi*, *Vivādaratnākara* and the *Vivādacandra* in Mithilā; 2) the *Vīramitrodaya* and the *Vivādatāṇḍava* in Vārāṇasī; 3) the *Vyavahāramayūkha* in Mahārāṣṭra; 4) the *Smṛticandrikā* in "Southern India;" and 5) the *Dāyabhāga* and the

²⁰⁰ Sir Thomas Strange, *Elements of Hindu Law: Referable to British Judicature in India*, Vol. 1., (London: Payne and Foss, 1825), 314.

²⁰¹ See, for example Derrett, "The British as Patrons," 267-269.

²⁰² Syed Mahmud, *Indian Law Review: Allahabad Series* (Madras: Law Reports Office, 1887), 9. Cited in Rocher and Rocher, "The Making of Western Indology," 112.

²⁰³ See Rocher, "Changing Patterns," 138-139, for some evidence for this position. Rocher sees some connection between the development of "a number of separate and different pyramids, with a High Court or Supreme Court" in Madras, Bombay, and Vārāṇasī, and the subdivision of the *Mitākṣarā* school of law into sub-schools.

Dāyatattva in Bengal.²⁰⁴ There is ample evidence for the existence of Maithila and Gauḍa schools of Dharmaśāstra (as seen from chapter two of this thesis and from my analysis of the *Vivādārṇavasetu* and the *Vivādabhaṅgārṇava* above), but Colebrooke's distinction between a Vārāṇaseya and a Mahārāṣṭrian school of law is inexplicable. Perhaps the *Vyavahāramayūkha* enjoyed greater popularity among the paṇḍits of Mahārāṣṭra than among the paṇḍits of Vārāṇasī, but, as my analysis in chapter three demonstrates, Kamalākara and Nīlakaṇṭha thought of themselves as part of a single, southern, Bhaṭṭa school of law whose authority extended from Mahārāṣṭra to Vārāṇasī (and which rejected the opinions of a Maithila and a Gauḍa school of law). The *Vīramitrodaya* may have enjoyed less popularity in Mahārāṣṭra (as its author did not enjoy the same social prestige as the Bhaṭṭas did in the country) and more popularity in Vārāṇasī (due to its more comprehensive, academic tone). The *Bālabhaṭṭī* and the *Dharmaśāstrasamgraha* suggest, however, that Mahārāṣṭrian and Vārāṇaseya paṇḍits read Bhaṭṭa nibandhas and the *Vīramitrodaya*. Consequently, it is difficult to see how Colebrooke justified splitting Kamalākaraḥṭṭa and Nīlakaṇṭha's Dharmaśāstra texts into two separate schools of law - or of jurisprudence for that matter.

For all of his considerable knowledge of northern India, Colebrooke lacked a significant exposure to southern India and his assertion that the *Smṛticandrikā* (and later, the *Sārasvatīvilāsa*) constitute the principal treatises of a distinct, Drāviḍian sub-school are based on considerations other than the self-representation of Dharmaśāstric authors. J.H. Nelson, district judge in Madras, wrote in 1881 that the introduction of the *Mitākṣarā* (as interpreted by the *Smṛticandrikā* and the *Sārasvatīvilāsa*) was the result of "the absurdly great authority conceded to

²⁰⁴ Colebrooke, *Two Treatises*, iv.

Colebrooke, who knew nothing about Madras.”²⁰⁵ One explanation for the fierce debates between orientalist in Calcutta and Madras about the nature of the Madras school of Hindu law - between Dharmaśāstra texts and customary practice - is that the intense, Dharmaśāstric debates amongst Mīmāṃsā and Navya-Nyāya trained paṇḍits that flourished in northern India did not extend to Tamil Nadu or Kerala.²⁰⁶

Despite the concerns of his critics, Colebrooke’s dual appointment to the high court and to the College of Fort William in 1801 ensured that his theory of schools of Hindu law - equal parts accurate and flawed - set the foundation for the academic study of Hindu law in the Company’s colleges.²⁰⁷ A string of editions and translations of the principal texts of the various schools of Hindu law followed in the nineteenth century, and by 1864, the courts terminated the employment of paṇḍit assistance because the significant body of translated Dharmaśāstra and case-law obviated the need for paṇḍit informants.²⁰⁸

To return to the broad arc of this thesis - the intellectual history of ownership and inheritance in Sanskrit jurisprudence - we can surmise, safely, that one motivating factor in the British development of schools of Anglo-Hindu law in the eighteenth and nineteenth century was the intellectual and cultural predilections of the paṇḍits whom the English hired to compile and to explicate the intricacies of the Dharmaśāstric jurisprudence of inheritance. Certainly, the English encounter with traditional Dharmaśāstra learning was inflected by gross inequalities in power and

²⁰⁵ Rocher and Rocher, *The Making of Western Indology*, 115. For the resistance in Madras to Colebrooke’s schools of law, see A.C. Burnell, *The Law of Partition and Succession: from the MS. Sanskrit Text of Varadarāja’s Vyavahāranirnaya* (Mangalore: Stolz, 1872), iii-viii.

²⁰⁶ For the Madras School of Orientalism, see Donald Davis, “Law in the Mirror of Language: The Madras School of Orientalism on Hindu Law,” in *The Madras School of Orientalism: Producing Knowledge in Colonial South India*, ed. Thomas Trautman (Oxford: Oxford University Press, 2009): pp. 288-309.

²⁰⁷ See Derrett, “The British as Patrons,” 237-8 for a list of Dharmaśāstra texts on the curriculum of the College Fort William between 1821 and 1837: *Mānavadharmasāstra*, *Mitākṣarā*, *Dāyabhāga*, *Dāyatattva*, *Dāyakramasaṃgraha* (of Śrīkrṣṇa) and Raghunandana’s other *Tattvas*.

²⁰⁸ Rosane Rocher, “Weaving Knowledge,” 71.

epistemic privilege, and the distortions and impositions that British colonial thinking inflected in the Dharmaśāstra and on its paṇḍit stewards are legion. However, one casualty of a prudent and necessary critique of Anglo-Hindu law is the complex, fascinating history of the development of scholastic schools of jurisprudential thought that developed in Vārāṇasī, Navadvīpa and Mithilā in the sixteenth, seventeenth, and eighteenth centuries whose adherents played an active role in shaping Anglo-Hindu law.²⁰⁹

The British ‘discovery’ of these schools of jurisprudence was gradual and followed the associations made between agents of the East India Company and paṇḍits from these three regions. Jones’ interaction with the paṇḍits of Navadvīpa and his exposure to the *Vivādārṇavasetu* compelled him to seek out Gauḍa and Maithila paṇḍits who could teach him the intricacies of their debates about ownership and inheritance. Henry Colebrooke followed the argumentative threads of the *Vivādabhaṅgārṇava*, embedded as they were in the arcane complexities of Navya-Nyāya, and sought a more concise summary of the various schools of thought whose opinions the digest cited. Colebrooke’s exposure to the paṇḍits of Vārāṇasī and their various treatises that defended the *Mitākṣarā* as a southern, *Mīmāṃsā* friendly treatise on ownership and inheritance drove him to divide (and, unfortunately, to subdivide) Dharmaśāstric commentary into various camps, or schools of law. In doing so, he crafted his own scale of Dharmaśāstra texts, which while alien to traditional Dharmaśāstra in many ways, took its inspiration from the

²⁰⁹ Of course, further research into the intervening period in this story - the world of the śāstrins between 1710 and 1780 or so - is a desideratum. One question, that I aim to take up in my thesis-revised-as-monograph, concerns the much larger finding that there great continuities between the ‘lost world’ of pre-colonial Sanskrit learning and the formal institutions of Indian modernity. Broadly, what replaces the ‘epistemic rupture’ theory as the appropriate description of the dramatic changes of the eighteenth and nineteenth centuries? Transformation? Trans-creation?

scales of texts of earlier Dharmasāstrins like Vijñāneśvara, Śrīnāthācāryacūḍāmaṇi, Kamalākarabhaṭṭa, and Jagannātha Tarkapañcānana.

Conclusion: Dharmaśāstra, Law, and Justice in the 21st Century

This doctoral thesis demonstrated that, contrary to the a theory of colonial invention which dominates contemporary scholarship on the legal history of South Asia, classical Sanskrit jurisprudence possessed elaborate and highly specialized theories of ownership, property, and inheritance that were sometimes associated with particular intellectual and ritual lineages. The principal principles of the Sanskrit jurisprudence of ownership and inheritance - of collective ownership by extended networks (of families, temples, and education institutions) and of proprietary rights as circumscribed by various entitlements to ritual rites - dramatically challenge the principles of personal property, individual subjectivity, secularism, and equality before the law which lie at the heart of (neo)liberal political theology. Before pondering the significance of these challenges we need to start with the ‘death’ of Sanskrit law in 1955. I argue, uncontroversially, that the codification and liberalization of Hindu personal law through legislative acts occurred in conjunction with the creation of a largely homogenized, Hindu political community. I argue, likely controversially, that the Dharmaśāstric jurisprudence of ownership offers a productive, indigenously Indian venue for disrupting some of the verities and pitfalls of India’s dominant liberal paradigm.

5.A: A Neo-Liberal Epitaph for the Rishis

In 1954, on the eve of the Indian parliament’s enactment of a series of comprehensive reforms of Hindu personal law, Prime Minister Nehru told the Lok Sabha that British colonialism had suppressed the natural evolution of Hindu law.¹

¹ John Duncan Derrett, “The British Administration of Hindu Law,” *Comparative Studies in Society and History* 4.1 (1961): pp. 10-52, 47 fn 183. Cf P.V. Kane, *A History of Dharmaśāstra*, Vol. 3. 2nd Ed. (Pune: Bhandarkar Oriental Research Institute, 1973), 820-823.

Nehru deftly argued that the only feasible remedy to the “fossilized,” dysfunctional condition of Hindu law was statutory reform.²

The Indian parliament passed a series of landmark reforms of Hindu law between 1955 and 1956. The “Hindu Code Bill” as these acts came to be known collectively, “was a composite body of laws, made up of distinct sets of legal enactment – the Hindu Marriage Act passed in 1955, and the Hindu Succession Act, the Hindu Minority and Guardianship Act and the Hindu Adoption and Maintenance Act, all of which were passed in 1956.”³ The effects of the Hindu Code Bill were legion: women were granted greater property rights in their paternal estates, the rules regarding divorce, adoption and marriage were greatly liberalized, and the legal cohesiveness of the joint family estate - the *comparcenary* - was greatly diminished.⁴ The rich diversity of schools of Hindu law - so characteristic of pre-colonial and colonial Hindu law - were elided by a universal, ostensibly progressive body of personal law which applied to those Indian citizens who were neither Muslim, Christian, Jewish, or Parsi. The end result was, as Derrett eloquently notes, a system of law that “repudiates in an implied or explicit manner the values and ethos of the ancient background” and that “has little to do with Hinduism by any possible definition of that term.”⁵ Derrett notes that modern Hindu law

is Hindu in name, and contains an occasional and embarrassing reminder of its predecessor, much as a ruinous but ancient building may be pulled down and replaced with a modern structure, which retains the same street-number, some panelling, a decorative window, or even a quaint chimney pot from the

² Of course, some jurists viewed the British influence on Hindu personal law as a positive, progressive development. S. Venkaṭarāman, “Influence of Common Law and Equity on the Personal Law of the Hindus,” *Revista del Instituto de Derecho Comparado*, Vol. 8-9 (1957): pp. 156-179.

³ Rochona Majumdar, “Marriage, Family, and Property in India: the Hindu Succession Act of 1956,” *South Asian History and Culture*, 1.3 (2010): pp. 397-415, 399.

⁴ For an overview of the changes ushered in by the Hindu Code Bill, see J. D. Derrett, “The Codification of Hindu Law,” in *Religion, Law, and the State in India* (London: Faber and Faber, 1968): pp. 321-351.

⁵ Derrett, “Codification,” 321 & 324, citing M. Anantanārāyanan.

old house, alleging a continuity with the past which may appeal to sentiment, but does not deceive the eye.⁶

The uniform Hindu Code Bill constituted the culmination of two trends in colonial and post-colonial Indian social history: 1) the codification, liberalization, and ‘modernization’ of Hindu personal law; and 2) the creation of a homogenized, racialized, and politically expedient demographic category of ‘Hindu.’ Contemporary scholars, particularly Donald Davis and Rachel Sturman have argued, persuasively, that the first trend began in 1772 with Warren Hastings’ “Judicial Plan” (analyzed in detail in the fourth chapter of this thesis).⁷ For the East India Company’s administrative apparatus, Hindu law became a textual phenomenon located in *Dharmaśāstra* - rather than in custom, in paṇḍit-jurists, or in ad-hoc tribunals.⁸ Although early orientalists were justified in postulating the existence of a diversity of regionally-specific schools of Dharmaśāstric jurisprudence (the broad argument of this doctoral thesis), the orientalists’ fundamentally forensic, text-historical approach to Dharmaśāstra’s legal utility effectively capped the tradition’s internal development. Once the Anglo-Indian courts shifted their search for authentic knowledge about Hindu law from the creation of new Dharmaśāstra anthologies (such as Jagannātha Tarkapañcānana’s *Vivādabhaṅgārṇava*) to the translation and interpretation of a

⁶ John Duncan Derrett, “Statutory Amendments of the Personal Law of Hindus Since Indian Independence,” *The American Journal of Comparative Law*, 7.3 (1958): pp. 380-393, 382. The final disjuncture of statutory Hindu law from its Dharmaśāstric roots prompted Derrett to pen an “Epitaph for the Rishis” (Durham: N.C. Press, 1978).

⁷ Donald Davis, “Modern Legal Framework,” in *Brill’s Encyclopedia of Hinduism*, eds. K. Jacobsen, H. Basu, A. Malinar, & Vasudha Narayanan (Brill Online, 2014); Rachel Sturman, “Marriage and Family in Colonial Hindu Law,” in *Hinduism and Law: An Introduction*, eds. Timothy Lubin, Donald Davis, and Jayanth K. Krishnan (Cambridge, 2010): pp. 89-104.

⁸ Of course, “custom and usage” became important sources of legal knowledge - sometimes more so than the Dharmaśāstra - during and after the colonial period. See for example Neeladri Bhattacharya, “Remaking Custom: the Discourse and Practice of Colonial Codification,” in *Tradition, Dissent and Ideology: Essay in Honour of Romila Thapar*, eds. R. Champakalakshmi & S. Gopal (New Delhi: Oxford University Press, 1996): pp. 20-51; Rachel Sturman, “Custom and Human Value in the Debates on Hindu Marriage,” in *Government of Social Life in Colonial India: Liberalism, Religious Law and Women’s Rights* (Cambridge: Cambridge University Press, 2012): pp. 148-195; John Mayne, *A Treatise on Hindu Law and Usage* (Madras: Higginbotham, 1878).

finite set of existing Dharmaśāstra treatises (a departure best marked by H.T. Colebrooke's 1810 translation of the *Mitākṣarā* and *Dāyabhāga*), the intellectual discipline of traditional Hindu jurisprudence - including the vast arsenal of interpretive techniques developed in Mīmāṃsā, Navya-Nyāya, and Vyākaraṇa - became an historical enterprise which could, at best, account for the intellectual configuration of Dharmaśāstra roughly *circa* 1800.⁹

Innovation and (liberal) reform to Hindu law came through legislative acts and through judicial intervention. The former, included the Caste Disabilities Removal Act (1850), the Hindu Widows' Remarriage Act (1856), the Hindu Inheritance Removal of Disabilities Act (1928), the Hindu Gains of Learning Act (1930), and the Hindu Women's Rights to Property Act (1937).¹⁰ The latter, came in the form of blatant judicial activism, or through a state-sanctioned license for jurists to apply the meta-legal principles of "justice, equity, and good conscience."¹¹ The criterion of justice, equity, and good conscience ensured that courts could, and would, separate enforceable "rules of positive law" from merely pious, "religious or moral precepts" in an idiosyncratic, ad hoc fashion (although obviously indebted to culturally specific British notions of equity).¹² The telos of the use of justice, equity, and good conscience dovetailed with the telos of piecemeal statutory reform of Hindu law: both

⁹ See chapter 4 of this thesis for a detailed analysis of the *Vivādabhaṅgārṇava*. The case of Ishwar Chandra Vidyasagar's 1856 *Vidhavavivāha*, a Dharmaśāstric digest that advocated widow remarriage forms a notable exception to this statement. Ishwar Chandra Vidyasagar was a principal at the Sanskrit College in Bengal at the time. See Davis, "Modern Legal Framework" and Brian Hatcher, *Vidyasagar: The Life and After-life of an Eminent Indian* (New Delhi: Routledge, 2014).

¹⁰ Derrett, "Codification," 327.

¹¹ Rosane Rocher, "The Creation of Anglo-Hindu Law," in *Hinduism and Law: An Introduction*, eds. Timothy Lubin, Donald Davis, and Jayanth K. Krishnan (Cambridge, 2010): pp. 79-88, 87. See Derrett, "Justice, Equity, and Good Conscience," in *Changing Law in Developing Countries*, ed. J. Anderson (London: George Allen & Unwin, 1963): pp. 114-154.

¹² See, for example, Ludo Rocher, "Hindu Law and Religion: Where to Draw the Line," in *Studies in Hindu Law and Dharmaśāstra*, ed. Donald Davis (London: Anthem, 2014): pp. 83-102. Also see Ludo Rocher, "Indian Response to Anglo-Hindu Law," in *Studies in Hindu Law and Dharmaśāstra*: pp. 634-642 for several cases in which the equity paradigm was invoked.

slowly, but ineluctably attempted to maximize the property rights - and commensurate political autonomy - of individual Hindus by freeing property from the constraints of religious restrictions.¹³ In essence, the reform of Hindu law fragmented the proprietary and ritual connections of the joint Hindu family - and the commensurate legal disabilities of women - and replaced the joint family with individual, “autonomous subjects of the state.”¹⁴

Derrett notes that the reformers, “large earners... jealous of the keenness of their agnates... to share their property to the partial or total exclusion of their own spouse, daughter, cognatic relations or friends,” “desire[d] to make property freely transferable” and to “abolish rules that smacked of antiquity.”¹⁵ Derrett attributes the liberalizing, individuating telos of the Hindu Code Bills to “an emerging partly-westernized class of well-to-do people, which was to all intents and purposes a caste... [and whose members] wanted to intermarry with Muslims similarly placed, not to mention Hindus of equal influence but lower caste.”¹⁶ Of course, for the Derrett’s cosmopolitan, nuclear-family focused, propertied elite,

their opponents, the ‘orthodox’, were people who did not need to contemplate intercaste marriage and suspected the motives of those who did. Religion was attempted to be used as a means of preventing what influential society wanted, and it might have succeeded had not the previous custodians of the Hindu law made out of it, *bona fide*, so appalling a system, from which anyone would have been glad to escape who cared for his country’s prestige.¹⁷

I find many of these reforms laudable. It is difficult to justify the disenfranchisement of women or the prohibition of marriage on the grounds of caste. At the same time, however, these reforms were accompanied by a disintegration of the joint family (in

¹³ Rachel Sturman. “Marriage and Family in Colonial Hindu Law,” 90.

¹⁴ *Ibid.*, 98.

¹⁵ Derrett, “Codification,” 338-339.

¹⁶ *Ibid.*, 348.

¹⁷ *Ibid.*, 350.

favor of nuclear families), pre-existing forms of ownership and inheritance (both the paternal coparcenary and maternal strīdhana), and the formal role of religious rites (saṃskāras) in structuring the legal status of individuals. In essence, equality before the law (at least amongst those individuals subject to Hindu law) resulted in a conspicuously homogenous understanding of property, family, and religion - at the cost of the rich plurality of family structures and forms of ownership articulated in various schools of Sanskrit jurisprudence.

The flattening of Hindu law coincided with a flattening of Hinduism as a religious and ethnic category - with varied and enduring political consequences. The colonial antecedents of Advaitavedānta's transformation into the representative spiritual tradition of a unified, modern bourgeois Hinduism have been traced deftly in a series of cutting-edge work in recent decades.¹⁸ The jurisdictional category of Hinduism played a decisive role in these transformations. As Davis notes,

modern Hindu law has expressed in legal form a set of rules and practices that has come to shape the way in which many middle- and upper-class Hindu families understand the "Hindu" view of inheritance, adoption, marriage, and the like. In other words, for middle- and upper-class Hindu individuals and communities who regularly interact with official governmental institutions and who rely on their predictable legal safeguards, modern Hindu law partially informs who they are as Hindus. Official Hindu law thus protects a restricted sense of Hindu identity and practice that its legislative form helped to create.¹⁹

I don't think that Davis' argument recapitulates the fashionable fallacy that colonial categories of law and religion created Hinduism as such.²⁰ Rather, as with Vedānta,

¹⁸ See for example, Anand Venkatkrishanan, "Mīmāṃsā, Vedānta, and the Bhakti Movement" (PhD Dissertation, Columbia University, 2015), 235-237. Also see Brian Hatcher, *Bourgeois Hinduism, or the Faith of the Modern Vedantists: Rare Discourses from Early Colonial Bengal* (Oxford: Oxford University Press, 2008); *Eclecticism and Modern Hindu Discourse* (New York: Oxford University Press, 1999), and Wilhelm Halbfass, *Philology and Confrontation: Paul Hacker on Traditional and Modern Vedānta* (Albany: SUNY, 1995). For a view to the contrary, see Andrew Nicholson, *Unifying Hinduism: Philosophy and Identity in Indian Intellectual History* (New York: Columbia, 2010).

¹⁹ Davis, "Modern Legal Framework."

²⁰ For one such example, see Brian Pennington, *Was Hinduism Invented?: Britons, Indians, and the Colonial Construction of Religion* (Oxford: Oxford University Press, 2005). Of course, Davis does make such an argument with regard to the existence of pre-colonial schools of Dharmaśāstra.

the colonial encounter led to a reformulation, or a recalibration of Hinduism. Davis explains that,

Safeguarding *religious* identity and practice may have been the ostensible historical reason behind the colonial creation of personal law systems, but modern Hindu law and the HCB have primarily contributed to the creation and protection of a narrow, homogenized *political* Hindu identity for the modern world.²¹

The broad implications of this narrow identity - with its attendant 'essential religious practices' for Indian secularism and Hindu nationalist (Hindutva) politics need not be rehearsed other than to note that its is the formal administrative apparatus of the Hindu state (in the form of the Supreme Court) that acts as the privileged arbiter of what is and what is not essentially Hindu.²²

5.B: Out of the Waiting Room of History: Dharmaśāstra and Legal Pluralism

Modern courts' Hindu law judgements contain plenty of Dharmaśāstric "window dressing" - stray comments from various Dharmaśāstras which have the effect of giving a Dharmaśāstric veneer to a decision reached through statute or through binding precedent.²³ These bits and bobbles aside, Dharmaśāstric jurisprudence - the use of the panoply of interpretive techniques to analyze an authoritative body of *smṛtis* according to the broad conventions of regional commentarial schools - has been relegated to "the waiting room of history."²⁴ One might read Raghunandana Bhaṭṭācārya, Kamalākarabhaṭṭa, or even Jagannātha Tarkapañcānana's writings as evidence for the essence or the history of Indian

²¹ Davis, "Modern Legal Framework."

²² For Indian secularism and its discontents, see Rajeev Bhargava, ed., *Secularism and its Critics* (Delhi: Oxford University Press, 1998). Also see Smita Narula, "Law and Hindu Nationalist Movements," in *Hinduism and Law: An Introduction*, eds. Timothy Lubin, Donald Davis, and Jayanth K. Krishnan (Cambridge, 2010): pp. 234-251. In general, the Supreme Court has tended to view Hinduism as a broad, unitary category (to the detriment of various sectarian communities' claims to a non-Hindu status) with an intrinsic ethnic component.

²³ Davis, "Modern Legal Framework." Also see Lariviere, R.W., "Justices and *Paṇḍitas*: Some Ironies in Contemporary Readings of the Hindu Legal Past," *Journal of Asian Studies* 48.4 (1989): pp. 757-769.

²⁴ Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2000), 8. Cf Venkatkrishnan, 25.

jurisprudence, but these jurists, like India's great philosophers, are "not at all considered contemporaries in the way that, say, Hegel or Marx has become indispensable to thinking about modern democratic politics."²⁵

One of the core arguments of this doctoral thesis is that until at least 1810, Dharmaśāstric jurisprudence was very much a substantive, if unequal conversation partner with European jurisprudence. Traditional paṇḍits including Jagannātha Tarkapañcānana and Bālabhaṭṭa Pāyagaṇḍe actively shaped and recalibrated the śāstric arguments of their forefathers in conjunction with British orientalist - whose singular obsessions with uniformity, concision, and consensus no doubt seemed antithetical to the dialogical nature of śāstric intellectualism and terribly idiosyncratic as well. Of course, the reform of Hindu law along modern liberal standards - laudable in its efforts to eliminate the graded and often deplorable inequalities enshrined in Dharmaśāstra texts and to foster economic growth through freeing property from the constraints of the joint family - eliminated legal pluralism within Hindu law.

While bemoaning the homogenization of Hindu law, Derrett introduces a tantalizing possibility, that

Without *stare decisis*, indeed, internal developments within the śāstra (while it lived) were possible. The Digest of Jagannātha translated by Colebrooke already showed signs of such activity, and in the interesting Slavery Case of 1825 the Pandits showed willingness to support "naturally just" accretions to the śāstra. But by 1864 judicial knowledge of Hindu law was assumed.²⁶

Derrett suggests that without the fossilizing forces of *stare decisis*, or of court paṇḍits being "confined to reporting the rulings of long dead authors," then "hundreds of different systems of customary law would have emerged."²⁷ Drawing from Quentin Skinner, Anand Venkatkrishnan argues that,

²⁵ Venkatkrishnan, "Mīmāṃsā," 23.

²⁶ Derrett, "The Administration of Hindu Law," 47.

²⁷ *Ibid.*, 47-48.

one of the benefits of intellectual history is in the vision it provides of alternative historical worlds that, regardless of whether they look different or similar to our own, are in and of themselves salutary reminders of how historically contingent the present is.²⁸

The intellectual history of ownership and inheritance in Sanskrit jurisprudence outlined in this thesis highlights the historical and cultural contingency of liberal, Western notions of property, personhood, and equality. Furthermore, the diversity and regional specificity of Sanskrit jurisprudence radically calls into question the unitary nature of property and the jurisdiction of the state - through either its legislative or its judicial apparatuses - to define and enforce property rights. Perhaps most radically, my thesis demonstrates that in the view of the Dharmaśāstrins, religious rites and legal rights ought to be mutually constituted. For paṇḍits such as Kamalākara and Raghunandana, relational categories (of son, daughter, wife, brother, Brāhmaṇa, Śūdra, disciple, Gauḍa, Dākṣiṇātya, etc) defined individuals differently, entailed different ritual obligations and afforded different - though often overlapping - proprietary rights. The intellectual history of ownership and inheritance suggests that in an alternative, or future world in which Dharmaśāstric jurisprudence supplanted Anglo-Hindu jurisprudence, property and persons would look radically different and the law would provide for a justice of a very different nature.

There are, however, manifold criticisms of Dharmaśāstric jurisprudence, but this doctoral thesis militates against the common charge that Dharmaśāstra is unchanging, uncompromising, and unable to meet the demands of the modern world. My thesis demonstrated that although Dharmaśāstra retained a continuity of style, perhaps unmatched in the history of jurisprudence, the jurists of classical and early modern India recalibrated various ideas in the system in remarkably dynamic

²⁸ Venkatkrishnan, "Mīmāṃsā," 23. Cf. Quentin Skinner, Quentin Skinner, *Visions of Politics, Volume I: Regarding Method* (Cambridge: Cambridge University Press, 2002), 6.

ways. Ownership by birth, women's rights to inheritance, the legal validity of property acquired impiously, and divine trusts, are but a few of the novel innovations developed by Dharmaśāstrins whose commitment to the traditional paradigms of the śāstric sciences was of aid, rather than an impediment, to new ideas.

Why should anyone care about the subtleties of a radically communitarian jurisprudence whose allocation of material resources is based on a deeply unequal religious system of caste, class and gender? What could varṇāśramadharmā possibly have to contribute to contemporary debates about property and political philosophy besides an undesirable, ultra-orthodox boogeyman? Is the answer simply that Dharmaśāstra's reminder of the contingency of India's liberal political economy is a sign of one progressive, positive product of the colonial encounter? Possibly.

Alternatively, one might equally see in pre-colonial Dharmaśāstric jurisprudence a potent rejoinder to Hindu nationalist claims of Hindu law and religion as unitary categories or to the role of property in our current political economy.²⁹ Advocates of legal pluralism in Europe and America, particularly of communitarian religious arbitration as an alternative to secular state courts, might find common cause with the Dharmaśāstric model of regionally specific schools of law.³⁰ Indeed, Rowan Williams' infamous endorsement of the "accommodation" of certain religious legal systems outside of the jurisdictional remit of Britain's secular courts, reminds us

²⁹ For contemporary debates concerning the nature of property and its relationship to political theology, see the introduction to this thesis.

³⁰ See, for example, Christian Joppke, *The Secular State Under Siege: Religion and Politics in Europe and America*, (Polity Press: 2015); Michael Helfand, "Religious Arbitration and the New Multiculturalism: Negotiating Conflicting Legal Orders" *N.Y.U. Law Review*, 86.5 (2011): pp. 1231-1305; Cumper, Peter, "Multiculturalism, Human Rights and the Accommodation of Sharia Law," *Human Rights Law Review* 14 (2014): pp 31–57;

justice does not always entail equality before the law.³¹ Similarly, the Anglo-American concept of private property has come under withering critique in the wake of the globalized free market.³² The shift toward “alternative forms of ownership” in progressive law and economics debates might well find conversation partners in the Dharmaśāstric theory of *svatva* as capable of being held by a multiplicity of ownership simultaneous.³³ Furthermore, advocates of women’s financial independence - particularly in rural India, where the gulf between traditional practices and abstract legal rights remains vast - might well find the category of women’s property (*strīdhana*) a more productive venue for achieving their laudable goals.³⁴

The rise of political Hinduism, the limitations of neo-liberal economics, and the push towards legal pluralism in the West make the investigation of alternative jurisprudences a necessary facet of legal scholarship. To cede Dharmaśāstra to religious chauvinists or to blithely accept its caricatured representation by some social activists would consign one of the world’s great intellectual traditions on the “ash heap of history.” Investigating the intellectual *history* of Dharmaśāstra ought to lead one to enquire about the intellectual *future* of Dharmaśāstra, even when it forces us to confront difficult questions and moral ambiguities. After all, *dharma* is subtle (*sūkṣma*), there is a near boundless ocean of Dharmaśāstra texts, and, as Kamalākarabhaṭṭa notes, “litigation concerning the division of inheritance

³¹ Rowan Williams. Williams, Rowan, “Civil and Religious Law in England: A Religious Perspective,” *Ecclesiastical Law Journal*, 10 (2008): pp 262-282. For a summary of and response to the the many passionate criticisms of Williams’ lecture, see Jonathan Chaplin, “Legal Monism and Religious Pluralism: Rowan Williams on Religion, Loyalty and Law,” *International Journal of Public Theology*, 2 (2008): pp. 418–441.

³² For one example of the tension between neo-liberal and indigenous categories of property, see William Coleman, ed., *Property, Territory, Globalization: Struggles over Autonomy* (Vancouver: UCB, 2011).

³³ See, for example, the Labour Party of the United Kingdom’s endorsement of this fashionable term. Cheryl Barrott, Matthew Brown, Andrew Cumbers et al, *Report: Alternative Models of Ownership* (Labour, 2017).

³⁴ See, for example, Srimati Basu, *She Comes to Take Her Rights: Indian Women, Property, and Propriety* (New Delhi: Kali, 2001), esp. pp. 159-190.

befuddles even the great amongst learned.”³⁵ When we take the time to attend to the complexity of the law, we discover the richness of its ethical possibilities.

5.C: Summary of Chapters

In this thesis, I tracked the development of the concept of ownership (svatva) in Sanskrit jurisprudential literature (Dharmaśāstra) and in Sanskrit philosophical literature (Mīmāṃsā and Navya-Nyāya) between the 11th and 19th centuries CE. My aim was to chart the relationship between philosophical theories of ownership and juridical models of inheritance. My guiding question concerned the contested existence of various schools of Sanskrit jurisprudence before the formal establishment of schools of Hindu law by the judicial apparatus of the East India Company in the nineteenth century. Contrary to recent work on the subject, I found that by 1772, at least three discoverable schools of Sanskrit jurisprudence existed: in Mithilā, Vārāṇasī and Navadvīpa. Furthermore, I demonstrated that the colonial administrators, despite their fundamental misunderstanding and misrepresentation of Dharmaśāstra as positive law, were largely justified in their identification of regionally specific schools of Dharmaśāstra, particularly with regard to ownership and inheritance.

Of course, a ‘school of law’ is by no means a universal term. In arguments for, and against, the existence of schools of law in pre-colonial Dharmaśāstra, few scholars took the time to explain what constitutes a ‘school’ and what constitutes ‘law.’ I accepted Ludo Rocher, Donald Davis and Patrick Olivelle’s distinction between Dharmaśāstra as an expert, meta-legal traditional of jurisprudence and law as positive, statutory codes. Ronald Inden’s theorization of a “scale of texts,” the patterned ways in which authors situate their writings in relation to previous and

³⁵ Kamalākarabhaṭṭa, “Vivādatāṇḍava (Dāyabhāga),” ed. Herambha Chatterjee, *Our Heritage* 7:2: pp. 1-23; 8:2: 25-37; 11:1: 39-50; 13:1: 51-58 (1959-65)

contemporary writers, provided the key methodological tool for recasting schools of Hindu law as schools of Hindu legal thought, or of jurisprudence. The point, I argued, was that thinking of Dharmaśāstra as a primarily intellectual tradition ought to entail reconstructing its intellectual history - replete with the considerations of scholarly lineage, pedagogical technique, and the perennial quest for patronage that made up the social contexts of individual Dharmaśāstra authors. Of course, the distinct southern and eastern schools of Sanskrit jurisprudence - whose existence formed the core question of this thesis - were themselves the culmination of centuries, perhaps millennia of intellectual development. The story of how these schools came about and of the British encounter with them, told quite a different tale about ownership and inheritance than recounted in existing scholarship.

In chapter 1, I examined the development of the concept of ownership in Mīmāṃsā and Dharmaśāstra from the first millennium C.E. to approximately the 15th century C.E. The origins of the first discernible school of Dharmaśāstric thought regarding ownership and inheritance - which crystallized the defense of ownership by birth in Vijñāneśvara's 11th-12th century *Ṛjūmitākṣarā* - lay in a Mīmāṃsā theory of ownership as a secular phenomenon. Contrary to Ethan Kroll and Derrett's caricature of Mīmāṃsā theories of ownership as "deplorable" or "regressive," I argue that Prābhākara-Mīmāṃsā writers including Śālikanātha and Bhavanātha developed a metaphysically detailed and ethically rigorous view of ownership as a secularly established fitness for use as desired (*lokasiddhayathēṣṭaviniyogayogyatva*). Furthermore, I argued that the *Mitākṣarā* marks a crucial juncture at which the sporadic, unsystematic theories of ownership by birth that appeared in earlier Dharmaśāstra commentaries (such as Medhātithi's *Manubhāṣya*) were consolidated and combined with a Prābhākara-Mīmāṃsā theory of ownership as a secular, extra-

śāstric phenomenon. Vijñāneśvara founded a distinctive school of Dharmaśāstric thought because his scale of Mīmāṃsā Dharmaśāstra texts became the standard way of thinking about the problems of ownership and inheritance for subsequent śāstrins. I argued that Vijñāneśvara was a founder of a school of thought in the sense that he *consolidated* earlier Dharmaśāstrins' theories of ownership and inheritance and established the parameters for future debate about the issue. The chapter does not, however, argue that the early *Mitākṣarā* school - a primarily academic school - was associated with distinct geographical regions or teacher-disciple lineages.

In my second chapter, I examined the rise of a geographically and culturally specific school of Sanskrit jurisprudence: the Gauḍa school of Navadvīpa, Bengal. I argued that a uniquely Bengali (Gauḍa), Navya-Nyāya-inflected school of jurisprudence developed at the university of Navadvīpa (founded in 1514) in the early sixteenth century. In many ways, the Gauḍa school, which came to be known in colonial times as the *Dāyabhāga* school, was the antithesis of the *Mitākṣarā* school. The Gauḍas had strong connections to a particular place, utilized the analytical techniques and theoretical presuppositions of Navya-Nyāya rather than Mīmāṃsā, and connected their discussions of ownership and inheritance with a comprehensive scale of Dharmaśāstric texts - which covered legal and ritual topics - and displayed an obvious desire to surpass a regional rival - the competing centre of Sanskrit learning in Mithilā. Navadvīpan Dharmaśāstrins, including Śrīnāthācārya Cūḍāmaṇi (1475-1525), Rāmabhadra I (1510-1570), and Acyutacakravartin (1510-1570), and logicians, such as Raghunātha Śīromaṇi (1460-1540), and Jayarāma Nyāyapañcānana (17th Century), began to speak of themselves, their ritual practices and their intellectual opinions, as being part of a Bengali (Gauḍa) school of thought.

I argued that Navadvīpan jurists recalled Jīmūtavāhana's *Dāyabhāga* from its previous obscurity and used their commentaries on this treatise as a venue within which to build a new, comprehensive theory of ownership and inheritance. Navadvīpan jurists wrote dozens of commentaries on the *Dāyabhāga* in a Navya-Nyāya idiom and dozens of logicians wrote Navya-Nyāya treatises on ownership which defended arguments from the *Dāyabhāga*. The key connection was between various Navya-Nyāya theories of ownership as discernible from the śāstra alone (śāstraikadhigamyasvatva, etc.) and the Dharmaśāstric theory of ownership by the cessation of the ownership of the previous owner (upamasvatva) articulated in Jīmūtavāhana's *Dāyabhāga*. The Gauḍa Dharmaśāstrins, however, do not appear to have paid significant attention to the *Mitākṣarā* or to *Mīmāṃsā* theories of ownership. Neither do they appear to have been actively involved in adjudicating property disputes in the wider Bengali society. The Bengal school was far more determinate than the *Mitākṣarā* school of the previous centuries, but it was, as far as this thesis could tell, first and foremost a scholarly endeavor. Of course, scholarship has its own politics and for the Navadvīpan, the perlocutionary force of their endeavors seems to have been building the reputation and fortunes of their new university.

In my third chapter, I examined the reception of the Gauḍa school jurisprudence amongst the predominantly Mahārāṣṭrian community of paṇḍits that flourished in Vārāṇasī in the sixteenth and seventeenth centuries. I was keen to examine how some of the distinctive features of Indian "early modernity," the pan-Indian Brāhmaṇa "ecumene," and the intensively competitive environment of Vārāṇasī inflected the development of the concepts of ownership and inheritance in Dharmaśāstra. I explored the *Mīmāṃsā* and Dharmaśāstra writings of the Bhaṭṭas, a

a famous and influential family of Mahārāṣṭrian Mīmāṃsakas and Dharmasāstrins who identified themselves as exemplary southern (Dākṣiṇātya) Brāhmaṇas and who led several adjudicative assemblies (brāhmaṇasabhās) that met in the Kāśīviśveśvara temple. I argued that the Bhaṭṭas recast Vijñāneśvara's *Ṛjūmitākṣarā* as a paradigmatic southern, Mīmāṃsā-compliant treatise on inheritance. They incorporated the *Mitākṣarā* and Mīmāṃsā theories of ownership into a comprehensive southern school of jurisprudence and contrasted this school of jurisprudence with that of the Gauḍas. It was at this moment, I argue, that the *Mitākṣarā* and the *Dāyabhāga* moved into each other's orbit and the basic *Dāyabhāga/Mitākṣarā*, Gauḍa/Dākṣiṇātya, Navya-Nyāya/Mīmāṃsā division in the jurisprudence of ownership and inheritance was fixed. I demonstrated that the development of Sanskrit jurisprudence was very much embroiled in the social politics of early Indian modernity - in squabbles between paṇḍits with various regionally and pedagogically-specific lineages, in the marked interest amongst paṇḍits for intervening in the caste hierarchies of the northern India, and the increasingly interdisciplinary character of scholastic Sanskrit endeavor.

The fourth chapter of this thesis tackled one of the central questions of this thesis: was Colebrooke's identification of *Dāyabhāga* and *Mitākṣarā* schools of law a "phony, artificial creation" or a justifiable characterization of the state of Dharmasāstra circa 1800? The answer, unsurprisingly, was a bit of both.

I examined the British encounter with Dharmasāstra in the the late eighteenth and early nineteenth centuries and traced the construction of Hindu Schools of Law between 1772 and 1825. I read three digests of Dharmasāstra digest that were compiled at the behest of the East India Company and whose English translations were utilized by British jurists in colonial courts: the *Vivādārṇavasetu*, the

Vivādabhaṅgārṇava, and the *Dharmaśāstrasamgraha*. I accepted that the grounding premise of Anglo-Hindu Law - that Dharmaśāstric legal treatises could be read as statutory law - was a distortion of the primarily scholastic nature of Dharmaśāstra as an expert tradition. I argued, however, that the colonial era Dharmaśāstra digests articulate the same discernible, regionally specific schools of jurisprudential thought regarding ownership and inheritance whose evolution I reconstructed in chapters two and three of this thesis. The *Vivādārṇavasetu* and the *Vivādabhaṅgārṇava*, compiled by teams of Bengali logicians, synthesized and defended the *Dāyabhāga*'s Bengali (Gauḍa) theories of ownership by the cessation of the ownership of the previous owner (uparamasvatva), ownership as discernible from the śāstra alone (śāstraiḥkagamyatva), and *factum valet* against the opinions of Maithila rivals (often utilizing the formal techniques of Navya-Nyāya philosophy). In contrast, the *Vyavahārabālabhaṅgī* - compiled by a Mahārāṣṭrian Mīmāṃsaka whose intellectual lineage intersected with the Bhaṭṭa family - defended the *Mitākṣarā*'s southern (Dākṣiṇātya) theories of ownership by birth (janmasvatva) and of ownership as secular (laukika) against the *Dāyabhāga* and logicians identified as Bengali (Prācyā, Gauḍa, etc.).

Consequently, I drew a distinction between conceiving of Dharmaśāstra as positive law and positing regionally specific schools of Dharmaśāstric jurisprudential philosophy. In accepting the first proposition and rejecting the second proposition, I argued that Colebrooke's formulation of schools of law - particularly his formulation of Dharmaśāstric theories of ownership and inheritance as rooted in the *Dāyabhāga* and *Mitākṣarā* - constituted a logical and an appropriate understanding of the state of Dharmaśāstra that he encountered directly in the Dharmaśāstra anthologies compiled for the British and through his collaboration with Bengali, Maithila and

Mahārāṣṭrian paṇḍits. Furthermore, the colonial-era Dharmaśāstra digests that I examined in the fourth chapter substantiated Colebrooke's hypothesis that Navya-Nyāya and Mīmāṃsā theories of ownership lay at the heart of the division of *Dāyabhāga* and *Mitākṣarā* schools of Sanskrit jurisprudence. I demonstrated that Davis' argument - that schools of Hindu law were a colonial invention - and Bhattacharya-Panda's insistence that the *Vivādabhaṅgārṇava*'s Navya-Nyāya-inflected theories of ownership were a British interpolation were themselves untenable, artificial distortions of the Dharmaśāstric record. The chapter concluded its criticism of the theory of an epistemic rupture in the śāstric sciences between pre-colonial and colonial India by proposing a new narrative of transformation and transcreation.

Where does this leave us? What work remains to be done? This thesis only scratched the surface of Sanskrit literature on ownership and property. There is a vast archive of Mīmāṃsā, Navya-Nyāya, and Dharmaśāstra texts that exists only in manuscript form and that has never been examined at any length. The colonial archive of Sanskrit digests, paṇḍits' vyavasthās, and case law remains an untapped resource for investigating the continuities and reconfigurations of Dharmaśāstric ideas about property in modern India. I hope that in addition to the myriad technical wonders illuminated, this thesis convinces the reader that the Sanskrit jurisprudence of ownership is more varied, more intricate, and of more utility to the future than some quick and current caricatures of it as regressive, pointlessly abstract, or a colonial fantasy might have you believe.

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