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CORPUS IURIS SANSCRITICUM
ET FONTES IURIS ASIAE MERIDIANAE ET CENTRALIS

A Series on Social and Religious Law
edited by Oscar Botto

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THE BOUNDARIES OF HINDU LAW

TRADITION, CUSTOM AND POLITICS IN MEDIEVAL KERALA

by Donald R. Davis, Jr.

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Per rispondere al crescente interesse per l'antico diritto indiano, il Comitato Scientifico ha recentemente deliberato di ampliare l'area geografica di competenza della Collana, che ha dunque acquisito la designazione di Corpus Iuris Sanscriticum et fontes iuris Asiae Meridianae et Centralis, e di pubblicare, oltre alle edizioni critiche e traduzioni di testi di diritto, anche studi monografici e riproduzioni in facsimile di manoscritti rilevanti anche sotto il profilo estetico.

La presente monografia, la prima pubblicata nella Collana, esamina l'applicazione della legge tradizionale Hindu nello Stato indiano del Kerala nel periodo compreso tra il XIV e il XVIII secolo e costituisce un contributo significativo sia dal punto di vista storiografico, sia da quello metodologico. In considerazione delle esigue informazioni storiche sugli ordinamenti giudiziari nell'India classica o medievale, l'Autore, Donald R. Davis, Jr., ha fatto ricorso non solo ai Dharmaśāstra e al materiale epigrafico, ma anche a importanti documenti inediti conservati negli archivi dei templi del Kerala, che si sono rivelati essenziali per l'esame dello specifico contesto storico.

Oscar Botto

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Donald R. Davis, Jr.

CONTENTS

INTRODUCTION

Legal History, Legal Theory, and India

Comparative law depends upon the assumption that an understanding of differences in the world's legal systems is the only plausible foundation for the articulation of increasingly complex international legal orders. To say that the history of law in India is one part of the history of law in the world would seem obvious. In actuality, however, the legal history of India and other regions in Asia and Africa has been excluded from what might be called mainstream jurisprudence or legal theory in Europe and America[1]. Especially in historical contexts, the laws of Asian and African countries never qualify as law itself[2]. Instead, they are segregated by outmoded adjectives like "primitive" or "native" or, equally dismissive, "non-Western[3]." Law is not unique among Asian and African social institutions in receiving such treatment.

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1. William Twining (2001: 185-189) describes such micro-comparative legal studies as the "Country and Western Tradition" of comparative law, i.e. comparison only of the law of nationstates and only of law in the West.
2. See, for example, Evans-Pritchard: "In a strict sense Nuer have no law" (1940: 162). See also MacCormack: "The view that China did not have law has still not entirely disappeared, even in the writings of well-informed scholars" (1996: xiii). Western jurisprudence, Ronald Dworkin has been the leading critic of historical, comparative approaches to law. Dworkin's view is that, "Theories that ignore the structure of legal argument for supposedly larger questions of history and society are... perverse" (1986: 14).
3. Max Gluckman discusses the theoretical problems encountered when certain "qualifications" are required of a society before it can be said to have law. In particular, Gluckman rejects legal litmus tests such as legislation and courts as standards for law. See Max Gluckman 1965: 178-83. Despite Gluckman's warning against specific criteria, Alan Watson offers a plausible set of characteristics: "The question for us, therefore, in considering a 'primitive society' is whether we should say that rules hallowed by custom or accepted morality become law at the precise point when dispute situations are institutionalised and when a process comes into existence whose decisions are validated in order to avoid further unregulated conflict" (1977: 29).

   Some influential scholars of jurisprudence, such as H.L.A. Hart (1994: 3-4, 91-92), one of Dworkin's staunchest opponents, continue to segregate "primitive law" in this way. Dworkin, however, simply omits most legal systems of the world from his purview and rarely, if ever, deals with anything but American and European legal systems in his discussions of jurisprudence. For an excellent survey of the dismissiveness entailed in Western studies of African and Asian law, see Chanock 1998.

This book examines the history of law in medieval India, specifically the region of Kerala on India's southwestern coast. I will describe what can be learned from studying the legal history of a time and place that may seem irrelevant to the modern world. In so doing, I want to emphasize the importance of studying legal systems outside the mainstream not in an apologetic way, i.e. by justifying the sophistication of the legal system of medieval Kerala in terms of mainstream jurisprudential concepts[4], but rather with the belief that inquiry into the principles and processes of law in academically neglected places and times can illuminate the presuppositions and the foundations of our own legal systems, whatever and wherever they may be. In other words, I am pursuing a microcomparative study of Kerala in a particular time, but with an eye toward macrocomparative problems in legal theory and legal history.

It is important at the outset to set forth some of the important approaches to the study of law and working definitions of legal theory concepts that I will use to analyze the history of law in medieval Kerala. There are two disciplines, jurisprudence and legal anthropology, that offer theories of law from which I will draw in explaining law in medieval India. By jurisprudence I mean the scholarly work of judges, lawyers, law school professors, and other legal scholars on the nature of law: this field of study is also known as legal theory and I do not make a distinction between the two here. There are many schools and rich, stimulating traditions of jurisprudence in Europe and the Americas, but I think that it is not unfair to say that this mainstream jurisprudence is fixated, and from my perspective regrettably so, on the legal systems which emanated broadly from the Roman and Common Law traditions. Despite the often brilliant analyses offered by mainstream scholars of jurisprudence, their conclusions are tainted and their pretensions to generality frequently misguided because of the fact that they exclude many important manifestations of law in other parts of the world.

Legal anthropology and Legal Realism tried to remedy this major theoretical lacuna in mainstream jurisprudence. Sally Falk Moore suggests that the work of Bronislaw Malinowski was the first to "per-

4. This was the strategy at work in many classic works on Indian legal history. The best example of this apologetic project, which was part of burgeoning nationalist trends in India at the time, is P.V. Kane's History of Dharmaśāstra (1962-75, hereafter HDh).

suade people outside the anthropological field that there was such a thing as law in nonindustrial societies" (1978: 220). Montesquieu in the 18th Century and Maine in the 19th Century (among others) wrote about the law of China and India, but their conclusions were marred by a lack of evidence and capacity to deal with original materials, even when available. The work of early comparativists was also marked by either a dismissiveness with respect to Asian laws or a purely antiquarian interest, as though the laws of Asia had a quaint, but no longer relevant, attraction for the modern world.

In this way, Moore seems correct to identify Malinowski (1926) as a key figure in generating a burst of scholarly interest in comparative law. For a time, anthropological and ethnographic accounts of law in non-industrial societies were regularly published. Scholars of mainstream jurisprudence, notably represented by Karl Llewellyn, also showed a keen interest in the work of legal anthropologists. Llewellyn described "primitive law," the usual moniker for the laws of Asia and Africa at the time, as "something you would not disregard, if you wanted to know anything about 'law' that was worth knowing" (1930: 431-2). Llewellyn even coauthored with E. Adamson Hoebel one of the classics of legal anthropology, The Cheyenne Way (1941), just prior to his work on the Uniform Commercial Code of the United States. Despite the erstwhile interest of such prominent legal scholars in comparative law and ethnography, legal anthropology has never made a significant impact on those who deal with law professionally and Moore goes on to point out that, despite generating some interest outside anthropology, Malinowski's work, like that of many others, never became part of mainstream jurisprudence, and was "placed in a very narrow niche reserved essentially for exotica and historical background" (1978: 220). The reasons behind the failure of legal anthropology to extend its theoretical advances in the academic study of law beyond itself stem both from the hermetic disposition of the scholarly community of mainstream jurisprudence and from the marginalization and perceived irrelevance of jurisprudence itself at law schools and among practicing legal professionals[5].

5. On the relevance of jurisprudence to practical legal, economic, and political matters, including for example globalization, see Twining 2001.

In using theories and concepts from both mainstream jurisprudence and legal anthropology, my intent is to bridge disciplinary gaps that currently disrupt the study of law – four disciplines in particular: jurisprudence, legal anthropology, religion, and history. The latter two are not concerned exclusively with law, but they are both essential for understanding the nature and practice of law in medieval India. Following Geertz, my approach:

> implies a less internalist, we raid you, you raid us, and let gain lie where it falls, approach; not an effort to infuse legal meaning into social customs or to correct juridical reasonings with anthropological findings, but an hermeneutic tacking between two fields, looking first one way, then the other, in order to formulate moral, political, and intellectual issues that inform them both. (1983: 170)

What Geertz is doing here is reminiscent of earlier efforts in religious studies to allow new "local knowledge," i.e. evidence from academically unknown parts of the world or historical moments, to inform and transform the analytic categories of the field of study within which the evidence falls[6]. In the case of law, this method amounts to a constant vigilance and openness with regard to the semantic range of the conceptual vocabulary of legal theory. New evidence or new "local knowledge" changes the theory necessary to interpret it. What counts as law, legal procedure, court, crime, evidence, property, authority, etc. has to respond to new kinds of evidence, rather than excluding and denying such concepts and the institutions they suggest simply because the concepts do not correspond precisely to preexisting formulations.

A common question that arises in connection with any study of law in a non-English context is how to define and delimit the semantically vast word "law." The word "law" in English is plagued with ambiguity, perhaps even more so than its counterparts in other European languages. "Law" in English refers not only to what is called ius in Latin, Recht in German, droit in French, and diritto in Italian but also to lex,

6. Jacob Neusner (1968) advocated such a methodology in connection with the notion of "scripture" some time ago.

Gesetz, loi, and legge[7]. It is a telling fact that whenever legal history in India is discussed, Recht and droit are preferred over the more legislatively oriented Gesetz and loi. On the one hand, this preference presupposes the dominance of legislation in Western legal contexts and legal history[8]. On the other, it accepts as fact the alleged lack of legislation in India[9]. From an historical perspective, however, the idea that legislation is the primary source of law is a relatively recent transformation in attitude, even in Europe. In his exposition of classic Common Law theory, for example, Gerald Postema writes:

> By the Seventeenth Century the conception of the nature of legislative activity of the sovereign or Parliament had changed. Medieval jurisprudence held that statutes performed, in a more explicit and general way, the same task which occupied the judiciary: namely, declaring, expounding, and making known law which already existed in the traditional practices of the people. To regard a body of persons capable of creating new law... was a radical departure. (1986: 15)

Harold Berman goes further, saying,

> Today people think of law primarily as the mass of legislative, administrative, and judicial rules, procedures, and techniques in force in a given country. The vision of history that accompanies this view of law is severely limited to the more or less recent past and to a particular nation. Indeed, it may even be a vision of no history at all, but only of current policies and values. (1983: vii)

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7. Compare Gluckman 1965: 199 and Geertz 1983: 187.
8. For a brief, but insightful critique of this position, see Barkun 1968: 9. Even otherwise well-balanced studies of "preliterate" legal systems, such as Michael Gagarin's study of early Greek law, assert that "What mattered was that the act of legislation, essential to the existence of a true legal system, had been invented" (1986: 144). The primacy of legislation and the projection of this primacy backwards in time is at the heart of many misunderstandings in the field of comparative law.
9. The classic denials of legislative power for rulers in ancient and medieval India are Rangaswami Aiyangar 1941: 43, 131-135 and Lingat 1973: 141, 230. For a critique of their extreme position, see Derrett 1964 and Davis 2005.

If the perception that law means legislation is an historically recent idea originating in Europe, then it is clear that defining law in terms of legislation will not be helpful in describing and explaining law and its social life in most of the world's cultures and time periods[10]. This does not mean, however, that we must abandon any notion of positive law, any theory of legal positivism, or even legislation, with respect to medieval India. It simply means that we cannot omit from the academic study of law legal systems that do not foreground the legislations of the modern nationstate. Emphasizing the lex/Gesetz/loi aspect of law ignores the ius/Recht/droit side of law; one might say that "legislation" obscures "justice," but perhaps better would be to say that the notion of positive law must be expanded beyond the relatively modern concept of parliamentary legislation in such a way as to connect the positive law with abstract notions of justice, fairness, and the spirit of law. It seems obvious that neither facet of law should be privileged in the analytic study of historical legal systems. The issue of abstraction, however, does raise another important theoretical question.

At what level of abstraction is it appropriate to talk about law and legal systems[11]? Some say that law is a kind of "folk system" limited to Europe and America and, to a lesser extent, the successors of their former colonies, while others want to apply the term "law" to almost every form of social control or patterned behavior[12].

Among those who criticize any attempt to formulate a general definition of law is Paul Bohannan who, from the side of anthropology, distinguishes between two ways of understanding law, namely as a "folk system" or as an "analytic system." In Bohannan's view, "the anthropologist's chief danger is that he will change one of the folk systems of his own society into an analytical system" (1957: 5), i.e. that "law" as the "folk system" of English-speaking countries and of much mainstream jurisprudence will be coopted as the "law" of com-

10. The modern emphasis on legislation as law is severely restricted in time and place and is best seen as a useful fiction of modern European and American law, especially at a professional and political level.
11. Twining (2001: 136-173) discusses about the difficulties and lack of consensus regarding the best way to compare legal elements of the same kind.
12. An interesting example of this strategy is Pospisil 1974.

parative jurisprudence and legal theory generally[13]. Despite Bohannan's provision for the use of "law" in an analytic sense, his work emphasizes the "folk" side of law to the point of making different legal systems incomparable. Such incomparability is exactly what I would like to avoid in the following description of law in medieval India. The fact is that law must be both a "folk system" and an "analytic system" at the same time. In one way, teasing out the emic and etic sides of law is the whole task of legal theory.

A better method is the "law-jobs" approach of Llewellyn (1940). This is a functionalist approach which compares law by comparing the tasks or social achievements of law that are common to all cultures, dispute-resolution being only the most famous of Llewellyn's law-jobs. The beauty of law-jobs is that they can differ in the manner of their accomplishment and yet achieve practically identical ends, ends that can be compared analytically. The law-jobs approach demands a certain kind of evidence – case reports. Without the details of actual cases, it is difficult to speculate on the functions of the law. For precisely this reason, the dearth of case materials of this sort from medieval India makes Llewellyn's approach problematic for India's legal history. The evidence adduced here from medieval Kerala records discrete events, but does not contain court records or thorough evidence for the law-jobs of this place and time. To the extent possible, however, I will use Llewellyn's approach to describe the law-jobs of medieval Kerala, knowing full well the pitfalls of functionalism and its ahistorical propensities.

From the side of jurisprudence, Richard Posner has articulated a pragmatist approach to law which extends Llewellyn's thought in both desirable and undesirable ways. Posner claims that "the central task of analytic jurisprudence is, or at least ought to be, not to answer the question 'What is law?' but to show that it should not be asked,

13. For a critique of this view, see Gluckman 1997 [1969]. Gluckman and Bohannan had an extended disagreement over the best way to pursue legal anthropology. Gluckman favored a mode of expression that emphasized contiguities and similarities between various types and levels of law; Bohannan preferred to stress the integrity of each individual realm of law at the expense of an explicit rhetoric of comparison. My own view leans more towards Gluckman's because the subsequent history of the debate has demonstrated the isolating effects of not developing a useable vocabulary of comparative law.

because it only confuses matters" (1996: 3). The problem, according to Posner, is that "the concept of law is so elusive. Writers on jurisprudence treat it as a universal topic; they decontextualize it, yet it is actually local" (1996: 37)[14]. Here Posner sounds like Bohannan in his emphasis on the localization of law as the only viable site for legal theorization. The notion that practical law or positive law is always an after-effect of localization is one that I will employ in the context of medieval Kerala[15]. However, I do not want to neglect the promise and necessity of comparative and universalizing theory concerning law, as Posner seems willing to do. Like Llewellyn, Posner's view of law begins not with theory, but with activity[16]. "Such fixity as legal doctrines have," Posner adds, "derives from their having socially desirable consequences" (1990: 423). The activities of law, the law-jobs, seem to provide us with a suitable level of abstraction for comparing legal systems and their histories. The analytic task should not stop here, however, and in the case of India, cannot stop here, because of the difficulties involved in tracing the law-jobs of medieval India.

Where possible, comparative legal scholars should not only compare law-jobs in different societies, but also "law-talk"[17]. Specifically,

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14. Posner's remarks suggest that law, like many other complex terms, is what Wittgenstein called a "family resemblance" term. The classic example of a "family resemblance" term is "game." There are many kinds of games. Some involve balls, fields, and gloves; others involve cards or pieces. There are not many outward similarities between, say, chess and baseball, but they are both games. "Family resemblance" terms suggest that some members of the family are closer than others, but that all of the members fit in an illdefined, disparate family. Except from an extremely parochial perspective or definition, law is an institution shared by all human societies, yet it may not have exactly the same essence in each society. Law, like so many other concepts, may elude definition, but it is not therefore meaningless.
15. By localization, I mean the process of creating legal institutions and substantive laws and of disseminating and enforcing rules of law in localized contexts. Localization is the total process of making a local legal system, and not merely the local appropriation of supralocal legal rules and institutions, though that process of appropriation can be very important to the development of local law and was in fact in medieval Kerala as will be shown.
16. See Posner (1990: 456-7):
    Law itself is best approached in behaviorist terms. It cannot accurately or usefully be described as a set of concepts, whether of positive law or of natural law. It is better, though not fully, described as the activity of the licensed professionals we call judges... Redescribing law in activity terms tends to erase the distinction between natural law and positive law, and the distinction has indeed outlived its usefulness.
17. In a series of lectures on general jurisprudence delivered at the Universities of Tilburg and Warwick, William Twining ("Reviving General Jurisprudence," 7-8, currently online at Prof.

I am referring to the indigenous scholarly tradition of India and its rhetoric of law, embedded as it is in larger categories of religion and duty. In other words, Indians themselves had an analytic discourse of law and jurisprudence that we must be attentive to in trying to understanding the legal history of India. Of course, the vocabulary and presuppositions differ between this traditional analytic and modern analytic discourse, not least because the latter is explicitly comparative, but the comparison of law-talk enables us to consider questions about the role of law and jurisprudence beyond local law-jobs and legal institutions. Law-talk in this sense regularly presumes a universal context, and the jurisprudence of Indian, especially Hindu, law is no exception.

What we require is the ability to discuss law as a phenomenon shared by every human society while maintaining and comprehending the distinct manifestations of law in those various societies[18]. Even if we keep in abeyance the effort to find the essence or final definition of law, however, we can still use the term "law" meaningfully in cross-cultural studies on the basis of the "family resemblance" between the differently constructed legal systems of the world. Thus far, I have suggested that to understand law in medieval India, we must disabuse ourselves of the idea that law necessarily presumes legislation and we must investigate both the traditional analytic and comparative analytic discourses of law and jurisprudence in order to create a responsible, yet accessible description of law in medieval India.

Before I proceed with such a description, there is one other general point about law that will run through this work and, therefore, deserves to be mentioned at the outset. In the tradition of Hindu law, there is an enduring relationship between law and the vision of society held by people with power and authority. I do not mean to imply here that in every case "law is simply a mirror of society, which functions to maintain social order" (Tamanaha 2001: 1). Tamanaha's critique of this view is penetrating and persuasive. However, following Tama-

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Twining's homepage) distinguishes "law talk" (talk of rules and doctrines) from "talk about law" (talk about any legal phenomenon). I follow his distinction, but emphasize that I am not disparaging "law talk" (Twining does in context for a particular purpose).

18. Compare Geertz 1983: 222.

naha, I would distinguish the "mirror thesis" from a view that acknowledges that law contains a vision of society articulated primarily by those with certain types of power – the "selective mirror thesis"[19]. The connection of power, ideological vision, and law is a potent combination in directing the trajectories of society – one that was recognized in the West as early as the Greeks (Tamanaha 2001: 11, 67). Roscoe Pound points out that the Greeks held the end of law to be the preservation of the status quo, and he himself suggests that law is "a continually more efficacious social engineering" (1922: 47). Elaborating on Kelsen's notion (1945) of a Grundnorm of law, Óscar Correas writes in a similar vein,

> la norma fundante de un sistema jurídico... es en realidad una ficción... Un sistema normativo es válido cuando es eficaz. Y lo es cuando 'la gente' actúa como si fuera válido. [the fundamental norm of a legal system... is in reality a fiction... A normative system is valid when it is effective. And that is when 'the people' act as if it were valid]. (1994: 24)

To behave as if a normative system is valid is to accept a particular vision of society and to behave according to that vision. The as if distinguishes my view from the simple mirror thesis in that it is the imagining of a legal system as a reflection of society and an instrument in its ordering that counts, not the reality. Moreover, it is an historical and empirical question, not merely a theoretical question, to ask whether or not a particular society's law mirrors its social structure. Tamanaha's example of Micronesia and the case of modern India's continuing acceptance of a "foreign" legal system demonstrate the lack of necessary mirroring connection between law and society[20]. That other examples, by contrast, do show a close connection, however, is not disproven by such examples. In the case of Hindu law in medieval India, and with certain exceptions as I will argue, there does

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19. Although Tamanaha is critical of the "selective mirror tradition," he acknowledges that the theoretical views of scholars in this grouping offer a much more plausible understanding of law for comparative purposes than scholars who see a necessary linkage between law and society in all cases. See Tamanaha 2001: 40-44, 65-71.

20. Two classic accounts of the phenomenon of legal transplantation and of its being the rule, not the exception, in legal history are Watson 1993 and Galanter 1989: 37-53.

appear to be a fairly close connection of law and society, one that exemplifies elements of selective mirroring in Tamanaha's sense. Here we might usefully invoke Anderson's notion of "imagined community" (1991) because law, like language, is central to any "imagined community." We can say that the imaginings of "community" dictated the trajectories of Hindu law in medieval Indian society, as long as we understand that not every person's vision counted equally. In this way, we can avoid the pitfalls of positing a simplistic mirroring of society in the law, without denying the clear connections of law and society. And so do the boundaries of Hindu law reflect, however imperfectly, the hopes, the fears, and the decisions of the "lawmakers" and, to a lesser, but still real extent, "the people."

Hindu law in Medieval India

In his study of Hindu conceptions of law, Ludo Rocher emphasizes the lack of a word for "law" in any Indic language: "Any discussion of Hindu conceptions of law has to start with the basic observation that nowhere in the Hindu tradition is there a term to express the concept of law, neither in the sense of ius nor in that of lex" (1978: 1283). Though Hindu law is at the center of the present study, Rocher's observation need not be limited to "Hindu" conceptions of law but was true of all Indic cultures: there was no word and no set of texts or evidence in premodern India that related exclusively to law. Law in India was embedded within other concepts and left its mark in various kinds of historical evidence. While some take this as an endpoint, a definitive declaration that Indians had no law in the Western sense, I see it as an interpretive challenge, an opportunity not only to illuminate the Indian categories through the analytic vocabulary of law, but also to expand and alter that vocabulary such that it meets the real needs of comparative law. If we want to understand how law was understood and put into practice in medieval India, we must search for the various voices of law in Indian texts and discover the variety of perspectives on law represented by different kinds of historical evidence. In so doing, we will never encounter a precise counterpart, an exact match to "law" in English, but rather we will uncover similarities and resemblances that can be compared with law and described by

English legal vocabulary. Just as the boundaries of law differ, however, so also do the boundaries of interpretation and understanding.

In most cases, scholars have either rejected the notion of law in India altogether or focused on the word dharma as the best hope for a comparable term[21]. More specifically, attention centers almost exclusively on two genres of Sanskrit literature – Dharmaśāstra and Arthaśāstra[22]. It is a common scholarly practice to equate Hindu law, or at least classical Hindu law, with Dharmaśāstra. In many cases, the equation of the two repeats the British colonial misrepresentation of dharma as law[23].

To understand the history of law in India, we must look beyond the concept of dharma, especially as represented in the śāstra texts, to the concept of ācāra and related terms. Dharma refers broadly to all religious, legal, and social duties and is totalizing in its scope. The classic sources for information about dharma are the texts known as Dharmaśāstra, what I will call for the sake of convenience the Hindu law texts, a distinct genre of scholarly writing in ancient and medieval India. It is a mistake to equate dharma and Dharmaśāstra because the texts capture only a portion of dharma. Ācāra, localized standards of law sometimes called customary law, is dharma in practice, continually recreated manifestations of dharma in particular local contexts. Ācāras may conflict with each other and still be dharma in their respective contexts. It should be remembered that all ācāra is dharma by definition and the law texts themselves affirm this point. At the

21. Rocher 1993 provides an excellent survey of the history of the debate over whether India had law and, if it did, how can we best understand what that law was.
22. Olivelle 2005: 46-50 shows clearly how the Dharmaśāstra tradition coopted the Arthaśāstra tradition, to the point of making the latter a very restricted, and at times moribund, scholarly tradition.
23. See Rocher 1978: 1283. Throughout this work, I will distinguish between dharma and law. In general, law is a subset of the ideas, procedures, and prescriptions associated with dharma and is only partially captured in the Dharmaśāstra. In fact, law constitutes a mere fraction of the contents of Dharmaśāstra and Arthaśāstra texts and the legal sections "are not more important or in any way different from the many other sections" (Rocher 1978: 1303). Dharmaśāstra as a tradition resembles jurisprudence more than law itself. As a result, the primary discourse of law is largely lost because few textual sources preserve it in any direct form. The main point here is that dharma and law are not coterminous and understanding the points of contact and disjunction between the two is, in many ways, the goal of all legal studies of Dharmaśāstra literature.

same time, the rules of the Hindu law texts and the rules of ācāra in a given locality may not always agree. According to most of the law texts, ācāra must give way in cases of conflict. In practice, however, rules of ācāra seem to have taken precedence over rules of the law texts. What motivates this study is the tension in how theoretical jurisprudence and practical jurisprudence[24] differentially view the relationship of law text and ācāra. To focus on ācāra as historically the closest equivalent concept for law in India is thus not to ignore dharma or Dharmaśāstra, but rather to concentrate first on its practical manifestations instead of its textual idealizations in the form of Dharmaśāstra.

The best reason to begin with ācāra and related terms such as maryādā (boundary), samaya (convention), saṃvid (agreement), and vyavasthā (pronouncement), however, is that, unlike dharma, these terms actually appear regularly in historical documents of law from medieval India, including inscriptions from all parts of South Asia and the Hindu temple records studied here. In other words, this set of terms, all referring to local laws in some way, provides the actual vocabulary of practical law in medieval India. By looking first to the vocabulary of law in epigraphical and documentary evidence from medieval India, therefore, we glean an understanding of law that is locatable in time and space – a necessity for any historical study of law. It is from this vocabulary and any conceptual system that may emerge from it that we can make comparative assessments of the legal historical role of the more famous, yet largely ahistorical, texts of law in India, the Dharmaśāstras, which contain a sophisticated and elaborate jurisprudence. To be clear, Dharmaśāstra represents the theoretical jurisprudence, legal theory, or legal philosophy of classical Hindu law. It is not the law itself, but rather a way of thinking about law[25]. Ācāra is the positive law and receives inputs from local customary laws, regional legal standards, local political rulers and elites, and from Dharmaśāstra texts.

24. On the distinction of theoretical and practical jurisprudence, I follow Weiss 1992: 15. For purposes of this work, Dharmaśāstra represents the theoretical jurisprudence of Hindu law, while ācāra, local law, is the basis for practical jurisprudence. Theoretical jurisprudence is presented very systematically in the Dharmaśāstra texts, but practical jurisprudence is hardly preserved at all in the historical record. Theory and practice are, of course, connected, and I argue throughout that it is this connection of a pan-Indian theoretical jurisprudence with local legal systems that is at the heart of the Hindu law tradition.

The fact that a rule appears in Dharmaśāstra does not by itself make it law. Rather, if and when that rule becomes part of a local ācāra system, as seems to regularly have been the case, then that is the point at which the rule of śāstra becomes law and not before. Dharmaśāstra had thus to be translated and received into local contexts before it had any practical effect. The nature of this translation and reception in medieval Kerala forms the central focus of this work.

It is, of course, a truism to say that a text is just words on a page until and unless some person takes the text seriously and "receives" it. At the same time, the history of legal studies in India has been stuck in a paralyzing dichotomy of analysis: either the Hindu legal texts were applied in the manner of law-books in the West or they were merely the "pious wishes" of their Brahmin authors (Rocher 1993: 260). If the law was not Dharmaśāstra, then it must have been mere custom. Since the late 18th Century, historians of India have had little choice but to accept one or other of these positions because no clear evidence for a middle ground had been put forth either by scholars or colonial administrators (see Lariviere 2004).

The notion that Dharmaśāstra was an expression of the laws to be applied to Hindus in courts is traceable to the time of Warren Hastings and William Jones in the 1780s and 1790s who were primarily responsible for the irreversible decision to elevate the Dharmaśāstra and the Shari'a to the status of statutory law for all Hindus and Muslims, respectively. Protests by F.W. Ellis as early as 1812[26] were unheeded and it was not until the provocative remonstrations of J.H. Nelson in 1877 that the British administration and the scholarly community began to turn away from Dharmaśāstra to customary law as the real

25. It is true that Dharmaśāstras, especially the smṛti texts such as the famous Laws of Manu (see Olivelle 2005), contain a myriad of prescriptions that have the appearance of rules of law. Injunction is the preferred mode of expression in śāstra texts, but the nature of śāstra is such that its injunctions are not enforced by any political authority. Olivelle speaks of śāstra as a "meta-discourse" on practical law and religion. Following him, I prefer to describe Dharmaśāstra as a whole, including its extensive commentarial traditions, as a system of jurisprudence, even though some of its prescriptions certainly did have practical force in certain places and times.

26. See Ellis 1827: 7. For an excellent analysis of the Madras school of Orientalism and its difference with Calcutta, see Trautmann 2005.

law of India[27]. The backlash against the direct study of Dharmaśāstra in the original Sanskrit, signaled most visibly in the dismissal of Brahmin pandits and Muslim maulavis from British Indian courts in 1864[28], resulted in an extreme swing of interest toward customary law and more ethnographically oriented ascertainments of the law of India. Of this momentous dismissal, Derrett writes, "The dharmaśāstra as a living and responsible science in matters which might come before a court of law died when the courts assumed judicial knowledge of the system in 1864..." (1968: 250).

As significant as the British colonial contributions have been to the Western study of Hindu law, the value of their work for the study of medieval forms of law in India is tainted by the much-remarked British misunderstandings of Dharmaśāstra and its relationship to practical law[29]. In order to circumvent the problems inherent in the prevailing British colonial interpretation of Hindu law as based solely on Dharmaśāstra concepts, I start in this work from a different kind of historical evidence that predates the British, namely several sets of records from Kerala temples dated between the 14th and 18th Century. The records take the form of palmleaf manuscripts preserved in Hindu temples. What is recorded consists primarily of contracts pertaining to the lands held by the temple trustees, but also includes accounts of other incomes and outflows of temple property and a description of how that property was acquired or was spent. While the land records are most useful for developing a solid framework for land law in medieval Kerala, it is in the latter type of record that we find the crucial, but incidental, legal details of property acquisition and dis-

27. Derrett 1977: 2.415: "Nelson claimed that a fantastic situation had developed in which the law of certain Sanskrit law books was being applied, as if it were their law and custom, to millions of people who had never been governed by any of their contents before, who were not in sympathy with their tenor, and who were entitled to have their own customs applied to them, customs which differed from the law as set out in those books as much as did the laws of China." Though Nelson's contentions are exaggerated, his provocative declamations led to a needed revision of the place of Dharmaśāstra in practical law.

28. The dismissal was part of the transition to empire in the 1860s. From a legal perspective, the seventy or so years of British Indian precedent and the now widely disseminated, though poorly understood, translations of Colebrooke, Borodaille, Sutherland, and others were held to be a sufficient basis for any further decisions of Hindu law. The interpretations of court pandits were no longer needed.

29. See Lariviere 1989, Cohn 1989, and Rocher 1993.

position – details that inform us about criminal law and administrative law among other things.

The methodological strategy of examining dated historical records of law prior to analyzing the theoretical works on law from India may seem obvious, but the paucity of such records, or at least the paucity of scholarly engagement with such records, has made this approach rare, or even impossible. The only study that attempts something similar is V.T. Gune's excellent study The Judicial System of the Marathas (1953). Gune's work collects and analyzes mahzars, court decisions, and administrative orders from the Maharashtra region between 1600 and 1818 A.D. The Arabic judicial terms including mahzar found in Gune's work immediately indicate that what he discusses is an historically fascinating hybrid system of Islamic and Hindu law at work in Maharashtra during the Peshwa period. The Kerala situation appears to be different and represents a case of Hindu law in practice without much, if any, influence of Islamic or other legal traditions. However, for reasons which will be made clear, I do not believe there is such a thing as a system of "pure Hindu law." That notion suggests a uniformity of legal norms and practices that the nature of Hindu law repudiates, for Hindu law always manifests as a localized legal system with a universal jurisprudence[30]. The process of localization makes it law; the universally available jurisprudence in the form of Dharmaśāstra makes it Hindu because the texts are a product of the Brahminical tradition.

In speaking of Hindu law, therefore, I will use the following working definition: Hindu law refers to legal traditions that have related but variable substantive laws as localized in specific communities but that presuppose a common theoretical jurisprudence that emanates from the Dharmaśāstra textual tradition. Local legal systems in medieval India may or may not have had strong connections with legal concepts, logic, procedures, and rules from Dharmaśāstra. In my defini-

30. Here I am distinguishing universal and general jurisprudence for the sake of contrasting the specific historical jurisprudence of Hindu law that saw itself as universal, at least for Hindus, and analytical general jurisprudence, an old notion made famous by Bentham and recently discussed in the work of Twining 2001 and Tamanaha 2001. General jurisprudence in their sense would incorporate insights from all existing legal systems in the formulation of a serviceable legal theory in an analytic sense and potentially in practical contexts as well.

tion, the level of correspondence between a local legal system and both the spirit and letter of Dharmaśāstra makes that local law more or less Hindu. It is important not to prejudge and presuppose that all law in medieval India was Hindu law without demonstrating on a case-by-case basis the connections to an identifiably Hindu tradition such as Dharmaśāstra. I also leave open the historical question of whether a given legal system originated as Hindu law, i.e. that its original foundations included elements of Dharmaśāstra, or became Hinduized later through encounter with Hindu rulers, migrating Brahmins groups, merchants, etc. Both scenarios would count as examples of Hindu law in my view, but the historical processes involved should be identified insofar as possible. In what follows, therefore, I will first examine the localization of law in medieval Kerala and then examine the jurisprudence that informs this localized legal system.

The temple records examined here refer to localized legal traditions as maryādā or ācāra[31]. The description of Kerala's medieval legal history is, therefore, an analysis of maryādā/ācāra in its broadest sense. In focusing on maryādā/ācāra, I am beginning where I think the records begin. However, I am not therefore rejecting any role for dharma or Dharmaśāstra in Kerala's legal history. One of the major arguments of this study is, in fact, that a close relationship existed between Dharmaśāstra and the legal traditions of late medieval Kerala. But only by changing our approach to Dharmaśāstra in the manner described can we begin to see how these texts were used in regional legal systems of medieval India.

In contrast to earlier studies on law in India history, I contend that we should shift our focus from dharma to the concept of ācāra, socalled "custom," and related vernacular terms such as maryādā and kiḻiyakkaṃ (prevailing law). This contention is based on how ācāra

31. Ācāra appears less frequently than maryādā in Malayalam but more frequently in Sanskrit. Regardless of its frequency, however, its presence signifies a terminological link between the legal traditions of late medieval Kerala and those of Dharmaśāstra. It should be noted also that I have adopted the convention of using the Sanskritized form of all cognate terms between Sanskrit and Malayalam, except when cited specifically from a Malayalam source. Thus, while maryāda is the standard spelling in modern Malayalam, maryādā is the correct Sanskrit equivalent. The lack of a standardized orthography in medieval Malayalam, makes using the Sanskrit form preferable to a myriad of variant spellings.

and maryādā are used in Kerala's temple records. Ācāra denotes proper conduct, embodied norms, and customary law. Maryādā's primary meaning is "boundary" as in the boundaries of a field. Both words are found in Malayalam and are used synonymously in legal contexts to mean "community standards" or "boundaries" of law[32].

The word dharma, by contrast, does not appear in the Malayalam records which form the core of this study. The absence of dharma in the legal vocabulary of the temple records immediately suggests that it may not be the best starting point for understanding legal history in Kerala (Davis 2002). In fact, the scholarly focus on dharma and Dharmaśāstra as the core of legal history in India has pushed aside historical evidence of law from other sources. Inscriptions and palm-leaf records have been selectively used in various articles and books, but they rarely been used as the starting point for legal studies of Indian history. In this study, I adopt a different methodology by focusing first on the temple records from Kerala and only later consider the points of connection between these records and Dharmaśāstra.

Plan of the Study

Chapter One describes the temple records that form the basis for the study and sets them in the broader contexts of Kerala's social, political, religious, and economic history. It is only in the last thirty years or so that the basic political history of Kerala has come to be understood. Little is known of Kerala before 800 A.D., despite the fact that Tamil Sangam literature enumerates the Cheras as one of the three major polities of that era and that Roman trade in the Kerala region is attested from the 2nd Century A.D. Beginning in the 9th Century A.D., epigraphs of a lineage of kings called the Kulaśekhara Perumāḷs appear in various parts of Kerala, though the core region was centered in Mahodāyapuram, present-day Kodungallur. Elamkulam Kunjan Pillai and M.G.S. Narayanan established the definitive chronology of the

32. Although ācāra in the sense of "community standard" is much more frequent in Sanskrit, Haradatta's commentary on GDhS 11.19 states, "vyavahāro lokamaryādāsthāpanaṃ" [legal procedure is the establishment of standards among the people]. Here maryādā is used to mean a boundary of law in the same way as it is used in Malayalam temple records.

Kulaśekhara Perumāḷs by studying the inscriptions of this early medieval period (800-1124 A.D.). More importantly, their work brought out the powerful presence and voice of Kerala's Brahmin communities in those same inscriptions. Despite the presence of a king who nominally ruled over the Kerala region, "in effect he was largely influenced if not controlled by an oligarchy of Aryan Brahmin settlers who commanded the agricultural wealth and dominated the realm of religion and culture" (Narayanan 1996: 73)[33]. As a result, the voice of Brahmins is disproportionately represented in the written historical evidence from Kerala. In the temple records of Kerala, we see the legal world of Kerala through Brahminical eyes[34]. Although it is unfortunate that we do not have historical evidence for dispute settlement, contractual relations, etc. among the oppressed castes in Kerala, I disagree with those who would dismiss evidence written by Brahmins as irredeemably tainted by their worldview[35]. The arguments for this dismissal are tenuous and demonstrate a similar bias in perspective on the part of its advocates[36].

The collections of Malayalam temple records that I will use come from three main population groups of medieval Kerala – Namputiri Brahmins, Nambyārs (usually a sub-caste of Nāyars, though also classified as Ambalavāsis), and "royalty" (usually called Sāmanta in Kerala). Together, these groups represent the vast majority of literate society at the time. Chapter One discusses these collections, along with their possibilities and limitations for historical research on law. The general method used in subsequent chapters is to first examine the evidence from the temple documents and then to compare that data with relevant Dharmaśāstra material.

Chapter Two opens the detailed analysis of the historical evidence with a look at what is the most prominent aspect of law in late medi-

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33. In general, I find Narayanan's use of the term "Aryan" in his writings unhelpful, or even objectionable, but he insists that the ethnic and cultural differences between Northern and Southern India can be described as being between Aryan and Dravidian India.
34. Throughout this work, I distinguish between "Brahmin" and "Brahminical." "Brahmin" refers to actual Brahmin communities, while "Brahminical" includes other castes who are heavily influenced by traditions, in this case legal traditions, of Brahmins.
35. In this respect, I take my cue from Olivelle 1993: 33-34 and 2000: 17.
36. A good example of such a dismissal is Dirks 1987.

eval Kerala: land law. Land law and land relations in the late medieval period (post 12th Century A.D.) built upon ideas and institutions developed in the early medieval period (9th to 12th centuries A.D.). Therefore, the first section of this chapter highlights the similarities and transformations in land law from the early to the late medieval period in Kerala.

The discussion of land law continues in the second and third sections with a comparison of several records of land sale with related material from Dharmaśāstra literature. Dharmaśāstra rarely broaches sales of land directly. Nevertheless, in connection with other topics, brief discussions of land sales do appear, and these supply further insight into the social and legal significance of land in medieval Kerala. In the fourth section, which deals with mortgages, a series of examples is taken from various temple archives and compared with Dharmaśāstra discussions of mortgage types, the nature of property, the rights and responsibilities of those connected to land, etc.

The final section of Chapter Two explores the significance of land law in the social history of late medieval Kerala. I am particularly interested here in the function of landed property in the social, political, and religious hierarchies of life in late medieval Kerala. Landed property was built upon these hierarchies and reinforced them at the same time. Thus, I move beyond Western concepts of property as absolute dominion of an individual to examine the ramifications of people's relationship to land in the social order of Kerala. I take an instrumental view of land sales and mortgages by seeing the strategies of power and social control by the upper castes as a driving force behind them. In so doing, I focus on what seems to have been important to Indians themselves, namely the role land played in maintaining a particular kind of "order" or "vision of society" at the political, social, and family levels.

While land law is far and away the most significant variety of law dealt with in the records, information about other aspects of law can also be extracted from the details and occasional narratives found in Malayalam records. In Chapter Three, I examine how crime and criminals were handled in the Hindu law of medieval Kerala and how the reports of punishments and crime found in Malayalam records illumi-

nate the exposition of penal law in Dharmaśāstra literature. Standard descriptions of penal law based on Dharmaśāstra have too often been myopic in their exclusive focus on Dharmaśāstra texts as witnesses to history. Though other literary and epigraphic sources are sometimes referred to in these standard accounts, such references are capricious and select only those inscriptions or literary accounts that tend to support the principles and prescriptions of one or more Dharmaśāstra texts. In other words, they attempt to "discover" Dharmaśāstra in these other sources, as though they were simple instantiations of this or that rule of Dharmaśāstra. Such piecemeal approaches to literature and epigraphy do justice to neither evidentiary source.

The approach I take on penal law in medieval India follows the stated methodology by focusing first on the temple records, and then trying to understand how and to what extent Dharmaśāstra played or might have played a role in the law related to crime and punishment. Unfortunately, cases and information about penal law are relatively rare in the temple records considered here. Thus, it is not possible to make a fully detailed analysis of penology in medieval Kerala on the basis of the records examined here. Despite the limited evidence, sufficient information about the procedures, punishments, and policing systems of medieval Kerala is available to develop a general picture of how criminal law operated. This criminal law both converged and diverged from the ideas of crime and punishment in Dharmaśāstra. I discuss the points of contact and difference in the final section of Chapter Three.

In Chapter Four, I look at the administrative structure of law in medieval Kerala. In general, the remarkable fact concerning administrative law is the close parallel in the division of juridical labor as presented in the temple documents and in Dharmaśāstra. The classic distinction of Brahmins as adjudicators and royalty as executors of law seems to have held true in medieval Kerala. The alliances made by local lords with temples created political, economic, and religious capital for the lords and temples in the small territories under their purview. Chapter Four explores the various levels and players in the administration of law in Kerala. With the help of Kerala temple records, many of the to-date theoretical conjectures concerning the

nature and operation of law in smaller medieval Indian polities can be evaluated historically.

The documentation and analysis of law in medieval Kerala presented here thus consists of three types of law: land, criminal, and administrative[37]. In dividing Kerala's legal system along these lines, I have tried to be faithful to the records themselves and the concerns expressed therein. As more information about law in medieval India is gathered, however, these interpretive boundaries may have to be redrawn.

These three chapters constitute the evidentiary core of the study. The final chapter addresses in a broader sense where we are and where we have come from in terms of studying the legal history of India. Almost all scholarly work on law in Indian history has utilized the evidence of Sanskrit texts, especially those belonging to Dharmaśāstra. While I do not dismiss or disparage this important work, I do want to modify or modulate current understandings of the nature of Dharmaśāstra literature and its role in the living legal systems of medieval India.

The conclusions about law in India made on the basis of Dharmaśāstra studies have frequently been challenged on grounds of textual uncertainty, alleged misunderstandings of śāstra as a literary genre, authorial myopia, and the lack of corroborating historical evidence. One common, and generally valid, criticism is that most past work on Indian legal history or some aspect of it has relied exclusively on Sanskrit texts as the basis for their conclusions about the nature and operation of law in Indian history. Considerations of vernacular textual sources from the medieval period are rare and are limited to illustrative references to inscriptions from various parts of India. Unfor-

37. It is significant that family law, especially inheritance and adoption, a major topic in both classical and modern Hindu law, does not find a place in the Kerala temple records. Unfortunately, the temple records do not contain sufficient information to develop a comparison of these legal subjects in Kerala with their presentation in Dharmaśāstra texts. A late medieval text known as the Śāṅkarasmṛti, an unusual Dharmaśāstra text from Kerala itself, does contain interesting and Kerala-specific rules concernind adoption among matrilineal communities in particular. I have completed a study of matrilineal adoption based on the text, and expect it to be published shortly. A brief consideration of other interesting rules from this text is found in Chapter Six.

tunately, while highlighting these past methodological problems, criticisms of historical studies of Dharmaśāstra have tended to miss or to misunderstand the potential of Dharmaśāstra as an historical resource. This study tries to avoid the methodological pitfalls of previous work on Dharmaśāstra while still recognizing and utilizing its value as historical evidence.

Therefore, in Chapter Five, I argue that historical studies of law in India have hinged upon an author's views of "custom" and "customary law." Unlike law itself, however, "custom" and "customary law" as concepts have rarely been deconstructed and have never to my knowledge been critically analyzed in the Indian context. The uncritical use of these terms in Indian legal historiography has homogenized our conception of law in medieval India. By problematizing "custom" and "customary law," it becomes possible to write a legal history of the Kerala region without reliance on these ambiguous, misleading terms. Understanding the conceptual vocabulary of law in India is a matter of both theoretical and practical jurisprudence. While this chapter concentrates on Dharmaśāstra expositions of words such as ācāra and caritra, I also make comparisons with similar terminology in Malayalam and relate these Indian understandings of the transformation of behavior into norm to other studies and critiques of "custom" and "customary law."

In conclusion, I suggest that the most interesting fact about the boundaries of law in India may be the implicit critique they contain of European and American understandings of law and legal history. In particular, classic notions of "custom," law as legislation, and law as an appendage of the state seem out of place in the context of late medieval Kerala and suggest that they may be inappropriate elsewhere. This reflexive challenge of cross-cultural study has the potential at least to enhance and improve our own understandings of law.

CHAPTER ONE

History and Evidence in Medieval India

Historians of India and Indologists often lament the lack of datable, reliable evidence for the history of classical and medieval India[1]. When compared with the vast, datable sources available to classicists and historians of medieval Europe or China, historical evidence from India is scant – often lacking dates, relative chronologies, places, etc. on which so much of historical writing is based.

Indologists and historians have been very innovative in constructing theories of India's history on the basis of classically recognized texts in Sanskrit, Tamil, and their derivative languages. In fact, it is astounding how much we do know as a result of research on even the twenty or thirty most studied Sanskrit and Tamil texts. In Olivelle's view, the study of India's history has necessitated a move beyond mere "event-oriented" history, a theoretically challenging move in that it should force questions about such histories even in the presence of event-oriented evidence (1993: 33-34). Still, most, if not all, scholars would agree that having a reliable chronological framework for situating historical changes is always preferable to working in the darkness of "timelessness." To compensate for a lack of clear chronology and the concomitant inability to speak definitively of particular moments of transition, the best methodology for studying any aspect of India's history has been to gather as much information as possible over a long span of time and create a composite likelihood of historical development[2].

What has sometimes happened, however, is that scholars have been seduced by the simplicity of 19th Century periodizations of India's

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1. For examples, see D.D. Kosambi 1975: 1-8 and Thapar 1980: 18-19. The lament over lack of datable evidence is, or used to be, linked to the much louder wailing about the alleged lack of history and historical interest among Indians. The classic instance is James Mill's History of British India, but other notables such as Marx, shared the perception that India lacked any history or historical record. For two different critiques of this view, see Talbot 2001: 1-4 and Narayana Rao, Shulman, and Subrahmanyam 2003: 1-23.
2. A fantastic instance of the possibilities of this methodology is found in Olivelle 1993.

history and identifications of its chronological framework on the basis of the changes in textual genres and "important" texts. Such narrow focus has overshadowed the potential of other works and other sources, leading many scholars to rework research on the "famous" texts rather than exploring less well-known sources or texts. While there remains much work to be done on these "famous" texts, I believe that more research on neglected or as yet unknown texts, epigraphs, or other records will do more to enhance our understanding of Indian history than continued efforts to "polish up the classics."

Moreover, studying less well-known texts and seeking out new historical sources has a reflexive effect on the interpretation and understanding of major texts. If we look, for instance, at the effect of Gregory Schopen's work (1997, 2004) on the study of early monastic Buddhism or the rise of the Mahāyāna[3], we see the value and potential of Buddhist inscriptions and the texts of the Mūlasarvāstivāda-vinaya, both of which had been largely overlooked in scholarly circles in favor of the much-studied Pāli canon. Schopen has successfully challenged the traditional methodological focus on textual studies, exposing the weaknesses of poor chronology and authorial bias. In so doing, he forces us to reexamine the "famous" texts of Buddhism and to reinterpret them in the light of other historical evidence. Schopen does not exclude these texts from his methodology, but he does reject the constant presumption that they are the best or most accurate witnesses to the history of Buddhism.

Schopen is just one of many scholars who has understood and taken advantage of the other major source for Indian history beyond texts: epigraphy[4]. Important contributions to our understanding of the role of land grants, religious endowments, temple complexes, etc. have depended upon the information gleaned from stone and copperplate inscriptions from all parts of India and dating back to Aśoka's

3. See also Steven Collins' review (1999) of Schopen's collection of essays and Dan Arnold's more cautious evaluation (2000) of Schopen's methodology.

4. I realize, of course, that epigraphs are also texts and suffer from many of the same limitations as historical sources as do "texts" in the common scholarly parlance of Indologists. Inscriptions, like texts, were not written as history or for historians as Salomon (1998: 226) has shown.

well-known edicts[5]. For example, epigraphic studies have created a vibrant scholarly debate around the subject of state formation in medieval India (see Kulke 1995a). The articles and monographs produced on the subject have inspired both novel theoretical proposals and important documentary work related to state formation. In addition, subsequent examinations of both old and new epigraphic materials have led scholars to extract other information from these inscriptions related to caste, gender, identity formation, monastic practices, mass cult formation, etc.[6] Epigraphy has provided a chronological and circumstantial backbone for textual studies.

Epigraphy is an event-oriented approach to history; textual studies are idea-, or even ideology-, oriented. Where available, both are crucial for constructing a tenable and comprehensive account of the past. It would be unwise to privilege one source over another because there are advantages and disadvantages in both kinds of evidence. Indian texts are plagued by a lack of chronology and biography, but drip with detail about themes and subjects that can illuminate many aspects of social history in India. On the other hand, epigraphic studies run the risk of making too much of unique or rare events which happened to be recorded. At the same time, they often give us clues about dates, biographies, concepts and ideas that do not appear in texts.

Temple Records in Medieval Kerala

The intent of this chapter is to introduce another event-oriented source of evidence found in many parts of India but which to date has not received much attention in scholarly circles[7]. I refer to records kept by temple authorities, usually dealing with the temple's property and the other "public"[8] affairs of its leaders. In the present study, I

5. See Stein 1980, Appadurai 1981, Chattopadhyaya 1997, and Heitzman 1997.
6. See Talbot 1995 and 2001, Orr 2000 and Eschmann, et al 1986 [1978].
7. Temple chronicles from Orissa and the medieval Jagannātha cult have and continue to be examined by German scholars, but I have not seen records of the sort examined in this study in the published literature on Orissa.
8. The trustees of Kerala's temples, usually called ūrāḷār or yogaṃ, transacted temple property in the name of the temple deity. Terminologically, there is a difference between temple property (devasvaṃ) and family property of Brahmins (brahmasvaṃ), but practically the

examine temple records from several parts of the Kerala region. The thematic focus of this examination is the nature and operation of law in medieval Kerala as represented by these records. Information on law, while not the only kind of information in Kerala's temple records, constitutes a significant and largely unexplored portion of the material in the records.

In the specific case of medieval Kerala, we are not restricted by a lack of datable chronological material from which to reconstruct the legal past. Therefore, I believe we can make reliable conclusions about the nature and practice of law in this region at this time without pretending to have solved myriad other problems in the study of India's legal history. By focusing on Kerala temple records and regional Dharmaśāstra texts from South India, I argue that historical resources of this kind will not only give us a better understanding of law in medieval Kerala but will also help us to reevaluate our interpretations of the "famous" texts on law in Indian history.

In the remainder of this chapter, I will first describe the nature and form of the temple records, giving short summaries of the contents and sources of the records used in this study. Second, I will discuss the limitations of the records for historical research. As event-oriented documents, these temple records are susceptible to methodological pitfalls and restrictions similar to those of epigraphic studies. Third, I will argue that the best approach to studying law in medieval Kerala is to combine evidentiary sources as much as possible in order to maximize the potential of each. Therefore, I employ a methodology which involves temple records, relevant texts, especially texts of the Dharmaśāstra tradition, inscriptions, and early colonial observations. Finally, I will provide a general historical background to late medieval Kerala as it pertains to the study of law. Specifically, I will show the importance of temple communities in Kerala history and the concomitant role of Brahmins in that history.

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two overlapped to a large extent. This means that transactions involving temple property often involved family property. The temple is a public institution in that people outside the family worship, work, and interact with the temple deity and its trustess. "Public" here does not refer to a state sanctioned status but rather to the public character of temple life in Kerala, despite the fact that a single family usually controlled the temple's activities.

All the temple records used in this study were originally written on palm leaves just as other texts in Sanskrit, Malayalam, etc. were throughout medieval India. Many of the records were written in the Vaṭṭeḻuttu ("round-writing") script[9], an old script used in Kerala inscriptions from at least the 9th Century. Others are written in some form of the modern Malayalam script, a modified form of the Grantha alphabet. Most temple records are dated with years given in the Kollam era (Kollam 1 = 825A.D.), common throughout Kerala. Some records omit the year but include month and day. Many of the existing manuscripts of the records are copies of disintegrated originals. For this reason, records do not necessarily appear chronologically as they are bound in the manuscript. The records used here, however, have all been edited chronologically and published in modern formats.

The main purpose behind writing down all the temple records was to document any inflow or outflow of property or money belonging to the temple or its trustees. This is the primary reason that the records exist at all. The ancillary details necessary to document the source and reason for the income or expense to the temple are often the places where one finds the most explicit data regarding legal practices such as fines, expiations, administrative procedures, and criminal activity. However, relative to the information about land sales, mortgages, and other land tenures, the data on other legal activity is small in extent. Despite the proprietary or pecuniary basis of the records, the contents are sufficiently variegated to provide information about criminal and administrative law, in addition to the abundance of data concerning land law.

There are several collections of temple records that have been published in Kerala. Among these, the two collections published in the Calicut University Historical Series are the most accessible and useful because they are annotated and contain indices. In this work, the following collections of temple records will be consulted:

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9. For an introduction to the Vaṭṭeḻuttu script, see the Travancore Archaeological Series, Vol. 1, 395-431.

- Vanjeri Grandhavari (1987, Calicut University Historical Series)[10]. This is the first volume in the Calicut series and it contains 162 records from the Śaivite Brahmin temple in Tṛkkaṇḍiyūr near modern Tirūr. The earliest record in this collection dates to 1541 A.D.

- Koodali Granthavari (1995, Calicut University Historical Series). The second volume in the series. There are 305 records from this Nambyār temple of the Kalliyāṭṭu-svarūpaṃ near modern Kaṇṇūr. Nambyārs belong to either the Nāyar caste or the Ambalavāsi, literally "temple-dwelling" (but meaning those who serve in the temple) caste. They are traditionally associated with temple drumming[11]. The earliest record in this collection dates to 1532 A.D.

- Chronicles of the Trivandrum Pagoda (n.d.) Records from the Padmanābhasvāmi temple in Trivandrum certainly number more than the 37 found in this selection of records from the famous temple. Estimates of the total number of records from the Travancore dynasty, the so-called Matilakam records, range to more than a million. The earliest of these records in this collection is dated 1341 A.D.

- Peruvanam Kṣetra Granthavari (1979). The 12 records from the Peruvanam temple are subdivided in several parts, making the total number of records closer to 40. Many of the records in this collection are statements of account regarding the expenditures incurred for performing elaborate rituals at the temple. The oldest date found in this collection is 1518 A.D., though most are from the early 18th Century.

In addition to these collections of a particular temple's records, selections of similar documents have been published in modern historical works. Such works contain selected temple records used for illustrative or documentary purposes. Records from the following works

10. A discussion of the relation of Dharmaśāstra and law on the basis of this collection alone can be found in Davis 1999.
11. See Logan 1995 [1887]: 131.

will be used here for similar purposes:

- The Travancore State Manual (Vol. 2) (1940). T.K. Velu Pillai collected 216 records from the voluminous Matilakam records of the Padmanābhasvāmi temple in Trivandrum as an appendix to his historical description of the Travancore area of Kerala.

- Malabar (Vol. 2) (1887). William Logan's second volume contains 58 documents, most of which resemble the temple records found in the collections above. Logan translated most of the documents himself, but, unfortunately, he did not provide the original Malayalam text.

- Tṛppūṇittuṟa Kṣetram (1943). This work is a history of the Tṛppūṇittuṟa temple near Cochin. It is based upon the temple records found there and several records are cited to help explain the temple's operation and history.

- The Zamorins of Calicut (1938). K.V. Krishna Ayyar's classic history of the most powerful royal lineage of Malabar contains excerpts from the so-called "Calicut Granthavari." The latter is a collection of records from the Tāli temple in Calicut which served as the family temple for the Neṭiyiruppu-svarūpaṃ to which the Zamorin's lineage belonged.

Finally, I must mention one other source of information about law in medieval Kerala which serves as the end-point in time for this study. During his long missionary stay in Kerala, Hermann Gundert collected a set of correspondence and records in Malayalam between officials of the newly formed British administration in Malabar and local leaders, complainants, and Malayali employees of the British. Recently, this collection was edited and published as the Talaśśēri Rēkhakaḷ (1996) a massive work containing more than a thousand letters and records dating from 1796-1800. Although these documents are of a different nature than the temple records which form the core of this study, I believe that they are still valuable for demonstrating ideologies of legal practice in Malabar during the transition to British legal administration of the entire Kerala region. They also provide for

the first time at least some information about lower land tenures and the concerns and attitudes of lower caste tenants. Such information is unavailable in temple records because such tenure relationships seem to have been established without written contract and because strict caste relationships prohibited most direct interaction of the upper and lower castes. The Talaśśēri Rēkhakaḷ are interesting if only for the fact that they preserve at least a minimally "subaltern" perspective. In general, however, they constitute a supplemental, not primary source of information about legal practice in medieval Malabar.

The limitations of Kerala's temple records as historical evidence stem from four factors: 1) the narrow focus on upper caste activities, 2) the formulaic idiom of most of the records, 3) the event-oriented character of the records, and 4) differing preoccupations and intents of the writers of the documents and the modern scholars who read those documents.

The legal language used in Kerala's temple records has a formulaic quality which tends to mask rather than elucidate particularities of a transaction. While the similarity of legal idioms throughout Kerala shows that temple communities shared a common legal system, details of the story behind the transaction are limited. Occasionally insightful details about legal procedure, punishments administered, political hierarchies, etc. do appear in temple records, but such records are exceptional. Because most records are contracts or accounts, the standardized form for these legal documents removes most of the individuality of the transaction, much as the standardized format of modern contracts leaves a only few blanks to be filled in personally in order to complete the transaction. In most cases, therefore, the legal idiom used in medieval Kerala covers up potentially interesting historical information about how and why given legal transactions took place.

Fortunately, the formulaic idiom of the records alleviates the restrictions imposed by the event-oriented nature of the records. The consistency of form and language between the records makes it possible to generalize about the basic types of mortgage, account, land sale, etc. A high degree of terminological and structural congruity between different types of records makes it extremely unlikely that other modes of mortgage, land sale, or accounting existed in medieval Kerala temples.

When information outside the standard idiom does appear, however, the exceptional character of the information, its status as a single event, comes to the fore. If we look at Doc. 54A of 1607 A.D. from the Vanjeri records, for example, we find a detailed narrative about a murdered Brahmin, the arrest of the perpetrator, his trial, and his execution[12]. The final lines of the record delineate which of the offender's possessions are seized by the temple and which are given to his relatives. This accounting of the distribution of the murderer's property is the impetus behind writing the record down, but the narrative of the crime and its punishment provides a good example of legal procedure in the case of murder. We cannot, however, extrapolate from this case to say that all murders were prosecuted in this fashion in medieval Kerala. There is no formula for reporting crimes in the temple records. So we must restrict conclusions based on single events in a way that we do not have to when discussing records of land transactions.

At a more general level, difficulties in interpreting historical evidence from India arise from the different concerns and intents of the makers of historical evidence and the modern scholars who interpret it. For instance, we know little about what purpose temple records served after being written down. It is only in the colonial period that they were used to bolster legal claims to property. Whether or not this function was present in the medieval period, we do not know. Fortunately, there is a great deal of information in the records themselves, although in many cases what we want to know is not what they wanted to preserve in their writings. The question of authorial intent, however, is a difficult one to resolve on the basis of the records studied here. Nevertheless, it is important to keep the potential problems in mind when interpreting the records in order to avoid putting modern or foreign twists on the description or explanation of them. Where possible, I try to theorize about the broader implications of the historical evidence of Kerala temple records and, where the evidence does not permit generalization, to limit my conclusions accordingly.

In order to overcome both the event-oriented problems of temple records and the problems of authorial intent, the best methodology for studying law in medieval Kerala is to compare and contrast evidence

12. Vanjeri Grandhavari, 29.

from as many historical sources as possible in order to minimize the limitations and biases of each source individually. While this approach is theoretically obvious, practically it means an extensive increase in the amount of material which must be considered. No single study will be able to incorporate all relevant materials in its purview. Having made this caveat, however, I will use several types of historical evidence in making the case for viewing legal-historical materials from medieval India interdependently. In other words, I will suggest terminological, ideological, and structural points of contact between Dharmaśāstra texts, Malayalam temple records, inscriptions, legends and chronicles, and early colonial narratives. Dharmaśāstra and Malayalam temple records will be the primary sources used; other evidence will supplement the comparison of these two different historical sources for data on law in the medieval period.

Historical Background of Law in Medieval Kerala

In order to contextualize the evidence used here to describe medieval legal practices in Kerala, a few important aspects of the general history of Kerala must be outlined as a framework for interpreting and understanding both the selected Malayalam records and relevant Sanskrit texts. A comprehensive review or even summary of medieval Kerala history is not possible here. What I will highlight are important transformations, social groups, and relationships pertinent to the study of the law in medieval Kerala.

From 800-1124 A.D., a line of kings called Kulaśekhara Perumāḷs were the titular heads of a dynasty and an area known as Cēra or Makotai[13]. I will refer to this period as both the Cēra period and the early medieval period[14]. With the demise of the last Perumāḷ, the mantle

13. This Cēra period should be distinguished from the socalled first Cēra period known from and dating to the Tamil Sangam era literature. Little is known of this earlier dynasty. For a discussion of the earlier Cēra period, see Nilakantha Sastri 1975: 116-28.

14. In using the dynastic appellation "Cēra," I do not mean to imply that anything like a strong monarchy existed in Kerala. The label is still appropriate, however, because all of the inscriptions from this period are dated in the regnal years of the Cēra kings. Therefore, when I refer to a Cēra period phenomenon or event, I mean only that the evidence for that phenomenon comes from the epigraphs of this period.

of the Cēra king's power and authority was removed. Though one often comes across descriptions of the subsequent period as a political scrambling in the wake of the Cēra kingdom's disintegration[15], most of the historical evidence from the post-Cēra or late medieval period in Kerala suggests that very few major transformations occurred in terms of political, economic, or social structure[16]. In fact, most of the arguments made in this study about the late medieval period could also be made for the early medieval period, though the evidence is more scarce.

The point here is that the major transformations to Kerala society occurred before and during, not after the Cēra period. The fundamental political, economic, and social arrangements of the entire medieval period took shape prior to or early in the Cēra period[17]. While changes did occur and will be noted, the continuity of tradition is to be emphasized throughout the medieval period[18]. First, I will discuss these fundamental arrangements in medieval Kerala and then I will focus on groups and relationships of the late medieval period.

M.G.S. Narayanan calls the migration of Brahmin families[19] and the establishment of Brahminical temples "the most important factor in social organization" in medieval Kerala (1996: 142). Unlike in other parts of South India, Kerala Brahmin communities were always centered around temples (Veluthat 1993: 207). Moreover, a network of temples existed in Kerala prior to the reign of the first Cēra Perumāḷ[20]. In fact, Narayanan's research on the epigraphic records of

15. Examples include Menon 1991: 134 and Varier and Gurukkal 1992: 245.
16. This assertion is based primarily on the work of M.G.S. Narayanan and Kesavan Veluthat, cited throughout this study, who ground the argument in the inscriptional records of the Cēras. A more complete discussion appears as part of the next chapter on land law.
17. See Narayanan 1996 [1972]: 178. Further support for emphasizing the continuities between Cēra and post-Cēra period over the changes are discussed in the next chapter.
18. Such continuity in Kerala contrasts, for example, with the major political and economic changes that occurred in Tamilnadu in the transformations from the Pallava to Coḷa to the Vijayanagara periods.
19. The exact time period of this migration is still unclear. The Tamil Sangam literature attests to the fact that Brahmins and Sanskrit had reached South India by the early centuries A.D. Their settlement in temple communities in Kerala, however, may have been as late as the 8th Century A.D.
20. See Veluthat 1993: 200. The network consisted in attempts to standardize rules for landholding, decision-making, and political relations through the use of kaccams or vyavasthās. On kaccams, see Narayanan 1996 [1972]: 114-20.

the Cēra period led him to postulate that the political system of early medieval Kerala was dominated by a confederation of Brahmin temples scattered throughout Kerala, especially four of these temples called Nālutaḷi[21] near the Cēra capital of Mahodāyapuram, present-day Koṭuṅṅalūr.

In other words, the Perumāḷ was more or less a figure-head with little real power or authority outside of what was ceded to him by the Brahmin temple complex (Gurukkal 1997: 291-2) which appointed or reappointed Perumāḷs on a recurrent twelve-year cycle[22]. Other royal figures, usually called "vassals" or "governors" in Indian historiography[23], had political power in smaller areas called nāṭus. These nāṭuvāḻis, or rulers of the region, in all likelihood performed most of the functions of a king in their areas, though they bore some military and fiscal responsibility to the Cēra king[24]. The alliances between nāṭuvāḻis and Brahminical temples in their proximity constituted the most important political force in Kerala throughout the entire medieval period.

Beyond their political role, temples were centers of large economic networks which generated the paddy, ghee, coconuts, mangoes, etc. necessary for temple worship and for the daily use of the non-cultivating castes. Large numbers of tenants who held a variety of tenures, some weak, some strong, cultivated paddy and garden lands in the area surrounding a temple. The "privilege" of cultivation came at a high price, however, as an equally diverse number of rents, interests, tributes, taxes, and duties were owed to holders of superior rights in the land. For the inland, non-mercantile regions of Kerala, temples were the major economic power throughout the medieval period. Mercantile ports and the predominantly Muslim population laboring in

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21. See the inscription translated in Logan 1995 [1887]: Vol. 2, cxxi-cxxii, No. 2, in which the Nālutaḷi and the other Brahmin temples "belonging" to them are mentioned. See also Veluthat 1993: 208.
22. Narayanan 1996 [1972]: 19, discusses the evidence for Brahmin selection of the Cēra kings.
23. See, for example, Sharma 1965: 216 and Ṇarayanan 1996 [1972] (throughout).
24. Veluthat 1993: 114-121. Veluthat briefly describes each of the thirteen nāṭus identified in early medieval inscriptions and discusses the areas of their dependence on and independence from the Cēra king.

overseas trade there had but few interactions with the temple communities of Kerala. Most historical evidence suggests that nāṭuvāḷis or their functionaries were the intermediaries between the commercial Muslim communities rich in cash and the temple communities rich in produce, when interaction was necessary[25].

Temple communities also thrived as visible symbols of the caste-stratified society which took particularly ferocious forms in Kerala. In general, the socially enfranchised groups were Brahmins, royal castes (Sāmanta, Kṣatriya, etc.), Nāyars, and, in the urban coastal areas, Muslims. Each of the first three had access, sometimes limited, to temples and the associated political, economic, and social benefits. In contrast, the disenfranchised castes such as Tiyya, Iḷava, and Puḷaya had no access to the temples and were relegated to tightly controlled interactions with upper castes. So isolated were these castes and Muslim groups in medieval Kerala that temple records rarely mention them at all.

We know something of the culture of lower castes in the medieval period from surviving oral traditions[26], but by and large the voice of the lower castes is not heard in historical materials of the time. Even taking into account the upper caste bias in temple records, however, it is clear that the upper castes controlled the major political, economic, and social institutions in Kerala.

Temples were the prime supralocal institutions of late medieval Kerala. The nexus of relationships within and between temples transcended the local concerns and considerations of peasant populations[27]. Viewed in this way, temple records become a valuable source of information about Kerala as a region and not merely about the proximate areas surrounding them. For most people in medieval Kerala, the necessary dealings of life remained within a limited geographic area. Most food, clothing, and shelter were produced and distributed locally. Even merchant groups in Kerala, unlike the nagarams of Tamilnadu (Hall 1980), were not itinerant traders and operated almost exclusively in the

25. See Dale 1980 and Bouchon 1987.
26. See Freeman 1991 and 2003 and the bibliographies therein.
27. Compare Heitzman 1997: 82-117.

relatively more urban coastal towns. In Kerala, Muslims dominated regional and international commerce, but they did not participate directly in the temple culture which defined non-port society. Temple leaders and functionaries represented the social strata that did have dealings beyond their localities. Temples dealt directly or indirectly with Muslim merchants for ritual goods and personal items for temple leaders; they also dealt similarly with merchants from other parts of India; and, they interacted with local and regional political leaders for protection, prestige, and rituals. Thus, while we cannot find much information about lower caste society in these temple records, we can understand both how temples functioned locally at the upper caste level and how they played a part in supralocal interactions between socially enfranchised groups in medieval Kerala.

Though lower castes do not figure much in the temple records used in this study, one of the collections used comes from a Nambyār temple from the northern part of Malabar. Nambyārs are classified either as Nāyars or as Ambalavāsis in the caste hierarchy of Kerala (see Ravi Varma 1932). In cases like that of the Kūṭāḷi temple, Nambyārs even controlled temples as trustees in the same manner as Brahmins did in their temples. The similarities of both form and content between the Kūṭāḷi temple records and those of Brahmin temples suggests that they shared a common legal and religious framework. In other words, although they were ritually and socially inferior to Brahmins in the theoretical caste hierarchy, Nambyārs and other Nāyar castes sometimes controlled their own temples and reaped similar political and economic benefits from the lands under their temples' control. To this limited degree, therefore, we get some glance at what might be called a "middle-class" section of medieval Kerala, neither Brahmin nor "royal," through the records of the Kūṭāḷi temple.

In summary, temple records from the medieval period in Kerala contain detailed and diverse information about legal practice, even though evidence for that practice is still elite. Because they are dated records of actual transactions or events, they provide long-desired evidence of legal practice in an historically identifiable time and place within India. The relationship between Kerala's temple records and the positive prescriptions of Sanskrit Dharmaśāstra texts is complex

and difficult to prove definitively because it is not a simple question of text and practice. In the remaining chapters of this study, I compare the evidence of law and legal practice from these two sources. The general conclusion which can be drawn from this comparison is that both Dharmaśāstra texts and Kerala temple records are part of the same broad legal tradition. They are, in fact, two different witnesses to the same tradition. The different "versions" of how law worked in late medieval Kerala will yield not only a solid description of law in Kerala but also a better understanding of the intricate relationship of prescriptive Sanskrit texts like Dharmaśāstra and actual practice.

CHAPTER TWO

Land Law and Social Order

Despite the fact that most large pre-modern societies depended primarily on agriculture and land as the basis of their economies, detailed laws relating to land were not always part of the early legal systems of the ancient world. Although the evidence from ancient Egypt, Mesopotamia, and Israel includes an abundance of material relating to transactions and legal rules about land (Ellickson and Thorland 1995), not all areas of the world follow this pattern[1]. Ancient law books and legal systems often dealt cursorily with land. In China, MacCormack suggests that legal codes, especially those of the Han and other succeeding Confucian-inspired dynasties, focused on "family relationships" and avoided discussions of "property and commerce" (1996: 8). He goes on to suggest that "matters of contract and property... were left to private negotiation and the custom of localities"(MacCormack 1996: 23)[2]. In the case of Rome, Alan Watson has criticized those who "simply postulate a correlation between the economic importance of a subject-matter and the development of the law relating to it" (1991: 141). According to Watson, "at Rome, land was not 'the principal subject-matter of the law'. Or perhaps it would be simpler to claim that, in

1. Despite the incredible amount of material synthesized by Ellickson and Thorland (1995) and their laudable efforts to use modern theories of economic behavior to analyze ancient world attitudes and activities relating to land, it still seems possible to make a distinction between a developed land law and unstructured evidence for transactions and tenures relating to land. Most of the material adduced by them seems to fall in the latter category. I do not pretend to have disproved their very convincing argument that private property is a very old institution nor that land law, in some places a well-developed land law, existed in some parts of the ancient world, especially it seems in Mesopotamia. Ellickson and Thorland presuppose that there must be developed law for every economically significant institution – a view that Alan Watson criticizes (see below).
2. This categorization of contract and property as "customary" tells us nothing about what is actually in MacCormack's sources. There may be little to discuss. If so, MacCormack should not lead us to believe that the "law" of ancient China in regards to land, property, and contract was "local" and "customary." It may be that we cannot tell from the evidence. Knowing that fact would be more enlightening than trying to figure out what MacCormack means here by "the custom of localities."

contrast with English law, there was no great development of land law..." (Watson 1991: 139)[3]. In early Greece, too, land law was but a tiny part of the total collection of laws (Gagarin 1986)[4].

In contrast, medieval commentaries or elaborations on early laws in Europe and China developed complex, sophisticated notions of property, ownership, succession, mortgage, etc.[5] The brief examples above suggest that sophisticated land laws as a rule developed in the later stages of world history, not in its early cultural formations.

The situation in India supports this view. While Dharmasūtras, Dharmaśāstras, and especially the Arthaśāstra do contain rules regarding land sales, mortgages, inheritance, etc.[6], they are not nearly as elaborate and broad as those found in medieval commentarial literature, nor is a developed notion of property apparent in these early materials. In fact, Derrett claims that increasing elaboration on the nature of property and laws relating to land only begins in the 13th Century A.D. and continues up to the early 19th Century A.D. (Derrett 1977 [1962]: 18)[7]. Therefore, detailed attempts to create land laws in India are a medieval phenomenon.

Although practical systems of land law were only developed at the regional level in medieval India, legal understandings of property, mortgage, the sale of immovables, and inheritance crossed regional systemic boundaries. In other words, although the actual rules of land law and arrangements of land-holding and cultivation differed from

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3. The quote which Watson criticizes in the present citation is from S.F.C. Milsom, the historian of English law.
4. In this short work, Gagarin surveys all of the literary and inscriptional evidence relating to law in early Greece without once having to discuss land directly. Minor questions of succession and restricted land ownership in Solon's laws are dealt with under the heading of family law.
5. On the importance of land law in medieval Europe, see Pollock and Maitland 1968: 231. In China, a developed land law appeared for the first time in the T'ang Code in the 7th Century A.D. (see MacCormack 1996: 45ff.) For early America, see Friedman 1985: 25: "The common law was utterly obsessed by two central topics: formal legal process and the law relating to land."
6. A thorough survey of the older Dharmaśāstra literature on land and property may be found in Kirfel 1965.
7. Tenurial forms and proprietary terms appear in Kerala as early as the 9th Century, though without evidence of a clear law pertaining to land. It is possible, however, that Derrett's starting point of the 13th Century may reflect his focus only on Dharmaśāstra literature.

region to region in medieval India, a common legal framework for dealing with land throughout India nevertheless existed. This abstracted legal framework is not merely the product of modern academic generalization. It was a reality among powerful people engaged in the practical systems of land law as they were regionally manifested. This chapter describes the operation of this framework of law, especially the idea of property, in the regional land law of medieval Kerala.

I will examine two types of land law records in this chapter: land sales and mortgages[8]. Although other types of record occasionally appear in the records examined for this study, land sales and mortgages are by far the most frequent[9]. From these two types of record, we will be able to see the range of common concerns about land found in medieval Kerala and Dharmaśāstra texts. In addition, I will also consider the broader implications of land sale and mortgage records in the social history of medieval Kerala.

In order to develop an historical and theoretical context for the records, the first section will provide a broader historical context for the discussion by outlining land law in the early medieval period. The remainder of the chapter will focus on the concerns about land expressed in Kerala during the later medieval period (14th to 18th Centuries A.D.). This focus sets aside questions and concerns relating to land that may have been important in other places and times in India. However, my sense is that knowing something about the problems in Kerala will provide a touchstone for comparing land laws in various parts of medieval India.

Land Law and Law Relations in Early Medieval Kerala

Information about the importance of land and the beginnings of a land law system in Kerala first appear in inscriptions dating from the

8. The best introduction to classical Dharmaśāstra views on mortgage (ādhi) are the relevant sections of Chatterjee Sastri 1971.
9. The question of inheritance usually looms large in discussions of Indian legal history. Unfortunately, the temple records of Kerala do not contain much direct information about inheritance patterns or problems. Neither do the Dharmaśāstra texts produced in Kerala, although some revealing passages are found in both the VyMā and the LDhP. As a result, the question of inheritance cannot figure in this chapter.

9th Century A.D.[10]. Most of the terminology and the basic forms of tenure, mortgage, and sale found in later medieval records are also found in these early epigraphic records. In order to understand the land law system of medieval Kerala, therefore, I begin with some salient features of land relations in the early medieval period.

The settlement of Brahmins was fundamental to the development of sophisticated systems of land tenure, mortgage, etc. in medieval Kerala. As mentioned in the previous chapter, Brahmin communities in Kerala, known simply as grāmas, "villages," were "invariably temple-centered" (Veluthat 1993: 207). From a top-down perspective, the story of medieval Kerala is the story of the increasing control of land and political power by Brahminical temples[11] throughout most of the Kerala region. As Freeman states, "what I find especially interesting is that in the absence of any unified polity, a cultural formation could and did emerge over most of what we today consider Kerala... Much of this had to do with the role of Brahmanical culture in this milieu and the peculiar and special role that temples and their culture came to play..." (2003: 446). The cultural formation of Kerala depended on the cultural hegemony of Brahminical temples, even though the power of temples and Brahmin communities diminished both in the primarily mercantile settlements of Kerala's coast and in the sparsely populated tribal settlements in the hills of the Western Ghats. Brahminical temples are generally found along the many riceproducing river valleys in Kerala (Narayanan 1996: 144). In this core agricultural region, however, any organization of peasant labor and agricultural resources outside of temple control was extremely rare (Veluthat 1993: 176, 227). This point is extremely important because it suggests that a large part of the population of medieval Kerala lived as part of a temple-centered community. The extensiveness and deep social reach of the temple networks is the firm basis upon which we can speak of a tradition of Hindu law in medieval Kerala that touched more than just Brahmins. To the extent that many, even all, castes of medieval Kerala

10. To my knowledge, there are no inscriptions of more than a few words in the pre-Cēra period, i.e. before the 9th Century A.D., in Kerala.

11. I include among Brahminical temples other temples not controlled by Brahmins but by Nāyars who followed the standards of Brahmin temples. The Kūṭāḷi temple, which I examine here, falls into this category.

found social roles as part of a Hindu temple's religious, economic, and political networks, to that same extent was the legal tradition relevant and powerful in the cultural life of the time.

Unlike in other parts of South India, there are no records of the founding of Kerala's Brahmin communities[12]. If the settlement of Kerala were similar to that of the Tamilnadu region, for example, we would expect some inscriptions recording the original granting of land to Brahmins to have survived. Instead, with the exception of two "brahmadeya-style" grants made in the late 12th Century (the end of the Cēra period)[13], land grants to Brahmins recorded in the Cēra period inscriptions are invariably made to already established temples.

A corollary of the small number of land grants in Kerala is the absence of brahmadeyas or agrahāras in Kerala. Brahmins appear to have settled in Kerala only in temple communities and not in separate villages under royal patronage. In Tamilnadu, the establishment of Brahmin communities through land grants and special exemptions from taxes was part of state policy beginning under the Pallavas and continuing through the reigns of the most powerful Cōḻa kings of the late 10th and 11th Centuries[14].

In Kerala, there were no such brahmadeyas or agrahāras, i.e. Brahmin communities not centered around temple (Varier and Gurukkal 1992: 101). Brahmin communities there did not develop under the auspices of royal authority[15]. Unfortunately, we do not know exactly how they did develop[16]. However, what we do know from the

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12. See Narayanan 1996: 109; Rajan Gurukkal 1997: 291; Kesavan Veluthat 1993: 200; and Veluthat 1978: 39.
13. See Veluthat 1978: 77-78. By "brahmadeya-style," I mean that the grants established Brahmins from other areas in a new area through land grants and other donations such as cultivators to work the land. The words brahmadeya and agrahāra are not used in these inscriptions, however. Veluthat also discusses a similar, but undated grant, allegedly from the 10th Century.
14. The most balanced description of the role of land grants in the Cōḻa kingdom is Heitzman 1997: 217-24.
15. Varier and Gurukkal (1992: 101): "The unique thing here [in Kerala] is that Brahmin villages (grāmas) took shape independently without the help of kings [aracanmāruṭe ottāśa kūṭāte svamēdhayā uruvapeṭunna grāmaṅṅaḷ āṇiviṭatte pratyēkata]."
16. Kesavan Veluthat has tentatively suggested that groups of Brahmins from institutions called "ghatika or salai," centers of educational, military, and missionary training, may have originally settled Kerala through the use of force. According to Veluthat, some of the early Brahmin settlements themselves may have been ghaṭikās or śālais. See Veluthat 1978: 4-5, 16.

epigraphic record of early medieval Kerala is that Brahmin settlements preceded the rise of the Cēra kingdom in the early 9th Century. As Veluthat states, "that the entire landscape was covered by a rather closely knit network of Brahmin settlements was already a fait accompli by the time the Cēra state of Mahōdayapuram had been established." (1993: 200).

Whatever their origin, the significance of this network of Brahminical temples in both the Cēra and post-Cēra periods is based as much or more on their political and economic power than on their religious power. With few exceptions, Brahmin temples in medieval Kerala were the "king-makers" of the time: the alliances forged by burgeoning political leaders with Brahmin temples became the source of power, prestige, and wealth for those leaders[17]. The total absence of praśastis or prakīrtis[18] eulogizing a reigning king in the epigraphic record of Kerala further bolsters the notion that the Cēra "kings" and other regional or local rulers, called nāṭuvaḷis and deśavaḷis, respectively, were politically weak relative to the Brahmin temples they supported.

The constant presence of temples and temple officials in the inscriptions of the medieval period indicates that "royal"[19] activities revolved in large part around the activities of temples. The most com-

17. The great mystery of Kerala history is: how did Brahmins acquire so much political power and how did they develop temple culture in the medieval period? Narayanan and Veluthat, whose work I follow most closely, assume that this power must at some point been granted to the temples by a royal authority. They assume, on analogy with other parts of South India, that the temples of medieval Kerala must have originated from land donations to Brahmins, even though there are no inscriptions to that effect.

    In contrast to their view, I believe that Brahmin grāmas developed in Kerala independently of any royal power, probably through a combination of superior technological and organizational skills. The fact that most of Kerala was sparsely populated at the time also makes possible a simple migration of Brahmins into the frontiers of human habitation. Obviously, there is much we do not know and much research left to do on this question, but it seems presumptuous to assume that the Brahmin temples in Kerala originated and developed along precisely the same lines as in Tamilnadu or Karnataka, when the evidence is silent on the question.

18. See Narayanan 1996 [1972]: 10 and Varier and Gurukkal 1992: 33. Such eulogies are common in inscriptions from other parts of South India, especially Tamilnadu.

19. In some cases, the people mentioned as donors or transactors in these inscriptions bore royal titles; in some cases, they did not. The latter group seems to be upstarts who were outside of the Cēra king's system of royal designation. See the discussion in Veluthat 1993: 114-21.

mon activity for both temples and rulers was the attempt to control land through purchase, mortgage, and, to a lesser extent, gift. The source of power for temples in the early medieval period was their control over land and their attempts to standardize land relations throughout the Kerala region.

Since the focus of this work is not the early medieval period, I will not discuss the role of the modes or types of landholding in the Cēra period. In passing, however, we can note that sales, mortgages, and other tenures are mentioned in both early and late medieval records from Kerala using the same legal terminology. However, a number of problems of interpretation applicable to both periods remain with regard to the precise meaning of different types of landholding[20]. One particularly contentious issue that is relevant to both periods merits some comment here.

A general problem that appears in the important Malayalam history of Kerala by Raghava Varier and Rajan Gurukkal is a failure to recognize the distinctiveness of Kerala within South India[21] in terms of its settlement pattern, its diversity of communities, its political topography, and its economy. Throughout their work, a pattern arises in which a lack of evidence for a given historical phenomenon in Kerala is supplemented by an appeal to general South Indian patterns.

For instance, although Varier and Gurukkal acknowledge the absence of brahmadeyas and agrahāras in Kerala, they state, "We must conclude that the relations of production here [in Kerala] are of the same type as those in other regions of Tamiḻakam, because there is no difference here [in Kerala] in terms of the nature of Brahmin participation in the system of production"[22]. The desire to view medieval

20. The best account of the various modes and types of landholding in Kerala is Shea 1959: 104-135.

21. Varier and Gurukkal are not the only scholars who have followed this presumption. Nilakantha Sastri also presumed that the Kerala situation was much the same as that in Tamilnadu and rarely mentions any distinctions of social, political, or economic history in Kerala as compared with Tamilnadu. See Nilakantha Sastri 1975: 162-8.

22. Varier and Gurukkal (1992: 101): "utpādanasaṃvidhānam iviṭeyuṃ tamiḻakatte maṯṯu pradeśaṅṅaḷilētinu samāntaram āṇennu karutaṇaṃ. kāraṇaṃ, utpādanavyavasthayil brāhmaṇapaṅkāḷittattinṯe svabhāvattinŭ iviṭeyuṃ māṯṯam onnum illennatu tanne."

Kerala as a continuance of the classical Cēra kingdom of Sangam literature, i.e. as a part of the Tamil world, has led Varier and Gurukkal to explain away this distinctive absence of brahmadeyas and agrahāras. While they acknowledge the unusually powerful position of Brahmins, the possibility that the strong presence of Brahmin temples in spite of the lack of royal foundation may alter the relations of production never occurs to them.

Another relevant example of viewing Kerala through the lens of Tamil-nadu history relates to the denotations of ūr and sabhā in Cēra period inscriptions. In Cōḻa and Pāṇḍya inscriptions, ūr and sabhā referred to non-Brahmin and Brahmin village assemblies, respectively[23]. Ūr refers both to a non-Brahmin village and to the assembly or council of a non-Brahmin village, while sabhā is reserved for the councils of Brahmin villages, either brahmadeya or agrahāra. In his seminal book on the history of the Cēra period, M.G.S. Narayanan argued that the people called ūrār, the leaders of the ūr or village, in Kerala inscriptions were invariably Brahmins[24]. According to Narayanan's research, village councils in Kerala went by many names including ūr, ūrār, urāḷar, sabhaiyār, nāṭṭār and taḷiyār, but their members were always Brahmins. Varier and Gurukkal want to challenge this assertion[25].

Their attempted refutation of Narayanan's assertion begins with a discussion of the role of Veḷḷāḷar castes in the economy of medieval Kerala. According to Varier and Gurukkal, the fact that Veḷḷāḷar castes in other parts of South India "owned land" (bhūvuṭamakaḷ) should mean that Veḷḷāḷars in Kerala also owned land (Varier and Gurukkal 1992: 114). Beyond the problems inherent in the concept of "ownership" in this context (to be fully discussed later) and the fact that Veḷḷāḷar castes represented a numerically miniscule percentage of the population in Kerala (Logan 1995 [1887]: Vol. 1, 115). Varier and Gurukkal nevertheless state,

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23. On the distinction of ūr and sabhai in Tamil inscriptions, see Subbarayalu 1973 and Heitzman 1997: 12, among many others.
24. See Narayanan 1996 [1972]: 109-12 and Narayanan 1996.
25. It should be noted that Gurukkal seems to have changed his opinion about ūr and sabhā from his earlier work. See Gurukkal 1997: 292-3.

> Even though there are no records showing Veḷḷāḷars at the level of landowners, we can see ūr and ūrār in the Kerala records just as in records from the rest of South India. Ūr in the contemporary records of Tamiḻnāṭu means a Veḷḷāḷar village... In Kerala, too, ūr and ūrār frequently appear in the records of the time[26].

Their implication here is clear: ūr in Kerala inscriptions should mean a Veḷḷāḷar village. Unfortunately, the logic is less clear. In Varier and Gurukkal's attempt to distinguish ūr and sabhā in Kerala, we again see the tendency to fill in the gaps of Kerala's history with information from outside Kerala. Kerala certainly shared and shares much in common with other parts of South India and India generally, but without evidence, it is misleading to assume a priori that what held in Tamilnadu also held in Kerala. The evidence that I have seen suggests that in Kerala, both ūr and sabhā referred to the same Brahmin temple councils that were later called yogam[27].

A general problem in Kerala historiography, therefore, is the tendency to view Kerala as an extension of Tamilnadu or Tamiḻakaṃ. A failure to see differences between the two geographic regions has led to a homogenized history of South India generally, a history in which the more copious materials from the Tamilnadu region have dominated the other areas of South India. The distinctive patterns of Kerala history, including the unusual preeminence of Brahminical temples in political life, have yet to be generally recognized in scholarly literature. These general patterns developed in the Cēra period and continued into the later medieval period.

The transition from the Cēra to the post-Cēra period in the 12th Century A.D. was not marked by a major military defeat or a collapse of the political or economic system in Kerala. A legend recorded in the Kēraḷōtpatti, a mythic history of the settlement of Kerala by Paruśurāma and its subsequent development, claims that the last

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26. Varier and Gurukkal (1993: 115): "veḷḷāḷar bhūvuṭamakaḷ enna nilayil pratyakṣappeṭunna rēkhakaḷilleṅkiluṃ dakṣiṇentyayile rēkhakaḷil ennapōle ūruṃ ūrāruṃ kēraḷṭyarekhakaḷiluṃ kāṇāṃ. tamiḻnāṭṭile samakālarēkhakaḷil ūr ṇnu tanneyāṇŭ... kēraḷattiluṃ ikālatte rēkhakaḷil ūruṃ ūrāruṃ dhārāḷamāyi pratyakṣapeṭunnuṇṭŭ".
27. See Narayanan, "Introduction", Vanjeri Grandhavari, xxviii. More on yogaṃ will appear in the succeeding chapters.

Perumāḷ of the Cēra dynasty converted to Islam and sailed off for Mecca[28]. Also according to this legend, before his departure, the Perumāḷ divided sovereignty of the Kerala region between several of the rulers formerly under his control, including the Vēnāṭu ruler (later to be called the king of Travancore), the Zamorin of Calicut, and others. Symbolically and popularly, this story has been accepted as the end of the Cēra "kingdom," "dynasty," or even "empire" and the spark for the "disintegration" or "feudalization" of the political and economic landscape of Kerala.

The rhetoric of rise and fall, "fissiparous tendencies," and decentralization in the context of the end of the Cēra Perumāḷ lineage is misplaced. The differences between the Cēra and post-Cēra periods have for the most part been exaggerated. First, decentralization presumes a prior centralization that simply did not exist in the Cēra period. Second, the continuities between the two periods, especially in the structure and power of the Brahmin communities, are more striking and interesting than the changes. Third, the "view from below" in the case would appear to be largely the same in the sense that similar tax collections, relations of production, policing systems, and authority structures held true for both periods[29].

Admittedly, some changes did occur which permit us to speak of a post-Cēra period[30]. This period was marked by a growing independence of Brahmin communities from one another which had begun as early as the 11th Century A.D. In particular, the efforts on the part of Brahmin temples to standardize their religious, legal, and economic functions diminished. In the Cēra period, published or otherwise publicized standards of conduct in the religious, legal, and economic life of the temples were called kaccams[31]. These kaccams, also called vyavasthās, "pronouncements," applied not just to individual temples, but to different groupings or indeed all of Kerala's Brahmin temples.

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28. A complete discussion of the Kēraḷotpatti and its value as a historical source is found at Narayanan 1996 [1972]: 18-20. On the last Perumāḷ's conversion, see Kēraḷotpattiyum Mattum 1992: 187-93, and Narayanan 1996 [1972]: 64.
29. I have also discussed the problems with the decentralization model in Davis 1999: 190.
30. The following discussion relies on Veluthat 1978: 8-10.
31. Narayanan 1996 [1972]: 114-20, gives a full account of what little is known about kaccams from the Cēra period inscriptions.

In the post-Cēra period, we do not find such explicit attempts to standardize and regulate the operations of multiple Brahmin communities.

In fact, dissension among Brahmin temples[32], not the demise of the Cēra royal lineage, was more likely the driving force behind the increasing independence of Brahmin temples from one another. This independence is also signaled by Brahmin communities calling themselves saṅkētaṃ or svarūpaṃ, instead of grāma as in the Cēra period. Grāma is a more neutral term than either saṅkētaṃ or svarūpaṃ, both of which refer to boundaries of territory and society under the control of a temple.

The independence of Brahmin communities in the post-Cēra period also became more prominent in the area of land relations as temples acquired more and more land through purchase, mortgage, and gift. Outright gifts of land were not common in the later medieval period[33]. Nāṭuvaḻis, the rulers of the regions called nāṭus, continued to patronize and support temples in their areas through protection, administrative assistance, and occasionally gifts, but they no longer owed any deference to the Cēra king. Although the interactions of these local and regional political leaders with Brahminical temples were constant, they were limited in nature and extent[34]. In this way, temples achieved an increased measure of political autonomy in the late medieval period. As we turn now to the later medieval period records, we should keep in mind that many of the same ideas about land law and property were present in this earlier period as well.

Records of Land Sale

Another difference between the Cēra and post-Cēra periods in Kerala is the more frequent appearance of land sales in the temple

32. On the disputes between Brahmin temples in this period, see Veluthat, Brahman Settlements, 73-6.
33. A rare example of outright gift from 1465 A.D. may be found in Logan 1995 [1887]: Vol. 2, cxxx (No. 8) in which Ittikombi and his relatives gave a large piece of land to Brahmins in Kalpattŭ deśaṃ.
34. The nature of this interaction will be discussed in Chapter Five below. I have also discussed the relationship in Davis 1999: 184-91.

records of the late medieval period. By this time, direct purchase had become an important means of land acquisition for Brahmin temples. The records of land sales provide the only information we have about the highest tenure in Kerala's land law known as aṭṭipēṟ or janmaṃ.

In order to be clear about what I mean when I use the word "sale" in the context of medieval Kerala, I am referring specifically to documents labeled aṭṭipēṯṯola in the temple records. Because the word "sale" carries connotations of ownership and property that may not fit with the transfer of aṭṭipēṟ rights over a piece of land, it is important to not to equate aṭṭipēṯṯola records with land deeds from, say, a county courthouse in the U.S. There are meaningful differences in the concept of property in modern Western legal systems and that of medieval Kerala to which we must be sensitive, specifically in differentiating a capital-intensive corporate economy from a labor-intensive kin-based economy.

In the previous chapter, I discussed the formal homogeneity of the records involving land transactions in late medieval Kerala. In the several collections of records examined for this study, the vocabulary and stock phrases used to register the sale of a piece of land are sufficiently similar to suggest that there was a regional system in Kerala for transferring the aṭṭipēṟ or janmaṃ (the terms are technically synonymous) rights over a piece of land. This homogeneity extends not only to Brahmin temples but also to Nambyār temples like the Kūṭāḷi temple, as well as to "royal" Sāmanta castes.

This legal regularity calls into question sweeping generalizations about Kerala's law being merely "customary." The fact that the regional land law of Kerala was known as maryādā or part of maryādā is explicitly stated in several of the deeds of land sale and mortgage in which the term maryādā or the stock phrase, "in accordance with the law" (mariyātayāyi) is included[35]. The mention of the term maryādā in records of land transactions indicates that the provisions of maryādā were well known and had positively defined bound-

35. For examples, see Vanjeri Granthavari Docs. 27A, 28A, 32A, 80A, 88A, 98A, 100A, 119A; Peruvanaṃ Kṣetra Granthavari 117; Talaśśēri Rēkhakaḷ 526, 564, 565, 592, 600, 601, 628, 689.

aries to which the records conformed. Moreover, these boundaries were clearly legal in nature because the contexts in which they occur are deeds of sale and mortgage.

The three examples of land sale records below each come from a different caste group, namely Brahmin, Nambyār, and Sāmanta[36]. In the similarity of form and phrasing, we will observe the systematic nature of land law which underlies the records. More specifically, we will observe the following prominent characteristics of land sales in late medieval Kerala: the importance of proper form, certain kinds of witnesses, the ritual of pouring water, the inclusion of the parties' younger brothers in the transaction, and the consent of neighbors and rulers.

There are basically two types of land that were bought and sold in medieval Kerala: 1) elevated garden lands called parambu on which coconuts, bananas, tapioca, and other crops were grown, and 2) low-lying rice-fields usually called nilaṃ or kaṇṭaṃ. The first example of a land sale comes from the Śiva temple in Tṛkkaṇḍiyūr, near modern Tirūr, which was controlled by a Brahmin household known as Vanjeri or Morttalaccēri. In this record of 1645 A.D., a parambu, or elevated garden land, is purchased by members of the Vanjeri house. Although the Brahmin temple organization, the saṅkētaṃ, is not mentioned directly, it is understood that the land will belong to the saṅkētaṃ as a whole, that is to several Brahmin families at the same time, not just to the Vanjeri household. The record reads[37]:

1. Witnessing the following transaction: Iṭṭi (Īṭṭi?) Keḷu Menon of Nellamuḷi, two members of the Tevalapuraṃ house, and the collector of rents[38] from Panaṅṅāṭṭūr.

2. This is an aṭṭipeṯṯola deed written in the month of [damaged], in the Kollam year 820 (1645 A.D.).

3. The garden land (parambu) known as Kanakāveli in the locality

36. I have provided in the Appendix further translated examples of land sale records are provided to allow the reader to see more clearly the similarity of form and content in these records.
37. Vanjeri Grandhavari, Doc. 89A, 47.
38. Pāṭṭamāḷi refers to an official responsible for collecting the pāṭṭaṃ, or rent, from tenant cultivators on temple or other lands. The pāṭṭamāḷi was usually appointed by a nāṭuvaḷi to oversee a particular temple's lands. See Logan 1995 [1887]: Vol. 2, ccxxi.

(deśam) of Tiruvūr, the borders of which are as follows: in the east up to the edge of Karipuraṃ, in the south up to the rented lands, in the west... [damaged] – the aṭṭiper rights over everything contained within these four boundaries including the water sources (kiṇaṟ) is given with water (nīruṃ) by Cuvaran Cuvaran of Panaṅṅātūr and his younger brothers who receive the current rate of the day as determined by a local group (anna nālar kaṇṭa peṟuṃ vila artthavuṃ).

4. In this same way, Tāmotiran Tāmotiran of Morttalacceri (Vanjeri) and his younger brothers receive with water the aṭṭiper rights over the stipulated lands and water sources.

5. Thus witnessed by the local rulers (deśakoyimmār) and Iṭṭi Uṇṇirāman of Aḷakapeḷḷi.

6. Fifty-five coins (paṇaṃ) were also exchanged for a house on this garden land.

The core of the typical aṭṭipēṯṯola deed is represented by numbers 2 through 5. It is important to recall here that all of the records used in this study were copied and recopied over the years, making transcription errors and elisions common. Usually, the witnesses to a transaction are listed together at the end of a record, not at the beginning. Also, the additional money exchanged for the house on the garden land would normally be mentioned within the main delineation of properties to be transferred. Thus, both numbers 1 and 6 may or may not be interpolations from other records.

The principal features of the aṭṭipēṯṯola deed do come out in this record, however. First, the record is labeled and dated. Second, the lands to be sold are clearly identified. Third, there is a direct statement of the giving and receiving expressed in terms of the aṭṭipēṟ rights. Finally, the witnesses' names and sometimes that of the scribe are mentioned.

Four other common features of land sale found in this record should also be pointed out:

1. the younger brothers of the main transactors are almost always mentioned as parties to a sale of land,

2. the phrase "anna nālar kaṇṭa peṟuṃ vila artthavuṃ,"[39] with some minor variations, is always found in such records,

3. the sale of land always occurs with a ritual pouring of water, and

4. local ruler(s) almost always act as witnesses to land sales.

These four characteristics of aṭṭipēṯṯola deeds, along with the formal organization described above, are found in the same order and using the same phrasing in all of Kerala's deeds of land sale.

One noticeable feature of this particular record, however, is the fact that more than one local ruler witnessed the transaction. Medieval Kerala was divided by somewhat fluid boundaries into larger regions called nāṭu, ruled by nāṭuvaḻis, and small localities called dēśaṃ, ruled by dēśavaḻis[40]. In the land sale above, the word deśavaḻimār, the plural of dēśavaḻi[41], indicates perhaps that several local rulers witnessed the transaction. The reasoning behind having local rulers witness such important transactions has to do with the prevention of disputes regarding the permanent alienation of family property.

Land sales also occurred in other contexts besides Brahmin temples, but the records of these sales follow the same formal and substantive pattern even in these non-Brahmin contexts. The land law system created in the early medieval Brahmin temples pervaded all of the Kerala region in the later medieval period[42]. An example from

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39. The phrase translates literally as "the sale price prevailing that day as seen [or determined] by a group [of four]." The number four in the term nālar here is not specific, but a generic indication of a group.

40. The best short description of the political divisions of Kerala is found in Tarabout 1986: 26-34.

41. It is possible that deśavaḻimār is used not as a true plural here, but as an honorific plural. The plural suffix is often used in Dravidian languages to show respect to the addressee. Based on the fact that the deśavaḻi is mentioned in the singular in most other records, however, I believe that it was not common to use the honorific plural in these records. Therefore, I have taken it in the true plural sense here.

42. The stock phrases, organization, and substantive concerns found the Cēra inscriptions largely overlap with the those found in later post-Cēra records. The difference is that the Cēra epigraphs relate almost exclusively to Brahmin temples. For examples, see South Indian Inscriptions, Vol. 7, 71 (no. 11 of 1901); South Indian Inscriptions, Vol. 5, 338 (no. 220 of 1895); South Indian Inscriptions, Vol. 5, 336 (no. 214 of 1895); and South Indian Inscriptions, Vol. 5, 334 (no. 209 of 1895).

1655 A.D., taken from the Nambyār-controlled Kūṭāḷi temple, reads:[43]

1. This is a deed of sale (aṭṭiper vilayola) written in the month of Karkaṭa of the Kollam year 830 (1655) when Jupiter was in the Karkaṭa phase.

2. Kaṇṇan Enman of Kaṇiyāṭa the palace (kottāram) of Pulikkīḻi, along with his younger brothers, give with water the aṭṭiper rights over three ricefields (kaṇṭam) of 20 nel (in measure) below the storage houses (pantala babalettāḻa?), receiving the rate of the day.

3. Araṭṭan Rayarappan of Puḻiyankaṇṭi receives with water the aṭṭiper rights over the three ricefields of 20 nel below the storage houses (pantalaṅṅale tāḻe), giving the rate of the day.

4. The borders of the aforementioned ricefield are as follows: to the east, up to the field of Kaṇakkapuḻḻi in Taṯṯiyoṭa; to the south, up to the cultivated (kottunna) field of Veḻḻuva Nambyār[44]; to the west, up to the property known as Uppamor (?); to the north, up to the property of Veḻḻuva Nambyār.

5. Thus witnessed by Kaṇṇan Rāmar of Eḷabilān, as well as by Ciṇṭan Ciṇṭan of Kalliyāṭa.

6. Handwritten by Appu Nārāṇan of Tāṯṯiyoṭa who repeated what he heard for the knowledge of the parties and wrote it down.

Here also the same pattern of organization and phrasing appears as in the previous example. In this case, the buyer is Araṭṭan Rayarappan who was a member of the Puḻiyankaṇṭi house. This household was one of the families which together formed the svarūpaṃ, the temple council or assembly, of the Kūṭāḻi temple, called the Kalliyāṭ svarūpaṃ. The seller (Kaṇṇan Enman) is a member of a royal household in the area. Despite the fact that neither party to the transaction is Brahmin, the formal pattern and phrasing of this Nāyar temple record correspond to those of Brahmin temples.

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43. Koodaḷi Granthavari 1995: Doc. 35C, 47.
44. The Veḻḻuva Nambyārs were the most "prominent landholding group of Kalliyat in that Swarupam." See K.K.N. Kurup, "Introduction", Koodali Granthavari, ix.

I will quote one final example in full in order to emphasize the similarity of language and legal phrasing used in these aṭṭipēṯṯola records and to show that yet another caste group, the Sāmantas, also followed the standard pattern for selling land. Sāmanta in the classic Sanskritic description of the Arthaśāstra refers to "neighboring" rulers who are allied under the authority of a king[45]. In Kerala, the Sāmanta appellation, used in the Cēra period (Narayanan 1996 [1972]: 150), continued in the post-Cēra period even though the Sāmantas were often not under the authority of any other ruler or did not have much power themselves. In other words, Sāmanta became a caste name applied to those born into historically or legendarily "royal" families. The long quote below records a major sale of land from 1524 A.D. between two Sāmantas. The original is no longer available. Only the translation of the record made by William Logan survives. His translation reads:

> Attipettolakarunam, executed in the Medam Nyayar (solar month), Makara Vyalam, of the year 699, Pulavali Nakan Naranan has given, with water, the Attiper of the Chennapuram Desam and Desadhipatyam, and Chennapuratt Ambalam, and Ambalapadi Urayma, and the Devasvam lands, and parambas, and Cherumars, and Kolapuratt Taravad, and the lands and parambas, and Cherumars, and Kudiyiruppus belonging to the said Taravad, to Valayur Kuriyetat Viyatan Manichan, after receiving from his hands the current market value thereof (annuperum arttham)... Thus, Valayur Kuriyetat Viyatan Manichan has received, with water, the Attiper of the above-said Chennapuram Desam and Desadhipatyam, and [etc., as before], after paying the current market value thereof. Thus Pulavali Nakan Naranan has given, with water, the Attiper of the four boundaries, and parambas, and nilams, and produce and all of these, etc. comprised in the said Desam, lands, parambas, and Kudiyiruppus, as also everything, of whatever description (epperpeṭṭatŭ), included in them, after receiving the current market value. Thus Viyatan Manichan has received, with water, the Attiper of the four boundaries, and parambas [etc., as before], after paying the market value. That the Attiper is given

45. See Kangle, The Kauṭilya Arthaśāstra, Vol. 3, 250.

with water and that the Attiper is received with water, is witnessed by Kandikundatt Nambutiri and Patinhare Kur[46]. Written by Chattu. (Logan 1995 [1887]: Vol. 2, cxxx-cxxxi)

Though this third example is repetitive, its repetition reinforces what was important in recording sales of land: the clear identification of the lands, the phrasing of the transaction in terms of aṭṭipēṟ rights, the water-pouring ritual, and the witness of an important ruler. Even in translation, it is clear that this transaction between Sāmantas conforms to the patterns established in Brahmin and Nambyār temple contexts above.

On the basis of these three land sale examples and many others which follow the same pattern[47], we can conclude that a regional system of land sale existed in late medieval Kerala in which members of several landholding castes participated. That this regional system bears deep similarities to legal ideas about property, land, rights of ownership, etc. in Dharmaśāstra literature remains to be established.

Dharmaśāstra Perspectives on Land Sales

Following my general view of Dharmaśāstra, I consider the best starting point to be evidence of living legal systems like the one described here in medieval Kerala. Dharmaśāstra may most usefully be seen as part of a cycle of collection, authorization, dissemination, and appropriation of local laws into other areas of India (Davis 1999: 166-167). The influence of Dharmaśāstra in the regional land law of Kerala was not total, but it was powerful nonetheless. In order to appreciate that influence, I have described records of land sale in medieval Kerala. To see how Dharmaśāstra connects to these records, we must change the still prevalent view of Dharmaśāstra literature as merely prescriptive. Dharmaśāstra records as much as it prescribes (Lariviere 2004) and we must tease out the legal history embedded in the prescriptive idiom of Dharmaśāstra in order to view its relationship to living legal systems in medieval India.

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46. The "Patinhare" household was that of the Zamorin of Calicut. "Kur" here means a junior member of that household.
47. See the Appendix for further examples of land sale records.

Early dharma texts do not contain long discussions of land sales and generally tend to disparage the sale of joint family property[48]. Except for a passing reference (1.18.1), ĀDhS gives no rules pertaining to land. GDhS lists land among the proper gifts (19.16, cf. BDhS 3.10.14 and VaDhS 28.16-17) and prescribes harsh penalties for false witness and for attempts to dispossess regarding land (13.16-17, cf. BDhS 1.19.12, 2.2.4 and VaDhS 3.16) but mentions a view that one (presumably a Brahmin) should not trade in (apaṇyam), i.e. buy and sell, land and other immovables even in times of adversity (7.15). VaDhS 16.11-20 provides an early account of a rule of eminent domain, of how to resolve boundary disputes regarding land and of adverse possession (cf. GDhS 13.39) that contains the seeds of some later Dharmaśāstra developments:

> Land must be surrendered for the road in a field through which a road runs, as also space for turning a cart... When there is a dispute regarding a house or field, the testimony of neighbors provides the proof. When neighbors provide contradictory evidence, written documents provide the proof. When conflicting documents are produced, the proof is based on the testimony of aged inhabitants of the town or village and that of guilds. Now, they also quote: Ancestral property, what is bought, a pledge [etc.]... Any of these is lost to the owner when it is used by someone else continuously for ten years. But they also quote a verse to the contrary: A pledge, a boundary, [etc.]... are not lost to the owner by being used by someone else. Abandoned property belongs to the king. If it is not abandoned, the king, together with ministers and city folk, should administer the property[49].

Land sales are hardly mentioned and only negatively in the Dharmasūtras. Nevertheless, a range of issues regarding land is raised in these early dharma texts that creates a paradigm for later legal thought, especially within this expert tradition.

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48. See Derrett 1977: Vol. 2, 50. Laws prohibiting the sale of land, esp. family land, were also common in China despite the fact that land sales were well-known. See MacCormack 1996: 45-6.
49. All translations from the Dharmasūtras are Olivelle's unless otherwise indicated.

The metrical smṛti texts reiterate most of the same issues regarding land (its suitability as a gift, its purification, its sanctity in testimony, and its importance in statecraft) (see MDh 4.230, 5.124, 7.206, and 8.99). One innovation of these texts, however, is the distinct title of law (vyavahārapada) know as Boundary Disputes (sīmāvivāda)[50]. This title provides insight into inter alia the methods of dispute settlement and the classifications of property types. Sales of land are still not dealt with directly in the smṛti texts.

Medieval Dharmaśāstra texts, however, begin to deal with sales of land more forthrightly, possibly reflecting an increased interest in and practice of land sales in this period. As mentioned at the outset, sophisticated legal rules about land and land relations are a medieval phenomenon in India. Whether or not this corresponds to a social transformation in the way people related to immovables such as land is a separate and much more difficult question. My own guess would be that sales of immovables were less frequent in the early periods and increasingly more frequent in medieval times.

I do not want to focus here on the details of the relationship between land sale records from Kerala and Dharmaśāstra discussions of land, property, etc., because I have dealt with these in an earlier paper (Davis 1999: 174-84). For the sake of continuity, however, I will summarize the four points of connection described there, before moving on to the more general question of the nature of property in Dharmaśāstra and in Kerala.

1. The younger brothers. The fact that the younger brothers of the transacting parties are frequently mentioned in the records of land sale in Kerala suggests that the younger brothers (tampimār) were themselves parties to the sale. Whether their role was active or passive, we cannot know, but the mere mention of younger brothers from Brahmin households contradicts the wide-spread assertion that Brahmins in Kerala followed a peculiar and very strict form of primogeniture. Instead, on the basis of Dharmaśāstra rules in BS (see DhK Vol. 1:

50. For the smṛti discussions of sīmāvivāda, see see MDh 8.245-266, YS 2.150-158, NS 11.1-38, KS 732-767, BS 19.1-55.

803, 1585), SC (446-47), VyN (288-89), and VyMā (166)[51], I argue that the younger brothers in Kerala were seen as undivided heirs who must, according to these Dharmaśāstra texts, consent to any alienation of joint family property. In other words, the only family members who had to consent to the sale of family land were the younger brothers in Kerala. This is a localized interpretation of a broad Dharmaśāstra rule requiring the consent of undivided heirs for any alienation of joint family property.

2. Fixing the price for land. The phrase "annu nālar kaṇṇṭa peṟuṃ arttham" (the rate of the day as determined by a local group) appears with minor variations in almost every record of land sale in late medieval Kerala. This stock phrase tells us that neighbors or other locals fixed the price for a piece of land to be sold. Both the YMit (2.114) and the KS (see DhK 1.898) prescribe the same practice[52]. Neither the temple records nor Dharmaśāstra texts describe exactly how this group of neighbors should determine the fair price, but the fact that both historical sources include the practice is further circumstantial support for a relationship between the two[53].

3. The ritual of pouring water. This ritual derives from gift-giving practices recorded as early as the GDhS (1.5.16-7) and ĀDhS (2.9.8-9)[54]. Its extension to sales of land appears to be a medieval phenomenon. The YMit (2.114) contains a plausible historical explanation of this extension. Vijñāneśvara states that because of the prohibitions against land sale in older Dharmaśāstra texts, sales of land should be disguised as gifts through the accompaniment of water[55]. The ritual of pouring water as a part of land sale transactions was a widespread practice in South India[56]. Vijñāneśvara's justification of this ritual in

51. The debate over primogeniture vs. equal partition in Hindu inheritance law is old. MDh 9.104-105 refers to both views, apparently considering primogeniture as the siddhānta or established position. A classic presentation of the view that equal partition should be the rule is presented in DāBh 1.36-37.
52. See also SV 325 and VyN 352.
53. Other evidence from both epigraphic and Dharmaśāstra sources indicates that sometimes royal authorities dictated the price of land. See Derrett 1977: Vol. 2, 46.
54. See also VyMā 167 and VyN 290-1.
55. Vijñāneśvara's interpretive skill in this case is profound. A complete translation of the YMit argument has recently been published in Rocher and Rocher 2001.
56. For examples from the Cēra inscriptions, see Narayanan 1996 [1972]: 174, f.n. 124.

his Dharmaśāstra commentary is an excellent example of the incorporation of living law into a Dharmaśāstra framework in the manner described by Lariviere (1997).

4. Local rulers as witnesses[57]. Most land sale records list either a dēśavaḻi or a nāṭuvaḻi among the witnesses to the transaction. In some cases, this ruler also issued a writ of consent (tīṭṭŭ/ śīṭṭŭ) to allow the sale to occur. Dharmaśāstra texts are not explicit on the question of whether rulers must consent to or witness sales of family property in their realms. The practice was common in other parts of India, however, and is by no means exclusive to Kerala (HDh 3.497).

Unlike mortgages which, as we shall see, were more or less directly appropriated from Dharmaśāstra and reproduced in Kerala, land sales represent a strongly localized appropriation of Dharmaśāstra ideas about land and property. The fundamental ideas of property, consent, formal arrangement, witnessing, pricing, and ritual found in Dharmaśāstra are manifested in Kerala. However, in Kerala's regional system of land sale, general Dharmaśāstra notions took on a distinctive Kerala flavor in the context of the diverse traditions of Kerala's Brahmin, Nambyār, and "royal" castes.

Mortgages and Upper Caste Solidarity

The most common types of record found in Kerala's temple archives are those dealing with mortgages and, to a lesser extent, other tenurial contracts on land[58]. Unfortunately, the majority of land tenures encountered by the British on assuming control of Kerala in 1792 are not mentioned at all in the temple records and other sources from medieval Kerala. This means first of all that most tenures were established without written contracts. In addition, it means that upper castes like the Brahmin, "royal," and Nāyar castes studied here did not possess the lower tenures.

The precise nature of Kerala mortgages and land tenures received

57. See Davis 1999: 182-3.
58. Further translated examples of mortgage records are included in the Appendix.

enormous attention by British officials, who had the task of overseeing the taxation of multiply tenured lands and adjudicating conflicts over the legal definition of the rights associated with a given tenure. The nature and operation of Kerala's land tenure system has also been studied by Thomas Shea (1957) in a dissertation on the relation of land tenure and capital formation in colonial and modern Kerala. Despite the large amount of research on land tenures, an accurate, comprehensive account of mortgages, leases, etc. in any period of Kerala history remains a desideratum.

On the basis of the temple records used here, as well as Dharmaśāstra materials, I can only hope to contribute some new evidence regarding mortgages and land tenures in medieval Kerala. Because the types of tenure discussed in the temple records are limited, I will restrict my remarks to mortgages, the most common tenurial contract in the records.

The first type of mortgage to consider is what may be called a usufruct. In Malayalam, there are two words for this kind of mortgage, veppu and o̲tti, both of which are used interchangeably in the records. I will use veppu as a short-hand for veppu/o̲tti. In these usufruct mortgages, a stated sum of money is borrowed by one party, who mortgages a specified part of his (they are always male) property to be used by the mortgagee until the debt is repaid through the use of the property. Both the principal and the interest on the loan are recovered through the produce of the mortgaged land, which may be either rice fields (nilaṃ, etc.) or garden lands (parambu). An example will clarify the transaction.

The following mortgage deed, dated 1550 A.D., from the Valluvanāṭu region of central Kerala was translated by William Logan. The deed records a usufruct mortgage between a Nambyār household (vīṭŭ) and a Brahmin house-hold[59]. He did not include the original Malayalam text in his collection of deeds, but the translation is sufficiently transparent to see the Malayalam in his rendition. One part of

59. The precise identification of these families is difficult without the original Malayalam text. "Nambi" is a term that could refer to a particular sub-caste of Brahmins or to temple officials or to royal officials working at a temple.

his translation is consistently misleading, however. He translates tampimār as heirs, when in fact it refers only to the younger brothers of the named parties. Whether or not younger brothers were also heirs, I have noted the correction in brackets. The text reads[60]:

> Veppolakarunam, executed in the solar month of Chingam, 725 (1550 A.D.), towards the end of Karkadaka Vyalam. Elaya Nambi Vittil Chattan Raman and heirs (tampimār) [sic, "younger brothers"] received 111 1/2 new fanams from (the hands of) Muttanambyar Vittil Kelan Kandan and heirs (tampimār) in this manner. Now the object of receiving the above 111 1/2 fanams is that Elaya Nambi Vittil Chattan Raman and heirs grant (literally, write and give) Nambukkotil Kandam 2 plots, Pantarattil Kandam 1 plot, Kundu Kandam 1 plot, and Pulikunnat compound. Muttanambyar Vittil Kelan Kandan and Anantiravars [relatives] accordingly obtain Veppu right on payment of the said sum. Thus written by the grantee, with the knowledge of Ayikkara Kandan Chattan, witness for the parties granting and obtaining Veppu right for the said amount.

The other type of mortgage found in Kerala's temple records is called paṇayaṃ, which I will call a custodial mortgage. In paṇayaṃ mortgage records, the mortgagor gives a specified piece of land as security for the loan of a stated amount of cash (paṇaṃ). The mortgagee in this case receives a specific rate of interest and does not have any claim to the produce from the land. The mortgagee only has custody of the land, not full use of it.

An example of this type of mortgage is the following record from the Kūṭāḷi temple in northern Malabar. It is dated 1617 A.D. and records a mortgage made by Komappan Teman in favor of the Kalliyāṭ svarūpaṃ, the council of Nambyār families for the Kuṭāḷi temple. The record follows the standard format used throughout late medieval Kerala for recording the mortgage. The text reads:

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60. See Logan 1995 [1887]: Vol. 2, cxxxi, no. 10. See Appendix for further examples of veppu mortgages.

1. This is a document made in the month of Karkkaṭaṃ when Jupiter was in Mithuna of the year Kollam year 765 (1590 A.D.).

2. 200 Kaṇṇaṇṇūr new coins, not accounting for differences of measurement or weight (vāśipeṭātava)[61] are given by the hand of the temple trustees (deyvattārūrāḷara) of Kūṭāḷi.

3. Komappan Teman of Dāvāraṃ in Cirikaṇṭamaṅṅaḷaṃ receives (the same). Thus, affirmed.

4. The security (paṇayaṃ) for the 200 coins and the interest is the ploughed land in the middle of Eccūravayal and ricefield which produces 100 nāḻis in the district (aṃśaṃ) of Dāvāraṃ.

5. That the parties agree to thus give and receive the security is witnessed by (the members of) the Kalliyāṭṭa svarūpaṃ.

6. Handwritten by the Niḻal Menokki of the Kalliyāṭṭa svarūpaṃ who repeated what he heard for the knowledge of the parties and wrote it down[62].

These two records may be taken as exemplars: formulaic statements made in precise legal language which record particular loan transactions. The records are similar to modern forms because of the fill-in-the-blank quality of the legal expressions. More than this, however, these two exemplars are instantiations of the two major types of mortgage found in Dharmaśāstra literature, namely bhogyādhi and gopyādhi.

I have described the detailed and precise connection between these Dharmaśāstra mortgage types, also known as pledges, and the medieval Kerala mortgage types in my earlier study (Davis 1999: 167-174). Therefore, I will again only outline the connections of form and content here before considering the broader significance of these mortgages in the land law of late medieval Kerala.

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61. On vāśi, see Logan 1995 [1887]: Vol. 2, cxl, no. 23.
62. Koodaḷi Granthavari 1995: Doc. 2B. See Appendix for further examples of this type of mortgage.

1. Formal Similarity. The form for recording mortgage transactions spelled out in Dharmaśāstra texts like VyMā (80-81) and SC (336) is followed almost exactly in the mortgage deeds from late medieval Kerala. The formal correspondence between Dharmaśāstra and the temple records extends to both the order and the type of information to be stated (date, house name, father's name, type of transaction, amount of interest, boundaries, witnesses, etc.).

2. Nature of the Mortgages. That the Kerala mortgages, veppu and paṇayaṃ, are instantiations of the Dharmaśāstra mortgages bhogyādhi and gopyādhi, respectively, is clear from the definitions of the latter in Dharmaśāstra texts such as the NS (1.109), VyN (241-243), VyMā (118). In fact, the Malayalam commentary on the VyMā, a dharmanibandha, or digest, from Kerala directly states that the Dharmaśāstra mortgages bhogyādhi and gopyādhi are known by names otti (veppu) and paṇayaṃ in Kerala (112-113, vs. 406 and 406). That at least one modern Kerala jurist considered these mortgages to be the same is, therefore, beyond doubt.

Given the close relationship of the Kerala mortgages and those described in Dharmaśāstra, how do these mortgages fit into the overall system of property and land law in Kerala? In Dharmaśāstra terms, mortgages are transfers of an important svatva, lit. "own-ness," over land in exchange for a monetary loan. However, mortgages, unlike other tenures, do not occur between parties of different social status. All of the mortgage records used in this study are transactions between Brahmin, Nambyār, or "royal" families. As a general rule, mortgages took place between members of the same caste. In no case do lower caste names appear as parties to a mortgage transaction. Mortgages, like sales of land, are elite transactions which define and delimit the social status of the transactors.

Loaning money secured by mortgaged property was an act of social superiority in which the mortgagor acknowledged a reliance on the loan of the mortgagee. But more than this, because mortgages took place between parties of basically equal social status, they kept the mortgaged land within the realm of their own caste and class. In this way, access to landed property and the social, economic, and political power that came with it was limited to those who already possessed

land. Mortgages, therefore, were part of a systematic attempt by Brahmins and other upper castes to retain and enlarge their control not only of land as the economic foundation of medieval Kerala but also, and more importantly, the social, religious, and ideological discourses of the time[63].

Mortgages kept landed property from being acquired by socially and politically oppressed groups. Although the mortgage right, whether veppu or paṇayaṃ, was lower than the aṭṭipēṟ/janmaṃ right associated with land sales, it was still a more powerful tenure than the lower tenures such as kāṇaṃ, kuṭima, and aṭima[64]. The latter three tenures, attested in colonial period accounts[65], are associated with progressively lower castes. Kāṇaṃ is still a relatively high tenure in which the holder of the kāṇaṃ right receives much of the produce from the land under his (or his family's) supervision. The properties of many Nāyar families were actually held under kāṇaṃ tenures. Kuṭima and aṭima, on the other hand, are exclusively low caste tenures. The upper tenures, in fact, often "contained" these lower tenures in the sense that transfers of land through sale or mortgage often mention the transfer of the rights to the produce of the cultivators (kuṭiyār) and slave laborers (aṭiyār).

No model of land relations presently exists which incorporates all of Kerala's land tenures. In fact, a model as such may be an impossibility or an abstraction with no basis in reality because of the lack of evidence for lower tenures in the medieval period and because of the rapidly changing nature of land tenure in the wake of first the Mysore-controlled dominance of Hyder Ali and Tipu Sultan in the second half of the 18th Century and then the British appropriation of Malabar in 1792[66]. Nevertheless, it is clear that land sales and mortgages were part of a system of tenure which was deeply embedded within social and political hierarchies in late medieval Kerala. In the final section of

63. Compare the provocative Brahmin "conspiracy hypothesis" in Stein 1969.
64. See Glossary for expanded definitions of these terms.
65. See, for example, Talaśśēri Rēkhakaḷ, Index, 683, 693, under aṭima and kuṭima.
66. On the transition to British rule in Malabar, see Frenz 2003. In 1879, William Logan made an impressive collection of the treaties, proclamations, and other governmental acts of the British in Kerala. This collection provides deep insight into the British attitudes towards Kerala in the 17th and 18th Centuries. See Logan 1998 [1879].

this chapter, I will consider the intersection of land law and social hierarchy more fully.

Property and Social Stratification

Beyond the specific connections between Dharmaśāstra literature and Kerala temple records concerning land sales and mortgages, there was also a common understanding of property underlying both these historical sources. To date, the most comprehensive statement of the Indian concept of property is Derrett's 1962 essay "The Development of the Concept of Property in India c. A.D. 800-1800" (see Derrett 1977: Vol. 2, 8-130). In his inimitable manner, Derrett has surveyed an enormous amount of information from Dharmaśāstra, epigraphy, and secondary sources to form his statement of the Indian concept of property. The sheer breadth of his evidence, however, makes suspicious the specificity of some of his conclusions. Derrett jumps back and forth in time and all over the Indian map to find evidence for the Indian concept of property. In many respects the nature of the historical evidence in India often forces scholars into such ambitious surveys.

As a general description of the notion of property in medieval India, Derrett's essay is excellent. In his unfashionable style and antiquated rhetoric, Derrett argues that a pan-Indian concept of property existed in medieval India, despite the variant manifestations of property relations in living legal systems of the time. Derrett's attempt to fit all of his evidence into a generalized abstraction of what property meant in all of India and Indian history goes too far, however, because the claims are too broad. Nevertheless, it remains interesting in that we can see many Dharmaśāstra ideas of property at work in places like late medieval Kerala. In this section, I extend Derrett's argument to include the significance of property in the social, political, and religious life of medieval Kerala. My criticisms of Derrett's superb overview, however, amount in one way to carping. The following discussion of property relies heavily on Derrett's ideas and my suggested modifications do not impugn the basic integrity of his statements.

Standard Western definitions of the idea of property are expressed in terms of an individual's "exclusive right of possessing, enjoying,

and disposing of a thing"[67]. Even in common parlance, property signifies possession, exclusivity, and ownership. This definition fails to deal with the social significance of property and restricts the importance of property to what an individual can do with a thing. Defining property in terms of individual rights, a notion derived ultimately from Roman legal conceptions of dominium[68], may be "more of a handicap than an advantage" (Derrett 1977: Vol. 2, 14).

Derrett's approach to property differs from the rhetoric of personal rights which characterizes many classic Western discussions of property. He states, "The great benefit of study of the Indian system is that it forces us out of established ways of thinking" (13). Though Derrett also omits the social significance of property in his analysis, his criticism of established legal definitions of property based solely on Western legal history points us in the right direction.

Derrett's major conclusion regarding Indian views of property is that "there might be several Owners of a thing, owning, not merely shares, but coextensive rights of different characters" (13). The Western desire to identify a single person as the owner of a thing is misguided in Derrett's view. He asks, "what point is there in defining the owner of some rights over a thing as Owner, and the owner of other rights as something other than Owner: particularly when the word for "owner" [svāmin] implies nothing more than 'belonging', 'mastery', and the like?" (14)

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67. See Black's Law Dictionary, 6th ed., 1216. In Western law, property is said to imply absolute dominion, i.e. the ability to use, dispose of, and prevent others' from using and disposing of a particular thing. This ability is always limited, however, no matter how absolute ownership is said to be. Indian jurists recognized and were fascinated by this limitation and were, therefore, critical of the comparable formulation: yatheṣṭaviniyogayogyatva, "the appropriate capacity to use a thing according to one's desire." For example, if I borrow a basketball from you with your permission, then I have the "appropriate capacity..." without having ownership, a fatal flaw for this definition. For this reason, other jurists sought to define Property in terms of the cognition of the owners, even if their cognitions be wrong legally (see Derrett 1977: Vol. 2, 128).

68. Early European administrators in Kerala tried to equate dominium with aṭṭiper/janmaṃ. Logan criticized this equation, noting what he thought to be the main difference in notions of property between Europe and Kerala, namely the "idea of property in the soil" on the European side and "authority" over the people on the soil in the Kerala framework. See Logan 1995 [1887]: Vol. 1, 602-4. Though Logan's formulation is problematic, his was the first recognition of a distinction of the received European notion of property as total dominion and the concept of property he encountered in Kerala.

This description of property based on Dharmaśāstra material corresponds well with ideas of property in late medieval Kerala[69]. Derrett identifies svatva and svātantrya as the key concepts in the definition of property of India. Svatva, literally "own-ness," refers primarily to the possession of a thing. Dharmaśāstra texts call svatva the assertion that "it is mine" (mamedamiti) (Derrett 1977: Vol. 2, 94). Svātantrya, on the other hand, means "independence" and refers to the ability and right of a person to perform certain acts on his/her own. In the case of land, svātantrya is the right to give away, sell, mortgage, or otherwise alienate the land. Grammatically and legally, both svatva and svātantrya are abstract notions. It is not that svatva is a mere incident of property, while svātantrya is true Property. Svatva itself is also Property in an abstract sense in the Hindu view, but not dominium, the Roman legal idea of absolute dominion of an individual. Another related term is adhikāra, which refers to the right and the responsibility to perform certain acts such as the sale of family property[70]. In technical terms, Derrett's definition of property in India reads as follows:

> The distinctive feature of the Indian concept of Property, therefore, is the capacity of svatva to exist in favour of several persons simultaneously, not only identical adhikāras being shared, as in the case of co-owners, but especially where the adhikāras are inconsistent, and mutually exclusive... Where svatva and svātantrya are not combined, there arises a situation in which 'full ownership' in the western sense is missing. (1977: Vol. 2, 86, 91)

Both svātantrya and svatva have counterparts in the vocabulary and conceptual legal thought of medieval Kerala. In the land law system of medieval Kerala, svātantrya, technically the right to alienate land, found expression in the equivalent terms aṭṭipēṟ and janmaṃ. It must be remembered, however, that the existence of other claims to land, i.e. other svatvas, in theory prevented the arbitrary dispossession of rightful claimants to legal svatva, even as the highest svatva, in the Kerala case called aṭṭipēṟ/janmaṃ, also contained the greatest measure of svātantrya, the legal capacity to alienate property for one's own purposes. In my view, this does not mean that possessors of inferior

69. For additional discussion of this topic, see Davis 1999: 174-175.
70. On adhikāra, see Lariviere 1988.

svatvas in land lacked completely any svātantrya. Rather, such independent capacity was severely limited by any superior owners whose propietary claim trumped any undesired exchange or commerce by inferior owners. Furthermore, the close connection of family and property in medieval India meant that the practical scope and opportunity for commerce in such property was limited.

Clearly, the correspondence between svātantrya and aṭṭipēṟ/-janmaṃ is a conceptual connection between the jurisprudence of Dharmaśāstra and the land law of medieval Kerala. The influence of Dharmaśāstra on this point occurs at a high level of legal abstraction. Svatva, on the other hand, includes both aṭṭipēṟ and other mortgages, tenures, and inheritance claims which prevailed in Kerala at the time (Davis 1999: 175). In other words, possession of a svatva indicated "ownership" in a thing. Clearly, in Western terms, we are dealing with a conception of property in which property is inherently fractured and multiple. This general concept of a fractured and multiple property in Dharmaśāstra found practical expression in the land law system of medieval Kerala.

There is another conceptual connection between Dharmaśāstra and the land law of Kerala, however, which Derrett overlooks in his definition of the Indian concept of property. This second connection extends Derrett's formulation of the concept of property by looking beyond questions of rights, whether individual or shared, to the social import of landholding in medieval Kerala. Thus far, I have called this connection the social significance of land in medieval Kerala, but more precisely, I mean an important function of landed property in the social and political structure of Kerala.

Like all entrenched systemic parts of culture and like law itself, the land law system such as that of medieval Kerala perpetuated and extended the extant socio-political structure not merely through disparate distributions of power but also through so-called cultural factors such as status, prestige, image, and ideology. If we look at the increasing control of land by Brahmin and Nāyar temples in medieval Kerala, we wonder why they were interested in acquiring so much land. Remembering that property in Western legal contexts is defined in terms of individual rights, we notice first of all that property in both

Dharmaśāstra texts and in Kerala temple records has significance beyond just the right of an individual to sell, give away, or mortgage a piece of land. The purpose of land acquisition by temples was not just material power and wealth, i.e. the personal use or enjoyment of the property. Rather, the function of land acquisition was the political and economic power to impose their vision of society on Kerala.

But what was this vision? First of all, there was and is no such thing as the Brahminical worldview in India. We cannot define an ethos which would hold true for all Brahmins in Indian history. Brahmins throughout India differed on many issues of religion, politics, morality, and social life. It is pointless to try to identify even the essence of an abstracted Brahminical worldview because we would be postulating a fiction which would eventually have to be dismantled.

Movements of all kinds possess ideals toward which they strive. The "network" of Brahmin and Brahminical[71] temples in Kerala was an identifiable group that was trying to standardize and fix clear boundaries of legal, religious, political, and social behavior. It was therefore a movement that had successes and failures, splits and cooperation, like all movements. By looking at the historical evidence from Kerala, we can identify the boundaries propounded by Brahminical temples and judge the results of their efforts. In doing so, we do not have to extract a definition of the Kerala Brahminical world-view. We can simply evaluate the evidence we have to see why acts like land sales, mortgages, etc. took place and what their ramifications were in the social and political life of the time. This is the point missed by Derrett and others and a point which also announces the importance of investigating the social life of property in any society[72].

In Kerala, temples, especially Brahmin temples, acquired land as a means to reinforce their position and the position of their successors in

71. Again, by "Brahminical" here I include temples controlled by Nāyar families or heavily patronized by local or regional rulers which, although not strictly Brahmin, followed the same patterns of land sale, mortgage, and tenure as did Brahmin temples.

72. My discussion of the social life of property stems broadly from the work of Kopytoff 1986 and Richard Davis 1997. While their discussions focus more on the social life of movable objects, immovables like land also "lived" in various social worlds.

the social, religious, and political hierarchies of the medieval period[73]. This important function of land acquisition by temples touches here on a crucial side of maryādā, the law of the locality. Maryādā was not simply the preservation of the status quo. It was also the active attempt to implement a largely Brahminical world-view involving notions of purity, caste, and hierarchy on the society at large. This social function of landed property, moreover, was at least as important as the actual personal enjoyment of the amassed wealth of the temples. And, not insignificantly, it worked. In the medieval period, Kerala became a society dominated by particular Brahminical discourses of purity, caste, and hierarchy[74]. We do not get a precise sense of the correspondence of land and social status at every level in the temple records. The observations concerning land tenure in Kerala by colonial administrators (see Shea 1957) confirms the kind of intimate relationship between property fractures and social stratification that I would argue must have also existed prior to the colonial intervention in Kerala. The correspondence, moreover, is at least partially confirmed by the kinds of high and low tenures mentioned in the temple records, though many gaps remain regarding the lower tenures.

In general, therefore, medieval Kerala people's relationship to the land determined their social status. There were several kinds of svatva (property) one could hold: the highest aṭṭipēṟ rights, mortgaged property (veppu/oṯṯi/paṇayaṃ), rented property (pāṭṭaṃ), cultivation rights (kāṇaṃ), occupancy rights (kuṭima), and even rights of slavery (aṭima)[75]. In between, there were other subvarieties of these major categories of svatva. One's place in the social life of medieval Kerala depended upon what kind of "property" one possessed. Conversely, the social position to which one was born practically guaranteed a particular relationship to the land. No Brahmin held occupancy rights and no Puḷaya held aṭṭipēṟ rights.

Landed property in Kerala, therefore, was an index of social status and

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73. Compare Shea 1957: 134-135.
74. Colonial observations of Kerala note the particular ferocity of Kerala's caste system and pollution rules. See, for example, Innes 1997 [1908]: 103-4. On the extremes of caste in Kerala, see also Jeffrey 1994: 9-25 and Hutton 1963: 79-85.
75. See Glossary for expanded definitions of these various tenurial forms.

fixed one's position relative to others both within and outside of one's caste. Derrett limited this function of property to "royal" castes saying, "Ownership in the public mind was inseverable from mastery, lordship, power, and the right and duty to protect" (Derrett 1977: Vol. 2, 91). In fact, the multiplicity of propietorship or "ownership"[76] in medieval Kerala meant that every person's role in the social order was related to his or her relationship to land. In Derrett's sense, "ownership" was coextensive with svatva and affected everyone who possessed some claim to a given piece of land from the Brahmins to the Paraiyars. "Absolute property" or "full ownership" makes little sense in this context, because different "owners" held the same piece of land in different ways.

The various "owners" of a piece of land held hierarchically ranked rights and responsibilities as a result of the aṭṭipēr/janmaṃ, kāṇaṃ, kuṭima, or other tenure held by them. It is no coincidence that the hierarchy of "ownership," i.e. the ranked order of svatva, in a piece of land corresponded to the social and/ or political status of the "owners." Stated broadly, Brahmins and "royal" castes held the highest janmaṃ rights, Nāyars the intermediate tenancy rights (kāṇaṃ), and the oppressed castes held the rights of occupancy (kuṭima)[77]. Therefore, the hierarchies of land ownership and social stratification reinforced one another in late medieval Kerala. The religious, political, social, and economic hierarchies of life at the time "matched up" with each other and were part of the shared vision of proper society promulgated by upper castes.

To summarize, Derrett's definition of property, as good as it is, misses this important social function of property in India. But we need not stop here. We might now ask what the case of Kerala can tell us about the conceptual use of "property" by historians generally. I would argue that a person's relationship to land is frequently, if not always, indicative of one's place and one's power in society. They are parallel realms which mutually influence one another. Exceptions to the contrary generally have an explanation as anomaly.

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76. Derrett would limit this term to svāmitva.
77. Shea (1957: 135) makes a similar point with reference to medieval and early colonial foreign observations of Kerala's land law system. The many sub-varieties of these basic tenurial forms could also be ranked and effectively, if not perfectly, compared with distinctions of social, religious, and political status in medieval Kerala.

If we turn briefly to the history of Western ideas of property and ownership, we may question whether classic notions of dominium, or absolute property, suit the historical evidence from Europe and America. In other words, was not property in the West also linked to social, religious, and political life?[78] Susan Reynolds writes of medieval Europe:

> Absolute property exists nowhere except in the minds and polemics of those who are anxious to defend their rights either against governments or against those who claim conflicting rights... Even in a laissez-faire capitalist society, and however little the man in the street may like to recognize the fact, property is to some extent limited by social controls. Modern property rights are less absolute and more liable to be divided and shared than those who stress the strange and incomplete nature of feudal property seem to imply... An 'owner' of property, in other words, does not have absolute rights over it. The distinction between 'ownership' and 'property' on the one hand and 'tenure' on the other, or between 'owner' and 'tenant,' is a distinction between words -our words. (1994: 53-54)

Reynolds tries here to reorient our understanding of property and ownership in the history of Western countries as well. Lawrence Friedman's description of early land law in the United States supports Reynolds' view:

> In theory, the principle of tenure governed both the land law of the colonies and the land law of England. No one could own land absolutely. One could speak accurately, not of ownership of land, but of rights to or in land. These rights might be arranged in layers of space and time; three, six, ten or more persons could have different sorts of interest in one tract of land. (1985: 58)

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78. That property and society are connected may seem obvious in the "post-modern" theoretical situation of scholarship today, but the academic literature on law is notoriously resistant to theoretical critique. Moreover, even a few short years ago, this now obvious answer to some would not have been so clear. For that reason, I feel it is important to use the evidence from medieval Kerala to reflect on current views of law and its intersections with social life.

The arguments of Reynolds and Friedman highlight the problems with some current Western jurisprudential definitions of property that fail to address the historical fact of multiple "ownership" and partial property rights which probably characterizes all historical legal systems. At the same time, both authors recognize the problem of defining property in terms of individual rights, but neither of them has investigated what the fact of multiple "ownership" means in other areas of life. For this reason, I would extend their argument and that of Derrett concerning multiple "ownership." Temple records from Kerala suggest that the partiality of rights in land and the inequalities of those rights both reflected and reinforced a hegemonic vision of society set forth by Kerala's upper castes, especially Brahmins.

The exact nature of the relationship between property, status, power, etc. remains to be examined. On the basis of the Kerala temple records and relevant Dharmaśāstra literature examined here, however, I have concluded that the hierarchies of property and ownership and the hierarchies of religious, social, and political life mutually influenced and reinforced one another according to needs and strategies of the upper castes. In this case, a strong connection of law and society is evident. As I have tried to show, however, the strength of the connection derives from a locally modified acceptance of Dharmaśāstra norms in the case of land sales and more or less direct importation of Dharmaśāstra in the case of mortgages. In both cases, the law appears after the local appropriation or localization process and is not the law in any meaningful sense prior to this process. In other words, Dharmaśāstra offers itself as a model of land law, but is not itself the law.

Without offering a comprehensive model of land relations, I have tried in this chapter to amplify some of the important jurisprudential ideas of property (svatva, svātantrya, adhikāra) and ownership which appear in both the records of Kerala's temples and in Dharmaśāstra literature. By examining a few very typical land sale and mortgage deeds from Kerala, I argued both for a close connection of the legal framework of the deeds and that of Dharmaśāstra and for the extension of these fundamental frameworks of law into areas of social and political hierarchy. The stratification of land relations in medieval Kerala not coincidentally reflected and reified stratifications of reli-

gion, politics, and society. The social side of these legal understandings of how people relate to the land around them has been neglected, especially in certain areas of Western legal theory. By considering the land law culled from Kerala temple records and Dharmaśāstra in its social and political context, I am also suggesting more generally that all legal discussions of property, ownership, and land must take the social significance and ramifications of these concepts and entities into consideration, if they want to claim to be at all comprehensive.

CHAPTER THREE

Legal Procedure and Crime

Like land law, legal procedure and criminal law in medieval Kerala fell under the general heading of maryādā, the law of the locality. Unlike land law, however, procedure and criminal law did not generate a historical record comparable in quantity to that represented by the numerous records of land sale, mortgage, etc. Crime, punishment, police, and procedure are topics which appear as sidelines to the main purpose of recording an income or expense of the temple[1]. As a result, our picture of criminal law, its guardians, and its procedures remains partial.

Despite the small amount of evidence for criminal law and its attendant legal procedures in medieval Kerala, there is sufficient material in the temple records to improve upon the standard brief descriptions of Kerala's criminal law before the colonial period. An example of these brief dismissive accounts comes from Krishna Ayyar in his still useful history of the Zamorins of Calicut. According to Krishna Ayyar, the following summarizes the whole of criminal law in the medieval period:

> The administration of justice consisted in the enforcement of the customary law of the community or the country. The duty of the sovereign was to protect the Dharma and uphold the Maryada or Acharam of each caste and locality. These were expounded by the representatives of the people who were qualified by learning and experience. All disputes about land were settled by local ad hoc committees called Panchayats. (1938: 280)[2]

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1. The Tellicherry Records, which are not temple records, contain a great deal of information on criminal cases and their resolution. However, the time period of these records (1796-1800) lessens their value as evidence for medieval legal traditions in Kerala. The same basic patterns of law persist in the Tellicherry Records, but we must be cautious in extrapolating the partially colonized legal system of the late 18th Century back into earlier Kerala history. I use the Tellicherry Records here mostly to supplement evidence already found in the temple records of the period prior to the mid-18th Century.
2. Instances of the word pancāyat are very rare in the medieval records of Kerala. Krishna Ayyar appears to project backwards the contemporary concern of his time with Gandhi's vision of Pachayati Raj. Councils at temples and royal house-holds went by many names,

> The administration of criminal justice was very simple. Offences against morality and religion were punished by caste tribunals, the king sending an officer called Koyma to prevent the miscarriage of justice and enforce the sentence. (1938: 282)

Such brief descriptions[3] result from the poor historical record, but the published temple records examined here (not to mention unpublished materials kept in various archives in Kerala) do enable us to give some more details about how criminal law operated in medieval Kerala.

The goal of this chapter is simply to improve upon the unnecessarily brief accounts of criminal law in medieval Kerala presented in the existing secondary literature. A comprehensive account is not possible in the current state of the evidence, but we can do better than one or two paragraph descriptions. I will look at three features of criminal law in medieval Kerala: procedure, punishment, and police. Unlike land law, these three sides of criminal law did not constitute a system that operated throughout all of Kerala. However, the organization of police in various localities was similar, especially in temple communities. This suggests that some aspects of what we may call criminal law were shared in a systemic way. I do not want to push this point, however, because I think we can and should understand criminal law in medieval Kerala without positing an institutional or ideological system behind it.

Before turning to criminal law proper, I will discuss one case of civil dispute that appears in the temple records[4]. Given the large quantity of records dealing with land law, noticeably absent from the temple records is mention of disputes about property and land. The plethora of land disputes recorded in the later Tellicherry Records sug-

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the most common of which were sabhā, pariṣad, and yogaṃ. It is not at all clear that such councils are the same as traditional pancāyats, which were primarily caste-based.

3. Other intolerably short descriptions of criminal law may be found at Varghese 1993: 259 and Menon 1991: 120, 157.

4. On the distinction of criminal and civil wrongs in classical Hindu law, see generally Rocher 1955. See also Derrett 1978 for further elaboration on private and public law in classical Hindu texts.

gests that disputes about land must have been common in the medieval period in Kerala, but, for some reason, records of these disputes were not preserved. A tantalizing, but incomplete, exception is found in the Koodali Granthavari [Doc. 14B, 9], which records a dispute about the janmaṃ right over a piece of land between the Kūṭāḷi temple council and the Māṇiyūr council:

> This is a document executed in the month of Iṭava of the Kollam year 786 [1611 A.D.] when Jupiter was in the Karkaṭa phase. In trying to ascertain the truth regarding Māṇiyūrappan and the Kūṭāḷi temple trustees (devattār urāḷār) – If the property known as Kaṭaṅṅoṭu is found to be under the janmaṃ right of the temple trustees, then [they] must pay to the other 100 paṇam; if it is found to be under the janmaṃ right of Māṇiyūrappan, then [he] must pay 800 paṇam to the temple trustee[s]; if the Māṇiyūr council (kaḻakam) has the janmaṃ right, then [we?] shall receive 800 paṇam and give over the property (oḻiccukoṭuttekka). [The record seems incomplete or erroneously transcribed here and no decision is indicated in the text.] The council of Māṇiyūr and the Kalliyāṭṭa svarūpam [are thus agreed]. Handwritten and witnessed by the Niḻal Menokki of the Kalliyāṭṭa svarūpam.

The document appears to record an agreement to submit to binding third-party arbitration in the case of disputed land. In the bracketed section, one would expect a statement of the decision and perhaps who was the authorized arbitrator. Even without these details, however, we do gain some insight into at least one method of resolving land disputes, namely an agreement to submit to a third party's decision possibly accompanied by a kind of judicial wager and compensation[5]. Unfortunately, this exceptional record cannot provide a firm basis for discussing civil disputes over land in medieval Kerala. The resolution of such disputes must have constituted a considerable portion of the adjudicative processes at the time, but the lack of evidence prevents us from further speculation at the moment. With this single example of a civil dispute in mind, we may now consider several references to crime and punishment in medieval Kerala.

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5. On judicial wagers in Hindu law, see Lariviere 1981.

Criminal law in medieval Kerala was a reactive process. The procedures, punishments, and police involved in resolving[6] a crime were rarely initiated by the political leaders of the area, unless the crime was committed against them or their interests. This does not mean that every aspect of criminal law was ad hoc, or created on the spur of the moment, by those prosecuting the criminal. It does mean that those responsible for the apprehension, trial, judgment, and punishment of a criminal had great power over the process and could consider factors beyond mere legalities in the overall adjudication of the case.

The reactive, as opposed to proactive, nature of criminal law in Kerala echoes the understanding of criminal law gleaned from Dharmaśāstra texts. As early as MDh 8.43, the burden for initiating both civil and criminal proceedings was on individuals: "Neither the king nor any official of his shall initiate a lawsuit independently; nor shall he in any way suppress an action brought before him by someone else." Priya Nath Sen suggested long ago that in Dharmaśāstra literature, "it was generally directed that neither a king nor his officers should create or foster litigation of their own accord but should ordinarily refuse to take cognisance of a cause of action without a complaint from the person aggrieved" (1984 [1891-92]: 336). As we review some important examples of how crimes were resolved, we must keep this reactive approach to both civil and criminal legal procedures in mind.

Procedures and Courts in the Resolution of Crimes

Courts in late medieval Kerala were not institutions, they were events. Although some foreign travelers' accounts describe the Zamorin of Calicut as holding court in criminal cases[7], their descrip-

6. Throughout this chapter, I will use the word "resolution" instead of "prosecution" because of the latter's connotations of "law applied," formal procedure, and "legality" at the expense of society. The problems with these connotations in the context of late medieval Kerala will be discussed throughout the course of this chapter. Legal anthropologists in general prefer terms like "dispute settlement" or "conflict resolution" to "prosecution" in discussion of criminal law. See, for example, Nader 1969.

7. Duarte Barbosa, A Description of the Coasts of East Africa and Malabar, in the beginning of the 16th Century (1866) and Ibn Battuta, Travels of Ibn Battuta, A.D. 1325-1354 (1958).

tions make clear that even the most powerful political leader in Malabar did not have a regularized court system. The fact that Col. John Munro, who was appointed as Resident and Divan of Travancore in 1809, felt compelled as a first priority to institute a hierarchical system of courts in British Kerala also indicates the lack of institutionalized courts and court procedures[8]. In the absence of a system of courts, the temple communities which dominated the regions of Kerala outside its urban ports[9] resolved crimes in their vicinity through the involvement of rulers, officials, and Nāyars in the area.

Although criminal law was not systematized to any great extent, we can still observe certain standards of criminal law by examining temple records. The best example I have found to demonstrate what may have been accepted patterns in the criminal law in Kerala comes from the Brahmin temple at Tṛkkaṇḍiyūr which was controlled by the Vanjeri Brahmin family. I will quote this record in full in order to show the general processes of criminal law at work. The record, dated 1607 A.D., describes the murder of a Brahmin who was a member of the council of the Tṛkkaṇḍiyūr saṅkētaṃ, the temple organization in the region. The full text reads[10]:

> Śrī. The 15th day of the month of Makara in the Kollam year 783 (1607 A.D.). In the sanketaṃ of Tiruvūr deśaṃ (or in Tiruvūr

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I should also mention here another procedural form used in medieval Kerala – ordeals. Ordeals, especially the oil ordeal, do not figure at all in the temple records examined here but are reported by nearly every foreign observer in Kerala up to the 20th Century. The reason for this omission may be an accident of preservation, but it could also be related to the pecuniary nature of the temple records. If there was no income or expense to the temple in the preparation of an ordeal, then it would not be mentioned in the temple's documents. In any case, I have omitted ordeals in what follows, despite their importance in Dharmaśāstra and, it appears, in Kerala as well, because there is no direct evidence for any ordeal in the records I examined.

8. See Parameśvara Ayyar 1997 [1931]: 41-70 and Shungoony Menon 1983 [1878]: 270-80.
9. The urban areas of Kerala were and are all located along the coast. They were trading communities often controlled by Muslims in northern Kerala and Christians in southern Kerala. Some temple communities are located not far from Kerala's coast, but they lack the urban character of the trading ports. Of course, Hindus lived in the urban ports, but their political, religious, and social world was very different from that of the temple communities geographically outside of the ports.
10. Vanjeri Grandhavari, 29 [Doc. 54A].

deśam which is a sanketaṃ), Ūrakattu Uṇṇāman (Uṇṇīrāman), who was an appointed official (manissam = manuṣyan) of the Zamorin in the area, stabbed and killed Karipuram [a Namputiri][11] while he was bathing at the temple tank on the south side of Karipuram [here, the family lands] in Tiruvūr deśaṃ. Thereafter, he [Uṇṇāman] fled toward the south, whereupon several people raised a "hue and cry"[12] (nilaviḷicca) and ran to the main road. At the north end of Maṅṅātūr, several captured [him], took [him] to the western end of Tṛkkaṇḍiyūr [probably the temple confines], and struck him in the head. After that, Vaṇjeri [the head of the family] went to Vammenāṭa. After he had apprised the Zamorin of the situation, he received permission to have the sanketaṃ law (sanketamaryāda) carried out on him by the lord (koyma) of Tṛkkaṇḍiyūr. Thereafter, on Sunday the 19th, Iṭamana Koṅṅāṭu, Vaṇjeri, Maṅṅalacceri Kaṭiyakkol[13], Pātamūlaṃ[14], Kommāḷi Cerāmaṅṅalaṃ[15], as well as the Nāyars of Pantīrāḷaṃ deliberated (nirūpicca). Because the Kovil Nambi[16] was unable to walk due to illness, he provided a writ for carrying out the law (maryāda). Thereafter, Karunāṭṭu Nāyar, Kommāḷi, and the Nāyars of Pantīrāḷaṃ took Ūrakattu Uṇṇāman to Poṭṭalākal[17]. There Kommāḷi, who was the representative (manissaṃ) of the deity of

11. Brahmins are sometimes called only by the name of their illaṃ, or household name. Here Karipuram is the family name and refers both to the head of the family and to the lands which the family controls.
12. On the meaning of nilaviḷicca, see M.G.S. Narayanan, "Introduction," Vaṇjeri Grandhavari, xxv, f.n. 64.
13. These first four names refer to the Brahmin families who together constituted the yogaṃ council of the Tṛkkaṇḍiyūr saṅkētaṃ. More details about this council are found in the next chapter.
14. Pātamūlaṃ (pādamūlaṃ) refers to a temple officiant.
15. The meaning of kommāḷi is uncertain here. Kōmāḷi/ kōmāḷaṃ refer to jesters or satirical players in a king's court. It is possible that the doubled m here is a variant spelling for kōmāḷi, which may just mean a "king's man" (kō + āḷ). The Tamil form also means jester. See Tamil Lexicon, Vol. 2., 1190. Since the kommāḷi mentioned here is associated with the "Panniyūr faction" (panniyūr kūṟ), he is clearly an official, probably a Nāyar, in the service of the Zamorin.
16. The Kovil Nambi was an appointee of the regional ruler, in this case the Veṭṭaṃ Rāja, who, among other duties, carried out punishments in the temple.
17. This area, apparently a large rock by its name, was the special site for punishments in the saṅkētaṃ. See Narayanan, "Introduction," Vaṇjeri Grandhavari, xxvi.

> the Panniyūr faction[18] executed him by cutting. His [Uṇṇāman's] clothes and weapon, given over to the samudāyam [Vanjeri, the head of the yogaṃ council], were then given to the relatives of the executed man. Uṇṇāman's own mother had received his earring and silk cloth while he was being held. Then on the 9th day of Mīna, Ūrakattu Uṇṇicāttan [the murderer's brother or relative] gave the weapon, the Veḻmakkara (spear?), and the Kaṇḍāmṛgaṃ (cudgel?)[19] to Kiḻakinakaṃ and received a written receipt. In the same way, a royal writ from the Zamorin was also received for the samudāyaṃ's punishment of Ūrukattu Uṇṇāman.

In this short account of the complete resolution of a murder, we see several aspects of criminal law at work. The first point to be noted is the prominent role of "royal" officials and Nāyars in the process. Though the relationship between Brahmins, rulers, and Nāyars will be fully described in the next chapter, we can anticipate the argument there in the division of duties between Brahmins and others. In an active sense, Brahmins were charged only with the adjudication of the case, but they also received some of the murderer's property. It is also interesting to note that in the very next record in the Vanjeri collection, the saṅkētaṃ purchases some of the victim's family lands as well[20]! On the other hand, the deśakoyma (local ruler), the Kommāḷi, and other Nāyars[21] were responsible for the arrest and punishment of the murderer. They were responsible for the executive side of the law, or what Dharmaśāstra calls daṇḍa, the "rod" of the ruler.

Next we see in this record that the whole case results from the clamor made by an unidentified group of people (palaruṃ kūṭi) which then prompted another group to capture the murderer. These people

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18. Some time after the end of the Cēra period, Brahmins in Kerala divided into two factions known as Panniyūr and Cōvaram. In general, the split is between Vaiṣṇavite and Śaivite temples. Legendarily, the Panniyūr faction was supported by the Zamorin of Calicut and his allied rulers, while the Cōvaram temples were supported by the Cochin rāja and his allies.
19. The meaning of both of these terms is unclear. I have not been able to find a plausible meaning for either.
20. Vanjeri Grandhavari, 29 [Doc. 55A].
21. I have not included the Zamorin in this list, because he is mentioned only because the murderer was an official appointed by him. In other circumstances, the Zamorin would not be involved in such a case.

are the ones who start the criminal procedure against Uṇṇāman. The level of formality at this point is unclear. As mentioned briefly above, Narayanan interprets nilaviḷicca in the technical sense of hue and cry, i.e. he argues for this being a standardized way of declaring a crime and demanding an arrest, perhaps with formulaic shouted statements. This is certainly possible, and I have followed Narayanan's interpretation. It is possible, however, that this is not a technical usage, but rather a description of what happened in this case alone. It seems certain that the murder would have been investigated in any case. Nevertheless, the involvement of people who were not part of the political or religious establishment is significant.

There is no question of guilt or innocence in this record. The lack of mobility in and the difficult geography of this part of Kerala must have limited the pool of potential criminals in many cases to those already known to the community. Some crimes must have gone unresolved, but the probability that a criminal and a victim knew or knew of each other was very high in temple communities. As a result, criminal procedures tended to identify a perpetrator quickly and with a presumption of guilt, not innocence. After Uṇṇāman was arrested and confined to an unspecified part of the temple, his "trial" consisted of the deliberations of a group made up of the members of the yogaṃ council in Tṛkkaṇḍiyūr, the Kommāḷi (one of the Zamorin's officials in the area), and a group of Nāyars, who were probably paid protectors of the saṅkētaṃ (kāvalkkār). There is no indication that Uṇṇāman was allowed to put in a defense of any sort.

Finally, the decision of this group, namely Uṇṇāman's execution, was carried out by the Kommāḷi, presumably by beheading. The permission of the Zamorin and the Kōvil Nambi, who would normally carry out the decision of the "court," to "do" (ceyyān) the law of the locality (sankētamaryāda) in this case refers to the power given to the group to make a decision in this case, not to apply some special punishment that was only followed in this area. One should make a distinction between local law and localized law in this instance, where the former refers to laws restricted to and created in a particular locality while the latter refers generally to the law in a locale, regardless of whether the same laws are observed elsewhere. In practical terms, the difference means little because both types of law were in force. When

considering the law beyond the locality, the distinction becomes crucial. The broader denotation of localized law connects it to other localized laws, a group of which might constitute a regional law, and so on[22]. The distinction is also important because of the obscuring history of the term custom and customary law to describe local and localized laws[23].

In one sense, the maryādā, the law, was applied to Uṇṇāman in the legal decision of the temple authorities. In another sense, the law is the decision, or rather is created in the decision-making process. The distinction made by Paul Hacker (1965: 103) between "dharma before its realization" and "dharma in its realization" is relevant in this context. Maryādā (and its synonym ācāra) similarly denotes both a prior normative source and a contextualized normative standard for the case at hand[24]. A similar distinction is described for Islamic law in the following way: "Strictly speaking, it is not the Law as such which is interpreted, but rather the sources of law. The Law as a topically-organized finished product consisting of precisely-worded rules is the result of juristic interpretation; it stands at the end, not at the beginning, of the interpretive process" (Weiss 1977-78: 200). Though Hindu law lacks a tradition precisely comparable to the fiqh manuals of Islamic law, a parallel nevertheless exists in the sense that law is the product of localized interpretation and is held to exist only in theory until that moment of interpretation. In this murder case from medieval Kerala, we see an interpretive, reactive process tailored to the circumstances of the case, not a mere application of a rule found in a book or in the oral traditions of the area.

The procedures of criminal law at work in this case are hardly procedures at all. The course of the resolution followed the particular facts of the case. The victim, Karipuram, was the eldest member of one of the prominent Brahmin families in the area and a member of the yogaṃ council. The stature of the victim demanded a strong punishment, given the interests of those in charge of the punishment. The

22. Compare Davis 1999: 162.
23. Both terms and their relationship to maryādā are considered in Chapter Four below.
24. For further discussion of Hacker's distinction, see Wezler 2004 [1999]: 639-640 and Davis 2004: 814, f.n. 8.

murderer was an appointee of a powerful leader, the Zamorin of Calicut. So, the Zamorin's permission was necessary before any serious action was taken against Uṇṇāman. The necessities of the procedure adopted, therefore, were dictated by circumstance, but they still restricted what procedure could be chosen. The relationships of the people involved not only in the crime itself but also in the adjudication and resolution of the crime determined the course the judicial process would take. On the one hand, the case was a unique event and not a rote application of a penal code[25]. On the other, the sources of law, i.e. the pre-existing maryādā, from which the judges of the case drew in formulating the law for this case were not unique.

Another example corroborates the circumstantial, reactive approach to criminal procedure in late medieval Kerala. In a case of theft from the Padmanābhasvāmi temple in Trivandrum dated 1596 A.D.[26], Aṟamana Nārāyaṇan, who was the officiant in charge of the pañcagavyaṃ-śānti ritual at the temple[27], stole unidentified goods (dravyaṃ) from Oppāraṇan while the latter was performing the pañcagavyaṃ ritual. Madhusūdhanan Viṣṇu witnessed the crime and reported it to the temple authorities. The record is a declaration of the punishment given to Nārāyaṇan. The sabhā of the Trivandrum temple and the other temple authorities (adhikārapadārthamuḍayavarkaḷ) who represented the Tṛppāpūr svarūpaṃ (the temple organization of the Travancore kings) decreed (kalpicca) that: 1) Nārāyaṇan had to pay into the coffers of the Tṛppapūr treasury (bhaṇḍāraṃ) an amount equal to what several people could steal together and 2) Nārāyaṇan was to be banished from his illaṃ, his extended family, and dismissed from his position as officiant of the pañcagavyaṃ ritual. In addition, Madhusūdhanan Viṣṇu, who reported the crime, was to be appointed to the position.

In this record, a witness to the crime initiated the criminal procedure that ensued. It is, of course, suspicious that Madhusūdhanan Viṣṇu, the witness and accuser, in the end assumes the accused's cov-

25. No trial is ever merely a "rote application of the penal code," but the view that it should be still persists among many lawyers and jurists in Western countries.
26. Chronicles of the Trivandrum Pagoda, 54 [Doc. 28].
27. This is an offering of the "five gifts" of the cow: milk, curd, butter, urine, and dung to the deity.

eted position as temple officiant. In the absence of further evidence, however, we can only assume that Nārāyaṇan was not framed for the crime and that Madhusūdhanan was awarded the position not because of his own criminal plot, but because of his courage in making a probably risky accusation. A combination of the Brahmin sabhā and the other authorities (probably Nāyars or members of the "royal" family) decided the case. Again, there was no question of innocence or guilt. The record indicates that Nārāyaṇan was caught redhanded, and there was never any possibility of his being found innocent legally. The circumstances of the case, in reaction to an initial instigation of a judicial process, determined, indeed almost predetermined, the outcome.

In both examples, there was a procedure, but it did not extend formally to other cases. The cases did not generate precedents of formal procedure to be followed in later criminal cases. Whether the cases generated precedents of substance is a question that may not be answered from the limited number of criminal cases known from medieval Kerala[28]. The procedures in these cases, however, originated from the relationships of the "judges," the status of the perpetrator and victim, and the circumstances of the case at hand. Even in the absence of institutionalized courts and fixed procedures for resolving cases, temple communities methodically resolved violations of the localized law according to standards deemed appropriate to the case hand. These standards were not made up on the spot but rather conformed to the needs and desires of the community as represented by the Brahmins, Nāyars, and rulers who controlled the process. The vision of society of these upper castes factored in their decision-making and in the kinds of procedures they followed[29].

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28. Though maryādā is not invoked as precedent in the common law manner, it nevertheless incorporates an implicit sense of preserving the past, specifically the norms derived from and in past legal cases. The citation process to such previous cases is elided in this context but the value of precedent nevertheless remains.

29. I do not claim here that legal procedures acted always to maintain social harmony or that judges in medieval Kerala or in other Hindu law areas always acted equitably first and legally second. Rather, I take an instrumental view of Hindu law in this case – one that would see in the procedural forms thus far adduced a privileging and protection of status and power interests.

The Means and Ends of Punishment

The range of punishments recorded in Kerala's temple records is surprisingly small. One might expect a society with a reactive, circumstantial criminal procedure to have devised numerous independent modes of punishment for a variety of criminal offenses. Instead, there are only four types of punishment described in the temple records of medieval Kerala: corporal (including both mutilation and death), fines in a broad sense, banishment, and public censure. Other punishments such as confinement (prison), forced labor, and torture are not found in the evidence. Punishments were generally combinations of these major types and were often accompanied by religious expiations as well.

The subject of punishment in law has since Foucault been a hot topic among scholars, policymakers, and activists. Classic motivations of punishment – retribution, deterrence, compensation, and rehabilitation, all of which have been upheld by scholars of Dharmaśāstra as the foundation of penology in India[30] – have given way to Foucault's talk of the "political technology of the body" (1979: 26) and "techniques of power" (1979: 23). The merits of Foucault's approach are hard to dispute. Personal and social agendas of power did and do enter into the meting out of punishments and we must recognize this fact.

At the same time, Foucault's theoretical framework does have limits in comprehending the criminal law of medieval Kerala. Perhaps the most incisive critique of Foucault on punishment is that he too narrowly focuses on power alone as the idiom of punishment. David Garland, in an appreciative critique of Foucault, argues that "there is no reason to suppose that either 'control' or 'power' is the exclusive motivation of penal practice, nor that penal policy is always organized according to instrumental, strategic considerations" (1990: 166). This is a more sensible approach which allows a variety of motivations to potentially underlie an act of punishment. Foucault's focus on power illuminates aspects of the retributivist elements of Hindu law in Kerala, but is less helpful in regard to the consequen-

30. See Kane, HDh 3.388-89 and Das 1977: 55-78.

tialist elements[31]. Specifically, some forms of compensation and rehabilitation constitute not an exercise of power, but an effort to achieve certain desirable consequences without regard for the preservation or extension of power. Nevertheless, as noted above, medieval Kerala serves with few caveats as an exemplification of Foucault's instrumental view of punishment.

In Kerala, punishments, being part of criminal procedures, were not part of an institutionalized system of criminal law. Because of this fact, we are immediately confronted with a problem. How can strategic considerations of power play an important role in the absence of a developed system of criminal law? One might also phrase the question as follows: Is the element of power in punishment a function of state law only or does it also exist in more or less non-state legal systems such as Hindu law? What agendas of power are furthered given the reactive, circumstantial, and largely non-institutional approach to the resolution of crime in Kerala? As I turn now to survey some punishments found in Kerala's temple records, I find a possible answer to these questions in the efforts made by Brahmin and Brahminized communities in Kerala[32] to control the social, religious, and political development of the area.

Punishments in medieval Kerala lacked standardization relative to the crime. Obviously, this suits the procedural approach followed in Kerala. Just as there was no standard judicial procedure prescribed for every type of crime, so also there was no one-to-one correspondence of crime and punishment. With the exception of murder, no clear pattern emerges from the temple records in which particular punishments are associated with particular crimes. All the murders mentioned in the records examined here were punished by the death penalty, usually

31. For a discussion of the philosophy of criminal law, see Alexander 2002. Alexander is dismissive of consequentialist views of criminal law and his criticisms in this regard are sound. Nevertheless, as a historical matter, consequentialist views have consistently been put forth in a variety of legal systems of the world and must be considered when they arise in legal history. The case of medieval Kerala and India appears to be one of Alexander's "mixed" systems, in which both retributivist and consequentialist theories appear.

32. Again, without specific evidence, I would not extend the fairly explicit project of Brahmins in Kerala to other parts of India, though I believe Kerala is not unique in this regard.

by sword[33]. In contrast, thefts were punished variously by execution[34], forced gifts to the temple and/or banishment[35]. Banishment was also the punishment in a case from 1588 A.D. in which some of the local ruler's men (manuṣyaṅṅaḷ) were harassing and pillaging peasant cultivators[36]. Two cases of verbal assault were punished with fines[37]. Physical assault in two cases was also punished by fine[38]. On the basis of this small number of examples, it is unwise to speculate about regional patterns of dealing with specific crimes.

While the details of these cases are interesting because they are dated, historical events as opposed to the abstracted discussions of crime in Dharmaśāstra texts, they cannot be used to generalize about the law pertaining to specific crimes in Kerala. The diversity of punishments for similar crimes, even within the few examples cited, suggests in fact that in medieval Kerala two key principles of most criminal legal systems were absent, namely consistency and neutrality in both the expected and actually executed punishments for given crimes. Some might object that a lack of consistency and neutrality in the criminal law violates the principle of legality that stands at the heart of the punishment of crime[39]. Without a common sense of what is legal, punishment becomes an arbitrary exercise of power. Medieval Kerala held to a concept of legality as maryādā sufficient to check the arbitrariness of punishment. In the first place, the responsibility for punishment was divided among at least two and often three or four players – generally, Brahmins and other temple authorities adjudicated disputes and crimes, while one or more political rulers executed their decisions. This division of juridical labor – to be described fully in the next chapter – restrained capricious punishments. Secondly, the determination of the

33. See Travancore State Manual, 23 [Doc. XXIV], 102 [Doc.CXXV]; Peruvanam Granthavari, 123; Zamorins of Calicut, 272, f.n.1.
34. Vanjeri Grandhavari, 30 [Doc. 56A].
35. Chronicles of the Trivandrum Pagoda, 54 [Doc. 28] (banishment was also involved in this case); see also Koodali Granthavari, 24 [Doc. 53B], xiii.
36. Travancore State Manual, 63-65 [Doc. LXXXIX].
37. Vanjeri Grandhavari, 23 [Doc. 43A] and 32 [Doc. 61A].
38. Travancore State Manual, 25-6 [Doc. XXVIII]; Vanjeri Grandhavari, 41 [Doc. 77A].
39. For a discussion of legality and non-retroactivity as the essential principles of any criminal law, see Alexander 2002: 823. Contrary to Alexander's implicit assertion, however, there are other means of establishing legality than just statute, even in American law.

law in the form of maryādā was always a collective act, never the act of an individual. Finally, hierarchies and distinctions among people appeared to have been axiomatic in medieval Kerala. To not take such "natural" differences into account would be to subvert justice in this context. The persons responsible for criminal law were willing to sacrifice consistency and neutrality in order to take status distinctions and circumstances into considerations of punishment.

One form of punishment not yet described is a type of public censure which took on a special form in Kerala. The punishment is the forced presentation of a special silver vessel, called a vellikuṭaṃ, to the temple, usually as both a criminal and a religious expiation[40]. In many cases, the offense committed in records of these expiations is not specified, though general terms like piḻa and tappŭ seem to indicate the criminal nature of the offense. The presentation of a vellikuṭaṃ included a public allocution to the crime called uttaraṃ collal. The public in these cases were the temple authorities, nearby rulers, and other officials. In general all the leaders and functionaries of the temple attended the ritual. Though not stated, the reason for their involvement was that this ritual was a public censure limited to upper castes, especially Brahmins. In fact, only "royal" castes and Brahmins are found making these offerings as punishments. Presenting the vellikuṭaṃ was as much public confession as punitive fine[41].

Therefore, it appears that this special expiation was restricted to the highest castes in Kerala. The presentation of a vellikuṭaṃ exonerated the offender as much as it punished him. One can say that the retribution and compensation constituted the offender's rehabilitation and reintegration into the larger community. However, because the offense leading up to the punishment is rarely mentioned, we cannot judge the religious versus the legal qualities of the ritual. In general, it is safe to

40. Temple records involving the presentation of a vellikuṭaṃ include: Vanjeri Grandhavari, 20 [Doc. 38A], 44 [Doc. 82A], 45 [Doc. 83A]; Travancore State Manual, 22 [Doc. XXIII], 27 [Doc. XXIX], 28 [Doc. XXXI]; 29 [Doc. XXXII], 31 [Doc. XXXIV], 65 [Doc. LXXXIX].

41. The vellikuṭaṃ was apparently quite an expensive offering. One record recounts the fact that the offender had to borrow money from the samudāyaṃ of the temple in order to afford the vessel. The cost of a single vessel apparently ran to several hundred paṇaṃ. See Vanjeri Grandhavari, 44-5 [Doc. 83A].

say that presenting a veḷḷikuṭaṃ was both a religious and a legal act. More importantly, the fact that it was limited to the highest castes indicates that it may have been designed to give these privileged castes an "easy out" when they committed a punishable offense.

The punishments described here did not constitute a systematic attempt to apply punishment equally throughout Kerala. Differences of status and circumstance affected the course of judicial processes. The flexibility allowed in determining appropriate punishments gave Brahmins and "royal" officials the leeway to tailor judgments to their vision of what their brand of social order required. There is no provision for appeal in the temple records. Thus, parties had but little choice about whether to abide by the decision of the "judges," as the enforcers of the decisions were bound to carry them out. These decisions, furthermore, were visible and continual manifestations of law and, to return briefly to Foucault, exercises of power on the body politic of the temple community. In the language of medieval Kerala, the boundaries of law, maryādā, were constantly created and recreated by the procedures and punishments carried out by those empowered to promote their vision of proper social order.

The Policing System

Throughout medieval Kerala, all temple communities employed, housed and paid for police protection in their territory in basically the same way. Some temple records are accounts of payments made to police, who were called kāvalkkār. Other records mention police in connection with the arrest of a criminal. Although all Brahminical temples maintained police as part of their regular expenses, much of the expense was passed on to those holding lower tenures on the temple lands, especially kāṇaṃ. The temple council recouped the cost of maintaining a police force by levying a kind of tax on the tenants known as rakṣābhogam or kāvalphalam[42]. Finally, most police were Nāyars who were part of the military organizations of the various local and regional rulers in Kerala at the time. They were often

42. Evidence for this tax dates back to the early Cēra period. See Narayanan 1996 [1972]: 117, 129.

appointed by the rulers as part of the political relationship between rulers and temples[43].

The policing system of medieval Kerala was as much a symbol of the alliance between a ruler and a temple as it was a means of protection for the temple community. Brahmin saṅkētaṃs benefited from the protection afforded by a few standing Nāyar police in their area, but rulers also benefited by establishing a closer, sometimes exclusive link to the powerful saṅkētaṃs through the appointment of their own military personnel as local police. The fact that police are rarely seen in the records as the initiators of a criminal procedure against someone supports the view that the alliance was at least as important as the protection.

Three records from the Vanjeri collection contain the most detailed descriptions of how police were paid by the temple and where the money came from to pay them. All three records are labeled statements of account (kaṇakkŭ) and are dated 1541 A.D.[44] Lands belonging to the temple are named and a specific amount of produce from that land is marked for the payment[55]. Each of the three Nāyars employed by the temple came from a different ruler who had connections to the Tṛkkaṇḍiyūr saṅkētaṃ. Uṇṇāman Panikkar, Rāman Panikkar, and Uṇṇi Ravi were Nāyars in the service of the Zamorin of Calicut, the Rāja of Vaḷḷuvanāṭŭ, and the Rāja of Veṭṭattunāṭŭ, respectively[46]. The amounts extracted by the temple from its subordinate tenants provided not only for the police themselves but also for two other levies: the mukanokka, a tribute paid to each of the saṅkētaṃ's allied rulers, and kīḻekkaṃ paṇaṃ, referring to the "former monies" paid to the temple by its tenants. Accordingly, the temple did not lose any income from the employment of the police; they simply passed the added expense on to the tenants of their lands. Such were the arrangements made in Tṛkkaṇḍiyūr for police protection. More importantly, however, the arrangements described in this record, especially the col-

43. This relationship is the focus of the next chapter.
44. Vanjeri Grandhavari, 1-3 [Docs. 1A, 2A, 3A].
45. Presumably the produce, here stated in measurements of rice paddy, was converted to cash (paṇaṃ) before being given to the various parties, but the records do not tell us the exact procedure.
46. See Narayanan, "Introduction," Vanjeri Grandhavari, xxiv.

lection of rakṣābhogaṃ, are more or less the same in other accounts of payments to police found in the temple records[47].

The range of cases in which Nāyar police were called upon to arrest and punish criminals covers all the major crimes. Nāyar police were involved in cases of murder[48], arson[49], rape[50], theft[51], embezzlement[52], harassing peasant cultivators[53], verbal assault[54], and physical assault[55] reported in Kerala's temple records. Unfortunately, in no case are many details given about the how the Nāyar police were involved. The records simply report that the police "arrested" someone (piṭicca koṇṭa) or carried out a certain punishment. As a result, we cannot say much about the organization of the police, how much they patrolled, if at all, or what their precise duties were.

In general, the policing system seems to have been more concerned with the interests of the rulers, in whose service the Nāyar police worked, than with the interests of the temples who provided for their livelihood. Arrests not arising out of a specific complaint by a victim or a third party are not found. Police apparently did not patrol the territory of the saṅkētaṃ. Instead, though appointed by a regional ruler, they acted more like the hired guns of the temple authorities who "did the dirty work" of arresting and punishing perpetrators. These tasks of arrest and punishment are always associated with the Nāyar police and their "lords" in the temple records of Kerala. That police in Malabar performed the same general tasks as those in Travancore is one indication of the systemic nature of police organization in Kerala. The other, as I have mentioned, was the collection of rakṣābhogam or kāvalphalaṃ in every area of Kerala[56]. This

47. Examples include Tṛppuṇittūṟa Kṣetraṃ, 26; Travancore State Manual, 2 [Doc. III], 81-82 [Doc. CXIV], 91-100 [Doc. CXXII]; Peruvanam Kṣetra Granthavari, 143.
48. Vanjeri Grandhavari, 29 [Doc. 54A]; Krishna Ayyar 1938: 272.
49. Vanjeri Grandhavari, 41-2 [Doc. 77A].
50. Talaśśēri Rēkhakaḷ, 325 [Doc. 756].
51. Vanjeri Grandhavari, 30 [56A].
52. Koodali Granthavari, 3 [Doc. 4A].
53. Travancore State Manual, 65 [Doc. LXXXIX].
54. Vanjeri Grandhavari, 32 [Doc. 61A], 23 [43A].
55. Travancore State Manual, 55 [Doc. LXXV].
56. Dharmaśāstra views of taxation for the purpose of supporting a police force are similar to those presented here on the basis of the temple records. For a complete discussion, see Davis 1999: 187-88.

tax was a shared part of the legal culture of Kerala which supported the presence of police, and with them the presence of the local and regional rulers, in the temple communities. In this way, rulers and temples both benefited from the extant police system of the time.

Criminal Law in Dharmaśāstra

Having outlined the evidence pertaining to the criminal law of Kerala in the medieval period, it is now possible to compare the approaches to crime and punishment found there with the approaches of Dharmaśāstra texts[57]. The limited information available in the temple records dictates that comparisons only be made with reference to the extant historical material. The temptation to read Dharmaśāstra into Kerala's historical record is greater here than in the case of land law. Nevertheless, a fruitful and meaningful comparison between these two historical sources is possible in the case of criminal law.

In the preceding sections, I argued that the boundaries of criminal law in Kerala were fluid within a fixed range of options for procedures, punishments, and policing. In general, crimes were identified in a reactive way. People complained about something and then action was taken. Complaints were called anyāyakāryaṃ or āvalāti and appeared frequently in the records of criminal activity[58]. There was no sense of crime against the state, although crimes against powerful people would certainly have brought swifter retribution. The resolution of crime was known as parihāraṃ[59] and involved a judgment made by the temple authorities and political leaders in the area and the administration of punishment by the Nāyars in their service. Throughout Kerala, upper castes had enormous control over all aspects of criminal law.

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57. The comparison which follows does not examine the different perspectives on criminal law found within Dharmaśāstra itself. These debates are not germane for the purposes of the comparison of Dharmaśāstra and Kerala temple records, but one should not, as a result, think that all Dharmaśāstras speak univocally about criminal law.
58. Instances of anyāyaṃ or āvalāti used in this way: Travancore State Manual, 4 [Doc. V], 13 [Doc. XV], 20-22 [Doc. XXIII], 102-3 [Doc. CXXV]; Vanjeri Grandhavari, 23 [Doc. 43A]; Talaśśēri Rēkhakaḷ (more than 50 examples), see Index, 683.
59. Examples of parihāraṃ as the "resolution" of a crime include: Travancore State Manual, 23 [Doc. XXIV], 28-29 [Doc. XXXII], 73 [Doc. CI]; Vanjeri Grandhavari, 22 [Doc. 41A]; 23 [Doc. 43A]; 29 [Doc. 54A]; 30 [Doc. 56A].

Procedure

In terms of criminal procedure, Dharmaśāstra texts and Kerala temple records are similar only in the general approach they take to resolving crime. As expected under my view of Dharmaśāstra, the evidence of criminal law in medieval Kerala does not support the notion that Dharmaśāstra was ever applied as law. Nevertheless, a connection between Dharmaśāstra and the Hindu criminal law of medieval Kerala does exist.

First, most Dharmaśāstra texts prescribe a reactive approach to criminal law. It is a standard principle of Dharmaśāstra that a ruler should never initiate lawsuits[60]. Although exceptional considerations of public law within the Dharmaśāstra have been described (Derrett 1978), by and large Dharmaśāstra is a tradition of private law in the sense that the ruler or state suo motu has but little authority to take judicial cognizance of a dispute or crime. This does not mean that Dharmaśāstra envisions the private resolution of disputes. Indeed, the ruler is at the very foundation of the authority of law and is primarily responsible for seeing that the law is followed. Thus, it is possible to distort the nature of Dharmaśāstra with reference to a distinction of public and private law. For my present purposes, it suffices to note that Dharmaśāstra, with certain excpetions, prescribes a reactive approach to crime.

Second, Dharmaśāstra, like criminal procedure in medieval Kerala, utilizes a circumstantial, as opposed to "strictly legal," approach to criminal law[61]. The attention to facts in Hindu law is part and parcel of a strong legal realism that pervades both the Dharmaśāstra and the evidence of criminal procedures in medieval Kerala. Texts ranging in

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60. See MDh 8.43, cited above, and KS 27 among many examples. See also the discussion in Kane, HDh 3.251, 263-65.

61. In contrasting circumstance and law here, I intend only to highlight the difference between criminal procedure in Kerala and in most Western legal systems, which only allow circumstantial evidence to be used sparingly. That circumstances of various sorts were not only permitted but crucial to the maryādā of late medieval Kerala is clear from the foregoing examples. The internal conception of circumstantial evidence, therefore, is that it is part of maryādā or law, but a comparative perspective must contrast this "legalized" use of circumstance in criminal procedure with legal systems which do not permit such evidence.

time from the GDh to the Daṇḍaviveka discuss the "extralegal" factors which must be considered in any criminal case[62]. MDh 8.126 states, "[The king] should inflict punishment on those deserving punishment only after he has fully ascertained the motive, as also the time and place, accurately, and considered carefully the ability of the criminal and the severity of the crime." The commentator Medhātithi calls this the "paradigmatic verse on crime and punishment." The centrality of facts and circumstances as the primary basis for judicial decision is repeatedly emphasized in Dharmaśāstra texts. YS 2.19 states, "Ignoring legal maneuvers, the king should conduct legal procedures according to the facts. Even the facts, if not established, are defeated through the litigation process"[63]. Relevant facts and circumstances would include the castes of the offender and victim, physical or monetary circumstances, age, motivation, time, place, etc.

Third, Dharmaśāstra gives the authority to administer punishments, known technically as daṇḍa, to the ruler (YS 1.359, NS Mā1.2)[64]. Brahmins, on the other hand, were to act as judges (sabhyas) in the adjudication process (MDh 8.9, YS 2.2-4, NS Mā3.3). This division of judicial responsibility corresponds well with the split found in Kerala temple records between members of the temple saṅkētaṃ, who held the power to determine guilt and assess fines or punishments, and the ruler's officials (Kōvil Nambi, kāvalkkāran, adhikāri), who were responsible for arrests and punishments. Beyond these three broad similarities in the general approach taken to criminal law, the elaborate provisions for courts and formal pleading and procedure found in Dharmaśāstra[65] are nowhere to be found in Kerala's criminal law.

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62. See the discussion with citations at Kane, HDh 3.391-3. See also GDh 12.51.
63. YS 2.19: chalaṃ nirasya bhūtena vyavahārān nayen nṛpaḥ | bhūtam apy anupanyastaṃ hṭyate vyavahārataḥ
64. Under certain circumstances, associations governed by their own conventions are also permitted to punish members without requiring the ruler's permission or assistance. See Davis 2005.
65. On the formal procedures of courts in Dharmaśāstra, see Kane, HDh 3.242-410 and Rocher 1956. Very little evidence of the practical use of formal procedures is attested in the historical materials from India. For one example of jayapattra, or document of legal victory, that describes formal procedures along the lines of Dharmaśāstra, see Lariviere 1984.

Punishment

Descriptions of punishments in Dharmaśāstra bear strong resemblance to punishments recorded in Kerala temple documents. Dharmaśāstra texts prescribe the same four punishments to deal with crime as were used in late medieval Kerala, namely corporal punishment, fines, banishment, and public censure[66]. Another similarity is the differential treatment accorded to upper castes in the determination of punishment. Dharmaśāstra texts set forth different punishments for different castes for the same crime (Sen 1984 [1891-2: 345-349). In medieval Kerala, caste was similarly a prominent factor in the determination of the appropriate punishment. The role of punishment in the Brahminical project of social control is clear in this differential treatment of upper and lower castes.

Overall, punishments in both Dharmaśāstra and late medieval Kerala were part of the Brahminical vision of the proper functioning of the world along caste lines. In a quote that could speak for both traditions, GDhS 11.27-32 eloquently states the purpose of punishment:

> "Brahmins united with Kṣatriyas", it is stated, "uphold the gods, ancestors, and human beings." The word 'punishment' (daṇḍa), they say, is derived from 'restraint' (damana); therefore, he should restrain those who are unrestrained. People belonging to the different castes and orders of life who are steadfastly devoted to the Laws proper to them enjoy the fruits of their deeds after death; and then, with the residue of those fruits, take birth again in a prosperous region, a high caste, and a distinguished family, with a handsome body, long life, deep vedic learning, and virtuous conduct, and with great wealth, happiness, and intelligence. Those who act to the contrary disperse in every direction and perish. The teacher's advice and the king's punishment protect them; therefore, one should never belittle the king or the teacher.

Punishment is never merely a question of caste, however, in the Dharmaśāstra[67]. Other kinds of status and the facts of the case itself were

66. See 1984 [1891-92]: 342; Kane, HDh 3.391-2; MDh 8.129; YS 1.367; VyMā 340-46.
67. For a thorough, if at times idiosyncratic, study of punishment in early India, see Day 1982.

equally important, if not more important, than caste. Kane writes, "the dharmaśāstras did not hold that the same punishment must be meted out for the same offence irrespective of the antecedents, characteristics or physical and mental condition of the offender. They always took extenuating circumstances into account" (HDh 3.392). Similarly, Lariviere draws parallels with dispute resolution in modern India: "We know from anthropological literature that dispute settlement in India is never done by weighing a set of facts in abstraction (except in [modern] government courts), rather the total history and relationship of the individuals involved is taken into account either overtly or implicitly" (1997: 100-101). The notion of a "total history" as key to the proper adjudication of a case epitomizes the realism of Hindu law as represented in the Dharmaśāstra. The recounting of facts first and foremost in the temple records of Kerala, at the expense of any description of judicial process, draws upon a similar attitude toward the "total history" of a case. I am less confident than either Kane or Lariviere, however, that such an approach necessarily means a total disregard of precedent in Hindu law contexts, but I cannot challenge their claims on the basis of the Kerala materials studied here. The general point remains that a similar set of motivations and range of punishments is found in the two sources.

Policing

Dharmaśāstra literature does not contain elaborate discussions of the proper policing system, but what it does say accords with what we know about police from the saṅkētaṃ documents in Kerala. First, the notion that taxes, like the rakṣābhogaṃ of medieval Kerala, should be collected specifically to support a standing police force appears in both the Arthaśāstra (1.13.6-7) and in Aparāditya's commentary (DhK 1.586) on the YS[68]. Second, several Dharmaśāstra texts specify that the police should be "agents" or "officials" of the king (YMit 2.266, VyN 504, VyMā 27[95], 266 [988]). Similarly, in Kerala, Nāyars who were part of the military force of a local or regional ruler were appointed to serve as police in various temple communities. These two connections between Dharmaśāstra and temple documents from late medieval Kerala regarding police organization suggest again that a relationship existed between the two traditions represented by these different wit-

68. See also a more complete discussion in Davis 1999: 187-88.

nesses to legal history. On this point, I have written earlier, "A single instance of compatibility between dharma texts and local records would be insufficient to establish an enduring relationship between the two. It is in the consistent and frequent occurrence of similar legal practices in these two historical documents that the relationship between Dharmaśāstra and 'real law' becomes clear" (1999: 162).

In the foregoing chapter, I have described the points of convergence between Dharmaśāstra and a range of records from temples in medieval Kerala with respect to criminal law. The patterned parallelism at both specific and general levels of mutual influence results from the attempts by Brahmin and Brahminized castes such as Sāmantas and Nāyars to impose their vision of society on medieval Kerala society. The parallels of criminal law provide us with a more nuanced perspective on crime and punishment in medieval Kerala. In the course of this chapter, I have tried to provide evidentiary justification for an elaboration of the standard one or two paragraph descriptions of criminal law in medieval Kerala.

In summary, I characterize the criminal law of late medieval Kerala as reactive, circumstantial, and political. It was reactive in the sense that most judicial procedures against criminals had to be initiated by a victim or a third party who requested the temple authorities, here including the temple council, nearby rulers, and Nāyar police, to resolve a crime committed. Criminal law was also circumstantial because many factors that we might in a Western view be called "extralegal," such as caste, special facts of the case, motivation, the relationship of the parties, etc. were integral to the deliberations and determinations of guilt and punishment. Finally, politics entered the criminal law of medieval Kerala in two different ways. First, rulers maintained their alliance with and presence in temple communities through the appointment of police to protect the temple's territory. Second, a thoroughly Brahminized worldview which affected religion, politics, economics, and cultural life, as well as law, guided the decisions and choices made by the powerful upper castes who controlled many aspects of life in the rural temples and their vast agricultural lands. The next chapter on administrative law explores in greater detail the relationships between these powerful castes and delineates the roles and responsibilities of each in both the local and supralocal life of late medieval Kerala.

CHAPTER FOUR

Administrative Law: the Division of Juridical Labor

Records of medieval Kerala refer to both land law and criminal law as maryādā, the boundaries of legal practice. The process or structure for administering maryādā, however, is not directly referred to as a part of it. Nevertheless, the strategies and relationships that governed how maryādā was implemented in Kerala society were similar throughout Kerala and constituted what I will call a system of administrative law. The fact that no clear term emerges from the records to describe this system is irrelevant so long as the systemic properties of administrative law can be established.

Administrative law in medieval Kerala, excepting the urban ports, was based upon the relationship between local or regional rulers and Brahminical temples. The symbiotic relationship between rulers and temples had many facets, but the center of the relationship was the transactional network surrounding the temple and the many resources that flowed in and out of temple properties. The players in this relationship were: 1) the rulers themselves, 2) their officials, 3) their military forces, and 4) the members of the temple councils known as sabhā, yogaṃ, ūrāḷār, etc. The purpose of this chapter is to describe how these players were involved in the preservation and extension of maryādā as the law of the areas surrounding the temples, called either saṅkētaṃ or svarūpaṃ[1]. Stated bluntly, the agents of law in late medieval Kerala were rulers and temples. These two groups controlled the legal process in a large part of Kerala. Administrative law consisted of the standards for how to implement law through these two agents.

The relationship of temples and rulers, or Brahmins and kings, is in Heesterman's words "the pivot of the Indian tradition" (1985: 15). In the classic formulations of Heesterman, Dumont (1980: 287-313), Hocart

1. Just to be clear, sabhā, yogaṃ, ūrāḷār, etc. refer to the councils of Brahminical temples, while saṅkētaṃ and svarūpaṃ refer to the territory controlled by these councils, i.e. the landed property belonging to the temple.

(1970 [1936]) and others, the material resources of the king and the spiritual resources of the Brahmin existed in a state of irreconcilable tension and mutual dependence. More specifically, the spiritual resources of the Brahmin are said to be purer and superior in any case to the political and material entailments of the ruler. In what follows, I will argue that a mutual dependence between ruler and Brahmin did exist in medieval Kerala but that this classic formulation is challenged by the evidence. The classic idea that Brahmins balked at material entanglements in favor of social and ritual purity is simply not true, at least in Kerala.

In fact, there is a near reversal of the classic formulation of Brahmin and king in the case of Kerala because "the Brahmins" controlled considerable material resources and "the king" by his presence often graced rituals, including rituals of public censure, which occurred at the temple. Furthermore, the relationship of rulers and Brahmins was triangulated by the close relationship of both to Nāyars. To understand the ideal-typical figures of medieval Kerala, one must include the Nāyars because of the kinship relations they had with other communities and their political importance. Both Nāyar and "royal" castes were matrilineal and seem often to have intermarried, owing to the sometimes fluid distinction between the two groups (Trautmann 1981: 421). Among Namputiri Brahmins, only the eldest son married another Brahmin and stood to inherit in the patrilineal succession that most Brahmins followed. Younger sons from the Brahmin community had saṃbandhaṃ marriages with Nāyar women. As Trautmann has shown, the connection of kinship and politics in Kerala was quite close. Of the basic kinship relations described here, Trautmann writes, "the political system has made of kinship its servant and is the probable cause, in ways we cannot guess, of its deviance from the Dravidian pattern" (1981: 425). Not only does this connection again show the distinctiveness of Kerala's history relative to other parts of South India, especially Tamilnadu, it also reveals a more complicated scenario of caste, kinship, and politics in Kerala than is envisioned in the simplistic talk of Brahmins and kings alone.

In another reversal, the center of the judicial process was not the ruler's court, as Dharmaśāstra literature tells us it should be, but rather the temple itself. Regional rulers had to make a place for themselves in the legal affairs of the temple in order to have a connection to its power

structure. The resulting division of juridical labor conformed to the classic pattern set forth in Dharmaśāstra, but the context surrounding this division of responsibility for administering law was different from that imagined in classical Sanskrit literature. In this way, the evidence of administrative law in medieval Kerala indicts the classic understanding of the problem or "conundrum" concerning the nature of Brahmin-Kṣatriya relations in Indian history. At the same time, it preserves the classic division of judicial responsibility described in Dharmaśāstra and a more complex scene of mutual dependence between the three elite communities of medieval Kerala's temple communities.

Rājas, Rulers, Rights, and Responsabilities

The role of the ruler in Indian political and legal history is one of the dominant themes in Indian historiography, especially in older works which viewed all medieval "states" as strong, centralized monarchies. Similarly, in Sanskrit literature itself, rājadharma is frequently discussed in both classical and medieval texts. Rājadharma covers a large number of topics, not all of which directly concern the role of kings in administrative law[2]. For that reason, I will only focus on the three aspects of the role of rulers in the administration of law which figured prominently in medieval Kerala: 1) punishment, or daṇḍa, 2) police, and 3) strategies of integration in and beyond temples. The examples pertaining to these aspects of administrative law reveal a more subtle picture of how rulers created roles for themselves in temple communities. I frame the process in this way because the ideological center appears to be the temples, while the rulers sought to ally themselves with those institutions.

Before addressing the interventions of various rulers in the law of medieval Kerala, I first provide a list of the major titles associated with these various "royal" administrators of law in order to make the relationships between them clearer:

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2. Two very different studies exclusively on rājadharma are Aiyangar 1941 which focuses on Dharmaśāstra and Arthaśāstra literature and Losch 1959, which examines Purāṇa literature on rājadharma to glean very different emphases concerning the proper interests and strategies of kings.

SUPRAREGIONAL RULERS – perumāḷ (Travancore), sāmutiri (Malabar), rāja (Kolattunāṭu, Veṭṭattunāṭū, Vaḷḷuvanāṭu, Cochi, etc.)
REGIONAL RULERS – nāṭuvaḷi, (mutta) tiruvaṭi, koyma[3]
LOCAL RULERS – deśavaḷi, deśakoyma
OFFICIALS – kōvil nambi, adhikāri, periya nambi
MILITARY FORCES – kāvalkkār, kāryakkār, Nāyar

The rankings of these various titles are neither fixed nor transparent. At times, some "regional" rulers had demonstrably more influence and power than certain "supraregional" rulers. Likewise, "officials" occasionally have more prominence than "local" rulers. The labels, therefore, are intended merely as a useful preliminary categorization. The reality was always less stable and less clear.

The previous chapter discussed punishments as part of the criminal law of medieval Kerala. I will turn now to the role of these various political players in the process of punishment, delineating the rights and responsibilities of the local, regional, and supraregional rulers, their officials, and their Nāyar military forces[4] in the execution of punishments. Punishments in medieval Kerala were executed either by an official of the regional ruler, usually called the Kōvil Nambi or Periya Nambi, or by a less commonly by local ruler, usually called (deśa) koyma. The personal names of persons holding these titles are never mentioned. The designation kōvil (the older form of kōyil), however, almost always refers to a member of the ruler's immediate or extended family[5]. These officials lived in the saṅkētaṃ of a temple and were the principal agents of the regional ruler in the temple's activities. As for koyma, many of the local rulers were probably Nāyars who had managed to acquire sufficient land and military power to act as rulers.

Several examples of Nambis acting as the executors of punishment are found in the temple records of late medieval Kerala. From south-

3. The word koyma is used generally of rulers and be applied to both deśavaḷis and nāṭuvaḷis.
4. The role of Nāyars in the actual punishment phase of a criminal procedure is limited to assistance they provided to the nambis or koymas as the examples which follow will show.
5. The strong association of the term kōvil/kōyil with temples in Tamilnadu is less certain in Kerala. The highest ruler, or kō, is the god of temple, whence the association of kōyil, "the place of the king" with a temple. Of course, the terms can refer to temples in Kerala as well, but most often the association is with a human ruler.

ern Kerala, a case of verbal and physical assault ("saying many unwanted things, beating, kicking and pounding" [anēkaṃ veṇṭāttatu parakayil... aṭiccu ceviṭu poṭiccu]) from 1604 A.D. in Karuṅṅāṭu[6] was brought to the attention of the Nambi[7]. The Nambi, along with the Nāyar police (tirumenikāvalvaḻiyil nāyakanmār), arrested the perpetrator for the crime (anniyāyaṃ). It appears that some sort of trial was held at the temple in Neyitacceri, but the record is unclear. In any case, after informing the local ruler of Karuṅṅāṭu, the perpetrator was beaten and fined by the Nambi.

Another example, from the Tṛkkaṇḍiyūr temple in north central Kerala, records a case of theft and is dated 1609 A.D.[8] The theft was reported by Nampiccan Vīṭa Cennan which prompted the arrest of Putukuḷaṅṅara Iṭṭi Uṇṇi by the Nāyar police. Iṭṭi Uṇṇi was interrogated and confessed to the crime. Confession in this case did not ameliorate the sentence, however. With the assent of the members of the yogaṃ council, the Kōvil Nambi executed Iṭṭi Uṇṇi for the crime (konnu pariyariccu).

In addition to these two examples of the Kōvil Nambis' responsibility for punishments, I will recount one case in which a deśakoyma similarly acted as the executor of punishment. In 1693 A.D., the secretary (potuvāl)[9] of the Kūṭāḷi temple in northern Kerala embezzled 700 paṇaṃ in interest from the temple by doctoring the accounts[10]. When the theft was discovered, the potuvāl was arrested (piṭiccu) by the local ruler (koyimma). The potuvāl claimed that the interest rightfully belonged to the Naṭuvanāṭu svarūpaṃ, not to Kūṭāḷi. The Kūṭāḷi svarūpaṃ council did not accept this assertion and had the koyma execute the secretary and seize his property. The record goes on to say that a feud subsequently broke out between the Kūṭāḷi and Naṭuvanāṭu svarūpaṃs over the case and the money.

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6. Karuṅṅāṭu is part of the area under the control of the Tṛppapūr svarūpaṃ associated with the royal lineage of the Travancore kings. The Padmanābhasvāmi temple in Trivandrum was the center of this svarūpaṃ.
7. Travancore State Manual, 73-74 [Doc. CI].
8. Vanjeri Grandhavari, 30 [Doc. 56A]. See also Vanjeri Grandhavari, 22 [Doc. 41A], 29 [Doc. 54A] for other examples from this temple.
9. Potuvāl is a common name for the account keeper in a temple.
10. Koodali Granthavari, 3 [Doc. 4]. 700 paṇam is a large sum by the standards of medieval Kerala.

Through these three examples, we can see the important function played by the nambis and koymas in the punishment of criminals in medieval Kerala. Throughout Kerala, either a nambi, a koyma, or both were responsible for carrying out punishments for crimes in the temple's territory. We have little or no information from the records about who these people were, what exactly their status vis-a-vis the temple was, or how they maintained their power and authority. We do know that their responsibility also extended to punishment by public censure in the form of the vellikuṭaṃ ritual, at which not only "royal" officials but also the rulers themselves were almost always present[11]. In many cases, the nambi or koyma was also present at and may have been part of the process of adjudication, though this aspect of the criminal law is the most elliptic part of temple accounts of criminal procedure.

In many records which report crimes, the punishment itself is called by the Sanskrit term daṇḍa[12]. The use of the same word found in Dharmaśāstra literature to refer to punishment is of course a simple borrowing from Sanskrit into Malayalam, but it also suggests that the origins of the punishment terminology and standards of medieval Kerala lie in broader Indian traditions. Furthermore, the fact that the agent of punishment is always a "royal" figure conforms to the image of ideal kingship presented in various Dharma- and Arthaśāstra texts. These are not the ideal-typical Kṣatriya kings of Heesterman and Dumont. Rather, this is a variegated group of individuals, some of whom belong to the lineage of a politically powerful family and some of whom appear unconnected to any stable source of political power beyond their own ambition, charisma, and success[13]. Carrying out punishment was one means of cementing the relationship that an official or local ruler had with a Brahmin temple. It must have been especially helpful in situations where the local ruler was not part of a political powerful lineage.

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11. Examples include Vanjeri Grandhavari, 20 [Doc. 38A], 44 [Doc. 82A], 45 [Doc. 83A]; Travancore State Manual, 22 [Doc. XXIII], 27 [Doc. XXIX], 28 [Doc. XXXI]; 29 [Doc. XXXII], 31 [Doc. XXXIV], 65 [Doc. LXXXIX].
12. The phrase in most cases is daṇḍapeṭatti, literally "caused a punishment." See Travancore State Manual, 28 [Doc. XXXI], 30 [Doc. XXXIV]; 65 [Doc. LXXXIX].
13. Heitzman's study (1997) of "intermediate lords" in Tamilnadu provides an instructive comparative model.

Daṇḍa, the power to punish, is one of the key elements in every classical description of kingship in Sanskrit literature. Ideally a king also conducts court procedures himself, but he should pass the burden on to Brahmin judges if the cases take too much of his time[14]. Daṇḍa, on the other hand, is the exclusive adhikāra, right and responsibility, of the king[15]. This is the ideal division of labor in legal procedures according to Dharmaśāstra texts – Brahmins (sometimes along with rulers) investigate and adjudicate conflicts, while the king or his agents punish the criminals. Unlike the Dharmaśāstra prescriptions on punishment, however, fines exacted from criminals in Kerala went for the most part into the coffers (bhaṇḍārattil) of the temple, not the ruler. To a large extent, this ideal division of juridical labor was true of law in medieval Kerala as well, although the political context diverges from the ideal model described in Dharmaśāstra.

Another relevant aspect of ideal kingship in Sanskrit literature is the protection (rakṣaṇa) of the people. This is the foremost duty of the king to his subjects and involves more than just military strength. The king should also appoint officials and police to carry out his policies and guard against criminal or treasonous activities[16]. From a legal perspective, this protective role of the ruler begins and ends with the officials and police he appoints to protect the localities in his realm.

In Kerala, the protective function of kingship was performed by the Nāyar police who were appointed by regional rulers to work in temple communities. As the examples from the previous chapter showed, however, the preventive protection afforded by these police was limited because of the reactive approach to crime in Kerala at the time. Police did not seek out criminal activity, but they did handle the arrest and confinement of criminals, and they sometimes assisted the nambi or koyma in the punishment phase of a criminal procedure. The legal protection offered by rulers thus meant primarily the implementation of legal redress in cases of dispute, not the prevention of crime itself, though deterrence does seem to a factor here as well.

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14. The Kerala text VyMā 5-10 confirms this point.
15. See Kane, HDh 3.21-22. Daṇḍa is more than just a legal prerogative. It is also a tool (upāya) of statecraft (see YS 1.346).
16. Although it is outside the scope of this study, the four upāyas of state-craft found in the Arthaśāstra are a good summary of the strategies used by kings in Kerala for their political ends.

I turn finally to the last major function of rulers and their agents in the administration of law, namely the integration of law and polity in the areas under their sway. Temple authorities and others who lived under the control of a saṅkētaṃ had limited links to the non-local, non-temple world. Hence, the law of a temple community dealt with local affairs alone. The center of all legal procedures reported in Kerala temple records is the temple. By contrast, the world of rulers, especially regional and supraregional rulers, extended both beyond and between temples. It was incumbent upon rulers to facilitate the proper legal processes not only of individual temples but also the relationships between and among them. The materials used in this study do not permit a detailed account of how rulers dealt with different temples in their territory of control. It is hard to imagine, however, that the kinds of intervention by rulers in the affairs of the temple communities under study were unique and different from their interventions in other temples without a preserved archive. As a result, it seems fair to speculate reservedly about various kinds of rulers with respect to their integrative strategies beyond and between temples.

In the world beyond the temple-centered communities, other communities that were not temple-centered such as those in the urban ports and certain Christian and Muslim areas often bordered or fell within a given ruler's realm. If so, the ruler also had to integrate these areas into his political policies and strategies. The region of Kerala is famous for its long history of religious coexistence, with sizable populations of Hindus, Christians, and Muslims (not to mention smaller groups of Jains, Buddhists, and Jews at different times) living in contiguous and sometimes overlapping territories. In this context, an argument premised on the relative cultural isolation of Hindu temple-centered communities may seem doubtful. In making such an argument, I rely on the work of Narayanan (1987: xv), Wink (1989: 73), and Jeffrey (1994: 18, 30-33), all of whom agree that coexistence does not necessarily imply cooperation, coordination, or even significant interaction. My own reading of the temple records and experience even of contemporary Kerala confirms the impression of these scholars. The Hindu temples in this isolated environment did not have to deal with these urban trading communities because they were economically self-sufficient. Hindu law in this context pertains primarily,

if not exclusively, to these temple-centered communities. The Hindu supraregional and regional rulers who were actors in the temple affairs, however, typically had broader horizons and ambitions that necessitated integrative strategies including Muslims and Christians, as well as Hindus who were not part of temple community.

Rulers in medieval Kerala were not the "supreme individuals in society" (Olivelle 1992: 32) portrayed in classic models of Hindu kingship because few of them directly controlled a source of wealth sufficient to sustain their military and political activities. They were dependent in certain ways on the constituencies in their realm for economic subsistence, political recognition, ritual integration, and legal authority. The power of rulers emanated from the military and political alliances made with temple communities, on the one hand, and trading communities, on the other. Unlike temples, rulers gained a political and economic base for themselves by dealing with the few itinerant traders from other parts of India or, more frequently, with settled trading communities in Kerala's urban ports.

How did these integrative strategies of rulers affect the administration of law in temple contexts? Primarily it gave the rulers a measure of independence from the temples. A ruler who had considerable networks established with several different temples and trading communities was not beholden to any individual temple. From this network of interdependence, a ruler could acquire the ability to be actively involved in the temple's affairs, especially legal affairs, without being controlled by the temple authorities. Accordingly, local rulers (deśavaḻi) had less independence from temples than regional rulers (nāṭuvaḻi) and they were thus more dependent upon and subservient to the needs and decisions of the temple authorities.

We see this difference first of all in the deferential references to regional rulers, i.e. with more titles and "courtly" jargon, as compared to the matter-of-fact references to local rulers. What this distinction of rulers meant for administrative law is a greater presence and influence of the nāṭuvaḻi in the legal activities and decisions of temple. In other words, the regional ruler had a greater say than the local ruler in how law in the temple would be administered. As we have seen in previous chapters, temples relied on these regional rulers for help in their land

transactions, arrests, and punishments[17]. Often the ruler did not himself provide the assistance, but one of his agents like the Kōvil Nambi or the Nāyar police did. Local rulers, by comparison, served a more circumscribed role which was controlled by the temple authorities.

The relative independence of nāṭuvaḷis enabled them to maximize the benefits of alliances with several temples, especially the agricultural produce from temple lands, without becoming dependent on them in the way local rulers, who often dealt with only one temple, did. Moreover, nāṭuvaḷis maintained some control over the legal affairs of the temples in their realm by using their status to place officials and police in the saṅkētaṃ. In return, the nātuvaḷi gained not only portions of the taxes such as rakṣābhogam, talaviri, and kaṭamai but also stable presence in the power structure and legal life of the temple.

In general, the supraregional and regional rulers struggled to build alliances with various temples as well as with trading communities in order maintain and extend their political power and social status, not to mention the economic benefits of such alliances. In the case of temples, regional rulers established their presence through a monopoly on the power to punish criminals and by appointing Nāyar police to serve in the saṅkētaṃ. The temple possessed economic, religious, and social power in which rulers wanted to share. In medieval Kerala, "royal" castes offered services such as police, punishment, sanctions for certain kinds of land transactions, and a regal presence for temple rituals in exchange for a share and an interest in the economic and social resources of Brahmin communities. This reverses the classic patterns of Brahmin-Kṣatriya relations presented by Heesterman and Dumont on the basis of classic Sanskrit texts. Despite this reversal at a political level, the responsibility for the administration of law in Kerala was divided and distributed along lines that seem to come straight out of Dharmaśāstra literature. As we turn to look at administrative law from the perspective of the temple councils, we must keep this political state of affairs in mind.

17. See also Narayanan, "Introduction," Vaṅjeri Grandhavari, xvii.

Temple Councils: Integrating the Universal Locality

The political and economic networks surrounding temples in medieval South India have long attracted the interest of scholars and colonial administrators[18]. Temple transactional systems and the redistribution of resources through the intermediacy of temples represented a microcosm for most people living in the temple's territory. This locality, the saṅkētaṃ or svarūpaṃ, was in many ways the whole world for peasants, slaves, and even the leaders of temples. Although studies of mobility in the ancient and medieval world have shown that far more movement, trade, and other interaction occurred than was previously thought (Ludden 2003), the temple-centered communities of Kerala do not preserve evidence of significant mobility or outward-looking activity[19]. The responsibility for integrating and maintaining this inward-looking universal locality fell on the members of temple councils, who together made decisions about the lands, monies, and political alliances associated with the temple.

Councils oversaw the administration of law in the temples of late medieval Kerala. These councils went by several different names in this period including: yogaṃ, sabhā, sabhāyogam, kaḷakaṃ, devatā ūrāḷār, vāriyaṃ, and svarūpaṃ[20]. The variety of names seems to make little difference in terms of the legal activities associated with these councils. Whatever the name, temple councils were the highest authority of law in the saṅkētaṃ. Their principal duty was to adjudicate disputes and resolve crimes which occurred in the vicinity of the temple. Thus, adjudication was the main function served by temple councils in the administrative law of medieval Kerala.

Temple councils were constituted by several members, usually called janaṃ, and led by a single member called the samudāyaṃ or muppŭ. Each of the members represented a household[21] within the

18. See Heitzman 1997: 121-42; Stein 1960; Spencer 1968.
19. Such mobility does seem more common in contemporary Kerala as the progressive movements among Kerala Iḻava community suggests (see Osella and Osella 2000).
20. Svarūpaṃ was a name for the both the territory and the council of that territory. The best examples from the records examined here are the Kalliāṭ svarūpaṃ of the Kūṭāḷi temple and the Tṛppapūr svarūpaṃ of the Padmanābhasvāmi temple.
21. The families or households were called illaṃ or mana in the case of Brahmins and taṟavāṭŭ in the case of Nāyars.

temple saṅkētaṃ or svarūpaṃ. As a group, the temple council represented the deity. The primary duties of the temple council were religious in nature and consisted of the organization and performance of pūjās, festivals (utsavaṃ), and other rituals which occurred at the temple. In addition to these religious duties, however, they also sold, mortgaged, and granted other tenures of temple lands on behalf of the deity. Temple land in Kerala was simultaneously devasvaṃ and brahmasvaṃ.

The details of the judicial role that temple councils played in the criminal law of Kerala are not clear in the documents I have examined. For the most part, the records simply say that the council, sometimes in conjunction with the nambi, koyma, or a group of Nāyars, "considered" the case or "deliberated" and caused the nambi or koyma to carry out a specified punishment. In other words, no details are given as to how the temple councils arrived at their decisions. How did they determine the law in a given case? Why did they fix one punishment over another? Unfortunately, the answers to these questions will remain unanswerable, unless as yet unpublished records come to light which contain such details. I suspect, however, that we will never find such records. The decision-making process is presented as a kind of formality in the published temple records, and it probably was a formality. The underlying presumption of guilt in most cases seems to have obviated the need for an elaborate investigation of the facts of the case, making judgments into determinations of punishment rather than determinations of guilt.

The cursory manner in which the deliberative process of criminal law is presented in the temple records contrasts with the elaborate provisions found in Dharmaśāstra texts for forms of legal action, modes of proof, witnesses, and other evidence that could be used in a trial. None of this complexity is seen in the temple records. The principle of Occam's razor would suggest that elaborate court procedures were not part of the administrative law of medieval Kerala because they were simply not necessary in the eyes of those who controlled the adjudication process, namely the temple councils. Moreover, as we have seen, the judgment of the council was a summary and appeal does not appear in the records.

In some situations, however, temple councils had occasion to resort to a public fasting ritual in protest against a policy or action of a ruler. This act is sometimes an appeal of judicial action taken by a ruler and sometimes a means to force the ruler to act in a particular way. The fast is known as paṭṭini in Kerala and dharnā elsewhere[22]. When employed by a temple council, paṭṭini affected the administration of law in particular cases by forcing the ruler to change his position on the case. Paṭṭini fasts were used in protest against both criminal and religious offenses against the saṅkētaṃ's interests.

Two cases of paṭṭini from the Vanjeri temple documents resulted in very different outcomes. In the first case from 1603 A.D., a man named Kaṇṇiyakka Kumarappan was arrested by the Kōvil Nambi and his Nāyars on a main road near the Tṛkkaṇḍiyūr temple for unspecified crimes[23]. They took him to the ruler's palace rather than to the temple for punishment, which prompted the janaṃ members of the temple council to start a paṭṭini fast on the grounds that the crime was committed in, and should therefore be resolved in, the temple saṅkētaṃ. After eight days of fasting, the paṭṭini worked and Kumarappan was taken back to the saṅkētaṃ. The yogaṃ council then decided that the resolution (pariyāraṃ) of the case would be a fine and the destruction of Kumarappan's house. Not knowing the crime in this case, it is difficult to understanding this seemingly strange case both in terms of its punishment and in terms of motivations behind a major fast for what appears to be a question of jurisdiction.

The second case of paṭṭini from the Vanjeri records and dated 1635 A.D. concerns a Muslim maritime trader[24] and his children who continually defiled the tank where the Tṛkkaṇḍiyūr Brahmins bathed[25]. After the Brahmins performed an initial punyāhaṃ purification ritual at the western tank in the area, the trader's sons bathed in it them-

22. On dharnā, see Derrett 1968: 215 and Chakrabarti 1979.
23. Vanjeri Grandhavari, 23 [Doc. 43A].
24. This is the only reference I have come across to Muslims in temple documents from the medieval period. Of course, there are a host of unstudied records in which Muslims may figure, but almost total absence of references to Muslims is indicative of the separation of the communities.
25. Vanjeri Grandhavari, 44 [Doc. 82A]. For a complete description of this record and its likely historical context, see Narayanan 1987: xxx-xxxii.

selves, perhaps as a protest for the Brahmins' attempt to take control of what may have been a tank open to a larger public. Confronting the trader, representatives of the Brahmins asked him to restrain himself and his children. He refused and added that he would continue to bathe in the tank. The Brahmins performed a second punyāhaṃ purification of the tank and again the Muslim trader and his sons bathed in it. The Brahmins conferred and decided to complain to the Veṭṭam rāja and eventually started a paṭṭini fast to emphasize their complaint. In the end, however, the paṭṭini failed as the ruler did not intervene and the Muslim trader continued to bathe in the tank, even going so far as to hire two Tamil Brahmins to come and hurl verbal abuse at the members of the temple council. This unusual record shows the limits of the temple council's power. All the relevant facts are not given in the record, but it appears that in certain cases even otherwise powerful temples were incapable of asserting their will. We may follow Narayanan in suspecting some collusion (perhaps a bribe) between the Muslim trader and the ruler in this case, but the fact that the ruler chooses not to intervene demonstrates the dependence the temple had on the ruler for protecting its interests and carrying out its wishes.

Other cases of paṭṭini are reported from various parts of Kerala including the Tṛppuṇittūṟa temple, the Peruvanaṃ temple, and the Iraññālakuṭa temple[26]. The strategy in each case is the same. The temple authorities allege that an injustice or insult has been committed against the saṅkētaṃ, especially by one of the rulers associated with the temple. The council then decides to begin a fast called paṭṭini to force the ruler to take action to rectify the offense. In most cases, paṭṭini was an effective manipulation of the how the law was being administering in a given case. Through this fasting ritual, temple councils made a powerful and efficacious statement of protest which usually resulted in the case going their way.

From the temples' perspective, therefore, there were two major roles for the temple council in the administration of law. First, they regularly performed the duty of adjudication in cases of crime and religious offense. Second, they occasionally performed a paṭṭini fast to

26. Tṛppuṇittūṟa Kṣetraṃ, 22, 24, 65, 68, 69; Peruvanam Kṣetra Granthavari, 110, 117; see also Pisharoti 1933: 47.

change the administrative course of a particular case to accord with their interpretation of its proper resolution. Together, temple councils, rulers, and their appointees established a complex relationship that had political, economic, religious, and social aspects. This relationship was the core of administrative law in the temple communities of medieval Kerala. The standards for determining and administering the maryādā in a given case were based upon the roles assumed by temple councils and rulers in their multifaceted alliances.

CHAPTER FIVE

"Customary Law" and the Historiography of Dharmaśāstra

Extrapolating from the preceding investigation of law in medieval Kerala and specific comparisons with corresponding discussions in Dharmaśāstra, I turn now to a more general consideration of the place of Dharmaśāstra in the study of legal history in India. This is simultaneously a question of methodology and an interpretive account of how best to characterize or describe the nature of traditional Hindu law. I ground my description in the historical facts from Kerala already adumbrated, but claim also that it is unlikely to be an anomaly in the broader spectrum of Indian history. In other words, I believe the Kerala situation to be illustrative of other parts of medieval India, while acknowledging that the famed and expected diversity of practice in India must also extend to law. Embedded in my understanding of Hindu law, however, is a recognition of the localized nature of its legal systems and the context-specific nature of its legal procedures – a recognition that derives in part from the Dharmaśāstra texts themselves.

The genre of Dharmaśāstra has been the foundation for almost all studies of the history of law in India. Rather than repeat what has already been said about śāstra literature[1] in general and Dharmaśāstra[2]

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1. As its name indicates, Dharmaśāstra is part of a larger genre of Sanskrit texts called śāstra. All śāstra is written in a prescriptive idiom and purports to describe the proper rules for various activities including politics (artha), architecture and sculpture (śilpa), love (kāma), aesthetics (alaṅkāra), as well as law and religion (dharma). Śāstra is that which "teaches" or "disciplines" a person in regards to certain activity. An excellent description of the genre of śāstra can be found in Pollock 1989.

2. From the beginning, I must emphasize the fact that Dharmaśāstra literature is an expert tradition which involves numerous debates and inconsistencies from text to text and time to time. Dharmaśāstra is not a singular whole and must not be essentialized if we are to use it for historical purposes.

   Dharmaśāstra shares many literary, hermeneutic, compositional, and functional similarities with other subgenres of śāstra literature. This is significant because studies of any subgenre of śāstra will affect the understanding of śāstra generally. Thus, I believe that my arguments concerning the nature and proper interpretation of Dharmaśāstra literature apply generally to other areas of śāstra as well. However, I do not suggest that all subgenres of śāstra follow precisely the same rules, have exactly the same intentions and audiences, etc. but

in particular, I will focus on what I believe to be the pivot point of most legal historical[3] studies of Dharmaśāstra, namely how they approach "custom" or "customary law" and its relationship to normative texts in Sanskrit. The question has been widely discussed in the secondary literature on Hindu law with some measure of consensus on the fact that Dharmaśāstra's origins lie in actual standards of law, specifically that Dharmaśāstra is a "record of custom" in Lariviere's phrase[4]. My approach is rather to undermine the debate about "custom" by arguing for the use of different analytic terms.

The Problem with Custom

Some time ago Clifford Geertz wrote, "The mischief done by the word 'custom' in anthropology, where it reduced thought to habit, is perhaps only exceeded by that which it has done in legal history, where it reduced thought to practice" (1983: 208). Concepts such as the German Adatrecht, according to Geertz, removed intellectual and social process from law and replaced them with behavior – "a collapsed circle of ought and is" (209). More recently, H. Patrick Glenn has argued that the labeling of non-Western legal systems as "custom" has transformed and marginalized these legal systems by imposing Western concepts onto these other societies (1997: 613-620). In Glenn's view, the focus on formal procedures in law and the importance of the present in fixing the law, for instance, are not part of most non-Western legal systems. This leads to what Glenn calls:

> a presentism which now controls the entire concept. Informal law in the past was information... Custom, however, by a very subtle process, has now become the present, external reaction by people to the information which they informally receive... it is their reaction as they presently respond to the old teaching which counts, and not the content of the teaching itself. The reconstruction of

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only that each subgenre shares general similarities in terms of structure, function, style, etc. On the nature and purpose of Dharmaśāstra, see Lariviere 2004 and Olivelle 2005: 62-66.

3. Literary, philosophical, or other investigations of Dharmaśāstra do not similarly revolve around the position of "customary law" in their arguments.

4. See Derrett 1968: 148-170; Lingat 1973: 176-206; Lariviere 2004; Wezler 2004; Davis 2004; and Olivelle 2005.

> custom thus consisted in its reformulation as a form of ongoing plebiscite. (617)

Finally, Óscar Correas (1994: 22) suggests that our present notion of "custom" boils down to a distinction between written and unwritten law and, therefore, we should simply restrict the term "custom" to unwritten law.

Each of these three authors expresses a different dissatisfaction with the analytical use of the term "custom," but the problem may be more fundamental than even this sampling of authors[5] has acknowledged. In the course of analyzing Indian attitudes toward what European and American scholars call "custom," I have become increasingly convinced that "custom" as a special type of law does not in fact exist. I do not deny that customs exist or that a social order may emerge from custom. What I deny is that "custom" necessarily has anything to do with law. My assertion relates to the growing literature in legal theory that questions the necessary connection of law and social order (see Galanter 1989, Watson 1993, and Tamanaha 2001). Part of the problem in speaking of "custom" and law is the existence of a third term "customary law" that seems to bridge the gap between the first two. Many fail to distinguish "custom" and "customary law," which leads to "an irresistible tendency to draw much of social life into the ambit of law" (Tamanaha 2001: 226)[6]. In contrast to "custom," I find "customary law" to be a useable, though still not preferable, term to describe normative rules emanating from the non-legal, unwritten world of social interaction as they are appropriated by established legal authorities such as legal texts, legal procedures, and political powers (see Watson 1984). Defining customary law in this way introduces agency back into the process of the creation of law.

When scholars and professionals separate customary law from "real law," they create a false dichotomy. The dichotomy suggests that customary law is somehow qualitatively different from law itself. In

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5. The literature on customary law is vast and of uneven quality. Authors frequently compare apples and oranges in their discussions because of the difficulty in mastering the details of several legal systems at once. A useful collection of many important papers on customary law from the perspective of legal anthropology is Renteln and Dundes 1994.
6. Compare also Chanock 1998: ix.

my definition, "custom" can be distinguished from law, but not customary law because it forms a part of the law itself. I believe that customary law is in fact "real law" and that it is produced through similar acts and processes of power and authority as are royal edicts, legislation, and adjudication – the classic standards for "real law." The only difference is that we often do not and cannot know the acts and processes by which some laws become binding. Traditionally, law with such unknown origins is deemed "customary," a designation which also implies inferiority. Custom may have unclear, even more or less random, origins, but customary law in my definition necessarily presumes an authoritative act and agent through which a given norm becomes recognized as law. Most scholars do not distinguish between these two terms and freely interchange them in their writing. As a result, both terms are tainted as useful analytic categories because of a lack of rigor in applying them.

In academic circles, what is called "custom" refers either to law itself or to behavior, though some want it to refer to both simultaneously. While the use of the word "custom" in connection with patterns of dress, eating, hospitality, etiquette, etc. may be tenable, the use of the terms "custom" and even "customary law" in an analytical sense to mean a special source or kind of law is generally capricious, indeterminate, and unhelpful[7]. Whatever the caveat in scholarly or legal literature, in most cases, customary law refers either to the unknown origins of a particular law or to the fact that a particular law is unwritten (Pospisil 1974: 194). In this way, "custom" and "customary law" have become trash-can concepts for all law that has no traceable origin or no written basis. Essentially, any law which does not manifestly emanate from royal edict, legislation, or common law precedent is put into the "custom" or "customary law" pile. Entire legal systems, including that of medieval Kerala studied here, have been described as "customary" without due reflection upon what that label means[8].

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7. A similar critique and a call for the abandonment of "customary law" from the discourse of legal history are found in de Jong 1948: 3-8.
8. For Kerala, see Logan 1995 [1887]: 109-10 and Menon 1991: 223. For medieval Europe, see also Bloch 1961: 109-16, who claims of early medieval Europe, "Custom had become the sole living source of law..." (111).

The concept "custom" is constantly differentiated from other kinds or sources of law by its alleged connection to practice or usage, i.e. the actual behavior, especially long-standing or well-established behavior, of people. However, Correas identifies the problem in making this connection:

> Los antropólogos, pero también otros científicos sociales, cometen el lamentable error de confundir las normas con las conductas. Sobre todo cuando las normas son no escritas. [Anthropologists as well as other social scientists commit the lamentable error of confusing norms and conduct. Especially when the norms are not written down]. (1994: 21)

Indeed, this confusion of norm and behavior is widespread in the common analytical use of the term "custom" in legal contexts which leads to an "over-valorizing" of observed behavior (see Moore 1989: 279). Thus, what is typically deemed "custom" or "customary law" is almost always just the behavioral patterns of a society or a group writ large, thereby converting conduct into norm[9]. But the conversion occurs in the mind of the scholar or the administrator or the lawyer and not necessarily in the cultural or social world of the group itself.

Hindu law scholars such as Kane, Lingat, Derrett, and Rocher have for all intents and purposes equated ācāra and "custom" without considering the possibility that there are differences between them. Take, for example, Rocher's statement: "In principle, the śāstra was still the theoretical source of law. In practice, maxims and customs were paramount" (1978: 1304). What are "maxims and customs"? Where do

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9. Two more plausible attempts to define the relationship of behavior and norm in customary law focus on the role of "acceptance" or "recognition" by judges or decision-makers as the key element in transforming customary behavior into law. See Watson 1994 [1984] and Simpson 1973.

   In think, in part, this is also the distinguishing feature of law put forth by Hart (1994: 100-117), which he calls the "rule of recognition," whereby primary rules of obligation are turned into law through the application of secondary rules about how to recognize the appropriate obligations in a given case. On the rule of recognition in Hindu law, see Davis 2005.

   While these are certainly improvements on the indiscriminate use of "custom" as a type or source of law, they seem to hold on to the concept not for any theoretical reason but simply for reasons of history, i.e. there must be an explanation of "custom" which can serve usefully in academic discussions.

they come from? Such questions never find a comfortable place in Rocher's explanation of Hindu law and yet they beg the question, Whose maxims and whose customs?

Other Hindu law scholars confuse the distinction between behavior and norm by indiscriminately calling ācāra "custom," in the manner highlighted by Correas. A good example in an otherwise excellent account of the nature of Dharmaśāstra literature is found in a recent article by Richard Lariviere. He writes,

> The point here is that the smṛti texts were the record of actual customs and practices found in classical India. These customs were recorded whether the compilers of smṛtis agreed with them or not because it was the purpose of these texts – on one level – to record the norms of those communities which accepted dharma as the standard of behavior. In addition, it was the object of the recorders of these customs to integrate these practices into the Brahminical/ vedic weltanschauung the promotion of which was the basic motive for their recording the customs in the first place. (2004: 618, emphasis added)

Note how Lariviere freely interchanges the words custom, norm, behavior, standard, and practice in this passage. Here we clearly see how "custom" in legal historiography really has two different meanings: either it is simply the behavior or practice of people or it is the prevailing law or norm in a given locality. Either way "custom" itself is essentially meaningless because it refers not to a separate form or source of law but to already existing law or to a practice that may or may not have a normative future.

A more removed perspective on "custom" further confirms its theoretical "mischief." If we compare presentations of "customary law" in various parts of the world, we see that the existence of "customary law" is predicated on an external view of legal systems at work. In other words, "customary law" is a chimera produced by the clash of different legal systems and the concomitant political struggle to establish one system over another. Stated baldly, the authorities of the "victorious" legal system dismiss the law of the "defeated" system as mere custom in the resultant legal discourse, though the process is only

rarely consciously combative and, in fact, often assumes a rhetoric of conciliation and consideration toward the "customary law." From the perspective of those "inside" these legal systems, what is called "custom" by outsiders is simply law itself to insiders, i.e. a legal system which is part of intellectual and social processes that are both thoughtful and deliberate. From the insiders' perspective, which I would argue is the one that matters the most, there is no such thing as "customary law"[10].

The struggle over the definition of customary law may occur either between distinct polities, broadly construed, or within a single polity as competing legal systems vie for hegemony in that polity. Colonial encounters are perhaps the best example of the former in which the law of the colonized polity is marked and transformed as "customary law." An example of the latter is early Roman law, which dealt with the disjunction between the "law" of the jurists and the "customs" of localities (Schiller 1938 and Schmiedel 1966). The case of India exhibits elements of both trends in that the colonial construction of "customary law" created a new law and legal procedure that had never been seen in India before, while at the same time, tensions between pan-Indian norms and localized laws had been negotiated for thousands of years, especially as part of the Brahminical efforts to develop a mārga or Great Tradition within India.

To elaborate on the colonial construction of customary law, we may refer to the seminal work of Sally Falk Moore and Martin Chanock on African law. Moore's work on the "customary" law of the Chagga of Kilimanjaro shows how a living legal system died as "customary law" through successive colonial encounters with the Germans and the British. Moore writes:

> Chagga law once was an integral dimension of a political totality, the precolonial chiefdom. The entity called "customary law" was constituted out of the residue left after the colonial modification of the Chagga polity... The construction of a restricted place for "cus-

10. The insider/outsider distinction here is not the separate problem of scholar/practitioner, but rather a more obvious distinction of, for example, colonized/colonizer. Even this distinction has its limits, but the question of "custom" presumes such a distinction.

> tom" by governments clearly has been a matter of calculated policy... The illusion from the outside that what has been labeled "customary" remains static in practice is patently false. (1986: 317-9)[11]

Perhaps the most trenchant critique of the colonial use of "customary law" as part of colonial policy is Chanock's 1983 history of law in Malawi and Zambia (reprinted as Chanock 1998). What Chanock says of African law is largely applicable to the Indian case as well, though the details have not as yet been so thoroughly documented, as he himself notes (1998: 5). Of colonial notions of "custom," Chanock writes, "custom was not local at all, but a part of very broad global developments during which localities were incorporated into a different world on very disadvantangeous terms" (vii). He continues, "The concept of customary law was racist because it implied an absence of agency. It existed, crystallized, in the minds of the old men who lacked the capacity to make a different future for themselves. Not being called African law, which might have hinted at cultural parity, it denied the possibility of a culture that transcended tribe and locality" (ix).

It is precisely the fixity and lack of agency implied in Indological uses of the terms "custom" and "customary law" that I find so unhelpful. Chanock's work makes it clear that contemporary deployments of such terms are laden with colonial and Orientalist presuppositions about the nature of law in Asian and African societies. The connections both ideological and academic between British colonial policy in India and Africa (see Cohn 1987 [1977]) make comparison of the two situations essential and illuminating. The customary law of British India has next to nothing to do with the preexisting substantive or procedural law of India, known locally as ācāra or maryādā. Indeed, the

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11. A more problematic account of the colonization of law as "customary law" is Gordon and Meggitt (1985: 190-209). Their data have much in common with Moore's, but they fail to see the way in which law in New Guinea was transformed by the colonial treatment of it as "customary law." In an interesting hodgepodge of terms, current legislation in New Guinea is trying to reappropriate the "customary law" of New Guinea. What the legislator's intend, of course, is not to institute the present-day "customary law," which is dominated by law developed by New Guinea's colonizers, but to rediscover the actual law which preceded the colonial period there. Before colonization, the law they are looking for was not "customary" – it was just the law.

law of ācāra and maryādā survived only in increasingly attenuated form as British law and colonial customary law became accepted in India[12]. Chanock's study reverses the usual methodological presumptions regarding customary law: "If we can fix firmly in our minds that the law of the western state comes first in time, and customary law afterwards, rather than vice versa, a new range of questions regarding contemporary processes is opened to us" (1998: 238). The reversal calls into serious question the value of custom and customary as analytic categories in studies of African and Asian law because of their close association with recent colonial encounters.

A similar process can be documented to some extent in India, especially in the later half of the 19th Century, during which the British moved away from Dharmaśāstra as the prime source of Hindu Law and instead began an intensive campaign to codify the customs of India's villages and regions (see Bhattacharya 1996 and Chakravarty-Kaul 1996: 187-198). It is not coincidence that the British denigration of India's law to the status of "custom" occurred precisely when the British seized tighter political and economic control over India in the transition to empire.

The more we dig into the genealogy of the terms "custom" and "customary law" as they have been used in modern scholarly and administrative writing, the more we can see both terms as either a product of the struggle for hegemony between clashing legal systems or an ambiguous label for both social norms and behavior at the same time. In both cases, "custom" is a kind of expedient fiction that allows colonial powers to more effectively control their colonies, on the one hand, and that provides scholars with a catch-all concept for all non-legislated, non-judge-made law, on the other. The rejection of "custom" and "customary law" as analytic terms is prelude to an attempt to find a more accurate understanding of legal change both in medieval and colonial situations.

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12. For an account of the survival of this form of law, despite the colonial changes, see Menski 2003. Menski makes a provocative and somewhat compelling case for the continued presence of Hindu law in this form.

Custom and Dharma in Dharmaśāstra

In the Indian context, "custom" or "customary law" has long been the preferred translation for words such as ācāra and caritra in Dharmaśāstra as well as synonyms such as maryādā in vernacular traditions including the temple records examined in previous chapters[13]. Especially in legal contexts, ācāra and caritra have consistently been so translated[14]. The etymological origin of ācāra and caritra, both from the Sanskrit root √car, is behavior or conduct. The question then is why are words that originally meant behavior translated as "custom" or "customary law" when they appear in legal contexts? Are these good translations or has the meaning of ācāra and caritra developed beyond mere behavior, at least in legal contexts? And, finally, do "custom" and "customary law" provide useful descriptions of law and dharma in medieval India?

That dharma in the Dharmaśāstra was derived in a historical sense not from the Vedic literature but from pre-existing local laws has long been accepted[15]. In the clearest exposition of this thesis that uses the language of "custom," Lariviere writes, "the whole of the dharma corpus can be viewed as a record of custom" (2004: 612)[16]. An important distinction must be preserved here between dharma and Dharma-

13. Because the argument which follows is based primarily on Dharmaśāstra material, I use the term ācāra almost exclusively. However, just as ācāra intersects and overlaps with both dharma and law, so maryādā, its equivalent in Malayalam, also connects with dharma and law. The arguments made here about ācāra thus apply equally to maryādā.
14. There is another common meaning of ācāra in Dharmaśāstra. It is the name of one of three subdivisions of dharma literature sometimes used by Dharmaśāstra authors, namely ācāra, vyavahāra and prāyaścitta. Here, ācāra refers to certain areas of dharma such as family rituals, rites of passage, and the duties of a king, but not to other legal areas of dharma, which are found primarily in the vyavahāra portions of dharma texts. However, even in this sense, ācāra refers to prescribed norms of religious practice and not simply to "what people do." This is another indication that ācāra has an inherently normative meaning and does not refer simply to conduct or behavior.
15. A convenient summary of such acceptance by scholars such as Kane, Sen Gupta, Lingat, Derrett, Lariviere can be found in Wezler 2004.
16. For a similar assertion, less well articulated, see Mandlik 1982 [1880]: "The next source of Dharmaśāstra which I have now to consider is that of usage or custom. In regard to this branch of law, I am inclined to hold that this has always been the main source of the Āryan law from the earliest times; and that our Smṛtis and Purāṇas, so far as they relate to Dharmaśāstra, have been merely the records of customs that existed in those days" (xliii).

śāstra, for the former is a concept and an idea, while the latter is a series of textual reflections on that concept. It is Dharmaśāstra that derives its substance primarily from what Lariviere and others call "custom," by which term ācāra should be understood as the intended Indic equivalent. For dharma, by contrast, "custom" (ācāra) is only one of its sources, the other two being śruti and smṛti, i.e. the Vedas and Dharmaśāstra texts themselves.

The uncertainty about the denotation of "custom" in Indian history stems from the already noted vacillation between custom as norm and custom as behavior (see, e.g., Lariviere 2004 and Wezler 2004)[17] and from a lack of critical reflection on the possible differences between custom and customary law. Both Lariviere and Wezler presuppose the nature of custom without due reflection on the ambiguities of the term. The purpose of this section is to extend their arguments by examining the nature of ācāra itself and its relation to the authority of dharma. If the Sanskrit term ācāra is to be related to the concept of dharma, to the point of being the very foundation of dharma in the Dharmaśāstra (Wezler 1999), then we must be clear about what is meant by calling ācāra "custom."

I contend that ācāra refers to norms or standards consciously and deliberately established by the elites of a given group[18]. Both as one of the three traditional divisions of Dharmaśāstra (vyavahāra and prāyaścitta being the other two) and as a generic term for local and regional laws (Davis 1999: 191ff.), ācāra refers to norms, expressed in the form of rules. As Ganganatha Jha writes in his exposition of the Mīmāṃsā understanding of the relationship of ācāra and dharma, "we are to accept as Dharma only those actions of good men which they do as Dharma; that is to say, any and every act done by good men is

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

18. Here I am specifically disagreeing with Wezler (present volume, f.n. 40) where he declares, "Hacker states that rendering dharma as 'norm', 'law', or 'obligation' was 'far too abstract'. The same is true for ācāra".

not to be regarded as Dharma; when they do an act, thinking it to be Dharma, then alone is that act to be regarded as Dharma" (Jha 1916: 68)[19]. In other words, there is an agentive process, typically in the form of consensus or legislation, whereby a certain behavior is accorded the status of ācāra and thereby becomes a norm, a rule, a law. Ācāra has attached to it a sense of behaving according to a certain set of well-known standards (Wezler 1999: 84). There may be many behaviors common to a particular group or region, but only when such a behavior has been authorized somehow can it be called ācāra, a standard or law. Medieval Dharmaśāstra commentaries are full of glosses and synonyms for ācāra that indicate both its nature as a norm and its conceptualization as practical and practiced dharma.

Ācāra, therefore, is dharma in practice, the practical, "real" life of dharma that acts as a normative precedent for future action, even though in practice it may sometimes differ from place to place and time to time[20]. If dharma's authority rests primarily on three sources, then it makes sense to examine the relationship of these sources to each other and to dharma itself. Elaborating on the medieval Dharmaśāstra presentations of the sources of dharma, I would argue that in general the authority of dharma derives both 1) historically – from the currency and political significance of ācāra and 2) academically or theologically – from the ideologically powerful connection of ācāra with śruti and smṛti. Thus far, I have primarily considered the historical significance of ācāra in the context of medieval Kerala. The authority of ācāra operated both within and outside of the theological and jurisprudential discourses of Dharmaśāstra, i.e. in the realm of

19. See also Kumārila's Tantravārttika (Jha 1983: 184), and Haradatta's commentary on Āpastambadharmasūtra 1.1.1: "na hi brūmaḥ samayamātraṃ pramāṇam iti | kiṃ tarhi | dharmajñā ye manvādayas teṣāṃ samayaḥ pramāṇaṃ dharmādharmayoḥ [We are not saying that just any convention is a means of knowing (dharma). What is then? The conventions of those who know dharma such as Manu and others are the means of knowing dharma and adharma]" (DhK 5: 60).

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

praxis as well. In other words, ācāra was the local law regardless of its justification or justifiability with respect to the academic discourse of Dharmaśāstra. In this section, however, I want to show that ācāra also had a theological significance within this academic discourse. To the extent that experts in Dharmaśāstra, mostly or exclusively Brahmins, had political and cultural influence, the ideological connection of ācāra with the Vedic tradition shaped and informed the historical importance of ācāra as dharma in practice. Thus, I believe the historical importance of ācāra impinges on the theology/jurisprudence and vice-versa. I will attempt to illuminate the authority of dharma as presented in medieval Dharmaśāstra texts with particular attention to ācāra as the least studied of the three classic sources.

The first step in understanding the authority of dharma in the religio-legal discourses of medieval Dharmaśāstra takes off from the fact that the most important school for the exegesis of both the Vedas and Dharmaśāstra, the Pūrva-Mīmāṃsā[21], recognized one of the principal sources of knowledge and authority in matters relating to dharma to be human beings who know the Vedas (vedavid). To be clear, the Vedas as scripture are the starting point for all Mīmāṃsā, but it is also clear from the tradition as a whole that the Vedas have power and authority only insofar as they are known, understood, and followed by human beings. Part of this grounding of authority in human beings relates to dharma's foundation in reason, as well as on the Vedas. Halbfass elaborates:

> Essentially, dharma is that which can only be learned from the Veda and justified through the Veda; there are no other means for knowing it, and no other sources for legitimizing it: to be sure, this 'rooting in the Veda' (vedamūlatva) should itself be secured by reason and argumentation (yukti, nyāya). The dharma is vedamūla; yet the insight that this is so is considered as nyāyamūla, as being based upon reason. (1988: 325-6, cf. Medhātithi on Manu 2.6 in Jha 1999: V.1: 58)

21. On the intimate connection between Dharmaśāstra and Mīmāṃsā, see Kane, HDh 5.1152ff. and Sarkar 1909.

The medieval SV is somewhat more explicit when it makes nyāya (reason, logic, common sense, etc.) into a kind of natural supplement to the Veda: "vidheyasya darśanasya kathamaṃśapūrakatvena pramāṇakoṭiniveśāt [because it enters into the category of authority (pramāṇa) by supplying (completing) the 'how-portion' in regard to the performance of what is enjoined]" (1927: 13)[22]. Dharma's basis in nyāya begins to shift the locus of authority away from texts to the people who know the texts and their accompanying ritual and legal traditions.

Medieval Mīmāṃsā texts corroborate the idea that authority also rests in the human person who knows the Vedic texts and traditions. The point is clearly made in commentaries to the 3rd section of the 1st chapter of the Pūrva-Mīmāṃsā Sūtras (PMS) of Jaimini. The opinion of the pūrvapakṣa, or interlocutor, reads: "dharmasya śabdamūlatvād aśabdam anapekṣaṃ syāt [Because the basis of dharma is the Veda, that which is not part of the Veda should be considered unrequired (as dharma)]" (PMS 1.3.1, see Jha 1916: 55). The siddhānta, or established teaching, of Jaimini, however, states: "api vā kartṛsāmānyāt pramāṇam anumānaṃ syāt [On the contrary, the presumption (of a Vedic text) should be the proof (of the authority of smṛti and ācāra) because the agents are identical]" (PMS 1.3.2, see Jha 1916: 56). In this case, the pūrvapakṣa suggests that human beings are only obliged to do things that are explicitly stated in the Vedas; in everything else, they can do as they please. However, Jaimini refutes this claim. Jha sums up the medieval commentarial interpretations of the sūtra as follows:

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

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

This argument opened the conceptual floodgates for the Mīmāṃsā tradition because it was extended also to the conventional standards and practices (ācāra) of these same "agents" (kartṛ) who followed the Vedas[23]. Such a view allowed medieval Dharmaśāstra commentators such as Medhātithi to incorporate ācāra under the same heading, and, therefore, the same status, as smṛti itself[24].

Another aspect of the Mīmāṃsaka argument here merits a slight elaboration. The Mīmāṃsakas acknowledge that the authority of Dharmaśāstra texts (smṛti) and local laws (ācāra) derives not directly from the extant Vedas, the contents of which overlap very little with Dharmaśāstra texts and local laws, but indirectly from people who respect and know the Vedas. Moreover, and here the argument stretches somewhat, the Mīmāṃsakas developed the doctrine that in a case where a rule of smṛti or ācāra cannot be derived from a Vedic text, we should infer or presume (anumāna) the existence of a lost Vedic text to which the accepted rule of smṛti or ācāra corresponds[25]. The key point here is not the doubtful historical validity of this "lost Veda" doctrine, but the hermeneutical gymnastics performed by the Mīmaṃsakas to permit or recognize, in the first place, the authority of humanly constructed norms and to connect that authority, in the second place, with the authority of the Veda.

With this recognition of the authority of certain human pronouncements about religious and legal life, we return to the argument described earlier in which Lariviere, Wezler, and others have asserted that Dharmaśāstra's real origins lie in "custom," i.e. ācāra. Although the Mīmāṃsakas would likely not characterize Dharmaśāstra's origins in this way, it seems possible to read Mīmāṃsā as permitting such a view provided that what we might call "the lost Veda corollary" is also

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23. See Jha 1916: 79ff. for the full explanation of the famous Holākādhikaraṇa on the general authority of local "customs" (ācāra). See also Tantravārttika (Jha 1983: 244ff.).
24. Medhātithi on Manu 2.10 (Jha 1920-39: Vol. 1: 70): "śiṣṭasamācārād api dharmasya kartavyatāvagatiḥ | so 'pi smṛtir eva | tataś ca yatra kasmai cit kāryāya smṛter upādānaṃ tatra sadācāro 'pi grahītavyaḥ [The understanding of the necessary duties of dharma arises from the collective standards of cultured people. Thus, these, too, are called smṛti (codified tradition). As a result, in whatever context and in whichever matter smṛti is mentioned, there the ācāra of good people also should be understood]" (my translation).
25. See Tantravārttika (Jha 1983: 111ff.).

understood as part of the characterization, an important corollary in that it allows the Mīmāṃsakas to claim that all sources of dharma are ultimately based on the Vedas, whether extant or "lost." As a result, one way of extending the historical thesis of Lariviere and Wezler is to suggest that even Hindu theology accords considerable importance and authority to standards and observances proclaimed and promulgated by humans. The authority of the person provides Dharmaśāstra with an apparatus of change and adaptability, one that can meet the challenges of historical developments while preserving an orthodox theological view of the "roots" of dharma as uniformly Vedic.

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

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

A tension between pan-Indian and regional standards of conduct acutely appears in Dharmaśāstra texts. Scholars have sometimes characterized the conflict as being between a transcendent dharma, on the one hand, and "customary" rules, such as ācāra, deśācāra, kulācāra,

etc. (not to mention the synonymous, and on this view rather paradoxical terms deśadharma, kuladharma, etc.) on the other hand (e.g. Lingat 1973: 176ff.). I think this characterization creates a dichotomy where there should be a continuity. Pitting dharma and ācāra against each other fails to account for the connections between the two described in dharma texts. A look at anācāra in a late medieval Dharmaśāstra text known as the Laghudharmaprakāśikā (LDhP 1906) helps us see the connections of dharma and ācāra. The date of the LDhP, also called Śāṅkarasmṛti[26], is unknown but is probably no earlier than the 16th Century A.D. Its provenance, however, is certain Kerala. In fact, the text calls itself the rules for the people of Kerala (kēraḷavāsi). The LDhP is one of at least three texts which records the 64 anācāras of Kerala and Kerala Brahmins (see Parpola 2001).

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

More relevant, however, is Wezler's discussion (1985) of durācāra in the Gīrvāṇapadamañjarī and Gīrvāṇavāṅmañjarī from Bengal[28]. Both of these texts use durācāra to refer to accepted norms that were restricted to a particular region. So, we are told that Brahmins in

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26. A complete edition and translation of the Śāṅkarasmṛti has been done by N.P. Unni and will be published shortly by the CESMEO Institute in Turin, Italy.

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

28. Although these two texts are not Dharmaśāstra texts, their use of the term durācāra resembles that in LDhP and, therefore, provides an instructive point of comparison. See also Deshpande 1993 for further remarks on the linguistic features of the Sanskrit in the Gīrvāṇapadamañjarī and Gīrvāṇavāṅmañjarī.

Andhra ride horses, Brahmins in Karnataka eat without bathing first, and that women in the Dravida and Kerala regions do not cover their breasts. The list includes several standard regional norms that were mentioned as early as BDhS 1.2.1-6 as well as others. The point here is that this label durācāra for certain regionally sanctioned practices comes from outside of the region where they are authoritative, i.e. not from the perspective of those who accept the restricted standards. From an internal or insider's point of view, what is durācāra to an outsider means positive prescriptions dictating authoritatively sanctioned behavior in many areas of life.

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

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

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

athāto 'nupravakṣyāmi nṛṇām kēraḷavāsinām
anācārān samāsena bhārgaveṇa pradarśitān

anyatrācāraṇābhāvād anācārān bhṛgūdvahaḥ
yān ācaṣṭa catuḥśaṣṭim ākhyāsye tatra tān api

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

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

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

Note how the LDhP says that these anācāras were "proclaimed by Bhārgava." From this, we learn that anācāras and, by inference, ācāras as well were proclaimed or pronounced by people with power and authority. They were not just random patterns of behavior, but rather authorized standards of conduct. The link between anācāra, ācāra, and dharma was the śiṣṭas, the ṛṣis, the elites who proclaimed

them. The rules for morality, ritual, politics, law, etc. lived in the persons who held the power to dictate those rules, and these persons struggled not only with traditional Dharmaśāstra texts but also with regional standards, in this case called anācāras, to determine what appropriate conduct should be in given circumstances. The tautology of ācāra and dharma neatly operates in the LDhP such that even ācāras that explicitly deviate from standards elsewhere are given the force of dharma because they have been proclaimed by a sage.

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

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

The variety of medieval commentarial glosses on ācāra provides us with another means of assessing ācāra's relationship to dharma[29].

29. The discussion below is based on a review of the collected commentaries contained in the well-known encyclopedia of Dharmaśāstra texts, the Dharmakośa in the Vārṇāśramadhar-

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

Several glosses equate ācāra with "convention," including samaya (convention), āgama (tradition), vyavahāra (daily business), and lokasaṃgraha (accepted by the people). The Ujjvalā of Haradatta explains the difficult term sāmayācārikān in ĀDhS 1.1 as follows, "samayamūlā ācārāḥ samayācārāḥ teṣu bhavāḥ sāmayācārikāḥ evaṃbhūtān dharmān iti [standards that are based on conventions are called conventional standards; something which has the nature of those (standards) is called conventionally standardized, and (he is speaking of) dharmas of that nature]" (DhK 5: 60). The explicit connection of ācāra with samaya would also link ācāra with the important title of law known as the "non-observance of conventions" (samayānapākarma) in which the authority is given for various corporate groups to create their own rules and laws which should be enforced by the king or by the groups' own power[30]. Samaya as a gloss clearly imparts a normative significance to ācāra.

The other glosses of ācāra as "convention" yield slightly different nuances to the semantic scope of the term. Āgama typically means what is passed down through a lineage of teachers (paraṃparā) and is found first as a synonym for ācāra in BDhS 1.1.4 ("tṛtīyaḥ śiṣṭāgamaḥ [the third (source of dharma) is the traditions of cultured people]") in which the expected ācāra is replaced by āgama. The princi-

makāṇḍa (DhK 5), specifically the section on dharmapramāṇavicāra. This excellent compendium provides a convenient synoptic overview of the Dharmaśāstra debates and arguments concerning the sources of dharma, including ācāra. A thorough review in English of the relationship of 'custom and Dharmaśāstra works' can be found in Kane, HDh 3.856-84.

30. For a detailed study of the law of associations and groups and their importance to the study of legal history in India, see Davis 2005. It is easy to underestimate the importance of these so-called conventional laws to the processes and substance of law in medieval India.

pal medieval commentary on this sūtra unambiguously equates the two with an etymology of the compound term śiṣṭāgama: "śiṣṭaiḥ āgamyate iti śiṣṭāgamaḥ. śiṣṭācarita ity arthaḥ [what is handed down by cultured people is the traditions of cultured people; the meaning is what is observed in practice by cultured people]" (Baudhāyana-vivaraṇam, quoted in DhK 5: 52). But ācāra is not merely that which is handed down in a traditional manner or through a specific teaching lineage, but also what is common and accepted in the present moment. For instance, vyavahāra "daily business" as a gloss is not meant to suggest random activities one might engage in throughout the day, but rather routinized ways of interacting in common situations, especially in commerce, that often develop through contracts and repeated negotiations[31]. It connotes standardized ways of interaction that have developed through frequent encounters. The gloss lokasaṃgraha "accepted by the people" most pointedly demonstrates that some Dharmaśāstra authors (e.g. Vṛddhagautama, cited in DhK 5: 50) viewed ācāra as something deriving directly from a collective consent of the populace. In this context, one is also reminded of the antonyms lokavidviṣṭa and lokavikruṣṭa "despised by the people" which describe instances in which dharma is set aside because it contravenes the conventions of the people. The precise limits and nature of such collective consent or dissent are not well explicated, but the general impulse is clearly to mark as dharma those standards of conduct that were current among at least some significant portion of the populace.

The other class of glosses for ācāra frame ācāra as an embodiment of or performance of dharma, including śīla and anuṣṭhāna. These glosses view ācāra as something that one follows based on both innate and learned dispositions of personal character. Śīla, for example, connotes the composite habits, propensities, and perspectives that one has developed genetically and, possibly, through education, and, therefore, may be understood as "character" in general sense. In glossing GDhS 1.2 (tadvidāṃ ca smṛtiśīlē [as well as the traditions and character of those who know them, i.e. the Vedas]"), the commentator Maskarin states, "ācārātmatuṣṭī api śīla evāntarbhūte iti na pṛthag upanyaste [standards of conduct and what is pleasing to oneself are

31. See Medhātithi's Manubhāṣya on MDh 2.6.

both part of character and, thus, are not separately mentioned]" (DhK 5.43). In this conception, śīla as a gloss for ācāra suggests that the latter is a kind of internal embodiment of the Vedic corpus (śruti) and its traditions (smṛti). In addition, ācāra as character is most likely the underlying form for the derivative term ācārya, or teacher, "one who possesses good character"[32].

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

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

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

understanding of ācāra. Ultimately, all ācāra is dharma and, in fact, constitutes the practical embodiment and performance of dharma.

In his introduction to the critical edition of the MDh, Patrick Olivelle (2005: 64-65) argues that Dharmaśāstra texts, like all śāstras, "represent a meta-discourse; they deal with reality but always once removed... Śāstras exercised control over practice not directly but through the mediation of experts." Olivelle's characterization is most appropriate and persuasive, but it also begs the question of what the primary discourse of dharma was in medieval India. If Dharmaśāstra is a "meta-discourse" that derives its content from ācāra, then it would follow that ācāra must be the primary discourse, i.e. dharma in practice. Dharmaśāstra texts contemplate and systematize ācāra without replacing the ongoing value of extra-śāstric ācāra to the evolving practical, day-to-day negotiations over the proper course of dharma.

The manner of textual expression used in Dharmaśāstra – a timeless, unchanging, injunctive idiom – often makes it difficult to trace developments of thought about dharma or other topics. The connection of dharma with ācāra was certainly not new to the medieval texts. However, ācāra's significance as a source of dharma does appear to grow over time within the Dharmaśāstra corpus (Kane, HDh 3.869-79; Altekar 1952: 43). We find greater elaboration and detail about the nature of ācāra; we find ācāra being linked with related terms such as caritra and maryādā used in other historical sources to refer to local laws and standards (Davis 1999, 2002); and we also find a growing number of sources that suggest the true supremacy of ācāra over smṛti or even dharma itself, especially in judicial contexts.

For instance, in the medieval Bālakrīḍā commentary, Viśvarūpa states, "yathaivāryāvartanivāsiśiṣṭavyavahārasthitis tathāiva smṛtyartho 'nusartavyo na tadviparyayeṇa [The meaning of smṛti should be understood so as to conform with the established standards of the disciplined people who dwell in Āryāvarta and not the other way around]" (YS 3.250, Ganapati Sastri 1921-22). In this case, I would argue that the term vyavahārasthiti should be understood as a synonym for ācāra. Viśvarūpa modifies the absolute precedence accorded to smṛti by declaring ācāra to be an interpretive matrix within which smṛti must be understood and applied.

Even dharma gives way to ācāra in certain contexts as attested in the KS, cited in the medieval SC and Parāśaramādhavīya: "yad yad ācaryate yena dharmyaṃ vādharmyam eva vā | deśasyācaraṇān nityaṃ caritraṃ tad prakīrtitam [Whatever is practiced (as a rule) because it has been perpetually observed (as an authoritative practice) in a locality, whether it conforms to dharma or not, is called caritra" (DhK 1.103)[33]. Again, I would argue that caritra in this verse is synonymous with ācāra, though the former seems to be found generally in discussions of judicial procedure in Dharmaśāstra texts (Lingat 1962). The text here, as Kane points out, "is principally concerned with the decision of legal disputes on the basis of the customs of countries and families, but his rules also have a general application" (HDh 3.862). In other words, in the special context of a legal dispute at least, what counts as a basis for decision (nirṇaya) is caritra, not dharma. In this context, caritra is clearly a source of legal decisions regardless of its connection to or consonance with dharma. Here what is binding in law is differentiated from what is binding as dharma. The text refutes a narrow view of caritra by including both dharmic and adharmic norms within its boundaries. Against Lingat's view (1973: 176), some norms are binding in spite of their adharmic quality. For Lingat, Kātyāyana's verse shows where "custom" deviates from dharma, but my view is that the verse shows where law deviates from dharma in the form of caritra. It is unlikely that this text intends to subvert the primacy of the Vedas and śāstras as the principal sources of dharma, but the inversion is intriguing as a possible circumscription of the power of these texts in favor of ācāra[34]. Overall, therefore, ācāra's significance as a source of dharma and as a source of law and legal procedure in its own right expands in medieval texts.

On the basis of this expanded importance of ācāra, the main purpose of this section has been to argue that ācāra and its relationship to dharma cannot be fully understood if relegated to the unhelpful cate-

33. For a similar verse, see Pitāmaha cited in DhK 1: 105. See also the discussion in Lingat 1973: 176ff.

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

gory of "custom." The idea that ācāra lacks specific content and corresponds to the vague notions of "custom" that float around legal theory circles must be reconsidered in the light of the precise manner of expression and the clearly defined content of ācāra as it is discussed in the texts. In this way, ācāra constitutes perhaps the most significant source of dharma in medieval Dharmaśāstra. At the same time, the authority of ācāra itself derives in a tautological manner from the authority accorded to knowledgeable (śiṣṭa) and good (sat) people whose character is made impeccable and trustworthy by virtue of their Vedic study and education in the śāstras. The productive tautology described here lent both stability and adaptability to the religio-legal thought and institutions of medieval India. It would thus be perilous to understand dharma and its authority without at the same time seeing its intimate connection to ācāra.

Custom and Law in Dharmaśāstra and Medieval India

To move from talk of Dharmaśāstra and dharma to talk of law is not a simple step[35]. Having shown the intimate relationship between dharma and ācāra in the previous section, I conclude this chapter with a brief investigation of how law as an analytic category fits with the Indic categories of dharma and ācāra. Some Hindu law scholars, such as Lingat and Derrett, have followed the colonial view that Dharmaśāstra literature, especially the vast commentarial corpus of the medieval period, became more concerned with legal matters over time. Ludo Rocher has consistently rejected equating "the transition from śāstra to commentary with the passage from 'dharma to law.'" because "the commentaries do not in any way attach greater impor-

35. The discussion which follows is implicitly critical of Lingat's discussion of dharma and "custom" (1973: 176-206) because Lingat fails to acknowledge the connections of ācāra and dharma. He argues, for example, that "the law which is promulgated by the śāstras differs from custom both by object and by origin... it prescribes duties and obligations of a religious character... By contrast, the rule of custom is in principle indifferent to the religious consequences of an act" (176). The cleavage between dharma and ācāra that Lingat proposes has hindered what I consider to be the proper approach to Dharmaśāstra texts and to the study of Hindu law. The argument of this study is that no distinction of dharma and ācāra exists in India nor in Dharmaśāstra. Ācāra is a subset of dharma. A distinction can be drawn between ācāra and Dharmaśāstra, but even there the origins of the texts appear to be in the ācāra of unknown localities, if we follow Lariviere's argument (2004).

tance to the legal sections of the ancient texts than they do to any other sections of the dharma, nor do they treat them in any different way" (1978: 1303). I follow Rocher's argument regarding the nature of Dharmaśāstra because I do not believe that these texts are codes of law, nor are they primarily concerned with the range of subjects that fall under the heading of law in the West. Viewing Dharmaśāstra in this way does not mean that Dharmaśāstra is irrelevant for legal historical studies of India (see Davis 2002: 70). On the contrary, Dharmaśāstra represents what I would call the theological and theoretical jurisprudence of Indian history. It is concerned with practical law, religion, and ethics, but it discusses these topics, as Olivelle has pointed out, at a remove from the realm of practice.

It is this gap between Dharmaśāstra and legal practice that makes shifting our focus away from dharma and Dharmaśāstra to ācāra so critical because ācāra is localized law that operated in practice throughout India, though not in the same way in every place. Ācāra may be other things as well, but it most certainly represents the local law in medieval Kerala. In the Brahminical temples that form the core of this study, the law of maryādā or ācāra would have been considered part of dharma, but not part of Dharmaśāstra. That all ācāra is dharma is an axiomatic truth of the Brahminical tradition. That not all ācāra is recorded or contemplated in Dharmaśāstra is also fundamentally recognized in the Dharmaśāstra texts themselves which make great space for laws and rules beyond the scope of the śāstra (see Davis 2005). A focus on dharma as the best conceptual entrance point for studying law in India leads to a mistake, because of the close connection that modern scholars make between dharma and Dharmaśāstra. A focus on dharma leads to an interpretation of Dharmaśāstra as a statement of law in the manner of a code. It should be clear that dharma, if properly understood, should not be an exclusively text-based concept because of its reliance on ācāra as a significant source of its substance. The association of dharma with Dharmaśāstra exclusively, however, has led to misunderstanding regarding the nature of the former.

In the Dharmaśāstra, dharma is "radically empirical" in Paul Hacker's phrase (1965), in the sense that dharma is to be found either

by consulting an empirically given textual source, i.e. the śruti or smṛtis, or, very importantly, by consulting a learned and good expert (śiṣṭa), i.e. ācāra. Dharmaśāstra is not a complete statement of what is dharma and the texts themselves acknowledge this fact. The ācāra of a locality is bound to incorporate elements of the dharma from other sources. Indeed, in this fact lies the entire justification for ācāra being considered a source of dharma at all, namely its consonance with the spirit of the śruti and smṛti.

The reality is, however, that consonance in spirit does not imply strict adherence to the letter. Ācāra regularly deviates from the Dharmaśāstra's prescriptions, but this deviation, more in letter than spirit, does not impugn the integrity of the texts for the Dharmaśāstra itself recognizes the need for localization as part of the process of developing law. A focus on ācāra as the best entrée into the legal history of India avoids the overly textualized notions of law associated with Dharmaśāstra and principal subject, dharma.

Part of the neological aspect of dharma (Olivelle 2004) is the connection of dharma to human convention, pronouncements, and standardized behavior. When the medieval commentator Haradatta calls conventional dharmas (sāmayācārikān dharmān) "human pronouncements" (pauruṣeyī vyavasthā), he signals an understanding of dharma as a part of human efforts to construct religious, legal, and social orders that emphasize the constructedness of dharma. This pragmatic, sociological view of dharma gives more weight to the conventions and pronouncements of human authorities than to sacred or transcendent order, contrary to what is sometimes asserted.

The emphasis on the human construction of law in the form of ācāra is key to understanding the notion of law in Dharmaśāstra. A modified version of Lariviere's argument (2004) suggests that the origins of Dharmaśāstra lie in its being a collection of ācāra supplemented and filtered through the hermeneutic frame of śāstra and Mīmāṃsā. This re-statement of Lariviere's thesis, however, says nothing about the afterlife of Dharmaśāstra texts beyond their moment of origin. Of course, knowing the origins of a text's ideas and content is often helpful to understanding its nature, but the life of the text after its composition and redaction is not predetermined by its origins. For

this reason, we have to understand the process of transmission and reappropriation of Dharmaśāstra throughout India (see Davis 1999: 166-167) which is more important than its origins for understanding Dharmaśāstra connections with practice. Lariviere's thesis confirms that Dharmaśāstra is retrospectively connected to practice. My argument is that Dharmaśāstra is also prospectively connected to practice in the manner described in the preceding chapters. The prospective life of Dharmaśāstra texts involved the movement of the texts to many, even all, parts of India and the appropriation of the ideas and jurisprudence contained in those texts into the localized legal and religious systems of medieval India. This afterlife of Dharmaśāstra would seem to be much more significant than its origins in the ācāra of an unnamed locality. What is happening in the ongoing life of local law in medieval India is a selective appropriation of Dharmaśāstra's judicial techniques, conceptual vocabulary, and even substantive rules into local laws such as the maryādā of medieval Kerala's temple communities. Just as in its origins Dharmaśāstra is an academic and theological reflection upon the ācāra of one or more unspecified localities, so also is the ācāra of other places a reflection of and upon Dharmaśāstra insofar as the legal, religious, and social life of that locality respects and conforms to the spirit and sometimes to the letter of the texts.

CONCLUSION

Maryādā: Law In- and Out-Side of Dharma

The simple conclusion of this work is this: the key to understanding law in medieval Kerala is the concept of maryādā, also known as ācāra in Kerala and elsewhere in India. Ācāra represented the point of convergence between the systems and sources of law in Kerala, and probably in India as well. Dharmaśāstra authors struggled to incorporate the forceful reality of differing ācāras into their interpretive mold. They recognized the established fact of divergent legal norms and justified them hermeneutically by means of the personal character of their arbiters whose status assured the propriety of those standards. Dharmaśāstra authors called this śiṣṭācāra, the standards of the learned. In Kerala, the sanctity and power of maryādā as determined by temple authorities and political rulers was the driving force behind both the preservation of established legal boundaries and the resolution of legal conflicts within socially and legally acceptable limits. In this way, transgressing maryādā was akin to "thwarting the rule of law."

The temple records of Kerala examined here do not mention dharma at all in connection with legal traditions current at the time[1]. As mentioned in the previous chapter, this does not mean that Brahminical discourses on dharma did not affect law in Kerala, but it does mean that dharma and Dharmaśāstra were practically and legally a secondary consideration in social, political, and economic life at the time. It also means that ācāra, not dharma is the most appropriate focal point for legal history in Kerala and probably in India.

Concerns about dharma and the desire to establish dharma fed into the living systems of law in medieval India, and, conversely, those legal systems influenced authors of Dharmaśāstra texts, challenging them to shape their works so as to validate practical systems of law.

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1. In fact, the only reference to dharma I have found in the temple records used for this study is Peruvanam Kṣetra Granthavari, 121, in the context of a short retelling of the Kēraḷotpatti, a myth about the origins of Kerala as the land of Paraśurāma.

Dharmaśāstra rules were never fully implemented in the legal traditions of late medieval Kerala. Nevertheless, the boundaries of law reflected in Kerala's temple records share deep similarities to both jurisprudential and substantive approaches to law in Dharmaśāstra. Thus, Dharmaśāstra provided one foundation for the practical traditions of law followed in Kerala, even though the arbiters of law in Kerala did not quote chapter and verse from Dharmaśāstra texts in the records of their legal affairs.

There are a number of methodological advantages to changing our focus from dharma to ācāra or maryādā. First, we ground our analysis in an historically datable period and a geographically limited context. The principal short-coming of Dharmaśāstra has always been that we do not know where and when these prescriptions may have been the law. In Lariviere's words, "Dharmaśāstra did represent the law of the land and is of very real value in constructing the history of Indian society since these texts tell us how – alas, not where and when – people actually lived" (2004: 627). Beginning with historical evidence from particular localities in a particular cultural region gives our analysis the framework of time and place necessary for any tenable methodology of history.

Second, we begin where the historical evidence begins. We appropriate the indigenous view of law as our own theoretical starting point. The temple records of medieval Kerala regularly mention maryādā in all kinds of land transactions, reports of crime, and statements of account. Adopting maryādā as the conceptual and categorical link to our notions of law merely isolates for conceptual analysis the term Malayalis themselves used in what we call "legal" contexts.

Finally, we maximize the potential not only of historical resources like Kerala's temple records but also of other evidence such as Dharmaśāstra texts, myths and legends, oral traditions, as well as colonial and early foreign accounts. We put the historical evidence in its proper places. In the case of Kerala, only temple records and earlier inscriptions suffer neither from an unknowable chronology and provenance nor from the bias of "the outsider." I grant that even temple records and inscriptions represent only a portion of the society of medieval Kerala and have their own biases that we must try to discern.

However, I have grounded my claims in the widely acknowledged extensiveness and comprehensiveness of the temple networks that seem to have penetrated to all levels of society and to all regions of Kerala, urban ports excepted. Moreover, given the lack of other available materials, records like these are the best hope for recovering an accurate and more complete view of legal history in Kerala and India.

In the area of land law, I brought together several records of land sale and mortgage from medieval Kerala to challenge current notions of property and the relationship of land and social order which dominate the existing secondary studies. Specifically, I argued that we cannot dissociate concepts of property and ownership in Kerala from the social context in which the existed. The principle of hierarchy ran through the religious, political, social, and economic life of medieval Kerala. It was not the only principle, or even the essential principle, but hierarchies in social status, caste, and political power paralleled hierarchies of landholding and economic power. These various hierarchical orders reinforced one another. In this way, the context of landed property tells us much more about the significance of land in Kerala history than a strictly legal interpretation.

Chapter Three dealt with the criminal law of medieval Kerala and attempted to improve upon the poor descriptions of crime and punishment in standard histories of the region. Focusing on procedure, punishment, and police, I argued that criminal law was a reactive, circumstantial process of resolution, not a system of rules to be mechanically applied to the prosecution of a criminal. As in other areas of Kerala's law, politics entered the criminal law through the division of juridical labor between rulers and temples. Finally, I compared this description of criminal law from Kerala temple records with discussions of crime, punishment, and police in Dharmaśāstra. The comparison suggested a complex relationship between the two perspectives on criminal law in which the foundations of criminal procedure, punishment, and policing seemed to be shared by the two traditions, while the details and practical manifestations differed.

In Chapter Four, I considered the relationship of rulers and temples in more detail in order to create a more accurate picture of administrative law in medieval Kerala. Politics and administrative law shaded

into one another in the ambiguous relationship of regional rulers and temple councils. Turning the classic description of Brahmin-Kṣatriya relations on its head, Brahmins in late medieval Kerala held the material power which the "king" desired for his own purposes. Through their appointed officials in the temple community and their independent relationships with trading communities, regional rulers tried to reap the material, mostly agricultural, benefits of temple alliances while remaining independent and powerful enough to preserve and extend their privilege and status. From the temples' perspective, alliances with regional and local rulers meant protection and executive power in the criminal law, but temple councils reserved for themselves the power of adjudication. Moreover, they asserted their jurisdiction and the power of the saṅkētaṃ through the paṭṭini fasts which appear regularly in the temple records. Through this manipulation of the administration of law, temple councils made their saṅkētaṃs the center of administrative law, and of law generally. Their power to control most aspects of law in their territory allowed them to create a self-sufficient world in the locality itself. Temples were not outward-looking in the way rulers were. The temple councils adopted strategies of law and politics which enabled them to create and maintain this universal locality known as the saṅkētaṃ.

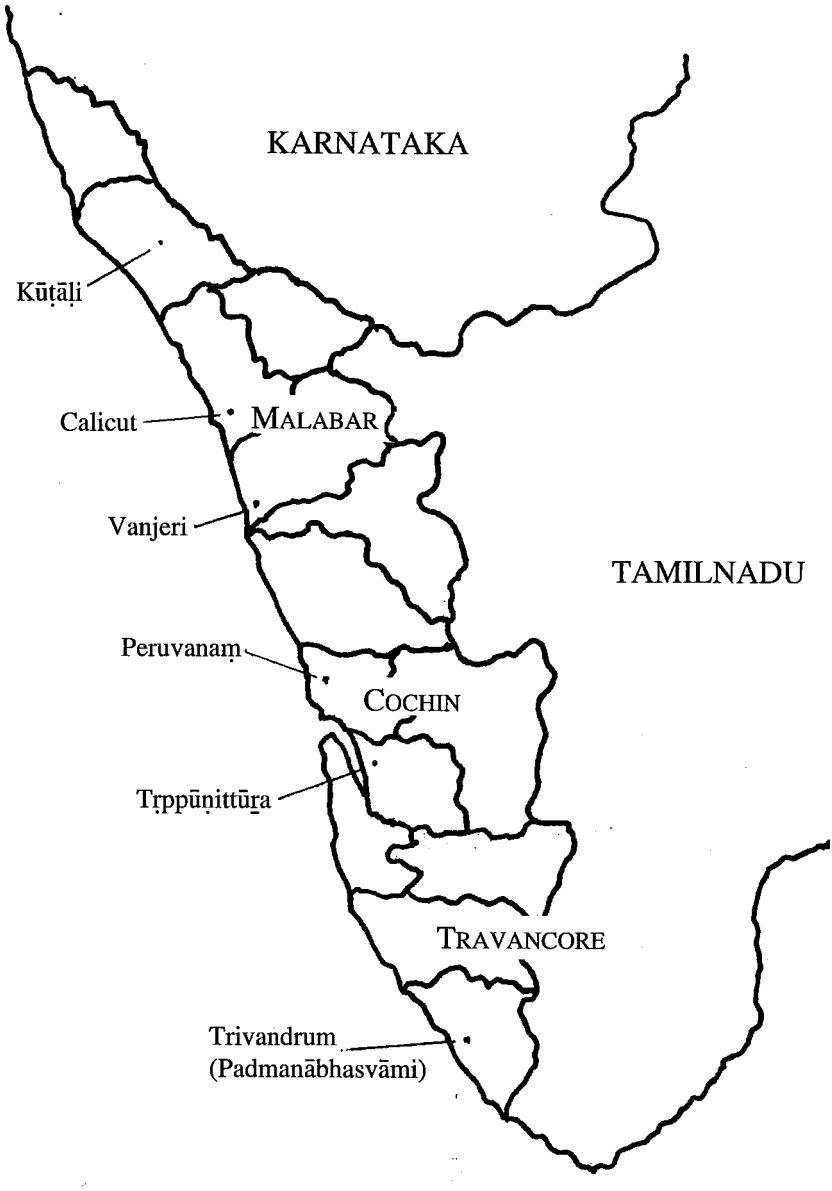
Finally I analyzed the perpetual sticking point in historical studies of Hindu law, namely the relationship of Dharmaśāstra and "customary law." In Western jurisprudence, "customary law" is often defined as law which has no clear origin and, therefore, no identifiable authority. Indians did not make the second leap, however. The authority of law in India was the situationally empowered elite who drew from various sources including śāstra, precedent, community sentiment, logic, etc. to determine the law. Authority was not established in Hindu law by knowing the origin of a law. In many legal systems, the origin of a law is its authority, i.e. the ability to identify the origin of a law is tantamount to discovering the source of a law's authority. In India, however, authority made law. Authority was given to, or seized by, the elite, the śiṣṭas, who represented the ultimate source of law in India.

I get the feeling that some scholars of Dharmaśāstra have, behind the scenes, been afraid that comparative studies of Dharmaśāstra and

other historical records would somehow expose Dharmaśāstra as the fraud it was claimed to be by some British administrators and some modern scholars. Studies like this one will hopefully assuage fears that Dharmaśāstra cannot live up to its promises. Our whole way of looking at Dharmaśāstra has to change before we can see its value. When we do change our perspective, the historical evidence about legal history from places like late medieval Kerala can be understood not only in itself but also in relation to broader Indian legal traditions. One purpose of this study has been to test this new methodology for using Dharmaśāstra literature in historical studies. The other purpose was to describe the medieval legal traditions of the Kerala region in light of this theoretical framework.

Throughout this study, the word maryādā has regularly appeared, just as it does in the temple records themselves, to remind us of the boundaries of law. Maryādā, the constant determination of acceptable boundaries of practice, was the ideological core of law in medieval Kerala. Dharma, the traditional focus of legal histories of India, is nowhere to be found in the legal vocabulary of medieval Kerala. In trying to understanding the history of law in Kerala and in India, therefore, we must put dharma and Dharmaśāstra literature in its proper place. We must understand Dharmaśāstra's origins as collections of laws which were authoritatively marked and disseminated throughout India. The subsequent appropriations of the disseminated texts were never complete, nor perfect in their reliance on Dharmaśāstra prescriptions. As we ground our methodology in the living systems of law called ācāra or maryādā, we learn more not only about the nature and operation of these regional legal systems but also about the connections and shared traditions between these regionally manifested systems of law in India.

MAP OF KERALA



APPENDIX

The following appendix contains additional translations of temple records relating to land law in late medieval Kerala. It is divided into records of land sale, usufruct mortgage, and custodial mortgage. The records are drawn from two major collections used for this study: Vanjeri Grandhavari and Koodali Granthavari. Records from other collections are more frequently embedded within longer records and are, therefore, not as useful for demonstrating the basic structure and phrasing of land law records. From these shorter examples, we can see more easily the similarity of organization and language between the records.

LAND SALES (Aṭṭipēr̲/Janmaṃ)

Koodali Granthavari – Doc. 14C

1. This is a deed of sale written in the month of Eṭavaṃ when Jupiter was in Makara in the Kollam year 804 (1629 A.D.).
2. Receiving the rate of the day, Mukkaṇṇi Kummāran Anantan and his younger brothers give with water the land below the garden land known as Kaṭalāvīṭu.
3. Giving the rate of the day, Kaṇṇen Keḷu of the Kalliyāṭan (svarūpaṃ) in Kūṭattiṅkal Kunnam receives with water the land below the garden land known as Kaṭalāvīṭu.
4. Thus, affirmed and witnessed by Vāsu Nār̲āṇan of Kalikoṭu.
5. Handwritten by Rayiru Rairu of the Kalliyāṭan (svarūpaṃ).

Vanjeri Grandhavari – Doc. 99A

1. This a deed of sale (aṭṭipeṯṯolakkaruṇaṃ) written in the month of Ciṅṅa in the Kollam year 825 (1650 A.D.).
2. The rice land below Kanakāveli in Tiruvūr deśaṃ and the lands on the southern side of that garden land, the borders of which are as follows: in the east up to the border of Karipuraṃ, in the south up to the border of Vaṭakkuṃpāṭṭa's land and the pond-hollow (kuḷakuḻi), in the west up to the pond-hollow

and the lands below the Kuṟuvaṭi (cudgel?), in the north up to Kanakāveli's garden land – the aṭṭiper rights over everything contained within these four boundaries (atir) including the water sources (kuḷaṃ) are given with water by Cuvaran Cuvaran of Kanakāveli and his younger brothers who receive the current rate of the day as determined by a local group.

3. In this same way, Tāmotiran Tāmotiran of Morttalacceri and his younger brothers receive the aṭṭiper rights over the specified lands and water sources.
4. Thus, taking the "mango-storehouse" (māvaṟa) he gives the "water-shed" (nīraṟa), and giving the "water-shed," he takes the "mango-storehouse"[1].
5. In the presence of the local ruler (deśakoyimma) – witnessed by Iṭṭiyuṇṇi Rāman of Aḻakapeḷḷi – handwritten by Vaṭakkumpāṭṭa Uṇṇekkan.

Koodali Granthavari – Doc. 24B

1. This is a deed of sale written in the month of Karkaṭa of the Kollam year 796 (1621 CE).
2. Neytileri Mādhavan Mātu gives with water the aṭṭiper rights over a ricefield of 1100 nel (in measure) below the house, receiving the rate of the day (annaperumartthavuṃ).
3. The Kūṭaḷi temple trustees (devatā urāḷar) together receive with water the aṭṭiper rights over this ricefield of 1100 nel below the house, giving the rate of the day. The border of this property including the eastern (kiḻakkakaṃ?) has been conveyed and accepted (aṭakki).
4. Thus witnessed by Devan Devan of Puṭukoḷḷi Parambu and Ukāran Ukkappan of Ceṇicceri.
5. Handwritten by the Niḻal Menokki of Payaṯṯukāl who repeated what he heard for the knowledge of the parties and wrote it down.

1. A similar expression is found in Doc. 55A of the same collection though I have still not found a satisfactory explanation for what it means.

USUFRUCT MORTGAGES (Veppu/ Oṯṯi)

Vanjeri Grandhavari – 100A

1. This is a deed of usufruct mortgage written in the month of Kanni in the Kollam year 826 (1650 A.D.).
2. It is hereby affirmed that fifteen and three quarter accus of new coin (putupaṇaṃ) are given by the hand of Tāmotiran Tāmotiran of Morttalacceri and received by Cuvaran Cuvaran of Kanakāveli.
3. The consideration for the 15 3/4 accus thus received is the garden land of the family house (illaṃ) in Tiruvūr deśaṃ along with the rice, fruits, and water sources thereon, which Cuvaran Cuvaran and his younger brothers hereby give as a usufruct.
4. In this same way, Tāmotiran Tāmotiran and his younger brothers receive as a usufruct the specified garden land.
5. Thus do the parties agree to give and receive as a usufruct the full principal (mutal), all of the produce, the ghee, and the pepper.
6. Witnessed by Iṭṭi Uṇṇirāman of Aḷakappeḷḷi in the presence of the local ruler (deśa koyimma).
7. Handwritten by Vaṭakkumpāṭṭa Uṇṇekkan.
8. In this matter, a stipulation for improvements (kuḷikāṇaṃ)[2] is also given for the produce of the mortgaged land.
9. This garden land was received as janmaṃ (ippaṟambu janmaṃ koṇṭu)[3].

Koodali Granthavari – Doc. 6E

1. This is a deed of usufruct mortgage written in the month of Tūlā when Jupiter was in Dhanu [no year given].
2. 75 Vīrarājan new coins (putiya paṇaṃ), not accounting for differences of measurement or weight (vāśipeṭātava), are given by the hand of Naṟāṇan of Tūṟāṇacceri.
3. Kaṇṇen Māṇikkaṃ of Niṭumbaṟaṃ receives (the same).

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2. A kuḷikāṇaṃ is a stipulation in many usufruct mortgages allowing the creditor to be compensated for any unrealized profits from improvements made to the usufruct lands.
3. The final phrase appears to be an addition made some time after the original deed in which the full janmaṃ rights to the mortgaged garden land were eventually given to the Vanjeri house.

4. For these 75 coins, Kaṇṇen Māṇikkaṃ of Niṭumbaṟaṃ gives as a usufruct mortgage (oṯṯiyāka veccukoṭuttān) half of (the produce from) the 20 seeded lands in Neṟakīḻ.
5. Nārāṇan Nārāṇan of Tūṟāṇaccēri receives as a usufruct mortgage the lands in Neṟakīḻ.
6. That the parties have thus agreed to give and receive this usufruct mortgage is witnessed by Devan Kuttan of Kaṇṇan(?) Baliyakaṃ and Kaṇṇan Cuvaran of Kuḷiyaparambu.
7. Handwritten by Keśavan Koyintan of Kanatamāra who repeated what he heard for the knowledge of the parties and wrote it down.

CUSTODIAL MORTGAGES (Paṇayaṃ)

Koodali Granthavari – Doc. 37A

1. This is a deed executed in the month of Iḍava of the Kollam year 792 (1617 A.D.).
2. 50 Kaṇṇannūr new coins, not accounting for differences of measurement or weight, are given by the hand of Araṭṭan Rayarappan of the Kalliyāṭa (svarūpam) in Kāyallūr Puḷiyankaṇṭi.
3. Kumāran Keḷu of the Nelliyāṭa Parambu in Coṇṭam receives (the same). Thus, affirmed (koṇṭān koṇṭa parica?). He agrees to pay interest on the 50 coins at the rate of 11 for 10 (10%).
4. The securities (paṇayaṃ) for the 50 and the interest are his share and his ploughshare-tax (koḻu) of Muḷiyākunna in Cotaṭam.
5. Thus witnessed by Ciṇṭan Rāmar and Muṇṭayāṭan Nambi Kaṇṇan.
6. Handwritten by Vāsu Emman who repeated what he heard for the knowledge of the parties and wrote it down.

Koodali Granthavari – Doc. 44C

1. This is a document executed in the month of Eṭava in the Kollam year 837 (1662 A.D.).

2. 101 Kaṇṇannūr new coins (putiya paṇaṃ), not accounting for differences of measurement or weight, are given by the hand of Ciṇṭan Ciṇṭan of Kūṭamkunnaṃ[4].
3. Koran Kaṇṇen of Nāṭācceri receives (the same). Thus, affirmed. He agrees to pay interest on the coins at the rate of 11 for 10 (10%).
4. The securities (paṇayaṃ) for the 101 coins and the interest are the rice fields known as Pūmbākunna and the ploughshare-tax on this land.
5. Thus witnessed by Kīttaḷḷi Tekkan Koman Cāttu and Kāpāṭan Cāttu Koran of Eṭavalaṃ.
6. Handwritten by Payaṯṯukka Ciṇṭan Cāttu who repeated what he heard for the knowledge of parties and wrote it down.

Vanjeri Grandhavari – Doc. 20A

1. This is a document (kāriyaṃ) made in the month of Makara in the Kollam year 744 (1568 A.D.).
2. Older contracts being settled (naṭatte karuṇṇaḷkka pinpa)[5], seven accus of new coin are given by the hand of Kaṇṭan Tāmotiran of Morttalacceri and received by Ceṟunnan Cekaran of Koṭṭillaṃ. Thus, affirmed.
3. The parties are also bound to give and receive as a security for the seven accus the previously mentioned (property) as well as three coins (paṇaṃ) per year.
4. Thus witnessed and handwritten by Teyyan Rāyiran of Kotakuṟippaṃ.

Vanjeri Grandhavari – Doc. 49A

1. This is a document made in the month of Tulā in the Kollam year 780 (1604 A.D.).
2. Older contracts being settled, 401 new coins and 12 potis of rice-seed (kaḻi vittu) as measured by the great nāḻi of Kotta-

4. This is the Kūṭāḻi house = "kūṭattiṅkal kunnatta".
5. The phrase refers to older mortgages between the two parties which have now been redeemed. In most such records, the same property which was previously mortgaged is again mortgaged. This is indicated by the phrase "the previously mentioned (property)" (naṭe iṭe colli).

kkeḻakka in Torekkavu are given by the hand of Tāmotiran Tāmotiran of Morttalacceri and received by Kṛṣṇan Iravikkumaran, the secretary (potuvāl) of Koṇḍayūr. Thus, affirmed.

3. The parties are also bound to give and receive as a security for the 401 coins and the 12 potis of seed the previously mentioned (property) along with interest at the rate of 11 for 10 (10%) as well as two polis[6].
4. Thus witnessed and handwritten by Vaṭakkuṃpātta Iṭṭirārappan.

6. Poli may be a textual mistake for poti. If poli is meant, however, it seems to refer to an "increased" amount of seed. The amount of increased seems to be understood.

GLOSSARY

ācāra – standard of conduct; localized law

aṭima – slavery which bound people to field labor but also entailed rights to a certain part of the produce and to continued subsistence

aṭṭipēṟ – the highest rights over land in medieval Kerala (equivalent to janmaṃ)

brahmasvaṃ – lands and other property belonging to Brahmin families

Cēra – title used by the "kings" of Kerala in both the Sangam and early medieval periods

cērikkal – lands belonging to a local ruler, regional ruler, or rāja; lands cultivated by peasants not under the control of a temple

dēśaṃ – locality; a small geographic and political unit controlled by a local lord

dēśavaḻi – title of local lords who controlled deśaṃs

dēvasvaṃ – lands and other property belonging to deities (dēva)

dharma – duties of religious and legal life; what must be "maintained" or "up-held" in the world

Dharmaśāstra – a genre of Sanskrit literature devoted to the exposition of dharma

ghaṭikā – centers of military, religious and other educational training

grāmaṃ – community of Brahmins living near a temple

janaṃ – a member of a temple council

janmaṃ – highest rights over land (equivalent to aṭṭipēṟ)

kaḻañcu – standard measurement of weight used for valuing coin

kaccaṃ – a declaration of rules for Brahmin communities in early medieval Kerala (equivalent to Skt. vyavasthā)

kaṭamai – generic term for a tax or obligation owed to a political lord

kāṇaṃ – a strong lease to land in which the lessee arranges for cultivation of the land and pays the lessor rent (pāṭṭaṃ); one of the higher land tenures in late medieval Kerala

kārāṇmai – rights of tenancy in land; rights associated with holding kāṇaṃ over land

Kollam era – the calendrical system used in medieval Kerala; A.D. 825 was the first year of the Kollam era

Kovil Nambi – title given to a royal official who acted on behalf of a ruler in temples

kōyil (kōvil) – a temple; from Tamil kō, "king," and il, "place"

kṣetraṃ – another name for a temple, referring to the "fields" surrounding the temple structure itself

kuṭimai – cultivation rights; rights held by lower castes through the payment of pāṭṭaṃ (rent) to the landholders (janmi) or to the holders of kāṇaṃ rights over the land

maryādā – local law; the "boundaries" of acceptable legal and religious behavior

muppu – title of the leader of a svarūpaṃ temple council

nāḻi – standard of measurement for rice; each locality had a standard nāḻi in their vicinity to which all quantities of rice were measured

nālu taḻi – collective designation for the four temples mentioned in Cēra inscriptions as being the leaders of the temple system in Kerala at the time

Nambyār – name of a Nāyar or Ambalavāsi sub-caste

Namputiri – name of the most powerful Brahmin sub-caste in Kerala; not prevalent until the 18th Century A.D.

nāṭu – a regional geographic and political unit controlled by a regional ruler

nāṭuvaḻi – title of the regional ruler who controlled a nāṭu

Nāyar – name of a matrilineal caste in Kerala; most Nāyar men underwent military training and served as police, guards, or soldiers, while Nāyar women were noted for the special marriages (sambandhaṃ) they made with Brahmins

oṭṭi – a usufruct mortgage; also known as veppu

pāṭṭaṃ – rent paid in kind or in cash

paṇaṃ – a monetary unit

paṇayaṃ – 1) a custodial mortgage; 2) the security for a debt

paṟa – standard of measurement for rice; larger than a nāli, smaller than a poti

poti – standard of measurement for rice; larger than a paṟa and nāḻi

Perumāḷ – title of "kings" in Kerala and other parts of South India; literally, "big person"

rakṣābhogaṃ – tax paid for police protection in a temple community; also called kāvalphalaṃ

sabhā – a temple council

śālai – centers for military education and other training

Sāmanta – generic name of royal castes in Kerala

samudāyaṃ – head of a saṅkētaṃ temple council

saṅkētaṃ – name for a territory under the control of a Brahminical temple or the group of families which controls the temple

svarūpaṃ – see saṅkētaṃ

ūr – generic name for "a place"; used in Cēra inscriptions to refer to Brahmin temples and their councils

vṛtti – kind of land tenure held in exchange for services rendered to a political ruler

veppu – a usufruct mortgage; also known as oṯṯi

yogaṃ – a temple council

Zamorin – title of the ruler of the Malabar area in medieval Kerala; from Malayalam sāmutiri

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