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ON THE SYSTEMATIC STUDY AND RELIGIOUS IMPORTANCE OF EASTERN, PARTICULARLY INDIAN, LAWBOOKS

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THE legal literature of Eastern nations mostly forms part of their Sacred Books, and the labours of scholars in that field may therefore justly claim the attention of those interested in the History of Religions. Now a distinguished Italian jurist, Dr. Giuseppe Mazzarella, has lately put forth a remarkable scheme for collecting and translating the whole body of Eastern law-books. Starting from the fact that the peoples of the East possess quite a number of very comprehensive systems of law, the records of which would fill many volumes in print, he points out that European scholars have only just made a beginning in studying this vast literature. The majority of Oriental works on law has never been translated; of others the existing versions are unsatisfactory. What is more, there exists hardly any co-operation between the two sets of workers in that field, the jurists and ethnologists on one hand, the philologists and Orientalists on the other hand. The philologists, whose attention is entirely absorbed by the peculiar philological difficulties besetting the study of these ancient texts, are not sufficiently acquainted with the institutions and usages of the East, to be able to form a correct estimate of Eastern law, and to translate Eastern law-books in a thoroughly satisfactory manner. The jurists and ethnologists are apt to fall into many mistakes, owing to their insufficient knowledge of the ancient and modern languages of the East.

In order to remedy this evil, it is proposed by Dr. Mazzarella that philologists and jurists should henceforth work in concert. Their common efforts would have to be directed to a full investigation of the following sixteen systems of law, the Indian, the Burmese, the Siamese, the Annamitic, the Chinese, the Japanese, the Corean, the Kalmuk, the Kirghiz, the Malayo-Javanese, the Balinese, the Malakay (this I suspect to be a misprint), the Babylonian and Assyrian, the Hebrew, the Egyptian, the Mohammedan, in the order in which they are mentioned. These numerous systems of law may be arranged in four principal groups, consisting of (1) Indian, (2) Indo-Chinese with Malay, (3) Chinese-Japanese, (4) Semitic.

The co-operation of the jurist with the Orientalist would have to take place in this way, that the former would first translate the texts

as literally as possible. Thereupon, the jurist or ethnologist would have to examine the work done by the Orientalist, and to suggest alterations, both as to the legal phraseology, which would have to agree with the legal terms current among the civilized nations of modern Europe, and as to the contents. The philologist would then go back to his work, revising his translation, and supplying annotations to it.

The organization of these labours would have to be entrusted to an international committee, with Berlin for its seat. At Berlin there exists the International Society of Comparative Jurisprudence, which might take the lead in this movement. Moreover, says the Italian scholar, the study of ancient Eastern languages flourishes in Germany to an extent hardly paralleled anywhere else, so that German scholars would be likely to give more help in this matter than those of any other country. This is what Dr. Mazzarella has to say on the question of organization. He does not decide, however, which particular language should be chosen for the proposed translations of Eastern law-books. He seems to think, either that all of them should be in German, or that the translator should be at liberty to choose between English, German, and French.

Coming to the financial question, it is suggested that either the learned societies of different European countries should each contribute something towards the expense of printing the translations, or that the governments of these countries should do so. It is pointed out that the surprising development of European colonies in the East, and the equally rapid growth of commercial relations with Eastern nations, render it eminently desirable for Europeans to obtain a better insight into the legal institutions of Eastern countries than has been hitherto possessed by them. Eighteen European states have recently combined to defray the heavy expense of taking photographs for a large-sized map of the sky, with a catalogue of stars. Might not a similar coalition take place for the purpose of translating the law-books of the East. Or the great academies and other learned societies of Europe might form an alliance towards the same end.

Such are the main points of the remarkable scheme proposed by the Italian jurist, which deserves the attention of students of religion as well as of lawyers and Orientalists. Whether it will be so easy to realize his proposals as he seems to think, is another question. Thus it is by no means certain that the suggested co-operation of Orientalists and jurists would lead to the desired result. A student of Eastern law who does not know Eastern languages, will always feel rather helpless, and it is not likely that he will be able to give any useful advice to an Oriental scholar engaged in the same study. I should say that Dr. Mazzarella has not done sufficient justice to the laborious and somewhat dry but necessary work of learning an ancient language

and interpreting ancient texts, sifting every passage, and carefully examining every word, before arriving at a final translation. It is not till all this preliminary work has been accomplished, that the student of comparative jurisprudence will get sufficient material to work upon, and will be placed in a position to supply new thoughts and standpoints to the Orientalist.

Secondly, it would be very difficult to interest the governments or even the leading learned societies of Europe sufficiently in a scheme of this kind to obtain their support, the expense to be incurred being likely to prove very considerable; although it must be admitted that those translations of ancient Indian law-books, which have been published here in Oxford, in the Sacred Books of the East, have been a financial success and have sold very well.

This brings me to a third point, namely, that those literary productions of ancient Eastern nations, which are connected with their religion, appeal indeed to a very large circle of students, and even to the general reader. If, then, we want to secure the support of outsiders for a work of this kind, we must not overlook the essentially religious character of Eastern law, and must try to obtain the assistance of students of Eastern religions in the first place.

Last, but not least, though, being a German myself, I rejoice in Dr. Mazzarella's suggestion that the proposed new undertaking should have its centre in Germany, I cannot help thinking that England, with her vast and manifold interests in the East, would be far fitter than Germany to take the lead in this matter, and that most if not all of the translations should be written in English.

It is a remarkable coincidence, that a scheme closely analogous to that proposed by Mazzarella has recently been started by an Indian law scholar, Govind Das of Benares; only that his scheme is confined to the department of Indian law. The name of Govind Das is well known to students of Indian law as that of the editor of two important Sanskrit law-books, *Bālaṃbhaṭṭī* and *Vīramitrodaya*. His opinion regarding the study and exposition of Indian law is given in a private letter, addressed to myself, of January 22 of the current year; and it will be hardly considered an indiscretion, I hope, if I try to give you the purport of his views on the subject.

Govind Das agrees with Dr. Mazzarella in proposing to establish an international committee or syndicate of experts, to whom the task of expounding Sanskrit law is to be entrusted, and in suggesting the co-operation of Orientalists and students of ancient law. Thus it is his idea that the international committee to be established should have as president myself as a German Sanskritist, with a jurist as joint-editor. The several parts of Indian law are to be divided between the experts, but no single chapter done by any one of these experts

shall be considered complete, till it has been revised by two other experts, one of whom should always be a Hindu, if possible. Each chapter of the proposed new work on Indian law would, therefore, pass through the hands of three workers in that field, besides those of the joint editors; which somewhat complicated process would ensure a high degree of exactness and authority for the work resulting from the labours of all these men. First of all, the modern law would be treated in a number of sections, much as has been done in that useful work, the *Vyavastha Chandrika*, of the late Shama Charan Sarkar. The principal Sanskrit manuals of law, such as the *Mayūkha*, *Viramitrodaya*, and *Bālaṃbhaṭṭī*, might serve as a basis for that part. Each section is to be followed by a commentary, giving a full account of the history of the institutions and legal theories discussed in the section, and of the attitude of the several Indian schools of law towards them. The different doctrines held in these schools of law are mostly based on a difference in interpretation of the early texts on law. It should be indicated in the commentary how far these discrepancies might be reconciled, and what improvements might be suggested from the standpoint of modern law in Europe. Legal procedure, as described in the Sanskrit law-books, would also come in for a separate treatment, but owing to its supersession by modern rules of procedure, it has an historical value only, and may be reserved for an appendix. A work by Greenidge published in Oxford, on *Legal Procedure in Rome in the time of Cicero*, might serve as a model for this part of the book.

It will be seen from the foregoing remarks, that what is intended here is not a mere collection of translations, but a complete cyclopaedia of Indian law. Such a cyclopaedia, of course, would be a very bulky work, consisting of three or four volumes, at least, somewhat similar in size and plan to the vast German cyclopaedias of Roman law. A work of this description might be expected to meet a want long felt, and to be equally useful and important to the antiquarian, to the student of comparative jurisprudence, to the professional lawyer, and, above all, to the codifier, who would find in it all the materials ready to hand for a codification of what is called the Hindu law. Such legislation, according to Govind Das, is very desirable and necessary, because the old national laws and usages of the people of India are in danger of being swept away by a judge-made law. Govind Das complains of the ignorance of Sanskrit law which prevails among Indian judges; and he agrees with Mazzarella in regarding the hitherto existing translations of Sanskrit law-books as unsatisfactory and insufficient.

These observations of a learned and patriotic Hindu certainly claim more than a passing notice. It is true that they are open to much the same objections as the Italian scheme, though the fact of their belonging

to a narrower sphere would seem to render their realization far easier. It appears eminently desirable that the proposed encyclopaedia of Indian law should be written, and that Indian and European scholars should join in preparing it.

I may now pass to the principal object of my paper. May I take the liberty of directing your attention to a literary undertaking, on which I am myself engaged? It is a far less ambitious one than the two schemes of which I gave you some account just now. My work is to be called *Ancient Law in India*. It is to contain a brief history of Indian law, in one volume. As you may gather from the title, it is to be in English. This, in spite of what has been said by Dr. Mazzarella, seems to me the proper language to be used in a work dealing with the old laws and customs of an English dependency, such as India is. The number of those interested in ancient Indian law is not very great, and they live for the most part in England or India. Of course, it is not easy for Germans to write in English, and I shall have to claim the indulgence of my readers for my faulty style. As regards the contents of my work, I need hardly mention that I am not going to enter into competition with the writers of manuals of the Hindu law, as it is administered in the courts of the present day. The modern case law has been frequently treated by a host of distinguished writers in England and India, down to Dr. Trevelyan, the Reader in Indian Law at this University, whose valuable work on Indian family law has only just been published. Some of these works contain interesting hints on the history of the institutions to which they refer, notably inheritance and adoption; others are short text-books for the guidance of the practical lawyer. But there is not in existence a single work, in the English language, covering the whole ground of Indian legal history; though other parts of the history of civilization in India have been treated very fully in English works, e.g. political history, numismatics, art, the history of Sanskrit literature generally, the history of Buddhism, and so on. The highly developed legislation and jurisprudence of the Indian people is quite important and interesting enough in itself, I think, to form the subject of a separate historical treatise. Their laws may be said to possess a special importance and value for the student of religion, because in India law and religion are even more closely connected than in other Eastern countries. This will appear more clearly, if I try to give you some account of the plan of my work.

Turning, then, to the several parts of the Indian law, it seems clear that in an historical book legal procedure should be discussed in the first place. It is impossible to arrive at a real insight into the working of the ancient legal rules in India, without having some knowledge of the Indian law of evidence, and of their judicial procedure. The law

of evidence includes the administration of ordeals, which were considered one of the principal kinds of evidence. This shows how closely the taking of evidence was connected with religion. The deities were believed to take a prominent part in the proceedings of a court of justice, and to be anxious to establish the guilt or innocence of the parties in a cause, giving as it were a religious sanction to proceedings-at-law.

In the same way the exercise of jurisdiction by the king or his judge was regarded as a sacred function. An offender duly punished was supposed to go to heaven; one released was thought to throw his own guilt on the king who had pardoned him. We have only to look at the code of Manu, to find that punishment, called *daṇḍa*, was extolled in the most exaggerated manner, and raised to the rank of a deity. In the Sanskrit law-books, as in all primitive legislation, criminal law forms the central part. Though this criminal law, like the native law of evidence, has long been superseded by a penal code of European origin, its historical importance cannot easily be overrated. No doubt it is an iniquitous law, written by Brahmans for Brahmans, and exhibiting in every way their pretensions and arrogance. Thus it is an established principle with these Brahman jurists, that no Brahman shall ever be subject to corporal chastisement.

Besides a full penal code, the Sanskrit law-books contain an elaborate system of religious penances for the expiation of sins. These so-called *Prāyaścittas* have retained to the present day an important place in the religious and social system of the Hindus, even after the entire disappearance of their criminal law with its barbarous punishments. The accurate performance of the prescribed forms of atonement is enforced by caste assemblies, and those who refuse to conform to their dictates are liable to be degraded from their caste. In ancient times punishment for crime seems to have been frequently combined with loss of caste, and the offenders had to perform a penance, in order to obtain readmission into their caste.

The family law is closely connected with religious ideas. Thus the entire law of inheritance has been said to be a spiritual bargain, in which the right of succession is made to depend on the due performance of funeral offerings to a deceased ancestor or relative. Adoption, again, is regarded as a religious duty, because it ensures the performance of the obsequies to his father by the adopted son where there is no natural-born son to perform them. Marriage is viewed as a sacrament, and the husband is said to receive his wife from the gods.

In the law of debt we meet with the well-known custom of Sitting in *Dharna*, which occurs as *Ācarita* or *Prāya* in the Sanskrit law-books. Under this custom, a Brahman creditor might compel an obstinate debtor either to pay his debt, or to charge himself with the atrocious

crime of killing a Brahman. Another essentially religious notion in the Indian law of debt is this, that a recalcitrant debtor will be reborn in his creditor's house as his slave. Here the characteristic Indian doctrine of transmigration comes in.

In the title of law which is called Concerns among Partners, the code of Manu has an elaborate discussion of the method of dividing the sacrificial fees between the officiating priests at a sacrifice. So in the rules regarding the rights and constitution of societies, religious corporations are specially considered. These religious castes and brotherhoods were largely endowed by kings and private persons, and the law of religious endowments and perpetuities has, therefore, reached a high stage of development in India. Thus in the title of Resumption of Gifts the gifts meant are principally charitable gifts. These gifts or endowments occur again in the Law of Inheritance as one of the kinds of impartible property, their impartibility 'arising as much from the fundamental idea of their not being private, as from a desire to maintain the uninterrupted use of the same for private purposes'.[1]

Royal grants are also mentioned in the Law of Limitation, where it is said that villages thus granted shall not be subject to the ordinary period of prescription. Thus if the villages have been appropriated by a stranger, and have been held by him and his descendants down to the third generation even, the original donee or his descendants may recover them on producing the royal charter by which they were granted. It appears probable that a large portion of the Indian soil had thus become, at an early period, the property of religious institutions. Various other gifts to Brahmans, in expiation of an offence committed, such as causing the death of various animals, are mentioned among the Prāyaścittas, or religious penances. Charity in general is particularly recommended as an atonement for guilt. Thus Gautama mentions divers gifts as one of the means for expiating sinful acts. Manu refers to almsgiving in the same connexion. Āpastamba declares charity to be the only mode of expiation open to Śūdras, because they may neither read the Veda, nor sacrifice, nor practise austerities. In the introductory chapter of his code, Manu declares charity alone to be the prevailing virtue in the present age of sin, the *Kaliyuga*. Another lawgiver, Yama, states charity to be the special duty or virtue to be practised by householders. And a third, Vyāsa, asserts the charitable man to be the real miser, because he does not leave his wealth even after death, i.e. he derives benefit from his property even in a future world. Mediaeval Sanskrit literature abounds in special treatises on the subject of *Dānam* (charitable gifts), some of them, as

[1] See Sarasvati's volume of Tagore Law Lectures on the *Hindu Law of Endowments*, 1897, p. 39, from which some of the following illustrations also have been taken.

Hemādri's *Dānakhaṇḍam*, of vast size. It is true that charity belongs to the religious rather than to the secular law. But, as you all know, the line between ecclesiastical and secular law has never been drawn in India, and the law-books, such as the code of Manu, are manuals of religion as well as of law. It is no matter of surprise, therefore, that the religious element, as shown before, makes its appearance even in those parts of the secular law where you would least expect it.

For further details I may be allowed to refer you to my book which I hope to publish in Oxford. Let me conclude by briefly referring to the subject of administration, which will also be treated in my book.

The essentially theocratic character of Indian administration, as described in the Brahmanical codes, is shown by the recommendations to appoint none but Brahmans as ministers and judges, to levy no taxes on Brahmans, to make grants of landed property to them and to inflict capital punishment on the forgers of such grants. Nor were these mere theories, as the course of Indian history shows. Thus under Mahratta rule, which may be designated as a Brahmanical revival, administration had entirely passed into the hands of the Brahmans.