social activity, especially everyday transactions between individuals or groups.[60] In a special way, it here refers to commercial transactions, such as buying and selling. Thus Kautilya defines it as commercial transactions: "*vyavahāra* consists of trading in merchandise."[61] From this is derived a more specific meaning of legally binding social and commercial transactions, regarding which one can bring a lawsuit. Thus Kautilya defines some kinds of transactions, such as those entered into by dependents or people who are drunk or mentally incompetent, or those transacted in secret, as null and void (*AŚ* 3.1.2, 13); they are technically non-*vyavahāra*.

From these legal connotations are derived two technical meanings relating directly to law. The first is seen in Kautilya's *Treatise on Politics* (ch. 3.1): there, as already seen, *vyavahāra* means a specific kind of law probably relating to social and commercial transactions.

The second meaning of *vyavahāra* is lawsuits and, derivatively, rules of legal procedure associated with them. Perhaps this meaning is derived from the fact that most lawsuits may have involved commercial transactions, and the nonpayment of debts is always the first and paradigmatic area to be dealt with in legal procedure, and the rules of procedure are most frequently given within the context of debts. Narada (*Mā* 1.1), for example, at the very opening of his treatise says that in the beginning people were truthful and honest and there was no occasion for *vyavahāra*, meaning legal disputes.

Under the category of legal procedure, treatises deal with two broad areas: court procedures, including the evaluation of evidence, and what have been called "titles of law" or what I would term "subjects of litigation." Although in this part of the sourcebook I will deal principally with the former, I want to provide here a synopsis of the latter, especially because the two areas are intertwined within the legal texts.

The term used for the different titles is *pada*, literally a step. Its earliest technical use is by Kautilya, who uses it in a compound with *vivāda*, a dispute or lawsuit (*vivādapada*, *AŚ* 3.16.38; 4.7.17). The more common technical term for a title of law is *vyavahārapada*, used by Manu (8.7), Yajnavalkya (2.5), Narada (*Mā* 1.30; 2.1; 3.1), and Brihaspati (1.1.121).

Manu is the first to classify these titles of law into eighteen categories, a number that was auspicious in ancient India. The actual number varies with different authors, but all except Kautilya, during whose time these titles were probably not formalized into a system, give the nonpayment of debts as the first. Below is the classification of these titles in four major legal texts in the order in which they are given in each.

These titles of law are also significant for legal procedure as such, because the first thing that a plaintiff has to present to court is the specific title under which he is filing the lawsuit. Later authors[62] maintain that a single lawsuit should deal with a

THE ORGANIZATION OF TITLES OF LAW

Manu	*Arthaśāstra*	Yajnavalkya	Narada
1. *ṛṇādāna*: nonpayment of debt	*strīpuṃdharma**: law concering husband and wife	*ṛṇādāna*: nonpayment of debt	*ṛṇādāna*: nonpayment of debt
2. *nikṣepa*: deposits	*dāyavibhāga*: partition	*upanidhi*: deposits	*nikṣepa*: deposits
3. *asvāmivikraya*: sale without ownership	*vāstuvivāda*: property disputes	*dāyavibhāga*: partition	*saṃbhūyasamutthāna*: partnerships
4. *saṃbhūyasamutthāna*: partnerships	*samayasyānapākarma*: breach of contract	*sīmāvivāda*: boundary disputes	*dattāpradānika*: nondelivery of gifts
5. *dattasyānapākarma*: nondelivery of gifts	*ṛṇādāna*: nonpayment of debt	*svāmipālavivāda*: disputes between owners and herdsmen	*abhyupetyāśuśrūṣā*: breach of contract of service
6. *vetanādāna*: nonpayment of wages	*aupanidhikam*: deposits	*asvāmivikraya*: sale without ownership	*vetanasyānapākarma*: nonpayment of wages
7. *saṃvidvyatikrama*: breach of contract	*dāsakarmakarakalpa*: rules regarding slaves and workers	*dattāpradānika*: nondelivery of gifts	*asvāmivikraya*: sale without ownership
8. *krayavikrayānuśaya*: cancellation of sale or purchase	*saṃbhūyasamutthāna*: partnerships	*krītānuśaya*: cancellation of purchase	*vikrīyāsaṃpradāna*: nondelivery after sale
9. *svāmipālavivāda*: disputes between owners and herdsmen	*vikrītakrītānuśaya*: cancellation of purchase or sale	*abhyupetyaśuśrūṣā*: breach of contract of service	*krītānuśaya*: cancellation of purchase
10. *sīmāvivāda*: boundary disputes	*dattasyānapākarma*: nondelivery of gifts	*saṃvidvyatikrama*: breach of contract	*samayasyānapākarma*: breach of conventions
11. *vākpāruṣya*: verbal assault	*asvāmivikraya*: sale without ownership	*vetanādāna*: nonpayment of wages	*kṣetrajavivāda*: land disputes
12. *daṇḍapāruṣya*: physical assault	*sāhasa*: violence	*dyūtasamāhvaya*: gambling and betting	*strīpuṃsaṃyoga*: relations between husband and wife
13. *steya*: theft	*vākpāruṣya*: verbal assault	*vākpāruṣya*: verbal assault	*dāyabhāga*: partition
14. *sāhasa*: violence	*daṇḍapāruṣya*: physical assault	*daṇḍapāruṣya*: physical assault	*sāhasa*: violence
15. *strīsaṃgrahaṇa*: sexual crimes against women	*dyūtasamāhvaya*: gambling and betting	*sāhasa*: violence	*vākpāruṣya*: verbal assault
16. *strīpuṃdharma*: law concerning husband and wife	*prakīrṇaka*: miscellaneous	*vikrīyāsaṃpradāna*: nondelivery after sale	*daṇḍapāruṣya*: physical assault
17. *vibhāga*: partition	*saṃbhūyasamutthāna*: partnerships	*strīsaṃgrahaṇa*: sexual crimes against women	*dyūtasamāhvaya*: gambling and betting
18. *dyūtasamāhvaya*: gambling and betting	*steya*: theft	*prakīrṇaka*: miscellaneous	*prakīrṇaka*: miscellaneous

*This term is not given in the *Arthaśāstra*, but the topic is treated at the very outset.

plaint relating to only a single title. If more than one are involved, then there is the legal fault called a fallacious plaint.

The early aphoristic texts on dharma provide minimal information on legal procedure, other than to point out the kinds of evidence, such as witnesses, that can be presented to prove a case. Gautama gives the most detailed account, but even that does not contain a full description of how a court functioned in ancient India. Kautilya and Manu are the first to give extensive accounts with a developed technical vocabulary. But Yajnavalkya, Narada, and scholars who followed them created the most extensive and detailed descriptions of legal procedure followed in a court of law. These descriptions are further expanded and provided a rational structure in the medieval legal digests, such as that of Devanna Bhatta, who takes the reader from the initial filing of charges all the way to the final verdict.

Here, given the constraints of space, I want to give a synoptic description of legal procedure developed by the authors from Kautilya to Narada. The multiple terms of the technical vocabulary used show that litigation carried out within a court is imagined as and compared to three other activities that have common elements: military battle, public debate, and logical syllogism. The battle metaphor is, of course, quite appropriate, because a case involves two combatants, an attacker and a defendant. The terms for plaint, plaintiff, and defendant—*abhiyoga, abhiyoktṛ, abhiyukta*—are also used in the case of attack, attacker, and attacked within the context of war. Victory and defeat in a lawsuit are called *jaya* and *parājaya*, and the winner and loser are called *jayin* and *jita*, all military terms. These same terms can also be used in the case of a debate, with a challenge, challenger, and challenged. Corresponding to a debate is the very word for a lawsuit, *vāda*, used also for a debate or argument. The plaintiff is *vādin* or *pūrvavādin*, and the defendant is *prativādin*. Further, the response of the defendant to the challenger's claim can be either agreement (*saṃpratipatti*) by saying that what the challenger has said is true (*satya*) or denial (*mithyā*). Terminology borrowed from logic is also employed: *pratijñā* as proposition and plaint; *sādhya* as probandum and plaint; *hetu* and *sādhana* as proof and evidence; and *siddhi* and *siddha* as establishing what has to be proved. These three metaphors are always in the background as authors discuss the process of litigation and legal procedure.

Sources describe court procedure as having four feet—a common trope to indicate a perfect totality: plaint, plea, evidence, and verdict. The plaint is divided into two phases. First, the initial allegation brought before the court, given the technical term *āvedana,* is recorded in writing on a chalkboard. The plaintiff is permitted then to edit and emend the charge up to the moment the defendant enters his plea. After emendation the final draft of the plaint, now called *bhāṣā,*[63] is written on a more permanent medium such as a palm leaf. After the court has accepted the allegation of

the plaintiff as admissible, the defendant is summoned to court and given sufficient time to enter a plea. The plea is also written down, after which the litigants are not permitted to change their statements in any way. Sources give detailed descriptions of what a plaint and plea must contain before they can be considered legitimate; those deficient in any required feature are considered specious (*pakṣābhāsa, uttarābhāsa*) and thrown out of court (ch. 13.2: #5–6). The plea may be of four kinds: denial, admission, special plea, and prior judgment. Admission and denial of guilt are easily understood, and these are the simplest pleas. With admission, the case ends after the plea and, as our sources say, the procedure has only two feet. Special plea, technically called *pratyavaskandana,* consists of both the admission of the facts presented in the plaint and presenting a factor that would establish innocence. For example, to a plaint that the defendant had borrowed a particular sum of money, the special plea says that he did indeed borrow the amount, but has already paid it back. The charges should therefore be dismissed. The plea of prior judgment consists of the defendant telling the court that he was sued by the same plaintiff on the same charges previously, and there is a court judgment declaring him the winner.

The third phase of the trial is the presentation of evidence. But prior to that the court must decide whether the burden of proof falls on the defendant or the plaintiff. Of the four kinds of plea, admission does not require the presentation of evidence at all. In the plea of denial, the burden of proof falls on the plaintiff, who must prove the claims contained in the plaint, whereas in a special plea it falls on the defendant (ch 13.2: #7). Finally, if a prior judgment is claimed, the defendant must prove that such a judgment was declared by providing a document issued by the previous court or through witnesses. It is normally required that at the beginning of the trial the two litigants must give the court in writing the kinds of evidence they will present, and, in the case of witnesses, their names.

Four kinds of evidence were permitted in a court: witnesses, documents, enjoyment or possession, and oath or ordeal (ch. 13.2I: #8). The way these are presented in the sources offers a glimpse into the legal and socioeconomic history of the period. In sources pre-dating Yajnavalkya, that is, prior to about the fourth century C.E., the dominant form of evidence consisted of live witnesses. Although a reference to documents with the somewhat unclear term *deśa* occurs in Kautilya and Manu,[64] the common term for a document in later legal sources, *lekhya,* is absent. Yajnavalkya, who can be dated with some confidence to the Gupta period, presents a long and detailed discussion of legal documents and the factors that are required to make them valid in a court of law (ch. 11.1: #3). A century or so later, Narada states clearly that documentary evidence is superior to live witnesses and, in enumerating the various kinds of evidence, places documents before witnesses (ch. 11.2: #2). It appears that

recording legal and commercial transactions in documents became commonplace during the Gupta period, and this is reflected in the discussion of court procedures by jurists.

The history of ordeals is similarly instructive. Manu writing in the second century C.E. refers to "oath" with the technical term *śapatha,* but makes no direct reference to "ordeal"; the very term *divya,* so common in later literature for ordeal, is absent in the literature pre-dating Yajnavalkya, the first to introduce it as one of the four kinds of evidence accepted in a court of law.

After the presentation of evidence, the court considered the case presented by the two litigants and reached a verdict. Even though the verdict was pronounced by the chief judge, often called *prāḍvivāka*,[65] it appears likely that the actual weighing of the evidence and court deliberation leading to a verdict were carried out by the three assessors (*sabhya*). In the case of a miscarriage of justice, for example, it was the assessors who were subject to punishment by the king, not the judge himself.

After the verdict, any a punishment, fine, or payment of compensation to the victorious party ordered by the court was carried out. There was also a procedure of appeal to a higher court and to the king himself as the court of last appeal by the losing party if he or she felt that a miscarriage of justice, such as bias or bribery, had taken place. If such an appeal was sustained, the higher court might order a retrial (ch. 13.2: #10). The final act of the court was to issue to the victor a court document called *jayapatra*, briefly stating the facts of the case and the final verdict.

DEFINING AND DELIMITING LAW WHILE ADMINISTERING JUSTICE

The two sides of the coin of Hart's "secondary rules"—the rule of recognition dealt with under the epistemology of dharma, and the rule of adjudication dealt with under legal procedure—in significant ways open up definitional issues relating to law and dharma: What is dharma? And how do we know it? In these concluding comments I want to look at the ways the discussions of legal procedure illuminate the epistemology of dharma and bring it from its theoretical perch to the lived reality of people interacting with the judicial system.

The epistemological theory set out by ancient jurists presents the Veda as the unique source of dharma, supplemented in a variety of ways by texts of recollection and normative practices. Even though there are voices of dissent, such as that of Medhatithi, by and large the tradition buys into this theory. The lived reality of a courtroom where actual litigants or criminals are tried for a variety of offenses, however, is often far removed from those theological pronouncements. The authoritative texts presented as epistemic sources of dharma themselves advise the courts to take into

account the varying customs, practices, and norms of the different communities to which the litigants belong. In reality, the diverse laws under which the litigants are tried and judged have little or nothing to do with the Veda or texts inspired by it. The courts, then, assume a plurality of laws whose origins are diverse, while subscribing to the theory of the Vedic origin of a unique Brahmanical dharma.

Already a century or so before the Common Era, Baudhayana pointed out five distinctive practices peculiar to north India and five to south India (ch. 2.2: #3). Those distinctive to the north are: selling wool, drinking liquor, trafficking in animals with incisor teeth in both jaws, being a professional soldier, and seafaring. Those distinctive to the south are: eating in the company of uninitiated persons or of one's wife, eating stale food, and marrying the daughter of one's mother's brother or of one's father's sister (cross-cousin marriage). Baudhayana goes on to state that these practices are lawful only in that particular region; if one follows the practices of the south in the north or of the north in the south, one commits an offense. But dissenting voices are heard: Baudhayana cites the view of Gautama, for example, who sticks to the conservative position, saying that one should pay no heed to such diverse practices because they are opposed to the Vedic tradition. The Veda is not only transhistorical, it is also transregional: the Vedic dharma respects neither time nor geography and is valid everywhere and at all times. We have already seen in the section on accounting for change the problems this created when customs and moral sensibilities changed and how creative hermeneutics managed to alter the unchangeable Vedic dharma.

A noteworthy feature in the discussions of the regional variations of dharma by both Bharuci and Medhatithi is the use of the technical term *vyavasthā,* which I have translated as "norm." This usage has implications for the epistemology of dharma. Little serious work has been done on this legal concept except in its more common meaning of a legal opinion or decision.[66] It is, however, a term both distinct from and falling within the semantic compass of dharma. Thus Bharuci (ch. 12.1: #1) equates the "norms based on the practices of the region" with "the dharma prevalent among farmers, traders, herdsmen, and the like." Likewise, at the end of his commentary on Manu 8.41 (ch. 12.1: #2), after discussing the dharma of castes, guilds, and the like, Bharuci states that if the king refused to enforce such dharma, there would be the demolition of norms, thus presenting a close association of dharma and norm.

Medhatithi deals with norms (*vyavasthā*) in greater detail and more explicitly. In the most explicit definition of the term, he equates it with dharma: "Dharma is a norm established by authoritative text, reasoning, or locality."[67] He further states that "the eternal dharma consists of norms that do not derive from recent times."[68] He also gives examples, presenting two customs, one prevalent in the south and one

in the north, both of which are norms and could be called regional dharma (see ch. 12.2: #1):

> Among some people of the south, a sonless wife, when her husband has died, goes up to the pillar of the court. When she has come up to it, and she has been examined by the court officials and found to be of good character, she obtains immediately after that her inheritance in the presence of relatives belonging to the same ancestry. Likewise, in the north when there is a marriage proposal for a girl, if a meal is given to the suitor then she is pledged to him even if one does not say the words: "I give her to you." (on *MDh* 8.3)

Later, while discussing the dharma of families (on *MDh* 8.41; ch. 12.2: #3), he provides a telling example. Here the dharma is actually instituted by an ancestor of the family:

> "The dharmas of families"—a family is a lineage. In such a lineage, there is a dharma that has been instituted by an ancestor of renowned glory: "When anyone born in our lineage obtains wealth from anywhere, he shall not use it for some other purpose without first making a gift to Brahmans"—these and others like it are dharmas.

The same term is used with regard to the dharma of guilds and associations (*śreṇidharma*) in his comments on *MDh* 8.41. Here too Medhatithi provides an example:

> There are people following a single profession, such as traders, artisans, moneylenders, and carters. Their dharmas are "the dharmas of guilds." For example, some leaders of traders present the king's share verbally fixed: "We make our living by this trade. This is the king's share due to you from us, irrespective of whether our profits are more or less." When the king has agreed to this, to obtain copious profits from their trade they create norms (*vyavasthā*) among themselves, norms that are not detrimental to the kingdom: "This commodity should not be sold for this length of time"; "This fine is earmarked for the king's sojourn here or for a festival of the deity." In this case, if someone violates this, he should be punished as a man violating in this manner the dharma of the guild.

Here the norms (*vyavasthā*) that the leaders of the guild created are called in the last sentence "the dharma of the guild."

Then he presents another norm, which is actually a verse from Narada (1.125), and thus a text of recollection. This deals with the manner in which documents and witnesses should be evaluated. According to Medhatithi, this verse simply reiterates something from worldly practice and is authoritative on that basis alone; it is not based on the Veda. He even calls into question the validity of the rule.

Although the semantic history of "norm" (*vyavasthā*) has still to be written, it is clear that at least some aspects of its meaning coincide with dharma and add to our understanding of dharma and its epistemology. The rules falling under "norm" are clearly human; Medhatithi calls them *laukika*, worldly, to distinguish them from *vaidika* or Vedic rules.

The medieval jurist Devanna Bhatta (ch. 13.2: #2) gives a revealing example of a practice recognized as law within a particular tribal community called Abhira. A man of this community is brought before a court accused of committing adultery, and there are witnesses to the crime. The accused admits that the facts presented to the court are indeed true. He, however, pleads not guilty based on the customary law of his own community that permits such sexual practices: "What the witnesses have said is true. Nevertheless, I should not be punished, because I did this on the strength of custom. And the king has recorded this in the book." The man is exonerated.

Legal epistemology using hermeneutical strategies and principles honed in the school of Vedic exegesis managed to hold on, however uncomfortably, to the two horns of the dilemma already noted. On the one hand, dharma is revealed in Vedic injunctions and in texts of recollection and normative practices based on the Veda. On the other hand, courts and jurists had to contend with both the diversity of laws prevalent in different regions and groups and the inevitable social, political, economic, and religious changes bringing with them new customs, rituals, and moral sensibilities. Although necessarily brief and incomplete, this sourcebook offers a survey of the intellectual labor of scholars and jurists down the centuries who contemplated and directly dealt with these profound legal, social, and religious issues.