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BOOK REVIEW

Ownership and Inheritance in Sanskrit Jurisprudence.

By Christopher T. Fleming. Oxford: Oxford University Press, 2021. Pp. 272. $85.00 (cloth); $84.99 (digital). ISBN: 9780198852377.

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Christopher T. Fleming's *Ownership and Inheritance in Sanskrit Jurisprudence* is an entry into the Sanskrit intellectual milieu through the lens of inheritance. Grounding his study in intellectual history, Fleming immerses the reader in the complex intertextual world of Sanskrit scholasticism in India between the eleventh and nineteenth centuries CE. By connecting the intellectual with the social, Fleming builds on the recent work of the collaborative project Sanskrit Knowledge Systems on the Eve of Colonialism.[1] This group questions whether traditional methods used in the practice of Western intellectual history can be effectively applied for the study of India, where, in most cases, there is a wealth of textual material but little in terms of historical context.[2] Fleming's inquiry comes after a hiatus in Indological studies on ownership. Fleming is writing for historians and philosophers working on South Asia, particularly those who specialize in classical Hindu law.

Fleming examines the evolution of ownership (*svatva*) through inheritance (*dāya*) in three distinct Sanskrit scholastic textual traditions: religio-legal-juridical (Dharmaśāstra), scriptural-hermeneutical-philosophical (Mīmāṃsā), and new logic-philosophical (Navya-Nyāya). Fleming must be congratulated for engaging three disciplines to offer a comprehensive understanding of ownership. This is undoubtedly one of the strengths of the book. In the first three chapters, Fleming draws connections between juridical and philosophical thought in what some call regional *schools* of jurisprudence. Comparing Sanskrit jurisprudential thinkers to their Western counterparts, Fleming observes, "If Western jurists focused on ownership's incidents—to the neglect of its coherence as a unitary category—traditional Sanskrit scholars focused on the definition of ownership and property—to the neglect of a rigorous account of its incidents" (4).

[1] For details on this collaboration, see "Proposal" and "Working Papers," Sanskrit Knowledge Systems on the Eve of Colonialism, accessed April 15, 2024, http://www.columbia.edu/itc/mealac/pollock/sks/. The project website is hosted on an unencrypted server, and some modern web browsers may need to adjust security settings to access it.

[2] Sheldon Pollock, "Is There an Indian Intellectual History? Introduction to 'Theory and Method in Indian Intellectual History,'" in "Theory and Method in Indian Intellectual History," ed. Sheldon Pollock, special issue, *Journal of Indian Philosophy* 36, nos. 5–6 (2008): 533–42; Jonardon Ganeri, "Contextualism in the Study of Indian Cultures," *Journal of Indian Philosophy* 36, nos. 5–6 (2008): 551–62.

Pinning down a precise definition of ownership has always been challenging for property theorists. Dharmaśāstras draw from certain principles in Mīmāṃsā and Nyāya or Navya-Nyāya in order to interpret certain matters.[3] Under consideration here is inheritance, which operates within the kinship structure of the Hindu joint family and which has generated two diverging responses from scholars on the following question: Does one acquire property from the ways prescribed in the authoritative texts (*śāstrika*) or from regular ways that are observed in the world (*laukika*)? In the early Dharmaśāstras, views about this are not explained elaborately. However, the later texts of the genre especially the commentaries and digests deliberate on this topic and seem to side with ownership of property either being *śāstrika* or *laukika.* Note that Dharmaśāstrins cannot deviate from the meta-structure of the Dharmaśāstras, and thus, interpreting these earlier texts with methodological tools from hermeneutics and logic becomes crucial for them in presenting their arguments.

The issue at stake in this debate was the timing of the heir's receipt of ownership rights, because *birth* (unlike gift, sale, and such) is not listed as a prescribed way to get ownership in the early Dharmaśāstras. The view that ownership is either *śāstrika* or *laukika* generates two different perspectives on the timing of ownership by inheritance. The inheriting individual acquires ownership rights either when one is born into the family (a position called *janmasvatvavāda*) or when the previous owner's ownership of the property ceases (a position called *uparamasvatvavāda*). In an intestate situation (which these texts assume as their basic premise), the deceased's property would ideally be transferred to his son or grandson based on certain criteria.[4] But this simple matter became contested in the later texts of the Dharmaśāstric genre, especially with two influential inheritance treatises, Jīmūtavāhana's *Dāyabhāga* and Vijñāneśvara's *Mitākṣarā*, which present opposite views both on whether ownership is *śāstrika* or *laukika* and on the related positions of *uparamasvatvavāda* and *janmasvatvavāda.*

To explain his position on property being *laukika*, Fleming shows that Vijñāneśvara combines Mīmāṃsā theories of ownership with concerns of the Dharmaśāstras. He thereby positions himself as an advocate of *janmasvatvavāda* (although the idea preexisted Vijñāneśvara). It is fascinating to read in Fleming's footnotes the reasoning behind property being considered *laukika.* Details such as these make the book come alive. For example, consider a situation where Mīmāṃsāka-s (like Śabara) are deliberating on the purpose of ownership: Does one own property to perform ritual sacrifices (implicitly tying it to *śāstrika* prescriptions)? If that were the case, nobody can own property outside of the ritual context (implying that all instances of ownership cannot be *śāstrika*) if the only purpose of ownership is ritual sacrifice. But because ritual sacrifice is not the sole purpose of acquiring property (property is necessary for people's daily functioning, too), ownership has to be *laukika*, of course, moral standards must be maintained in the way that it is acquired (45–47). In other words, not all ownership of property can be restricted to the śāstras, where birth is not listed as a means to acquire property. Incorporating concepts such as these from the Mīmāṃsākas, Vijñāneśvara strongly argues that ownership is *laukika* and advances his argument on

[3] For details on Mīmāṃsā and Nyāya principles used in Dharmaśāstras, see Pandurang Vaman Kane, *History of Dharmaśāstra: Ancient and Mediaeval Religious and Civil Law*, 5 vols. (Poona: Bhandarkar Oriental Research Institute, 1930–1962). For more recent scholarship on this, see Donald R. Davis Jr., *The Spirit of Hindu Law* (New York: Cambridge University Press, 2010). Also see Lawrence McCrea, "Hindu Jurisprudence and Scriptural Hermeneutics," in *Hinduism and Law: An Introduction*, ed. Timothy Lubin, Donald R. Davis Jr., and Jayanth K. Krishnan (New York: Cambridge University Press, 2010), 123–36.

[4] For details on such criteria, see Ludo Rocher, "Inheritance and Śrāddha: The Principle of Spiritual Benefit," in *Studies in Hindu Law and Dharmaśāstra*, ed. Donald R. Davis Jr. (New York: Anthem Press, 2012), 267–78. For a more recent study, see Manomohini Dutta, "Upakāra: The Theory of Spiritual Service and Women's Inheritance in the Dāyabhāga," *Journal of Hindu Studies* 11, no. 3 (2018): 260–84.

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janmasvatvavāda. Strangely, Vijñāneśvara does not provide any definition of ownership in the *Mitākṣarā* (56). Others after Vijñāneśvara, such as the Bhaṭṭa family of Benaras, with their scholarly lineage were influenced by the position on *janmasvatvavāda* and seemed resistant to accept *uparamasvatvavāda.*

While Jīmūtavāhana does not make overt statements on ownership being *śāstrika* or *laukika*, he implicitly advocates for śāstric bases of property (especially since inheritance is listed as a means to acquire property in the śāstras) and argues for *uparamasvatvavāda.* For him, ownership rights of any new owner(s) arise if and when rights to the property of the previous owner cease. Though Jīmūtavāhana, too, does not clearly define ownership, for him, ownership is characterized by the legal entitlement to use the property as one pleases (*yatheṣṭaviniyogārhatva*). Fleming shows that the *Dāyabhāga* came to be connected with Navya-Nyāya debates on ownership by scholars in two neighboring regions, Mithila (modern-day Tirhut) and Gauḍa (modern-day Bengal). He goes on to illustrate that Navya-Nyāya idiom and analytical techniques appear strongly in the *Dāyabhāga* commentaries for a deliberate purpose.

Fleming suggests that in a dynamic world of scholarship where intellectual leanings may be shaped by other intellectuals, these conversations operate within a theory of "scale of texts" (where previous scholarship of a similar academic discipline shapes works of contemporary authors) and those of intertextuality (222). While I agree for the most part with Fleming's argument, I feel that, except in the case of the Bhaṭṭa family, where their agency is clear because of the nature of historical evidence, the intertextuality argument could be more nuanced in drawing intellectual connections between Mīmāṃsā-*Mitākṣarā* and Navya-Nyāya-*Dāyabhāga.* For instance, are there not any Mīmāṃsā concepts in the *Dāyabhāga*, such as *yatheṣṭaviniyogārhatva*? Or for that matter, why do separate disciplines make distinctions between similar concepts of *yatheṣṭaviniyogārhatva* and *yatheṣṭaviniyogayogyatva* in a Nyāya text.[5] How can we show (or not) a dialogue, not necessarily agreement or disagreement, between textual genres using such textual evidence? Or consider the use of the abstract concept of a relationship (*saṃbandha*) between an owner (*svāmi*) and his property (*sva*), which is frequently used to explain property: Can this be credited to Mīmāṃsā? Similarly, I wonder if there are any Nyāya or Navya-Nyāya concepts in the *Mitākṣarā.* If so, then, discussing their presence would enrich the point about intertextuality. Fleming delightfully and adequately provides accounts of ways in which different disciplines approach ownership, with the logicians explaining it as a cognition of property (omitting the Sanskrit: I cognize that this is my property) and with jurists focusing on matters of legal entitlement (the property is mine only if I can legally use and alienate it).

Fleming's analysis of the scholarly Bhaṭṭa family and their intellectual rivalry with the logicians and jurists of Bengal is illustrated as a great case study in intellectual history. The Bhaṭṭas' visibility in the intellectual milieu arose for various political reasons and it is extremely useful to situate such intellectual products within a particular historical context. The availability of other historical evidence (from the Bhaṭṭas' internal family documents and others) makes the Bhaṭṭas a historian's delight. The intertextuality is clear in the case of the Bhaṭṭas' use of Mīmāṃsa and Dharmaśāstra concepts. As Fleming states, "the Bhaṭṭa corpus might be viewed as a single, integrated meta-text" (133). On the other hand, for Jīmūtavāhana, we know very little historically—yet there exists a body of Dharmaśāstric literature in Bengal that he appears to have influenced. Fleming's meticulous analysis provided in the chapter on the Bhaṭṭas, in my view, is the strongest part of his intertextuality argument. Of course, there are now ways of theorizing the Indian intellectual milieu: for instance, Ganeri's thesis about the rich literary context provided by an abundance of

[5] For details, see Ethan S. Kroll, "A Logical Approach to Law" (PhD diss., University of Chicago, 2010).

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textual material in India. Being trained as a historian, however, I find the absence of adequate information regarding the physical context of these textual materials nevertheless troubling. Questions of sociopolitical, economic, and cultural contexts cannot altogether be discarded, and I kept hoping to find a bit more information external to the subject, just as Fleming found in case of the Bhaṭṭas, being fully aware that both context and dating are notoriously difficult to establish for such materials.

There are "competing" ways of thinking about inheritance in premodern India (1). Such debates, Fleming states, may have led to the formation of regional intellectual identities. Note that centers of Sanskrit higher education and learning in śāstric disciplines flourished in parts of Bengal, Bihar, and Benaras. In places like these, long traditions of scholarly lineage existed, and in light of that, Fleming's argument about a regional intellectual identity seems very reasonable.[6] Fleming's larger argument is that these regional intellectual clusters with their academic differences (as portrayed in the texts) made the British perceive—not incorrectly, according to Fleming—Dharmaśāstric literature as schools of *law*. Though Fleming concedes that the British were mistaken in their understanding of the Dharmaśāstras as positive law, they were nevertheless, in regard to inheritance, largely "justified" in perceiving these scholarly clusters as regional Dharmaśāstric schools (222). On inheritance, those from Bengal are assumed to have followed the *Dāyabhāga* whereas those from southern regions are assumed to have followed the *Mitākṣarā* rules. There are intense academic debates about the British codifying Dharmaśāstras as Hindu legal texts (for administrative purposes) resulting in—correctly or incorrectly, depending on which side of this debate you find yourself on—the creation of schools of Hindu law.

Fleming defines *schools* based on a "comprehensive scale of texts" with an author taking part in a shared "cluster of opinions" and "shared lineage" by which it appears that the author is participating in a "school of thought" (20). He mentions that these scholars use certain texts for pedagogical purposes in certain regions. For instance, he states that Śrīnātha was setting up a center of learning in Bengal (86). The Bhaṭṭa family read Vijñāneśvara's text as a southern text, one in opposition to texts from Bengal, and taught it to their students and scholarly family members. Should similar intellectual views and rivalries then be characterized as influence (as in terms of a leader's influence) or simply as pedagogical lineages that, luckily, had some bright students and family members to carry on? Fleming also identifies influential scholars such as Vijñāneśvara and Śrīnātha as *founders* of the schools of jurisprudence because of their innovations and influence in gathering intellectual followers. He demonstrates how the intellectual divergence between scholars (identifying with certain intellectual clusters) became visible during the compilation of three English digests (the *Vivādārṇavasetu*, the *Vivādabhaṅgārṇava*, and the *Dharmaśāstrasaṃgraha*) that were commissioned by the East India Company in order to administer law in the colonial courts. This aided the crystallization of British notions of schools of law as preexisting in the subcontinent.

While I accept Fleming's regional intellectual cluster thesis, I am not entirely convinced by his analysis of the British understanding of schools of law though I admit that I can see his line of reasoning. Along with advancing his argument, I sincerely wish that Fleming had engaged deeply with the serious concerns raised by scholars like Ludo Rocher and Don Davis on this matter.[7] For instance, in many of their colonies the British imposed their conceptual categories on many non-Western cultural concepts, including what they labeled *religion*, and these came laden with their problems. As Rocher clearly shows, these Sanskrit scholars were

[6] For a study of intellectual communities, see Samuel Wright, *A Time of Novelty: Logic, Emotion, and Intellectual Life in Early Modern India, 1500–1700 C.E.* (New York: Oxford University Press, 2021).

[7] For details see Ludo Rocher, "Schools of Hindu Law," in Davis, *Studies in Hindu Law and Dharmaśāstra*, 119–27. See also Davis, *Spirit of Hindu Law.*

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not practicing *lawyers* and the Dharmaśāstras were not law texts. This requires a separate conversation on how to label texts of the Dharmaśāstric genre when explaining them in English: Are they juridical, legal, or (to use my preferred term), religio-legal in nature? The English terminology used reflects (to the extent possible through language) how a particular category or genre is now understood. When I reflect on the school of law debate, I wonder if these Sanskrit authors use a term somewhat corresponding to *school of law* in representing themselves and their texts? If not, how should we proceed in thinking about this?

Fleming's *Ownership and Inheritance in Sanskrit Jurisprudence* contributes significantly to an emerging framework of reconsidering Sanskrit intellectual history. A big-picture project like this is sure to intellectually provoke many readers, as it should. Engaging with this book made me rethink some of my existing ideas even when I disagreed in the spirit of intellectual differences. I thank Fleming for writing this excellent book.

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