Indian Law from a Seventh-Century Chinese Buddhist Perspective

Max Deeg

Abstract

This paper will discuss the passage in the 7th-century Chinese Buddhist traveller monk Xuanzang's "Record of the Western Regions of the Great Tang (Dynasty)" on law and legal procedure in early medieval India. Xuanzang's depiction of the Indian legal system is compared and contrasted in some detail with the information gained from the Artha-and Dharmaśāstra literature. The particular features in Xuanzang's report which clearly differ from the śāstric literature are explained in the context of Tang China's social and political situation. By doing so I do not only want to warn from reading the "Record" as a face-value description of India but also would like to highlight the necessity to read a specific text like the " Record" in its immediate context which is more Chinese than Indian. Interpreted in this way Xuanzang's record gains what it loses on the "historical" side by presenting a fascinating compilation of "facts" about a cultural other in which idealisation – the "description" of an ideal (pseudo-) Buddhist legal system – is used for the end of indirectly criticising and influencing his own social and political environment.

Résumé

Cet article discute du passage portant sur le droit et la procédure juridique en Inde dans l'ouvrage du VIIe siècle du moine bouddhiste chinois Xuanzang Mémoires sur les contrées occidentales à l'époque des Grands Tang. La représentation du système juridique indien que donne Xuanzang est confrontée aux informations provenant des traités techniques indiens, relevant des genres de l'Arthaśāstra et du Dharmaśāstra. Les caractéristiques de l'œuvre de Xuanzang qui diffèrent clairement de la littérature śāstrique sont expliquées dans le contexte de la situation sociale et politique de la Chine des Tang. Ce faisant, l'auteur de cet article souligne la nécessité d'une lecture prudente de Xuanzang que l'on ne peut envisager comme un témoignage brut portant sur l'Inde et qu'il faut replacer dans un contexte plus chinois qu'indien. Ainsi considérés les Mémoires de Xuanzang regagnent ce qu'ils perdent du côté proprement historique en s'avérant présenter une fascinante compilation de « faits » sur une autre culture dans laquelle la description d'un système juridique idéal (pseudo-) bouddhiste est utilisée pour critiquer indirectement et influencer l'environnement social et politique de leur auteur.

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Keywords: Xuanzang; Datang-Xiyu-ji; Indian law; Chinese law; Dharmaśāstra; Arthaśāstra; ordeals.

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Mots-clés : Xuanzang ; Datang-Xiyu-ji ; droit indien ; droit chinois ; Dharmaśāstra ; Arthaśāstra ; mises à l'épreuve.

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Introduction

If one thinks of Law in pre-modern India the first term that comes to one's mind is naturally *dharma*. At the same time the term creates more problems than it brings clarity in a wider Indian but also more specifically in a Buddhist context. The word is, in some contexts quite unfortunately, one of the most multi-facetted terms in the Indic vocabulary.[1] Its semantic and connotational range is vast and context does not always give the solution for the sound philological interpretation of its occurrence in a specific source.[2] In Brahmanical (or "Hindu") texts the conceptual breadth comprises cosmological, sacrificial, moral, habitual, legalistic and soteriological notions. While in Buddhist texts *dharma*[3] is linked to the teaching of the Buddha, it is not directly used in the more specific technical sense of normative law (although *dharma* is used in the sense of "lawful" in addition to "*vinaya*"), prescribing correct or orthodox behaviour and eventually penalising transgression. For this Buddhism has a specific conceptual field of rules and practice and genre of literature subsumed under the term Vinaya. The relation of the Brahmanical and the Buddhist understanding of *dharma* is hardly directly taken up and negotiated in the sources of the respective tradition.[4]

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* Cardiff University, deegm1@cardiff.ac.uk. This article originated from my ongoing work on Xuanzang's Datang-Xiyu-ji. My thanks go to Petra Kieffer-Pülz for asking me to reformulate my commentarial notes on Xuanzang into a full-fledged article, and to the two anonymous reviewers who gave constructive and helpful advice. I also would like to thank the audience and colleagues for their comments on parts of the material discussed here which I presented in lectures given at Nālandā University, India, and the School of Oriental and African Studies, UK.

1. For an extensive treatment of the term in different periods and traditions see Olivelle, ed., 2009.

2. One of the earliest historical examples is clearly Aśoka's *dharma* (*dhaṃma*) the interpretation of which oscillates between referring to the Buddhist *dharma* or a quite wide and general concept of what could be called, in a modern terminology, "civil religion".

3. I leave aside the well-known meaning of *dharma* (Pāli *dhamma*), translated as "(ontological) element", "Daseinsfaktor", etc., for which still see Geigers' classical article (1920); see also Rupert Gethin (2009).

4. The Brahmanical approach seems to be a rather inclusive one in which the heretic mendicants are just given peripheral space, while the Buddhists are either ignoringly exclusive in legalistic terms – the Vinaya does not discuss *brāhmaṇa*s and their behaviour at all – or spiritual-inclusive when the Buddha, for example, re-interprets in the Śrāmaṇyaphala-sūtra (Pāli *Sāmaññaphala-suttanta* in the *Dīghanikāya*) what a true *brāhmaṇa* means.

It may therefore be interesting to notice how an "outsider" and Buddhist monk whose own life was primarily regulated by the monastic "law", the *vinaya*, looked at law in its legal dimension. The probably most quoted external, that is non-Indian, source when it comes to witness matters in early medieval India (roughly the first millennium of the Christian era) is the Chinese Buddhist monk Xuanzang's 玄奘 (600/603–664; travelled 629–645) travelogue, the "Record of the Western Regions from the Great Tang [Dynasty]", Datang-Xiyu-ji 大唐西域記 (subsequently called "Record" or abbreviated as XJ), written between the traveller's return from India to China in 645 and 646 upon request of the second Tang emperor Taizong 太宗 (r. 626–649). On general matters concerning India it is particularly the first half of the second of the twelve chapters (or fascicles, *juan* 卷) which contains a plethora of information which is very often – mostly read and quoted in the 1884 translation of Samuel Beal – taken at face value as a valuable and reliable source, even as eye witness, by scholars. This chapter also contains a relatively short passage on law. The interpretation and wider contextualisation will be the main focus of this article.

It may be interesting to see how a non-Indian and Buddhist, Xuanzang,[5] looked at law, how his view compares to the information found in the vast dharmaśāstric literature, and how by way of presentation – what is and what is not included – it is influenced by his own Chinese and Buddhist views. The purpose of this article is not so much a reconstruction of Indian law as it was at some point in time implemented and practised. After all, I am well aware of the normative nature of the Indian material and the intentionality of the Chinese source. The minimal purpose of this paper is to make clear that the "Record" – and any other foreign record – cannot naïvely be read as an eye witness report on whatever matter Indian. This does not seem to be a superfluous undertaking keeping in mind that even in standard works on ancient and early Indian society Xuanzang is appealed upon more often as a reliable source[6] than his report is critically contextualised and questioned. But I also hope to demonstrate that a meaningful and critical approach to the texts which takes into consideration the wider cultural and social context, as much as this can be done, of the information retrieved from historical texts that were not meant to be descriptive or documentary reveals other layers of the text beneath the sometimes thin surface of historical and positivist factuality.

Xuanzang's record

I start with a translation of the respective passage on law from the "Record":[7]

5. One could also have selected other sources as, for instance, Al Bīrūnī or early European travellers' reports, but as things stand the Chinese sources are the oldest ones of this kind.

6. At several places in Kane's voluminous reference work (1930–1962), but also, e.g., in more recent publications like Hartmut Scharfe (1989) to underline the validity of a normative statement made in a Dharmaśāstra or the Arthaśāstra.

7. Most of what is presented here is extrapolated from my forthcoming translation and commentary of the "Records" which will also contain the full quotations of the original texts and translations.

"As for their customs, although [their][8] character is irritable, [their] intentions are very true and simple; as for material wealth [they] do not take it at random,[9] as for righteousness [they are rather] liberal;[10] [they] fear the suffering of a sinister fate, and hold light the karmic consequences of [worldly] actions. Cunning is not committed, [and] alliances are trusted. [The official] politics and education is quite simple, [and] the customs are harmonious. [Even if] violent, low-ranked mob at times destroys the order of the state and conspire against the ruler, [and their] plotting becomes manifest, [they] usually are thrown into jail, [and] are not executed, [but assigned] to lifelong labour,[11] [and their] social relations are disregarded.[12] [If they] violate etiquette and righteousness[13] [and] pervert loyalty and piety, [their] noses, ears, hands or feet are cut off, [and they] are either exiled or sent into remote borderlands.[14] From other accusations of crime [they] free themselves by paying money. To settle a lawsuit and to reach a verdict no beating or flogging [of the accused is applied].[15] Following the investigation [they] discuss the case,[16] and according to the matters [they] settle the legal [case]. [There are people] who defy the crimes [they have committed], do not want to have [their] offenses been made public,[17] and try to conceal [their] transgressions[18]. [One] then may want to investigate the facts of a case, [and] for matters to be judged there are generally four rules [for doing it]: by water, by fire, by a scale, [or] by poison. In case of [an ordeal] by water the one [accused] of a crime and a stone are put [together] into connected bags [and] are submerged into a deep stream in order to test [the accused's] guilt. If the man submerges

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8. I make more frequent use of marked [ ] additions than usual in my translation of Chinese text passages in order to indicate to the non-Sinologist where I as translator had to interfere to make the translation intelligible and readable.

9. *yu cai wu goude* 於財無苟得: this is clearly an idealised description of Indian society which is, however, in accordance with traditional Chinese ideals: see Liji 禮記 (Quli 曲禮 2): 臨財毋苟得，臨難毋苟免。 ("One does not take one's environment's wealth at random, and does not avoid one's environment's difficulties."), and Kong Yingda's 孔穎達 commentary on the term *goude*: 非義而取，謂之苟得。 ("Taking unrightfully that is called 'deliberately achieving'.") (quoted after HDC, s.v. *goude*). For the negative connotation of the expression *goude* see also Du Fu's 杜甫 ninth poem in the collection Qianchusai 前出塞: 眾人貴苟得，欲語羞雷同。 ("The people esteem deliberate acquisition and long for the echoing of the embarrassment of the words [of others']").

10. *yurang* 餘讓 normally is the option to decline (e.g. a post) but has to be taken more literally here. The complete phrase is repeated in Ma Yu's 馬愈 (15th c.) Mashi-richao 馬氏日抄 (Shuihuochengdu 水火稱毒) (HDC, s.v. *yurang*).

11. *ren qi shengsi* 任其生死; for *ren* in the translated meaning see HDC, s.v., 11, with a syntactically parallel example from the Zhouli 周禮 (Xiaguan 夏官, Zhanggu 掌固): 任其萬民，用其材器。 ("[He] puts into labour his manifold people, and uses his abilities.") with the respective commentaries.

12. *bu chi renlun* 不齒人倫; for the respective meanings of *buchi* 不齒 and *renlin* 人倫 see HDC, s.vv.

13. *liyi* 禮義. The following binom *zhongxiao* may indicate that this stands for the synonymous expression *liyi* 禮儀, "etiquette and rites" (see HDC, s.v. *liyi* 禮義, 2).

14. *huangyi* 荒裔; for this term see HDC, s.v.

15. *bu jia xingpu* 不加荊朴: this is specifically referring to punishment through beating or flogging with a stick: see above, and HDC, s.v.

16. *kuandui* 款對; see HDC, s.v.

17. *(wu) chiguo* (吾)恥過; the *locus classicus* of the term *chiguo* in the opposite meaning, given as an advice of good rulership by the Great Yue 說 to the king, is Shujing 書經, Shuoming zhong 說命 2: 無恥過作非 ("Do not be ashamed by your offenses and make them crimes.").

18. *shifei* 飾非; the *locus classicus* is Zhuangzi 莊子, Touzhi 盜跖: 強足以拒敵，辯足以飾非。 ("[Robber Footpad] is strong enough to repel his enemies and his powers of disputation are sufficient to gloss over his wrongs." Translation Victor H. Mair [1994: 299].)

> and the stone floats [on the surface he] is guilty; if the man floats and the stone submerges [he] is without false pretensions. In case of [an ordeal] by fire [a piece of] iron is heated and [the accused] of a crime [has to] sit on it or has to step on it with [his] feet; if a superintendent is dispatched [he even] lets him lick [it] with his tongue. Those who are not injured are [to be considered] innocent; those how are harmed are [judged] guilty. Weak people, [if they] cannot stand the blazing heat, carry flowers in [their] hands which have not blossomed yet and scatter them into the flames. [If they] are not guilty the flowers will start to blossom, if they are guilty the flowers will burn. In case of [an ordeal] by a scale the [accused] person and a stone are balanced against each other and their weight taken as a proof [of guilt or innocence]. [If he] is innocent the man will drop and the stone will rise; [if he] is guilty the stone will be heavier and the man lighter. In the case of [an ordeal] by poison [they] cut the right thigh of a black ram according to the portion which will be eaten by the one involved in the case and mix poison into the right thigh [of the ram]. [If he] is guilty the poison will take effect, [and he] will die; [if he] is innocent the poison will remain ineffective, [and he] will live. By the way of these four measures [people] are protected against the path of the hundred evils.[19]"[20]

Xuanzang and Indian law

The passage on law and legal procedures sits between the parts describing the military system and customs and etiquette in India. There is a certain inner logic from a Chinese standpoint of continuing information about

19. *baifei* 百非: the *locus classicus* is in Liu Xiang's 劉向 (79–8 BC) compilation Shuoyuan 說苑, "Garden of Tales", Zayan 雜言 28, "Miscellaneous Sayings": 曾子曰："吾聞夫子之三言，未之能行也。夫子見人之一善而忘其百非，是夫子之易事也。夫子見人有善若已有之，是夫子之不爭也。聞善必躬親行之，然後道之，是夫子之能勞也。夫子之能勞也，夫子之不爭也，夫子之易事也，吾學夫子之三言而未能行。" ("Master Ceng said: 'I have heard three things about Master [Kong]fu[zi] [in which I] am not capable to cope with. [When] Master [Kong]fu[zi] saw that there was something good in a man [he] did not care about his hundred evils – this was a simple matter for Master [Kong]fu[zi]. [When] Master [Kong]fu[zi] saw that a man had [the faculty] of goodness and if [he] already had [developed] it, then Master [Kong]fu[zi] did not dispute with him. [If one] hears about goodness [one] must [try] to practise it [oneself] and then teach it – this is what Master [Kong]fu[zi] was able to accomplish. What Master [Kong]fu[zi] was able to accomplish, that Master [Kong]fu[zi] did not dispute [with somehow having goodness], what was a simple matter for Master [Kong]fu[zi] – I have studied [these] three things said about Master [Kong]fu[zi] but still am not able to cope with them.'").

20. T.2087.877b.20ff. 夫其俗也，性雖狷急，志甚貞質，於財無苟得，於義有餘讓，懼冥運之罪，輕生事之業，詭譎不行，盟誓為信。政教尚質，風俗猶和。凶悖劾小，時虧國憲，謀危君上，事迹彰明，則常幽囹圄，無所刑戮，任其生死，不齒人倫。犯傷禮義，悖逆忠孝，則劓鼻、截耳、斷手、刖足，或驅出國，或放荒裔。自餘咎犯，輸財贖罪。理獄占辭，不加荊朴，隨問款對，據事平科。拒違所犯，吾過飾非。欲究情實，事須案者，凡有四條:水、火、稱、毒。水則罪人與石，盛以連囊，沈之深流，校其真偽。人沈石浮則有犯，人浮石沈則無隱。火乃燒鐵，罪人踞上，復使足蹈，既遣掌案，又令舌舐，虛無所損，實有所傷。袁弱之人不堪炎熱，捧未開花，散之向焰，虛則花發，實則花焦。稱則人石平衡，輕重取驗，虛則人低石舉，實則石重人輕。毒則以一羖羊，剖其右髀，隨被訟人所食之分，雜諸毒藥置右髀中，實則毒發而死，虛則毒歇而蘇。舉四條之例，防百非之路。 Although Buddhist Chinese texts are referenced according to the standard print edition of the Chinese Buddhist canon, the Taishō-shinshū-daizōkyō (T., in its electronic CBETA version), for the "Record" I am using the text edited and punctuated by Ji Xianlin. I have reduced the philological notes here to a minimum and would refer the reader to my fully annotated translation of the second chapter of the "Record" which should be published in the near future.

military with another one on the legal system of India, or to be more precise: on the penal system; both subject areas deal with what Lewis calls "sanctioned violence".[21] On the other hand the link between this passage and the following one on etiquette is, from a Chinese standpoint, quite natural in the light of the Chinese traditional understanding of the connection between law and ritual and etiquette (*li* 禮; see below). Although it is evident that the passage deals with law and the legal system, it is also striking that the whole passage does neither contain the term *fa* 法, for Skt. *dharma*, nor the word *lü* 律 for codified law. The lack of the former term quite likely reflects a reluctance to refer to the overlap between the Buddhist concept of the *dharma* and the concept of secular law as represented in the śāstric texts,[22] which both would be *fa* in Chinese, while the avoidance of *lü* is due to the underlying idealised concept of Indian law which, according to Xuanzang, was different from Chinese penal law (*lü*).

Another reason why Xuanzang does not discuss or even mention the conceptual and functional relation between the secular penal law (Chin. *lü* 律) and the Buddhist monastic code or law, the Vinaya (Chin. *lü* 律) is to be found in his Chinese social and political environment. It reflects the more general situation of Chinese Buddhism in which, probably different from India – although we do not know very much about the political-religious reality – state authority did apply the secular legal system to Buddhist monastics as well, but also the addressee(s) of the text, the emperor and his political advisors, who certainly had no interest to take notice of conceptional overlaps of monastic and secular law.[23] No attempt is made to use the opportunity to recommend an "extraterritoriality" of Buddhist law; instead Xuanzang seems to try to present an idealised Indian legal system that recommends itself by contrast with some "Buddhist" features which are contrasted with Chinese law.

There are enough extant śāstric and other texts (*dharmaśāstra*s and *-sūtra*s and *arthaśāstra*)[24] – taken with the necessary *caveat* that they are normative and not necessarily representing historical practices – to compare them with Xuanzang's description of the customs and legal system in India, and from their evidence it becomes clear that what is reported here is a highly idealised representation and cannot be taken as a reflection of a historical reality.[25] Although it is difficult to say what exactly the

21. Lewis (1990).

22. For a discussion of a possible reconceptualisation of the śāstric *dharma* as a reaction to the appropriation of the term by Buddhism see Olivelle (2006b).

23. For the Indian context see the discussion in Heinz Bechert (1997). For the "educational" aspect of the "Record" see Max Deeg (2009).

24. See an overview in Robert Lingat (1998); John Duncan M. Derrett (1973); Ronald R. Davis, Jr. (2010).

25. The standard Chinese and Japanese commentaries even seem to assume a continuity of the legal situation described by Xuanzang from the Mauryan period (3rd c. BC) well into the 7th century: see Ji Xianlin *et al.* (1985: 204, note 1); Mizutani Shinjō (1999, vol. 2: 183, note 1). This is, of course, not to say that the śāstric texts reflect more "reality" than what Richard Lariviere (1997: 98) has called "a record of custom". It therefore does not impede on a comparison between Xuanzang's record and the Indian śāstric sources since the latter are normative – without us knowing in most cases if and to what extent these norms were kept – while Xuanzang is not.

sources of information were, Xuanzang seems to have had some knowledge of the content of the *śāstra*s; the quite accurate description of the Indian ordeals (see below) clearly demonstrates this. It is hard to believe that the Buddhists in India did not have to deal with the customs and laws of their environment.

It also should be kept in mind that the "Record" in general reflects tropes of idealisation: the introductory part about the general character of the Indian people follows a logic of correspondence which is also at work in the regional descriptions where climate and character of people correspond: since the people are overall friendly, trustworthy and not violent the juridical system is likewise – a concept which was not completely alien to a Chinese reader who assumed a close and mutual interrelation between men and nature and therefore also between nature and customs and law.[26]

The overall positive social situation ascribed to India and the fact that, in contrast, Tang law was merely a criminal and penal one (see below) exempted Xuanzang from discussing matters of civil law (heritage, marriage, debts, contracts, etc.): per default of the predisposed nature of Indian civilisation things are in order and in harmony. The śāstric texts,[27] however, cover these issues in quite some detail;[28] in particular, the relatively late Nāradasmṛti (NS) is predominantly concerned with this kind of legal issues and procedures.[29]

Another general idealisation is the egalitarian legal system which Xuanzang attributes to India, while the śāstric system – and to a certain extent, although not as extreme as the Indian, the Chinese system as well[30] – was clearly based on social differentiation: punishment according to the caste of the culprit: a *brāhmaṇa* is always to receive milder punishment (lower fines for the same crime or offense than the other castes, no capital sentence but branding and exile, etc.), while *śūdra*s had the risk of severe penalties. KAŚ.3.20.20 generally formulates this principle: "[20]Specific fines should be imposed in keeping with the distinctive character of the person and the offense."[31] The punishment was not only dependent on the caste of the culprit but also on the caste of the person against whom the offense or crime was committed. The śāstric texts give ample example of the extreme and severe punishment of *śūdra*s, while the other castes get

26. Johnson (1979: 14f.).

27. Dating texts like the *śāstra*s admittedly is a cumbersome task not least because of their complex formation history; Olivelle (2000: 4ff.), dates them somewhere between the 3rd century BC and the 4th or 5th century AD. On the formation and age of the Arthaśāstra see Mark Richard McClish (2009), the so-called "śāstric version" being dated between the second half of the 2nd century and 5th century AD: Olivelle (2013: 29).

28. See Julius Jolly (1896: 47ff.).

29. Lariviere (2003: 1 & passim).

30. Johnson (1995); on instances where the social differentiation became invalid, e.g. high treason: see Johnson (2007).

31. *puruṣāparādhaviśeṣeṇa daṇḍaviśeṣaḥ kāryaḥ*. Translation Olivelle (2013: 222), text: R.P. Kangle (1965: 127). As it is clear, I am heavily drawing on Olivelle's excellent translations, leaving his numeration of the texts.

away with relatively mild penalties. GDhS.12.1ff., for example, describes this in very concrete terms:

> "[1]If a Śūdra uses abusive language or physical violence against twice-born people (…), the part of his body used for the crime should be chopped off. [2]If he has sex with an Ārya woman, his penis should be cut off and his property confiscated; [3]if the woman had a guardian, then, in addition to the above, he shall be executed. [4]And if he listens in on a vedic recitation, his ears shall be filled with molten tin or lac; [5]if he repeats it, his tongue shall be cut off; [6]if he commits it to memory, his body shall be split asunder. [7]If, while is occupying a seat, lying on a bed, speaking, or walking on the road, he seeks to be their equal, he should be beaten. [8]If a Kṣatriya hurls abusive words at a Brahmin, he shall be fined a hundred; [9]if there is physical violence, the fine is doubled. [10]A Vaiśya guilty of the same crime shall be fined one and a half times as much as a Kṣatriya. [11]A Brahmin guilty of the same crime against a Kṣatriya, on the other hand, shall be fined fifty, [12]half that amount if it is against a Vaiśya, [13]and none at all if it is against a Śūdra. [14]If a Kṣatriya is guilty of the same crime against a Vaiśya, or a Vaiśya against a Kṣatriya, the fine shall be the same as that levied on a Brahmin *vis-à-vis* a Kṣatriya, and on a Kṣatriya *vis-à-vis* a Brahmin, respectively."[32]

This and other passages relativise Xuanzang's statement that in case of some crimes or offenses a fine could be paid: the lower castes very often had to suffer corporeal punishment without a chance to bail themselves out while the higher castes got away with fines.

Although Xuanzang must have been aware of this complex situation and especially because the differences of punishment for the different social classes was certainly not as extreme as in India he obviously prefers to ignore it completely and present a legal system which rather reflects Buddhist wishful thinking of an egalitarian law than the reality, which ironically was in accordance with the Chinese traditional legalist (*fajia* 法家) view that everyone should be treated equally in front of the law.[33]

The general methods of punishment given by Xuanzang correspond to what e.g. MDhŚ.8.310 has to say: "He [i.e.: the king; M.D.] should strenuously suppress the wicked by three means: imprisonment, shackling, and diverse forms of corporeal punishment (…); …"[34] The death penalty, however, is completely ruled out by Xuanzang, while the śāstric text know it quite well (see below).

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32. *1. śūdro dvijātīn atisaṃdhāyābhihatya vāgdaṇḍapāruṣyābhyām aṅgaṃ mocyo yenopahanyāt. 2. āryastryabhigamane liṅgoddhāraḥ svaharaṇaṃ ca. 3. goptā ced va-dho 'dhikaḥ. 4. atha hāsya vedam upaśṛṇvatas trapujatubhyāṃ śrotrapratipūraṇam. 5. udāharaṇe jihvācchedaḥ. 6. dhārane śarīrabhedaḥ. 7. āsanaśayanavākpathiṣu samaprepsur daṇḍyaḥ. 8. śataṃ kṣatriyo brāhmaṇākrośe. 9. daṇḍapāruṣye dviguṇam. 10. adhyardhaṃ vaiśyaḥ. 11. brāhmaṇas tu kṣatriye pañcāśat. 12. tadarthaṃ vaiśye. 13. na śūdre kiṃcit. 14. brāhmaṇarājanyavat kṣatriyavaiśyau.* Text and translation Olivelle (2000: 148f.).

33. See Geoffrey MacCormack (1990: 36).

34. *adhārmikaṃ tribhir nyāyair nigṛhṇīyāt prayatnataḥ, nirodhanena, bandhena, vividhena vadhena ca*. Translation Olivelle (2006a: 184, text: 721).

This pattern of an over-idealised India as a Sacred Land even in matters of legal system – already reflected in the characterisation of the Kingdom of Elephants (India) at the beginning of the second fascicle of the "Record" – had been established by the earlier and is also followed by later Chinese visitors who left us observations about the Indian legal system. For the early 5th century Faxian 法顯, for instance, in his Foguo-ji 佛國記 ("Record of the Buddhist Kingdoms") has a completely idealised – almost romanticised – description of India:

> "In the Middle Kingdom (*madhyadeśa*) [the weather] is moderate in winter and in summer, without [any] frost or snow. The people are prosperous and happy; there is no registration [and no] state control. Only those who cultivate the royal land have to pay returns. If [they] want to leave [they] go, [and] if [they] want to stay [they] stay. The king rules without corporeal sentences [or even] beheading; [those who] have committed a transgression only have to pay a penalty in cash according to the severeness of [their] crime. [Even those who] commit an evil attack twice only have cut off [their] right hand. [Those] who guard the king all are paid a [regular] income. No one of the people in the kingdom kills living beings, drinks alcohol or eats onion except the *caṇḍāla*s. … In the kingdom [nobody] rears pigs or chicken, [and] no [other] domesticated animals are sold. On the markets there are no butchers or anyone selling alcohol; [they] use cowry for trading. Only the *caṇḍāla*s [who are] fishermen and hunters sell meat.[35]

And more than two hundred years later Huichao 惠超 gives a similarly idealised description for the whole of India:

> "In the legal [system] of the kingdoms of the Five Indias there is neither flogging nor prisons, and there is also no capital punishment. Starting with the king down to the simple people, no one is seen on hunting tours by releasing falcons or letting loose hounds or [occupied] with similar [violent] activities. Although there are a lot of robbers on the roads [they only] take the property and then release [the people] without killing [them]. [Only] if [the robbed person] sticks to his property [he] will suffer damage."[36]

This idealised description of India's juridical system by Xuanzang and other Chinese Buddhists clearly follows an established Buddhist tradition of rule and jurisdiction according to which severe punishment like execution should be refrained from.[37] The tension between secular law and a religiously ideal situation of a crime-free society in which there was no need of punishment in combination with criticism against the concept of royal punishment

35. T.2085.859b.1ff.: 中國寒暑調和，無霜、雪。人民殷樂，無戶籍官法；唯耕王地者乃輸地利，欲去便去，欲住便住。王治不用刑斬；有罪者但罰其錢，隨事輕重；雖復謀為惡逆，不過截右手而已。王之侍衛，左右皆有供祿。舉國人民悉不殺生，不飲酒，不食葱蒜，唯除旃荼羅。 … 國中不養猪、雞，不賣生口；市無屠店及沽酒者；貨易則用貝齒。唯旃荼羅漁獵師賣肉耳。 For a discussion of this passage see Max Deeg (2005: 135f.).

36. T.2089.975c.1ff., here quoted after the edition of Kuwayama Shōshin (1992: 16, line 25ff.): 五天國法無有枷棒、牢獄。有罪之者據輕重罰錢，亦無刑戮。上至國王下及黎庶不見遊獵，放鷹走犬等事。道路雖有足賊，取物即放，亦不殤殺。如若耒物即有損也。

37. See Michael Zimmermann (2000, 2006).

of the Arthaśāstra is reflected in Buddhist literature.[38] Both Buddhist and Chinese "legal mythology" were based on the conception that in a remote past or in antiquity human beings were still uncorrupted and there was no crime, hence no need for a penal system.[39] It was only through the decline and the corruption of society that regulation and finally a legal system with measures of punishment became required.[40]

This Buddhist concern for reducing violence, be it criminal acts (*fei* 非, *guo* 過) or state-imposed punishment (*xing* 刑), to a minimum had its correspondence in the Confucian idea of custom and etiquette (*li* 禮) as the basis of a regulated and harmonious civil society, and its opponents in the proponents of a strong and strict legal system, the legalists (*fajia* 法家). The former found its expression in the codified law of the Tang in which the intellectual and social elite was expected to act according to the ancient, inherited etiquette (*li* 禮 as a kind of customary law), while the gross of the population was disciplined by the penal law (*fa* 法 or *lü* 律).[41] Still, the ideological basis of the Chinese legal system was the idea of proper conduct the infringement of which has to be punished.[42] The connection between proper conduct – expressed in the Confucian key terms used by Xuanzang in this context: "etiquette" (*li* 禮), "righteousness" (*yi* 義), "piety" (*xiao* 孝), "loyalty" (*zhong* 忠) – and the implemation of the law in case of breeching these conventional social rules is well expressed in the 11th chapter of the Xiaojing 孝經, the "Classic of Piety":

> "The Master said, 'The crimes that are addressed by the Five Punishments number some three thousand, and none of them is graver than to be wanting in family reverence. To coerce one's lord is tantamount to repudiating the institution of rulership; to denounce the sage is tantamount to repudiating law (*fa*) itself; to denounce family reverence is tantamount to repudiating parenthood altogether. Such offences pave the way (*dao*) to mayhem and anarchy.'"[43]

The five punishments *wuxing* 五刑 included different forms of punishment in different periods of history: in antiquity branding, or tattooing the face (*mo* 墨), cutting off the nose (*yi* 劓) and the legs (*fei* 刖, or *yue* 刖), castration or sterilisation (*gong* 宮), and decapitation (*dabi* 大辟, *xiaoshou* 梟首, or just *sha* 剎).[44] During the Sui and Tang the five penalties were: death (*si* 死),

38. Zimmermann (2000).

39. For the Chinese side see the introduction to the Tang code translated in Johnson (1979: 49ff.); see also the translations from the chapters on law and penalties of the Tang dynastic historiographies in Karl Bünger (1996: 73ff. & 141ff.).

40. A well-known example for this kind of Buddhist utopian view is the Agaññasutta (Dīghanikāya), studied and translated by Steven Collins (1993: 301–393; 1998: 448ff. and 626ff.). I have to thank one of my two reviewers for referring me to this text.

41. See e.g. Shiga Shūzō (1992: 97f.).

42. See e.g. MacCormack (1990: 54ff.).

43. 子曰："五刑之屬三千，而罪莫大於不孝。要君者無上，非聖人者無法，非孝者無親。此大亂之道也。" Text and translation Henry Rosemont, Jr. & Roger T. Ames (2009: 112).

44. Rosemont & Ames (2009: 117, note 21); during the earlier Qin and Han periods instead of castration or sterilisation chopped up parts of the body were dispersed on a market place: *ju qi gurou yu shi* 菹其骨肉於市.

exile (*liu* 流), imprisonment or penal servitude (*tu* 徒), beating with a heavy stick (*zhang* 杖), and flogging with a light stick (*chi* 笞),[45] i.e. exactly the penalties Xuanzang discusses in this passage.

Buddhists were well aware of this tension between ethical ideal and the necessity of legal procedures resulting from the harsh reality of a not so ideal and harmonious social situation. One way of dealing with this tension was to shift punishment as a consequence of karmic retribution to the period after death, into the realm of the god of the underworld, Yamarājā / Yanluo 閻羅, or his judges. Others recognised the necessity to have a penal law in place and action. The Song monk Qisong 契嵩 (1007–1072), for instance, has a complete section on penal law (*xingfa* 刑法) in his anthology Tanjin-wenji 鐔津文集 (T.2115.669c.29ff.) in which the attempts of Tang Taizong to impose a rather lenient penal system (see below) are positively highlighted (T.2115.670c.5ff.).

In his biography (*Datang Daciensi sanzang fashi zhuan* 大唐大慈恩寺三藏法師傳) Xuanzang is made to express his stern rejection of taking lives quite clearly when he refuses to accept the offer of a heretic Sāṃkhya master to cut off his head as a sign of defeat in debate with the words: "We sons of Śākya[muni] never harm people – I now allow you to be [my] slave and to follow my instructions."[46]

In the Indian normative texts and in Buddhist literature it is normally the king who administers sentences and punishes. Punishment is a divine royal duty without which society would decline and become corrupt, as MDhŚ.7.14ff. emphasises:

> "[14]For the king's sake, the Lord formerly created Punishment, his son – the Law and protector of all beings – made from the energy of Brahman. [15]It is the fear of him that makes all beings, both the mobile and the immobile, accede to being used and do not deviate from the Law proper to them. [16]The king should administrate appropriate Punishment on men who behave improperly, after examining truthfully the place and the time, as well as their strength and learning. [17]Punishment is the king; he is the male; he is the leader; he is the ruler, and, tradition tells us, he stands as the surety for the Law with respect to the four orders of life."[47]

In practice the implementation of the law (*dharma*) was executed by a royal representative, e.g. in particular matters of civil cases by courts of three judges (or "justices" as Olivelle prefers to translate the term *dharmastha*)[48] as indicated in KAŚ.3.1.1.: "[1]Justices of ministerial rank in groups of three should conduct trials – in frontier posts, collection centers, district

45. Johnson (1979: 14f.).

46. T.2053.245b.29f. 我曹釋子終不害人，今令汝為奴，隨我教命。

47. *14. tasyārthe sarvabhūtānāṃ goptāraṃ dharmam ātmajam, brahmatejomayaṃ daṇḍam asṛjat pūrvam īśvaraḥ. 15. tasya sarvāṇi bhūtāni sthāvarāṇi carāṇi ca, bhayād bhogāya kalpante svadharmān na calanti ca. 16. taṃ deśakālau śaktiṃ ca vidyāṃ cāvekṣya tattvataḥ, yathāhataḥ saṃpraṇayen nareṣv anyāyavartiṣu. 17. sa rājā puruṣo daṇḍaḥ sa netā śāsitā ca saḥ, caturṇām āśramāṇāṃ ca dharmasya pratibhūḥ smṛtaḥ.* Translation Olivelle (2006a: 154f., text: 615); see also MDhŚ.7.161f.; 8.1ff.; Scharfe (1989: 218 & 220ff.).

48. Olivelle (2013: 495, note to 2.1.30).

municipalities, and provincial capitals – of lawsuits arising from transactions."[49] The tasks and duties of these officials are then discussed at length in the third chapter of the KAŚ.

According to the *dharmaśāstra*s, quite obviously seen from a brahmanical point of view, the execution of the law is done by a learned *brāhmaṇa* as is expressed in MDhŚ.8.9ff.:

> "[9]When the king does not try a case personally, however, he should appoint a learned Brahmin to do so. [10]Entering the main court itself accompanied by three assessors, he should try the cases brought before the king, either seated or standing. [11]The place where three Brahmins versed in the Vedas and a learned officer of the king sit, they call the court of Brahman."[50]

Curiously, and despite the Buddhist tradition of ascribing legal authority to the ruler, Xuanzang does not specify any juridical agent, e.g. the king, judges or other administrators. The reason for this may be, on the one hand, that in the Tang legal system punishment was delegated to the regional officials and only as an exception (e.g. high treason, confirmation of death penalty) a case was directly brought in front of the emperor – another case of *presentatio sinica*: in India legal affairs were handled similarly as in China. On the other hand, this silence on the king's role in the legal system may reflect Xuanzang's reluctance to have the king – in more concrete terms the highly idealised king Harṣavardhana of Kanauj – involved in juridical matters.

In Xuanzang's description, especially the part about not executing traitors and plotters (*dūṣya*) against the state authority, raises some doubts about the validity of this description as representing practiced law in general. KAŚ.5.1.1ff., for instance, deals in some detail with the punishment of traitors who are, in case they are officers, to be gotten rid of by secret agents or by provoking other persons to kill them. But there is also advice to deal with other traitors, as explained in KAŚ.5.1.43ff.:

> "[43]In case of traitorous cities, villages, or families, assassins should hurl their weapons during an altercation relating to village boundaries and borders (…) between fields, threshing floors, and houses, or due to injuries caused to property, implements, crops, and draught animals, or during spectacles, performances, and festivals, and declare: 'This is what happens to those who altercate with this man!' [44]The others should be punished for this crime. [45]Alternatively, in case of traitorous persons among whom there have been deep-rooted altercations, assassins should set fire to their fields, threshing floors, or houses, or hurl weapons at their kinsmen, relatives, or draught animals, and declare likewise: 'We

49. *dharmasthās trayas trayo 'mātyā janapadasaṃdhisaṃgrahaṇamukhasthānīyeṣu vyāvahārikān arthān kuryuḥ.* Translation Olivelle (2013: 179), text: Kangle (1965: 96); for other agents who administer law, see the discussion in Olivelle (2013: 16f.).

50. *9. yadā svayaṃ na kuryāt tu nṛpatiḥ kāryadarśanam, tadā niyujyād vidvāṃsaṃ brāhmaṇaṃ kāryadarṣane. 10. so 'sya kāryāṇi saṃpaśyet sabhyair eva tribhir vṛtaḥ, sabhāṃ eva praviśyāgryām āsīnaḥ sthita eva vā. 11. yasmin deśe niṣīdanti viprā vedavidas trayaḥ, rājñaś ca prakṛto vidvān brahmaṇas tāṃ sabhāṃ viduḥ.* Translation Olivelle (2006a:167, text: 660); see also MDhŚ.7.162, and Olivelle (2013: 583, note to 3.1.1).

> have been dispatched by that person.' [46]The others should be punished for this crime. [47]Alternatively, secret agents should get traitors in the fort or the provinces to invite each other as guests. [48]On that occasion, poisoners should give them poison. [49]The others should be punished for this crime."[51]

In all cases it is clear that, at least according to śāstric norms, traitors are to be killed and not spared under any circumstances, but the involvement of the ruler should not be revealed but the killing of the traitors be blamed on scapegoats, thereby getting rid of all witnesses. Similarly MDhŚ.9.275 asks for capital punishment of men acting against the king: "[275]Those who rob the king's treasury, those who act contrary to his interests, and those who conspire with his enemies – he should inflict diverse kinds of capital punishment on them."[52] MDhŚ.9.232 prescribes the death penalty for offenses against royal authority less than high treason (*nṛpadroha*):[53] "[232]He [i.e.: the king; M.D.] should put to death those who forge royal edicts, corrupt the constituents of the realm,[54] or kill women, children, or Brahmins, as also those who give aid to his enemies."[55] Capital punishment was even to be exerted in case of damage of public facilities as stated in MDhŚ.9.279f.:

> "[279]Someone who breaks a reservoir should be killed by drowning or clean execution; or else, he should repair it and be made to pay the highest fine (…). [280]He [i.e.: the king; M.D.] should kill without hesitation those who break into the treasury, the armory, or a temple, and those who steal elephants, horses, or chariots."[56]

Contrary to Xuanzang the śāstric sources never speak just of exile (*avasrāvaṇa*, *vivāsa* or *pravāsa*[57]) as punishment for treason. The only exception coming close to Xuanzang's description is given in KAŚ.9.3.12ff., where the punishment of a revolt (*kopa*) is indeed exile, restricted, however, to a courtly priest (*purohita* which Olivelle translates as "Chaplain"), i.e. a *brāhmaṇa* by caste, while other high-ranking plotters are to be executed:

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51. *43. purāṇāṃ grāmāṇāṃ kulānāṃ vā dūṣyāṇāṃ sīmākṣetrakhalaveśmamaryādāsu dravyopakaraṇasasyavāhana-hiṃsāsu prekṣākṛtyotsaveṣu vā samutpanne kalahe tīkṣṇair utpādite vā tīkṣṇāḥ sastraṃ pātayitvā brūyuḥ 'evaṃ kriyante ye 'munā kalahāyante' iti. 44. tena doṣeṇetare niyantavyāḥ. 45. yeṣāṃ vā dūṣyāṇāṃ jātamūlāḥ kalahās teṣāṃ kṣe-trakhalaveśmān ādīpayitvā bandhusaṃbandhiṣu vāhaneṣu vā tīkṣṇāḥ śastraṃ pātayitvā tathaiva brūyuḥ 'amunā prayuktāḥ smaḥ' iti. 46. tena doṣeṇetare ni-yantavyāḥ. 47. durgarāṣṭradūṣyān vā sattriṇaḥ parasparasyāveśanikān kāra-yeyuḥ. 48. tatra rasadā rasaṃ dadyuḥ. 49. tena doṣeṇetare niyantavyāḥ.* Translation Olivelle (2013: 256), text: Kangle (1965: 153).

52. *rājñaḥ kośāpahartṝṃś ca pratkūleṣu ca sthitān, ghātayed vividhair daṇḍair arīṇāṃ copajāpakān.* Translation Olivelle (2006a: 204, text: 798).

53. See Jolly (1896: 127).

54. According to Olivelle (2006a: 332, note to 9.232), the "constituents" (*prakṛti*) here are the royal ministers so that this seems to refer to attempts to corrupt or bribing high officials.

55. *kūṭaśāsanakartṝṃś ca prakṛtānāṃ ca dūṣakān, strībālabrāhmaṇaghnāṃś ca hanyād dviṭsevinas tathā.* Translation Olivelle (2006a: 202, text: 789).

56. *279. taḍāgabhedakaṃ hanyād apsu śuddhvadhena vā, tad vāpi pratisaṃskuryād dadyāc cottama-sāhasam. 280. koṣṭhāgārāyudhāgāradevatāgārabhedakān, hastyaśvaratha-hartṝṃś ca hanyād evāvicārayan.* Translation Olivelle (2006a: 204, text: 799).

57. Olivelle (2013: 631f., note on 4.4.7), however, points out that *pra-√vas-* can refer both to "exile" and "execution".

> "[12]A revolt of the interior is one initiated by one of the following: Counselor, Chaplain (…), Chief of the Armed Forces, or Crown Prince. [13]He should subdue that person either by eliminating his own faults or in conformity with that person's power and crime. [14]Even in the case of a serious crime, the Chaplain is subdued by imprisonment or exile; the Crown Prince by imprisonment or by execution if he has another virtuous son."[58]

In another case (KAŚ.13.3.36) the king deliberately should send officials accused of a crime into exile in order to infiltrate the enemy and lead to his destruction. In general, exile is not very often mentioned, and is to be implemented for a range of offenses, for instance, in case of corrupt officials (MDhŚ.7.124, KAŚ.4.4.10), assumption of the profession of a higher caste (MDhŚ.10.96), but mainly in case of *brāhmaṇa*s instead of the death penalty administered for the three other castes in case of false testimony (MDhŚ.8.123) and other serious offenses (MDhŚ.8.241, NS.14.9, BDhS.1.18.17, KAŚ.4.9.29).

The Indian view on treason is therefore quite similar to the Chinese as reflected in the Tang code – resulting in death or capital punishment, or, depending on the status, in exile –, but while in the Chinese context this is dealt with publicly, KAŚ recommends clandestine and conspirational action. Such insidious action could, of course, not been ascribed to an idealised Indian ruler. It is therefore quite likely that Xuanzang's information is rather a Buddhist wishful thinking than based on reality: even Aśoka in his otherwise self-idealising edicts threatened the jungle tribes who opposed him with violent punishment. Xuanzang himself exemplifies his normative statement by the episodes of unsuccessful attempts on the life of Harṣa during the great festival at Kanyākubja by heretics and a hired assassin after which the king spares the attackers' lives despite the request of his officials to behead them and bans a large group from his territory. That this episode reflects general real practice is already indicated by the fact that main plotters are indeed punished and that Harṣa's official ask for what probably was the normal penalty for an attempt on the king's life. Harṣa's hesitation to punish with the full severity of Indian law is questioned in another event in the Biography where the king threatens to apply harsh punishment when he finds out that Hīnayāna followers plan an attempt on Xuanzang's life, because they were defeated in debate: "Anyone in the crowd who will do harm to the *dharma* master will have his head cut off, [and anyone] who will insult [him] will have his tongue cut out."[59]

The mild punishment of treason and mutiny stands in an odd contrast with the rather drastic sentences of cutting off limbs for unethical behaviour. There can be no doubt that corporeal punitive measures for crimes, between

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58. *12. Mantripurohitasenā-patiyuvarājānām anyatamakopo 'bhyantarakopaḥ. 13. tam ātmadoṣatyāgena paraśaktyaparādhavaśena vā sādhayet. 14. mahāparādhe 'pi purohite saṃrodhanam avasrāvaṇaṃ vā siddhiḥ, yuvarāje saṃrodhanaṃ nigraho vā guṇavaty anyasmin sati putre.* Translation Olivelle (2013: 356), text: Kangle (1965: 222).

59. T.2053.247c.24f. 眾有一人傷觸法師者斬其首，毀罵者截其舌。

mutilation and death, were drastic, especially for the lowest class, the *śūdra*, even in case of non-physical offenses as explained in MDhŚ.8.270ff.:

> "[270]If a once-born man hurls grossly abusive words at twice-born men, his tongue should be cut off, for he originated from the lowest part. [271]If he invokes their names and castes with disdain, a red-hot iron nail ten fingers long should be driven into his mouth. [272]If he arrogantly gives instruction on the Law to Brahmins, the king should pour hot oil into his mouth and ears. … [279]When a lowest-born man uses a particular limb to injure a superior person, that very limb of his should be cut off – that is Manu's decree. [280]If he charges with his hand or with a stick, his hand ought to be cut off; if he strikes with his foot in anger, his foot ought to be cut off. [281]If a low-born man attempts to occupy the same seat as a man of a high rank, the king should brand him on the hip and send him into exile or have his buttocks slashed. [282]If he arrogantly spits at such a person, the king should cut off both his lips; if he urinates at him, his penis; and if he breaks wind at him, his anus. [283]If he grabs him by the hair, the king should cut off both his hands without a second thought, as also if he grabs him by the feet, the beard, the neck, or the testicles."[60]

Mutilation or amputation are described by other foreign observers as well, e.g. for the crime of theft committed by a *brāhmaṇa* (who is also blinded) or a *kṣatriya* by Al-Bīrūnī.[61] Al-Bīrūnī's description does, however, not correspond to the śāstric texts according to which *brāhmaṇa*s were, by highest divine authority (Manu), exempted from corporeal punishment, as mentioned e.g. in MDhŚ.8.123ff.:

> "[123]When individuals of the three classes give false testimony, a righteous king should first fine them and then execute them; a Brahmin, on the other hand, should be sent into exile. [124]Manu, the son of the Self-existent One, has proclaimed ten places upon which punishment may be inflicted. They are applicable to the three classes; a Brahmin shall depart unscathed. [125]They are: genitals, stomach, tongue, and hands; feet are the fifth; and then, eyes, nose, ears, wealth, and body."[62]

It is, however, undoubted that corporeal punishment was administrated for serious offenses, and this was even to be displayed to the public for reason of deterrence, as MDhŚ.9.288 states: "[288]He [i.e.: the king; M.D.] should locate

60. *270. Ekajātir dvijātīṃs tu vācā dāruṇayā kṣipat, jihvāyāḥ prāpnuyāc chedaṃ jaghanyaprabhavo hi saḥ. 271. nāmajātigrahaṃ tv eṣām abhidroheṇa kurvataḥ, nikheyo 'yomayaḥ śaṅkurjvalann āsye daśāṅgulaḥ. 272. dharmopadeśaṃ darpeṇa viprāṇām asya kurvataḥ, taptam āsecayet tailaṃ vaktre śrotre ca pārthivaḥ. ... 279. yena kenacit aṅgena hiṃsāc ced chreṣṭham antyajaḥ, chettavyaṃ tat-tad evāsya tan manor anuśāsanam. 280. pāṇim udyamya daṇḍaṃ vā pāṇicchedanam arhati, pādena praharan kopāt pādacchedanam arhati. 281. sahāsanam abhiprepsur utkṛṣṭasyāvakṛṣṭajaḥ, kaṭyāṃ kṛtāṅko nirvāsyaḥ sphicaṃ vāsyāvakartayet. 282. avaniṣṭhīvato darpād dvāv oṣṭhau chedayen nṛpaḥ, avamūtrayato meḍhram avaśardhayato gudam. 283. keśeṣu gṛhṇato hastau chedayed avicārayan, pādayor dāḍhikāyāṃ ca grīvāyāṃ vṛṣaṇeṣu ca.* Translation Olivelle (2006a: 182, text: 713ff.).

61. Sachau (1910, vol. 2: 162).

62. *123. kauṭasākṣyaṃ tu kurvāṇāṃs trīn varnān dhārmikao nṛpaḥ, pravāsayed daṇḍayitvā brāhmaṇaṃ tu vivāsayet. 124. daśa sthānāni daṇḍasya manuḥ svāyaṃbhuvo 'bravīt, triṣu varṇeṣu tāni syur akṣato brāhmaṇo vrajet. 125. upastham udaraṃ jihvā hastau pādau ca pañcamam, cakṣur nāsā ca karṇau ca dhanaṃ dehas tathaiva.* Translation Olivelle (2006a*:* 173, text: 683f.).

all prisons along the royal highway where people will see the criminals, grieving and mutilated."[63] There is no evidence for a general application of this form of sentences for violations of etiquette, as Xuanzang claims.

This discrepancy of the application of corporeal punishment with the śāstric norm also highlights Xuanzang's complete omission of other crimes like theft, robbery, rape, murder, etc. The offenses given by Xuanzang for these kinds of punishment are very un-Indian and rather Chinese: transgressions against *liyi* 禮義, "[proper] etiquette and righteousness", and *zhongxiao* 忠孝, "piety", are rather in the context of proper social and moral behaviour than in the realm of crimes, but from the standpoint of a traditional Chinese view quite a lot of crimes such as rebellion and rioting were judged according to the rules of Confucian ethics, and this was incorporated in the Tang code of law.

Although Indian legal thought was not completely devoid of customary aspects and even of ad-hoc jurisprudence through the ruler, it is made clear in the legal texts that it is the brahmanical textual tradition which is to be the predominating standard; see e.g. GDhS.11.19ff.:

> "[19]His [i.e.: the king's; M.D.] administration of justice shall be based on the Veda, the Legal Treatises, the Vedic Supplements (…), Subsidiary Vedas, and the Purāṇa. [20]The Law of regions, castes, and families are also authoritative if they are not in conflict with the sacred scriptures. [21]Farmers, merchants, herdsmen, moneylenders, and artisans exercise authority over their respective groups. [22]He should dispense the Law after he has ascertained the facts from authoritative persons of each group. [23]Reasoning is the means of reaching a correct judgment. [24]Having reached a conclusion in this manner, he should decide the case equability. [25]If there is conflicting evidence, he should consult those who are deeply learned in the triple Veda and reach a decision, [26]for, it is said, acting in that way, he will attain prosperity."[64]

It is obvious that and why Xuanzang, as a Buddhist, could and would not directly refer to the brahmanical *śāstra*s or their content: they were not Buddhist and prescribed measures that went against general Buddhist and certainly his personal views on legal matters.

It seems clear that Xuanzang is only interested in certain points of the legal system, and only in aspects which either match the Chinese legal concepts or must have seen "exotic" to a Chinese like the ordeals. Idealisation is at play when Xuanzang suppresses the information that Indian (normative) law was, as the Chinese, socially graded, i.e. different sentences for members of different castes for the same offense were in place. In an idealised Buddhist society of social and human equality different treatment of different strata of society in front of the law was, of course, unacceptable.

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63. *bandhanāni ca sarvāṇi rājamārge niveśayet, duḥkhitā yatra dṛśyeran vikṛtāḥ pāpakāriṇaḥ.* Translation Olivelle (2006a: 205, text: 800).

64. *19. tasya vyavahāro vedo dharmaśāstrāṇy aṅgāny upavedāḥ purāṇam. 20. deśajātikuladharmāś cāmnāyair aviruddhāḥ pramāṇam. 21. karṣakavaṇikpaśupālakusīdikāravaḥ sve sve varge. 22. tebhyo yathādhikāram arthān pratyavahṛtya dharmavyavasthā. 23. nyāyādhigame tarko 'bhyupāyaḥ. 24. tenābhyūhya yathāsthānaṃ gamayet. 25. vipratipattau traividyavṛddhebhyaḥ pratyavahṛtya niṣṭhāṃ gamayet. 26. tathā hy asya niḥśreyasaṃ bhavatīti.* Olivelle (2000: 146f.).

The statement that torture was not applied at Indian courts is another highly idealised detail in Xuanzang's description that should be questioned in the light of the information available in the śāstric sources. KAŚ.4.8.1ff. is quite specific about the application of torture, when and how it should be administered:

> "[1]In the presence of the victim of the theft, as well as external and internal witnesses, he should interrogate the accused about his country, caste, lineage, name, occupation, wealth, associates, and the residence. [2]He should corroborate (…) these by checking them against other depositions. [3]Then he should interrogate him about what he did the previous day and where he spent the night until his arrest. [4]If he is corroborated by the person providing his exoneration, he is to be considered innocent; otherwise, he is to undergo torture. … [17]When there is likelihood of someone's guilt, he should subject him to torture, but never a woman who is pregnant or within a month after giving birth – [18]for a woman, however, half the normal torture or just oral questioning; … [21]There are four kinds of conventional torture: six strokes with a stick, seven lashes with a whip, two suspensions, and the water tube. [22]Beyond that, for those who have committed grave crimes there are nine strokes with a cane, 12 lashes with a whip, two thigh bindings, 20 strokes with a Naktamāla-twig, 32 slaps, two scorpion bindings, two hangings, needle in the hand, burning one digit of a finger of a man after he has drunk gruel, heating in the sun for one day for a man after he has drunk oil, and sleeping during a winter night on a bed with points of Balbaja-grass. [23]These are the 18 types of torture. … [26]Someone who has previously committed a crime, someone who confesses and then retracts, someone in whose possession a portion of the loot is found, someone who has been arrested by reason of the act or the stolen goods (…), someone who embezzles from the king's treasury, or someone subject to death by torture on the king's orders – he should subject these to torture administered collectively, individually, or repeatedly."[65]

In the Chinese legal system torture was a legitimate means to achieve a confession,[66] and this kind of violence certainly was something that did not find the support of Xuanzang. Stating that torture was not used in India, although not true, was a means to indirectly criticise these measures in China.

In general terms, Xuanzang's description must be seen in the context of the social environment of the early Tang, especially the legal system[67] and

65. *1. muṣitasaṃnidhau bāhyānām abhyantarāṇāṃ ca sākṣiṇām abhiśastasya deśajātigotranāmakarmasārasahāyanivāsān anuyuñjīta. 2. tāṃś cāpadeśaiḥ pratisamānayet. 3. tataḥ pūrvasyāhnaḥ pracāraṃ rātrau nivāsaṃ cāgrahaṇād ity anuyuñjīta. 4. tasyāpasārapratisaṃdhāne śuddhaḥ syāt, anyathā karma-prāptaḥ. ... 17. āptadoṣaṃ karma kārayet, na tv eva striyaṃ garbhiṇīṃ sūti-kāṃ vā māsāvaraprajātām. 18. striyās tv ardhakarma, vākyānuyogo vā. ... 21. vyāvahārikaṃ karmacatuṣkaṃ - ṣaḍ daṇḍāḥ, sapta kaśāḥ, dvāv upariniban-dhau, udakanālikā ca. 22. paraṃ pāpakarmaṇāṃ nava vetralatāḥ, dvādaśa kaśāḥ, dvāv ūruveṣṭau, viṃśatir naktamālalatāḥ, dvātriṃśat talāḥ, dvau vṛści-kabandhau, ullambane ca dve, sūcī hastasya, yavāgūpītasya ekaparvadaha-nam aṅgulyāḥ, snehapītasya pratāpanam ekamahaḥ, śiśirarātrau balbajāgra-śayyā ca. 23. ity aṣṭādaśakaṃ karma. ... 26. pūrvakṛtāpadānaṃ pratijñāyāpa-haran tam ekadeśādṛṣṭadravyaṃ karmaṇā rūpeṇa vā gṛhītaṃ rājakośam ava-stṛṇantaṃ karmavadhyaṃ vā rājavacanāt samastaṃ vyastam abhyastaṃ vā karma kārayet.* Translation Olivelle (2013: 240f.), text: Kangle (1965: 140f.).

66. Johnson (1979: 15).

67. For a general description see Charles Benn (2002: 195ff.).

its reform during Taizong's rule, a process which was characterised through a continuation of moderation in severeness of punishments and consequent codification which already Taizong's father, Gaozu, had applied to the Sui code as soon as he had established the new dynasty;[68] for example, ninety-two crimes which were formerly punished by death penalty and seventy-one by life-long exile were downgraded in the new code.[69] The latter point culminated in the compilation of the Tang penal code, the Zhenguan-lü 貞觀律, first under Fang Xuanling 房玄齡 and finished in 637, and of its official commentary, the Lüshu 律疏 compiled, with changes to the original code, under the direction of Taizong's influential brother-in-law Zhangsun Wuji 長孫無忌 and finished by 653.[70] The Tang historiographies reflect a vivid discussion of legal issues at different times of Taizong's reign, and depict Taizong as a ruler with a tendency to compassion and mild punishment.[71] Taizong is described as having especially struggled with the issue of death penalty, the reduction of which is the only major legislative detail given for his reigning period in the Tang-huiyao 唐會要 39.[72] But there is other evidence of the emperor's volatility in terms of imposing the death penalty: in the ninth month of the year 644, just some months after Xuanzang's return to Chang'an, Taizong almost had a boy who had claimed to be emperor – a *lèse-majesté* – executed but spared him in the last moment (Tang-huiyao 38).[73] In 647, a year in which

68. For a historical overview see e.g. Bünger (1996: 24ff.); see also Howard J. Wechsler (1979: 206f.).

69. Johnson (1979: 39).

70. See Shiga (1992: 103f.).

71. See the description in the Xin-Tangshu 新唐書 56: 十六年，又徙死罪以實西州，流者戍之，以罪輕重為更限。…太宗以英武定天下，然其天姿仁恕。初即位，有勸以威刑肅天下者，魏征以為不可，因為上言王政本於仁恩，所以愛民厚俗之意，太宗欣然納之，遂以寬仁治天下，而於刑法尤慎。四年，天下斷死罪二十九人。六年，親錄囚徒，閔死罪者三百九十人，縱之還家，期以明年秋即刑；及期，囚皆詣朝堂，無後者，太宗嘉其誠信，悉原之。("In the sixteenth year [of Taizong's reign he] definitely moved [the ones condemned] to capital punishment to Xizhou [to serve] as exiles to protect it and determined the [time] of service according to the seriousness of [their crime]. … Taizong brought stability to the realm through military prowess, but his natural character consisted in kindness and clemency. When [he] ascended the throne [he] was given advice to purge the realm with drastic punishment, but [his advisor] Wei Zheng was the opinion that [he] should not do so and therefore submitted [a petition] that a monarch's rule should be based on benevolence and kindness by which [he] expressed [his] love for the people and fondness of the common; Taizong happily endorsed this, then ruled the realm with encompassing benevolence and was very careful with the implementation of punishment. In the fourth year [of his rule only] twenty-nine [people] were given the capital punishment. In the sixth year he himself reviewed the list of convicts, had pity with three hundred ninety and sent them back home to come back for punishment in autumn of the following year. When the time had come the convicts all came to the court without [one] being late, and Taizong praised their sincerity and pardoned them all." Translated in Bünger [1996: 155f.]).

72. 貞觀十一年正月十四日，頒新格于天下，凡律五百條，分為十二卷。大辟者九十二條減流，入徒者七十一條。("On the fourteenth day of the first month of the eleventh year [of the era] Zhenguan (637) the new code was proclaimed. The law codex comprised five hundred paragraphs and was divided into twelve fascicles. Capital punishment was reduced to exile in ninety-two paragraphs, [and exile] into imprisonment in seventy-one paragraphs." Translated in Bünger [1996: 175]).

73. 十八年九月，茂州童子張仲文忽自稱天子，口署其流輩數人為官司。大理以為指斥乘輿，雖會赦猶斬。太常卿攝刑部尚書韋挺奏仲文所犯，止當妖言，今既會赦，准法免死。上怒挺曰："去十五年懷州人吳法至浪人先置鉤陳，口稱天子。大理刑部皆言指斥乘輿，咸斷處斬。今仲文稱妖，乃同罪異罰。卿乃作福於下，而歸虐於上耶。"挺拜謝趨退。自是憲司不敢以聞。…："…其仲文宜處以妖言。"("In the ninth month of the eighteenth year the boy Zhang Zhongwen from Maozhou suddenly called himself 'Son of Heaven', and appointed several boys of his age officials. Judges

Xuanzang had constant contact with the emperor and the court because of ongoing diplomatic exchange with India, a discussion at court led to the reduction of collective death penalty for treason supported by the emperor (Tang-huiyao 39).[74] All this clearly shows that the court discourse on legal affairs was an ongoing and continuous one which certainly was also noted by Xuanzang. It is very likely that Xuanzang wanted to capitalise on these discussions which led to a more and more lenient system of punishment in the range of capital and corporeal sentences.[75] There was also serious discussion about the adequacy of collective (family) punishment which finally resulted not in the complete abolition of it but in its revision.[76] By twisting the Indian legal system, Xuanzang indirectly recommends the complete abolition of the death penalty – as briefly achieved in 747 under emperor Xuanzong 玄宗 (but then was reintroduced again later).[77]

It is striking that all the offenses presented and discussed in this passage – with the exception of the ordeals which had no correspondence in China – match exactly the main points of the juridical discourse at Taizong's court. The permeation of Chinese legal thinking with Confucian moral concepts – sometimes called "confucianisation" or "moralisation"[78] – was already fully established in the 7th century, but has a long tradition in the discourse between the Confucian and legalist (*fajia* 法家) schools of thinking, going far back into Chinese antiquity where offenses against piety are to be punished very severely.[79]

Xuanzang's main point in his description is that no crime is punished by the death penalty and execution in India. This stands in a direct contradiction to the frequent occurrence of execution in the śāstric texts;[80] KAŚ and MDhŚ even make a distinction between several types of execution for different crimes: plain (*śuddhavadha*), probably by decapitation, "vivid execution" (*citro ghātaḥ*, or *citravadha*) involving torture (impalement, etc.),

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from the High Court thought [that he] had denounced the emperor and although there was an amnesty [wanted] to behead [him]. The Great Master of Ceremonies, also minister of punishment Wei Ting made a petition to the throne [saying that] the crime committed by Zhongwen only was a heresy and that [he] now should be pardoned and spared of the death [penalty] according to the law. The emperor angrily said to Ting: 'Fifteen years ago a man from Huaizhou [called] Wu Fazhi frivolously started to have imperial sacrificial vessels carried in front of [himself and] the imperial insignia displayed, and called himself "Son of Heaven". All the judges of the office of punishment of the High Court said that this was a denouncement of the emperor and all of them decided that [he] had to be decapitated. [If] now Zhongwen's [crime is just] called a heresy then the same crime would be punished differently. Do you [want] to bring blessing for yourself but make the emperor to appear as a tyrant?' Ting apologized and retired. From then on judges did not dare asking the emperor [again in this case]. … [The emperor said]: '… This Zhongwen should only be sentenced for heresy.'" Translated in Bünger [1996: 192f.]).

74. Translated in Bünger (1996: 193f.).

75. For a translation of the relevant passages from Jiu-Tangshu 舊唐書 50 see Bünger (1996: 79ff.).

76. Jiu-Tangshu 50: 自是比古死刑，殆除其半。 ("From then on the [number of] death penalties was almost reduced half in comparison with before." Translated by Bünger [1996: 84]).

77. Bünger (1996: 31).

78. Shiga (1992: 98).

79. For a general overview see e.g. MacCormack (1990: 26ff.).

80. Jolly (1896: 125ff.).

execution with or through mutilation (*vikṛtavadha*), and "tainted" execution (*kleśadaṇḍa*).[81] There were all kinds of forms of execution. In the ninth act of the drama Mṛcchakaṭikā the hero Cārudatta is to be impaled (*sūle bhajjedha* / Skt. *śūle bhaṅkta[ḥ]*) for allegedly having strangulated the courtesan Vasantasenā.[82]

In the light of clear evidence of death penalty, why does Xuanzang claim that capital punishment is not enforced in India? Again, this seems to be a subtle criticism of the regulation in the Tang code where the death penalty was common but underlying certain restrictions: in principal at least the emperor had to confirm it, and the execution was restricted to specific dates. There were only two forms of death penalty executed in Tang China: strangulation (*jiao* 絞) or decapitation (*zhan* 斬) (Tang code §5).[83] The offenses of crimes which Xuanzang lists match – in a rather general way – the so-called "ten abominations" (*shi'e* 十惡) which were, according to the Tang code (§6), the most severely punished acts for which all levels of society were liable and for which amnesty would not be granted (at least in principle): 1. plotting rebellion (*moufan* 謀反), 2. plotting great sedition (*moudani* 謀大逆), 3. plotting treason (*mopan* 謀叛), 4. contumacy (*e'ni* 惡逆), 5. depravity (*budao* 不道), 6. great irreverence (*da-bujing* 大不敬), 7. lack of filial piety (*buxiao* 不孝), 8. discord (*bumu* 不睦), 9. unrighteousness (*buyi* 不義), 10. incest (*neiluan* 內亂).[84] Planning and executing rebellion and sedition were the most serious crimes and caused the punishment not only of the criminal but also of the collective, the whole family: decapitation of the culprit, and his relatives were strangulated, enslaved or exiled, depending on the closeness of their relation or the gender and age (Tang code §§248ff.).[85] Xuanzang may also still have had in mind the radical measures which Taizong imposed on the *saṅgha* to purge it from illegally ordained monks in the years 627–629, before his own departure to India, according to which these individuals were to be punished with the death penalty, even by the more shameful one of beheading.[86]

The abominations 6–10 in the code run partly parallel with the offenses for which in India, according to Xuanzang, the harsh cruel corporeal punishment was administrated. While these penalties were certainly applied in India, most of the ideals and virtues which are mentioned by Xuanzang – piety (*xiao* 孝), respect (*jing* 敬; see next passage), righteousness (*yi* 義) –, however, have no clear and direct correspondence in the Indian context. Yet, this emphasis of ancient Chinese ideals of social customs and rightful behaviour is not surprising in the light of the constant references to historical

81. Olivelle (2006a: 333, note to 9.279, and 334, note to 9.291), and Olivelle (2013: 638, note to 4.9.2).

82. Tripathi (2002: 565); Ryder (1905: 151), and Van Buitenen (1968: 164), who translates "be broken on the pole".

83. Translation Johnson (1979: 59f.).

84. English terminology by Johnson (1979: 17); for a translation of §6 of the code Johnson (1979: 61ff.).

85. Translation Johnson (1997: 239ff.).

86. See Stanley Weinstein (1987: 14).

and ritual classics like the Shujing 書經, the Liji 禮記, or the Zhouli 周禮 in the Tang code.[87] Obviously Xuanzang accepts the need of these bodily punishments and therefore ascribes them to the Indian legal system as well, although he completely sinisises the causes.

Xuanzang on Indian ordeals

The most detailed discussion in this passage is the one on ordeals to which Xuanzang seems to wish to draw some attention of the reader, probably because this idea of finding juridical truth by a proper ordeal (German: "Gottesurteil") – and not by oath – was not part of Chinese standard legal practice[88] and must have appeared rather "exotic" to a Chinese readership. A similar example is the Syrian theologian Bardaisan's (154–222 AD) description of two Indian ordeals, one by water[89] and a completely imagined one by means of a gigantic statue of a deity.[90] On the other hand the description has to be read against the missing means of torture to extract a confession from the accused: while according to Chinese law this was allowed, India had other, divine means to reach a verdict in case of non-confession. The śāstric texts similarly prescribe ordeals in the case of doubts (*saṃdeha*): see e.g. ĀDhS.2.29.6 "… [6]in doubtful cases investigating the matter by examining the evidence and using ordeals."[91]

In the Indian legal tradition ordeals, together with oaths, are a stable part of the system,[92] and lists of them comprise up to nine different forms.[93] Outside of the śāstric sources the four kinds of Indian ordeal of water, fire, scale and poison as described by Xuanzang are, for instance, found in the ninth act of the drama Mṛcchakaṭikā (*viṣasalilatulāgniprārthite me vicāre*),[94] and in Bāṇa's Kādambarī.[95] In this combination they are also found in the śāstric literature, but except for the scale ordeal they are executed in completely different manners. It has to be taken into account, however, that there is no fixed set of regulations about ordeals in the texts. Even in the śāstric texts with the most extensive discussion of ordeals, as for instance the NS, the sections on ordeal differ from version to version.[96] This seems to indicate some flexibility in administrating and handling ordeals on the Indian side.[97]

87. Bünger (1996: 61ff.); Johnson (1979: 9f.).

88. See Ch'ü Tung-tsu (1961: 207); MacCormack (1990).

89. It is very different from the normal Indian water ordeal but also from Xuanzang's: both the accused and the accusing have to pass a lake and sinking is taken as a sign of guilt or wrong accusation.

90. Winter (1999: 48ff.).

91. *saṃdehe liṅgato daiveneti vicitya.* Olivelle (2000: 114f.); for a more complex description see KS.411ff.: Kane (1933: 197ff.).

92. See Jolly (1896: 142ff.), and Sircar (1995: 121ff.); for a detailed discussion see especially Lariviere (1981).

93. Jolly (1896: 145).

94. Tripathi (2002: 569); Ryder (1905: 152).

95. See Kane (1930–1962, vol. 3: 362).

96. Lariviere (2003: 6ff. & 11).

97. On variations of the water ordeal, see Lariviere (1981: 39f.).

Al-Bīrūnī (973–1050) describes six kinds of ordeals in the order of increasing severity to prove innocence: the accused 1. has to drink a substance called *bīsh* (or *brahmaṇa*)[98] without being damaged, 2. is thrown into water without drowning, 3. has to drink sacred water without vomiting, 4. has to sit on a scale, 5. has to take out a piece of gold from a boiling kettle, 6. has to carry a piece of hot iron without damage.[99] This is much more in line with the śāstric ordeals than what Xuanzang describes.

Xuanzang does not mention that the preceding or alternative measure for ordeals were oaths (Skt. *śapatha*) according to the accused's caste (MDhŚ.8.109ff., NS.20.1f., see below). MDhŚ.8.114ff. briefly touches on ordeals – the last case actually is clearly marked as an oath and not an ordeal in the strict sense[100] –, but none of them corresponds to what Xuanzang describes:

> "[114]Alternatively, [the judge] may make the person carry fire, stay submerged in water, or touch separately the heads of his sons and wife. [115]When the blazing fire does not burn a man, the water does not push him up the surface, and no misfortune quickly strikes him, he should be judged innocent by reason of his oath."[101]

Later śāstric texts like the last chapter of the NS[102] or chapters 9–14 of the VDhS[103] list five different kinds of ordeals (*divya*), and at least the means or substances for four of them – water, fire, scale, and poison –, though not the method, match Xuanzang's description. Since both texts describe the ordeals in a more or less identical way I will focus here on one of them, the NS. The text is the most specific on this matter of the ancient law texts and gives the conditions for an ordeal as follows, quoting the authorities of Manu – not found in the *textus receptus* – and Nārada (20.1ff.):

> "1–2. When parties to a lawsuit have no witnesses, the king should examine the parties by means of ordeals or one of the following oaths: the truth; vehicles and weapons; cattle, seeds, and silver; the feet of gods and ancestors, gifts, and good works. 3–4. The king should administer ordeals in matters involving serious offenses; in minor matters, that best of men should make the accused swear an oath. These oaths indeed have been prescribed as effective in minor disputes, but when violent crimes are involved, the rules for ordeals apply. 5–6. Lord Manu has said that there are five ordeals for those accused in doubtful matters, especially if the events took place in secret: the balance, fire, water, poison, and finally, holy water. These are the ordeals prescribed for the exoneration

98. Sachau assumes that this corresponds to Skt. *viṣa*, "poison"; although this would make perfect sense philologically, ordeal by poison, however, seems a bit odd as the lowest form of juridical probing. *The Divyatattva*, 41, suggests that the term *brahmaṇa* may stem from a misunderstanding of the epithet of the poison (*brahmaṇā sṛṣṭa*, "created by Brahma").

99. Sachau (1910, vol. 2, 159f.).

100. See also Olivelle (2006a: 311, note on 8.115).

101. *114. agniṃ vā hārayed enam apsu cainaṃ nimajjayet; putradārasya vāpy enaṃ śirāṃsi sparśayet pṛthak. 115. yam iddho na dahaty agnir āpo nonmajjayanti ca; na cārtim ṛcchati kṣipraṃ sa jñeyaḥ śapathe śuciḥ.* Translation Olivelle (2006a: 173, text: 681f.).

102. Cautiously dated by Lariviere (2003: 13), between the 4th and 6th century.

103. Viṣṇusmṛti, a text from Kaśmīr from between the 6th and 8th century: Olivelle (2009: 7ff. and 15); for a translation of the respective chapters see Olivelle (2009: 67ff.).

> of the falsely accused. 7. Nārada, the great-souled one, has prescribed the ordeals, which reveal what is true and false, for the exoneration of those accused in doubtful matters. A wise man should administer an ordeal with the consent of the plaintiff, not otherwise."[104]

While ordeals should be applied in case of doubts (*saṃdigdha*) they also are recommended for cases when matters are concealed (*channa*) and cannot be resolved in the normal way. The latter corresponds more or less to the situation which Xuanzang describes for ordeal: when the accused does not confess or collaborate, i.e. when the "truth" cannot be determined by normal means of testimony (*kriyā*) or circumstantial evidence (*liṅga*).[105] The Indian tradition, however, has all kinds of special conditions for the administration of the different kinds of ordeal, taking into account the severity of the transgression or crime, the status or situation of the accused, the value in dispute, etc.[106]

The forms of the ordeals as described by Xuanzang differ considerably from the ones described in the Indian text.[107] In the discussion here the regulations of the Nāradasmṛti are given, but similar descriptions can be found in the other legal texts. Ordeals in general can be divided into two categories: those that prove guilt or innocence by sign, or those that prove innocence by survival and guilt by damage or death as a consequence of the ordeal.[108] The Indian ordeals mostly belong to the first category with death as consequence in most cases, and the Nāradasmṛti, for instance, seems to express this by the sequence of the ordeals, starting with the one that would be survived in any case, the scale (*dhaṭa*), continuing with the hot iron ("fire", *agni*), very likely to inflict severe burning, and with water (*udaka*) with a high risk of drowning, and ending with the one that probably would lead to death by poison (*viṣa*). Xuanzang's ordeals are milder insofar as only one ordeal (poison) is predisposed to end in death.

The water ordeal in the *śāstra*s is completely different from the one described by Xuanzang. NS.20.25ff., for example describes it as follows:

> "25–27. Next, I will explain the supreme rule for the water ordeal. Three arrows should be shot from a bow that is not too strong. The middle arrow should be brought back by an extremely fast runner; when he brings it back, the accused is found innocent. He is, on the contrary, found guilty if he lets even a single limb show or moves from the spot where he went under. 28. Women should not be forced to undergo this ordeal, nor should

104. *1. yadā sākṣī na vidyate vivāde vadanāṃ nṛṇām, tadā divyaiḥ parīkṣeta śapathaiś ca pṛthakvidhaiḥ. 2. satyaṃ vāhanaśastrāṇi gobījarajatāni ca, devatāpitṛpādāś ca dattāni sukṛtāni ca. 3. mahāparādhe divyāni dāpayet tu mahīpatiḥ, alpeṣu ca naraḥ śreṣṭhaḥ śapathaiḥ śāpayen naram. 4. ete hi śapathāḥ proktāḥ sukarās svalpasaṃśaye, sāhaseṣv abhiśāpe ca vidhir divyaḥ prakīrtitaḥ. 5. saṃdigdhe 'rthe 'bhiyuktānāṃ pracchanneṣu viśeṣataḥ, divyaḥ paṃcavidho jñeya ity āha bhagavān manuḥ. 6. dhaṭo 'gnir udakaṃ caiva viṣaṃ koṣaś ca pañcamaḥ, uktāny etāni divyāni dūṣitānāṃ viśodhane. 7. saṃdigdheṣv abhiyuktānāṃ viśuddhyarthaṃ mahātmanā, nāradena punaḥ proktāḥ satyānṛtavibhāvanāḥ, vādino 'numatenainaṃ kārayen nānyathā budhaḥ.* Translation Lariviere (2003: 447f., text: 233).

105. Jolly (1896: 142).

106. Jolly (1896: 145f.).

107. Jolly (1896: 146); Watters (1904–1905, vol. 1: 172); Mizutani (1999, vol. 1: 184, note 1).

108. See Dario Sabbatucci (2005: 6846b.f.).

> a weak man; it might scare a woman to death, and to administer it forcibly to a weak man might kill him. If any of these have to be seized forcefully, they should not be made to go under water. 29. He should remain calm and grasp the thighs of the man in the water."[109]

While the Indian method is quite clear: guilt or innocence are decided through the capability of the accused to stay under water as long as it takes to retrieve the arrow, Xuanzang's description is not very concise: while the stones will, of course, never float on the surface it is not completely clear if the accused is supposed to be restricted in his movements or will just be allowed to swim, in which case this would be a very "mild" form of ordeal. Structurally it looks as if Xuanzang's version is following the principle of the scale ordeal adapted to the element of water.

The scale ordeal in Xuanzang is an abbreviated form of how the ordeal should be administrated according to the Indian sources: the accused should be weighted twice, once to determine the counterweight and then a second time to determine guilt or innocence. NS.20.8ff. describes the procedure as follows:

> "8–9. To support the balance, two posts, each six [correct into "four"; MD] *hastas* long, should be set two *hastas*[110] deep. The distance between the two posts should be one and one-half *hastas*. Rope supports should be fixed to the solid hooks at the ends of the balance beams. 10–11. The accused should be weighed a first time and the balance marked against the counterweight; the man should be taken off it. After he has given his sworn testimony the accused should again be made to get onto the balance and be weighed in the same manner until the balance comes to a stop. 12. If the accused weighs more when he is weighed, he is definitely innocent; but if he weighs the same or less, he is guilty."[111]

Xuanzang's scale ordeal is closest to its Indian counterpart of all the forms described by him.

Xuanzang's fire ordeal is, in a way, "Buddhisised" insofar as it leaves open the option of throwing flowers on the hot iron (or into a fire) instead of inflicting the heated iron directly on one's body. This blossoming of lotus flowers

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109. *25. ataḥ paraṃ pravakṣyāmi toyasya vidhim uttamam, nātikrūreṇa dhanuṣā prerayet sāyakatrayam. 26. madhyam astu śaro grāhyaḥ puruṣeṇa yavīyasā, pratyānītasya tasyātha sa viśuddho bhaven naraḥ. 27. anyathā na viśuddhaḥ syād ekāṅgam api darśayet, sthānād anyatra vā gacched yasmin pūrvaṃ niveśitaḥ. 28. striyas tu na balāt kāryā na pumān api durbalaḥ, bhīr utvādyoṣito mṛtyuḥ kṛśasyāpi balāt kuryāt, sahasā prāpnuyāt sarvāṃs tasmād etān na majjayet. 29. tayomadhye manuṣyasya gṛhītvorū susaṃyataḥ.* Translation Lariviere (2003: 450, text: 236f.). In other texts it is made clear that the accused should submerge while grasping the thighs or knees of another man standing in the water up to the navel.

110. Cubit, *ca.* 47 cm: Olivelle (2013: 458).

111. *8. caturhastau tulāpādāv ucchrayeṇa prakīrtitau, ṣaḍḍhastaṃ tu tayor dṛṣṭaṃ pramāṇaṃ parimāṇataḥ. 9. pādayor antaraṃ hastaṃ bhaved adhyardham eva ca, śikyadvayaṃ samāsajya dhaṭe karkaṭake dṛḍhe. 10. tulayitvā naraṃ pūrvaṃ cihnaṃ kuryād dhaṭasya tu, kakṣāsthānena taṃ tulyam avatārya tato dhaṭāt. 11. samayaiḥ parigṛhyainaṃ punar āropayen naraḥ, tasminn evaṃ kṛte sā cet kakṣesthāpya suniścalā. 12. tulito yadi vardheta śuddhaḥ syān nātre saṃśayaḥ, samo vā hīyamāno vā na viśuddho bhaven naraḥ.* Translation Lariviere (2003: 448, text: 234f.). According to some versions and other texts, e.g. VDhS.10.12 (Jolly 1880: 57), the outcome is determined by the exact opposite: if the accused is lighter the second time he is innocent: see Lariviere (2003: 448, note to 20.12); Jolly (1896: 145).

despite of destructive heat is an old Buddhist topos that can be seen in the story of the Garahadinna who prepares a fire-filled pitch for the Buddha out of which lotus flower grow when the Buddha approaches it (*Garahadinnavatthu, Dhammapadaṭṭhakathā* 1.434ff.),[112] or the episode of the monk Samudra who endures being boiled in Aśoka's hell-prison (*naraka*) by reciting a *sūtra* while sitting on a magically produced lotus flower in the *Aśokāvadāna.*[113]

NS.20.15ff. describes the "classical" śāstric form of the fire ordeal which is quite different from the one given by Xuanzang:

> "15–16. Next, I will explain the supreme law of the iron ordeal. It requires circles the diameters and intervals of which equal thirty-two *aṅgulas*. Eight circles encompass a total number of two hundred forty *aṅgulas* according to the experts in such matter. 17–21. After the accused has been ritually purified and entered the delineated circles, one should tie seven *aśvattha*[114] leaves on his hands with strings and prepare a smooth, hot iron ball weighing fifty *palas*.[115] The accused should take this in his hands, and slowly walk through the circles. He should not stop over any circle nor in between them, nor should he drop the ball outside that portion of the earth which has been designated before he has covered the prescribed distance. If he calmly traverses the circles in the prescribed manner, and remains completely unburned, he is innocent. If he drops the iron ball out of fear, but appears to be unburned, he must carry it again; this is the ancient practice. The ordeal of fire should be conducted in accordance with these rules."[116]

In the NS ordeal by poison is the simplest method in terms of implementation, but quite a few details are given for the right time and the way the poison should be prepared (20.32ff.):

> "32.33. Next, I will explain the supreme rule for the poison ordeal. The poison should be given during the winter and in proper amounts. One who knows the law would never administer this ordeal in the morning, or at noon, or at twilight, or in autumn, or summer, or spring. 34. Poisons that are broken, crushed, scented, or mixed, *kālakūṭa*, and *alaṃbu* should be carefully avoided. 35–37. If the king wishes to know the truth, he should administer to those accused of a major crime the *śṛṅga* poison from the Himālayas, which has the proper aroma, color, and flavor, but not to children, the sick, or the elderly, nor to those accused of minor offenses. Seven grains of poison mixed with clarified butter should be

112. See a discussion of this legend in David V. Fiordalis (2008: 178f.).

113. Strong (1983: 73ff. & 215f.); the story is also referred to in the records of Faxian and Xuanzang: see Deeg (2005: 396ff. & 557).

114. *Aśvattha* tree: *ficus religiosa*.

115. *Ca.* 37.76 g: Olivelle (2013: 459).

116. *15. ata ūrdhvaṃ pravakṣyāmi lohasya vidhim uttamam, dvatriṃśadaṅgulāni tu maṇḍalān maṇḍalāntaram. 16. aṣṭābhir maṇḍalair evam aṅgulānāṃ śatadvayam, caturviṃśatsamākhyātaṃ saṃkhyātattvārthadarśibhiḥ. 17. kalpitair maṇḍalair evam uṣitasya śucer api, saptāśvatthasya pattrāṇi sūtreṇāveṣṭya hastayoḥ. 18. vidadhyāt taptalohasya pañcāśat palam saṃmitam, hastābhyāṃ piṇḍam ādāya śanaiḥ saptapadaṃ vrajet. 19. na maṇḍalam atikrāmen nāpy arvāka pādayet padam, na ca pātayetāprāptaḥ yāvad bhūmir prakalpitā. 20. tīrtvānena vidhānena maṇḍalāni samāhitaḥ, adagdhaḥ sarvato yas tu sa viśuddho bhaven naraḥ. 21. bhayād vā pātayate yas tv adagdho yo vibhāvyate, punas taṃ hārayel lohaṃ sthitir eṣā purātanī, anena vidhinā kāryo hutāśasamayaḥ smṛtaḥ.* Translation Lariviere (2003: 449, text: 235f.).

> administered to the accused. One twentieth of a sixth of a *pala* of poison minus one eighth, mixed with clarified butter, should be administered to the accused. 38. An accused who has been approved in accordance with the preceding rule should touch a brāhmaṇa, fast, and then swallow the poison in the presence of the gods and brāhmaṇas. 39. If the poison is peacefully digested without paroxysms or languor, the king, realizing that the accused is innocent, should treat him with respect and release him."[117]

In comparison with the rather simple Indian procedure the poison ordeal described by Xuanzang seems rather complicated and the text not very clear, which has confused some translators. Beal translates this passage: "They take a ram and make an incision in its right thigh, then mixing all sorts of poison with a portion of the food of the accused man, they place it in the incision of the thigh (of the animal); if the man is guilty, then the poison takes effect and the creature dies; if he is innocent, then the poison has no effect, and he survives."[118]

I have to confess that it is completely unclear to me (and other commentators who stay awkwardly silent) why the poison has to be positioned in the specific bodily part of a ram. Although an actual Indian practice cannot be excluded in the light of the differences between prescribed śāstric ordeals and the ones practices in reality, what Xuanzang describes does not seem to be a widely practised form. There is a possibility of influence from the Chinese side where the only form of ordeal attested in antiquity is the one by which a ram is used.[119] Another possible link on the Indian side is the "*śṛṅga* poison from the Himālayas" (*śārṅgahaimavata*) in the NS which is also found in other law texts dealing with the ordeal. This poison is normally described as being produced from a plant (*śṛṅgī*, the "horned one") growing in the Himālaya, sometimes also called *ajaśṛṅgī* "with horns like a ram"[120] after the goat-horn-shaped fruits (?). According to KS it makes the blood "dark and hard (clotted)".[121] KAŚ.2.15.17 mentions a plant of another name, *meṣaśṛṅgī* ("ram's horn"), which, mixed with other substances, is used for producing fermented drinks.[122] It could well be that Xuanzang confused the

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117. *32. ataḥ paraṃ pravakṣyāmi viṣasya vidhim uttamam, tulayitvā viṣaṃ pūrvaṃ deyam etad dhimāgame. 33. na pūrvāhṇe na madhyāhṇe na saṃdhyāyāṃ tu dharmavit, śaradgrīṣmavasanteṣu varṣāsu ca na dāpayet. 34. bhagnaṃ ca dāritaṃ caiva dhūpitaṃ miśritaṃ tathā, kālakuṭam alaṃbuṃ ca viṣaṃ yatnena varjayet. 35. śārṅgahaimavataṃ śastaṃ gandhavarṇarasānvitam, mahādoṣavate deyaṃ rājñā tattvabubhutsa-yā. 36. na bālāturavṛddheṣu naiva svalpāparādhiṣu, viṣasya tu yavān sapta dadyāc chodye ghṛtaplutān. 37. viṣasya palaṣadbhāgād bhāgo viṃśatim astu yaḥ, tam aṣṭabhāgahīnaṃ tu śodye dadyād ghṛtaplutam. 38. yathoktena vidhā-nena viprān spṛṣṭvānumoditaḥ, sopavāsaś ca khādeta devabrāhmaṇasaṃni-dhau. 39. viṣaṃ vegaklamāpetaṃ sukhena yadi jīryate, viśuddham iti taṃ jñātvā rājā satkṛtya mokṣayet.* Translation Lariviere (2003: 450ff., text: 237f.).

118. Beal (1906, vol. 1: 84f.), for instance, following Stanislas Julien (1857–1858, vol. 1: 85). Watters (1904–1905, vol. 1: 172), rightly opposes this interpretation and paraphrases as translated by myself. Lariviere (1981: 41), is mistaken as he follows Beal's translation. Mizutani (1999, vol. 1: 183), also translates in a similar way.

119. MacCormack (1990: 74ff.).

120. See PW, s.v.: *odina pinnata*, or *lannea coromandelica*, on which see Umberto Quattrocchi (2012: 2208b.f.), s.v. *Lannea coromandelica*: "strongly irritant" but not deadly poisonous, used for poisoning fish, fruits are edible and bark and leaves are used for medical treatment.

121. Kane (1933: 204).

122. Olivelle (2013: 136f.); see also other references in PW, s.v.

name and a description that poison from this plant was mixed and eaten with meat, from which he concluded that the poison was taken with goat meat. Both assumptions, however, have to be completely hypothetical as long as no other concrete sources comes to light.[123]

Conclusion

I hope to have shown that the interpretation of the description of Indian law through a foreign lens – in my case a medieval Chinese one – needs a contextualising reading in both directions, the one of the "observer" (Chinese) and the one of the studied "object" (Indian). One of the obvious tasks is to try to understand the motivation behind a "description" diverging from what can be gained as information from the Indian context through the normative sources. This is, in cases, possible when taking into account the political and social situation in China at the time of the author Xuanzang, who reacted against certain aspects of Chinese law and legislation, which conflicted with his own view as a Buddhist. Projecting an idealised Indo-Buddhist society then was a means to indirectly criticise certain un-Buddhist aspects of Chinese society (or government). Although the whole general "description" of India in the first half of the second chapter of the XJ is an idealisation, it is in the passage on law and in the preceding part on Indian warfare that the strongest ethic stance is taken, and that subcutaneous criticism is brought forward against harsh physical violence exerted in the Chinese context through the idealised depiction of India. What is interesting in contrast to this is that the part about the ordeals – which are not necessarily less cruel than actions of war and punishment but had no direct correspondence in China – contains the most authentic information when compared with the Indian śāstric texts.

Abbreviations

ĀDhS	Āpastambadharmasūtra
HDC	Hanyu-dacidian, see Luo 1990.
GDhS	Gautamadharmasūtra
KAŚ	Kauṭilīyārthaśāstra
KS	Kātyāyanasmṛti
MDhŚ	Mānavadharmaśāstra
NS	Nāradasmṛti
PW	Petersburger Wörterbuch, see Böhtlingk & Roth 1855–1875
VDhS	Vaiṣṇavadharmasūtra
XJ	Datang-Xiyu-ji, see Ji 1985.

123. There is also an interesting story in the *Mahīśāsakavinaya*, told by the Buddha, about a child bitten by a poisonous snake and a sorcerer trying to force the snake to lick the poison from the child by the force of a "black ram spell" and a black ram which obviously "writes" a spell with his horns (T.1421.173c.15ff.); the story is repeated in Daoshi's 道世 (*fl.* 656–683) Fayuan-zhulin 法苑珠林 (T.2122.482b.1ff.). This at least seems to indicate that black rams were linked to ominous rituals.

Bibliography

Beal, Samuel

1906 *Si-yu-ki. Buddhist Records of the Western World, translated from the Chinese of Hiuen-Tsiang (A.D.629)*, London, Kegan, Paul, Trench, Trübner & Co. Ltd., 2 vols. [first published 1884].

Bechert, Heinz

1997 "Die Gesetze des indischen Sangha als indisches Rechtssystem", *in* Bernhard Kölver (ed.), *Recht, Staat und Verwaltung im klassischen Indien / The State, the Law, and Administration in Classical India*, München, R. Oldenbourg Verlag (Schriften des Historischen Kollegs, Kolloquien 30), pp. 53–64.

Benn, Charles

2002 *China's Golden Age. Everyday Life in the Tang Dynasty*, Oxford–New York, Oxford University Press.

Böhtlingk, Otto & Rudolph Roth

1855–1875 *Sanskrit-Wörterbuch*, St. Petersburg, Kaiserliche Akademie der Wissenschaften, 7 vols. [Indian reprint Delhi 1990].

Bünger, Karl

1996 *Quellen zur Rechtsgeschichte der T'ang-Zeit (Neue, erweiterte Ausgabe, mit einem Vorwort von Denis Twitchett)*, Nettetal, Steyler Verlag (Monumenta Serica Monograph Series 9).

Ch'ü Tung-tsu (Qu Tongzu 瞿同祖)

1961 *Law and Society in Traditional China*, The Hague, Mouton.

Collins, Steven

1993 "The discourse on what is primary (*Agañña Sutta*): An annotated translation", *Journal of Indian Philosophy* 21 (4), pp. 301–393.

1998 *Nirvana and Other Buddhist Felicities: Utopias of the Pali imaginaire*, Cambridge, Cambridge University Press.

Davis, Donald R. Jr.

2010 *The Spirit of Hindu Law*, Cambridge–New York–etc., Cambridge University Press.

Deeg, Max

2005 *Das Gaoseng-Faxian-zhuan als religionsgeschichtliche Quelle. Der älteste Bericht eines chinesischen buddhistischen Pilgermönchs über seine Reise nach Indien mit Übersetzung des Textes*, Wiesbaden, Otto Harrassowitz (Studies in Oriental Religions 52).

2009 "Writing for the Emperor – Xuanzang Between Piety, Religious Propaganda, Intelligence, and Modern Imagination", *in* Martin Straube, Roland Steiner, Jayandra Soni, Michael Hahn & Mitsuyo Demoto (eds.), *Pāsādikadānaṃ. Festschrift für Bhikkhu Pāsādika*, Marburg, Indica et Tibetica Verlag, pp. 30–60.

Derrett, John Duncan M.

1973 *Dharmaśāstra and Juridical Literature*, Wiesbaden, Otto Harrassowitz (A History of Indian Literature V.1).

Fiordalis, David V.
2008 "Miracles and Superhuman Powers in South Asian Buddhist Literature", Ph.D. Thesis, Ann Arbor, University of Michigan [unpublished].

Geiger, Magdalena & Wilhelm Geiger
1920 *Pāli Dhamma, vornehmlich in der kanonischen Literatur*, München, Bayerische Akademie der Wissenschaften [reprinted in Geiger Wilhelm, *Kleine Schriften zur Indologie und Buddhismuskunde*, Wiesbaden, Franz Steiner, 1973, pp. 102–228].

Gethin, Rupert
2009 "He Who Sees the Dhamma Sees Dhammas: Dhamma in Early Buddhism", *in* Patrick Olivelle (ed.), *Dharma. Studies in Its Semantic, Cultural and Religious History*, Delhi, Motilal Banarsidass, pp. 91–120.

Ji Xianlin 季羡林 *et al.*
1985 *Datang-xiyuji-xiaozhu* 大唐西域記校注, Beijing, Zhonghua-shuju.

Johnson, Wallace
1979 *The T'ang Code: Volume I, General Principles*, Princeton, Princeton University Press.
1995 "Status and Liability for Punishment in the T'ang Code", *Chicago-Kent Law Review* 71 (1), pp. 217–229.
1997 *The T'ang Code: Volume II, Specific Articles*, Princeton, Princeton University Press.
2007 "Limitations on Legal Privilege in *The Tang Code*", *Journal of Asian Legal History*, pp. 23–40.

Jolly, Julius
1880 *The Institutes of Viṣṇu*, Oxford, The Clarendon Press.
1896 *Recht und Sitte (einschließlich der einheimischen Litteratur)*, Straßburg, Karl J. Trübner (Grundriß der indo-arischen Philologie und Altertumskunde II,8).

Julien, Stanislas
1857–1858 *Mémoires sur les contrées occidentales, traduits du Sanscrit en Chinois, en l'an 648, par Hiouen-Thsang, et du Chinois en Français*, Paris, Imprimerie impériale, 2 vols.

Kane, Pandurang Vaman
1930–1962 *History of Dharmaśāstra (Ancient and Mediaeval Religious and Civil Law in India)*, Poona, Bhandarkar Oriental Research Institute, 5 vols.
1933 *Kātyāyanasmṛti on Vyavahāra (Law and Procedure). Text (Reconstructed), Translation, Notes and Introduction*, Poona, Oriental Book Agency.

Kangle, R.P.
1965–1972 *The Kauṭilīya Arthaśāstra, 3 Parts*, Bombay, University of Bombay [reprint Delhi 1986].

Kuwayama Shōshin 桑山正進 (ed.)
1992 *Echō-ō-go-tenjikkoku-den-kenkyū* 慧超往五天竺國傳研究 *(Kyōto-daigaku-jinbun-kagaku-kenkyūjo-kenkyu-hōkoku* 京都大學人文科學研究所研究報告*) – Huichao's Wang Wu-Tianzhuguo zhuan, Record of Travels in Five Indic Regions, Translation and Commentary* [Report of the Research Project: Central Asia and the Indian Subcontinent between the Fourth and Eighth Centuries As Reflected in the Chinese Records of Buddhist Pilgrims and their Biographies, Institute for Research in Humanities, Kyoto University], Kyoto, Kyōto-daigaku-jinbun-kagaku-kenkyūjo.

Lariviere, Richard W.
1981 *The Divyatattva of Raghunandana Bhaṭṭācārya: Ordeals in Classical Hindu Law*, Delhi, Manohar.
1997 "Dharmaśāstras, Custom, 'Real Law' and 'Apocryphical' Smṛtis", *in* Bernhard Kölver (ed.), *Recht, Staat und Verwaltung im klassischen Indien / The State, the Law, and Administration in Classical India*, München, R. Oldenbourg Verlag (Schriften des Historischen Kollegs, Kolloquien 30), pp. 97–110 [reprinted in Olivelle 2009, ed., pp. 189–205].
2003 *The Nāradasmṛti. Critical Edition and Translation*, Delhi, Motilal Banarsidass (Sources of Ancient Indian Law).

Lewis, Mark Edward
1990 *Sanctioned Violence in Early China*, Albany, State University of New York Press.

Lingat, Robert
1998 *The Classical Law of India* (Translated with additions by J. Duncan M. Derrett), New Delhi, Oxford University Press.

Luo Zhufeng 羅竹風 (ed.)
1990 *Hanyu-da-cidian* 漢語大詞典, Beijing, Hanyu-dacidian-chubanshe, 12 vols. + 1 index.

McClish, Mark Richard
2009 "Political Brahmanism and the State: A Compositional History of the Arthaśāstra", Ph.D. Thesis, Austin, The University of Texas Austin [unpublished].

MacCormack, Geoffrey
1990 *Traditional Chinese Penal Law,* Edinburgh, Edinburgh University Press.

Mair, Victor H.
1994 *Wandering on the Way. Early Taoist Tales and Parables of Chuang Tzu*, New York–Toronto–etc., Bantam Books.

Mizutani Shinjō 水谷真成
1999 *Daitō-saiiki-ki* 大唐西域記, Tokyo, Tōyō-Bunko (Tōyō-bunko series, vols. 653, 655, 657), 3 vols.

Olivelle, Patrick
2000 *Dharmasūtras. The Law Codes of Āpastamba, Gautama, Baudhāyana, and Vasiṣṭha (Annotated Text and Translation)*, Delhi, Motilal Banarsidass.

2006a *Manu's Code of Law. A Critical Edition and Translation of the Mānava-Dharmaśāstra*, New York–Oxford, Oxford University Press.

2006b "Explorations in the Early History of the Dharmaśāstra", *in* Patrick Olivelle (ed.), *Between the Empires. Society in India 300 BCE to 400 CE*, Oxford–New York, Oxford University Press, pp. 169–190.

2009 *The Law Code of Viṣṇu. A Critical Edition and Annotated Translation of the Vaiṣṇava-Dharmaśāstra*, Cambridge (Mass.)–London, Harvard University Press (Harvard Oriental Series 73).

2013 *King, Governance and Law in Ancient India. Kauṭilya's Arthaśāstra (A New Annnotated Translation)*, Oxford–New York, Oxford University Press.

Olivelle, Patrick (ed.)

2009 *Dharma. Studies in Its Semantic, Cultural and Religious History*, Delhi, Motilal Banarsidass.

Quattrocchi, Umberto

2012 *CRC World Dictionary of Medical and Poisonous Plants. Common Names, Scientific Names, Eponyms, Synonyms, and Etymology*, Boca Ratton, CRC Press.

Rosemont, Henry Jr. & Roger T. Ames

2009 *The Chinese Classic of Family Reverence. A Philosophical Translation of the Xiaojing*, Honolulu, University of Hawai'i Press.

Ryder, Arthur

1905 *The Little Clay Cart [Mṛcchakaṭika] A Hindu Drama Attributed to King Shūdraka, Translated From the Original Sanskrit and Prākrits Into English Prose and Verse*, Cambridge (Mass.), Harvard University (Harvard Oriental Series 9).

Sabbatucci, Dario

2005 "Ordeal", *in* Lindsey Jones (ed.), *Encyclopedia of Religion (Second Edition). Volume 10: Necromancy-Pindar*, Farmington, Thompson Gale, pp. 6846b–6851b.

Sachau, Edward C.

1910 *Alberuni's India. An account of the religion, philosophy, literature, geography, chronology, astronomy, customs, laws and astrology of India about AD 1030*, London, Kegan Paul, Trench, Trübner & Co. Ltd., 2 vols. [Indian reprint Delhi 1992].

Scharfe, Hartmut

1989 *The State in Indian Tradition*, Leiden–etc., E.J.Brill (Handbuch der Orientalistik / Handbook of Oriental Studies II.3.2.).

Shiga Shūzō

1992 "A Basic History of T'ang Legislative Forms", *Asia Maior* 5 (3rd series), pp. 97–110.

Sircar, Dinesh Chandra

1995 *Studies in the Political and Administrative Systems in Ancient and Medieval India*, Delhi, Motilal Banarsidass (Second Edition).

Strong, John S.
1983 *The Legend of King Aśoka. A Study and Translation of the Aśokāvadāna*, Princeton, Princeton University Press.

Tripathi, Jaya Shankar Lal
2002 *Mṛcchakaṭika of Śūdraka. Edited With 'Bhavaprakasika' Sanskrit-Hindi Commentaries*, Varanasi, Krishnadas Academy.

Van Buitenen, J.A.B.
1968 *Two Plays of Ancient India: The Little Clay Cart. The Minister's Seal*, New York–London, Columbia University Press.

Watters, Thomas
1904–1905 *On Yuan Chwang's Travels in India*, London, Royal Asiatic Society, 2 vols. [Indian reprint Delhi 1973].

Wechsler, Howard J.
1979 "T'ai-tsung (reign 626–49) the consolidator", *in* Denis Twitchett (ed.), *The Cambridge History of China. Volume 3: Sui and T'ang China, 589–906, Part I*., Cambridge–London–New York, Cambridge University Press, pp. 188–241.

Weinstein, Stanley
1987 *Buddhism Under the T'ang*, Cambridge–London–New York–etc., Cambridge University Press.

Winter, Franz
1999 *Bardesanes von Edessa über Indien. Ein früher syrischer Theologe schreibt über ein fremdes Land*, Thaur bei Insbruck, Druck- und Verlagshaus Thaur (Frühes Christentum, Forschungen und Perspektiven, Band 5).

Zimmermann, Michael
2000 "A Mahāyānist Criticism of *Arthaśāstra*: The Chapter on Royal Ethics in the *Bodhisattva-gocaropāya-viṣaya-vikurvaṇanirdeśa-sūtra*", *Annual Report of the International Research Institute for Advanced Buddhology at Soka University for the Academic Year 1999*, Tokyo, The International Research Institute for Advanced Buddhology, Soka University, pp. 177–211.
2006 "Only a Fool Becomes a King: Buddhist Stances on Punishment", *in* Michael Zimmermann (ed.), *Buddhism and Violence*, Lumbini, Lumbini International Research Institute, pp. 213–242.