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Pratiloma Paranoia: Class Hierarchy, Conservatism, and Ethics in Classical Hindu Law

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Abstract: The Hindu law tradition grounds its social ethics on an ideological hierarchy of class or caste known as *varṇa*. The positive inculcation of this hierarchy is bolstered by a fear of social inversion, known as *pratiloma*, in every area of law and society. Through an examination of the concept of *pratiloma*, this article contends first that the central Hindu law principle of *dharma*, religious and legal duty, depends upon knowing and abiding by one's place in society. From this Hindu articulation of social rank as the foundation of ethics, the article then draws a comparison between classical Anglo-American conservatism and Hindu law to suggest that conservative traditions in general base moral action on social station and the fear of breaking social rank. Ethics in Hindu law, therefore, are derived from an acceptance of social station within the *varṇa* hierarchy and the constant cultivation of local expectations of proper behavior according to social position.

Keywords: class; hierarchy; ethics; conservatism; Hindu law; caste

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1. Introduction

Pratiloma paranoia is everywhere in the classical Hindu law tradition, by which I mean the expert intellectual tradition of Dharmaśāstra in Sanskrit.[1] Fear of the inversion of the social order and acts against the natural social order pervade nearly all topics of religious and legal duty, or *dharma*. *Pratiloma* means "against the hair"; its opposite is *anuloma*, "with the hair". In its most common denotation, *pratiloma* refers to a marriage between a woman from a higher social class and a man of lower social class, or to the offspring of such a marriage; *anuloma* is also a mixed-class marriage or child, in which the father is of a higher social class than the mother. Though marriage between people of the same social class is strongly prescribed, *anuloma* unions are tolerated, while *pratiloma* unions are detested. The classes in question form the *varṇa* hierarchy, the idealized ranked system of four classes or castes, about which so much has been written in South Asian studies. *Pratiloma* refers either to actions or to people that upset the "natural" status ranking: Brahmin–Kṣatriya–Vaiśya–Śūdra. As seen from the male perspective, to have sex with or marry a woman of higher *varṇa* is an abomination. Anxiety about *pratiloma* relationships does not end with sex and marriage, however. *Pratiloma* paranoia extends to all areas of social life, particularly areas touched by law and religion. In this essay, I will provide examples from many other subtopics of *dharma* in order to show that fears of mixing and inversion in social classes were fundamental to the ideology of *dharma* in this tradition.

The fear of class inversion connects to the fact that *dharma* in classical Hindu law almost always means *varṇāśramadharma*, the law or duties of social classes and life-stages that permeates the Dharmaśāstra literature. Class hierarchy is built into the basic structure of the most famous and influential text of Hindu law, the *Laws of Manu* (ca. second century CE). As Olivelle (2005, pp. 7–11) has shown, the structure of the text delineates *dharma* sequentially first for Brahmins, then Kṣatriyas, and so on. Class hierarchy is thus one pillar of *dharma* overall. The other pillar is the distinction between the householder and the renouncer, which manifests textually as the four stages of the *āśrama* system—student, householder, forest retiree, and renouncer (Olivelle 1993). Precisely because it shows up

in so many places, an examination of *pratiloma* paranoia within the *varṇa* ideology also provides insight into the general idea of *dharma*, and thus into the interplay between law and ethics in this tradition.

This class ideology, including its anxiety about *pratiloma* unions, has been described many times before as a strategy to preserve "the fiction of natural superiority of the Brāhmaṇical vision of order, i.e., the *varṇa* scheme of things, while simultaneously pointing to structural changes such as the proliferation of castes in early Indian society" (Sahu 2009, p. 50; see also Jha 1970, p. 287). Without denying the underlying Brahmin exceptionalism, I interpret *pratiloma* paranoia instead as an integral element of the ethical, religious, and political imagination of Hindu law authors. The positive commitment to class hierarchy produces a negative fear of social inversion. More specifically, I contend that a commitment to social hierarchy and class form a necessary part of the conservatism of Hindu law. A commitment to hierarchy is typical of conservative traditions around the world, and it is one of many conservative characteristics of Hindu law. Furthermore, the language of conservatism brings fresh analytic categories and perspectives to the study of Hindu law.

In this article, I will first provide evidence about *pratiloma* from classical Hindu law sources, both early texts and later commentaries. These sections give both an overview of the central issues with maintaining class distinction and hierarchy in premodern India and a set of examples showing that fear of class inversion and disruption affected many areas of law and religion, not just marriage and reproduction. I then draw on the evidence of *pratiloma* anxiety and class hierarchy in Dharmaśāstra to make a comparison with standard conservative positions from the Anglo–American tradition.[2] Conservatism relies upon both natural religious hierarchy and political–legal necessity to justify the preservation and prescription of social status and duties. Here, F. H. Bradley's ([1876] 1927) meditation on "my station and its duties" provides the foil for Hindu law's *pratiloma* paranoia and links both to a common conservative perspective.

2. *Pratiloma* Marriage and Class Hierarchy

Recent anthropological work on hierarchy (Piliavsky 2021; Keeler 2017) has rejuvenated anthropological claims (especially Dumont 1980) that hierarchy is common, inevitable, and even beneficial for social interaction. These studies offer penetrating analyses of hierarchical systems in practice. What Dumont missed, in my view, is the exclusive character of hierarchies. The original association of hierarchy with the sacred (*hieros*), with angels and holy people, should carry over into our analysis of hierarchy, especially when the hierarchy is articulated as an ideology.[3] Those who are part of the hierarchy have some place in the system, but a hierarchy requires others who do not belong at all—at least, in theoretical or ideological terms. In practice, real people have a way of occupying physical space and needing to be "fitted in" somehow, no matter how distasteful their presence may be to others. In delimited real-world contexts, therefore, hierarchies push toward "holism" or "encompassment" (Dumont 1980, pp. 232, 239), always finding some place for individuals and groups. In theory, by contrast, hierarchy requires a group outside the sacred circle, or below the sacred ladder. The hierarchical structure and the value(s) it represents may change over time, but there will always be a group—an enemy—beyond.

Furthermore, some hierarchies are more important than others. In the present case, I will show that the *varṇa* hierarchy, i.e., caste or class (though not in a Marxist sense), took precedence over other ranked systems of social value. In Hindu law texts, class structure lay at the foundation of all social relations and, thus, influenced other social institutions. It has been shown time and again that this ideological view was not the historical reality (Guha 2013). Ancient India was never divided into four classes, and early inscriptions of India do not even refer to the *varṇa* system (Bronkhorst 2011, p. 64; Olivelle 2023, pp. 57–58), suggesting that the earliest Hindu law texts (ca. first century BCE) may have invented the scheme in the form of a social theory. In fact, Bronkhorst (2016, p. 113) emphasizes the creation of the *varṇa* ideology in the centuries just before the Common Era as the critical element in a new Brahminical conservatism. Once established, however, the idea of *varṇa*

stubbornly persisted, and one cannot deny its continuing influence up to the present day as a simplified view of an ideal social structure. Caste, like race, is always clearer in theory than in practice, and the Hindu law tradition preserved and promulgated the four-fold "caste" ideal for more than 2000 years. Recent genetic research suggests that a shift toward the endogamy required by caste systems like *varṇa* seem to have occurred in India roughly 1900 years ago (Reich 2018, pp. 140–46). This fact correlates well with the current dating of the textual evidence we have for the *varṇa* hierarchy. The ideological preeminence of *varṇa* demands our attention, therefore, as an historically persistent misrepresentation of social reality in India. That ideology revolves around a fear of social inversion and disorder—*pratiloma*.

In the mythic prelude to the *Laws of Manu* (MDh 1.102),[4] the eponymous author Manu composes the text in order "to determine which activities are proper to the Brahmin and which to the remaining classes in their proper order". Understanding the natural order of the classes and the implications of that order is a basic goal of Dharmaśāstra. Since the exemplary institutions of Hindu law are the Brahmin class (*varṇa*) and the lifestyle of the married householder (*gṛhasthāśrama*), other important institutions build upon these two as the pillars of *dharma*. The primary function of the state, for example, is to protect the classes and orders of life, especially the Brahmin householder: "The king was created as the protector of people belonging to all social classes and orders of life who, according to their rank, are devoted to the Law specific to them" (MDh 7.35). The same king must defend the customs of "castes, regions, guilds, and families" because "even men living far away endear themselves to the world when they stick to the activity specific to each and carry out their specific activities" (MDh 8.41–42). The idea that people should "stick to the activity specific" to their own class serves as a classic touchstone of conservative social theory. Each of these statements shows the same commitment to defend class hierarchy as the essential principle of social organization. Moreover, the *Laws of Manu* not only accepts distinction, inequality, and hierarchy, but positively embraces them.

From the other side, chaos ensues when a low-class Śūdra interprets the law, or when Vaiśyas and Śūdras deviate from their proper duties:

> When a Śūdra interprets the Law for a king, his realm sinks like a cow in mud. (MDh 8.19)

> The king should strenuously make Vaiśyas and Śūdras perform the activities specific to them; for when they deviate from their specific activities, they throw this world into confusion. (MDh 8.418)

In this view, the king and his state administration have a clear interest in maintaining, even enforcing, class distinctions in order to preserve both social order and their own political power. Class separation matters because the Vaiśya class takes care of commerce and agriculture (*vārttā*, *vāṇijya*, *kṛṣi*) and the Śūdra class performs basic labor and menial service (*śuśrūṣā*, *karma*). The work of these classes makes the "higher" work of Brahmins and Kṣatriyas possible. A generous reading would say that the lower classes perform essential social tasks—the worldly work that enables success and prosperity in both the religious and political spheres. A cynical reading would note the obvious oppressive and exploitative effects on the lower classes.

A separate chapter of the *Laws of Manu* is devoted to normative class relations and deviant class interactions. The dreaded "mixture of class" (*varṇasaṃkara*) arises from "adultery among the classes, marrying forbidden women, and abandoning the activities proper to their class" (MDh 10.24). The basic rule is for a man to marry a woman of the same *varṇa* through an approved legal form of marriage (MDh 10.5, YDh 1.89). Marrying from a different class or by a disapproved form of marriage results in a "mixed-class" marriage and children, according to the law (see Davis 2022). Inversion of class in marriage is the worst of all, as B. P. Sahu (2009, pp. 48–49) states:

> The abhorrent pratiloma unions and their progeny are listed at some length. Issues of all such unions are placed at the bottom or beyond the four varṇas. . . .

> The broad six pratiloma categories could produce other loathsome permutations. . . . Progeny so born were assigned various low vocations . . . by assigning them imagined pedigrees proportionate to their socio-cultural and vocational competence. . . . The concept of *varṇasaṃkara* was thus a post-facto rationalization of the origin of *jātis*.

V. N. Jha (1970, pp. 274–75) adds:

> Grave anxiety and horror are, however, expressed at *pratiloma* marriages, and it is sought to make them entirely forbidden. Gautama even says that all *pratiloma*s are *dharmahīna*, "without virtue", or, as Bühler translates it, "outside the pale of the sacred law". . . . The maintenance of the purity and integrity of the *varṇa* system from these ominous trends [of caste mixture] through endogamy is prized beyond measure, and the preventing of confusion of orders or mixture of castes is enjoined as the prime responsibility of the king, of course in alliance with the indispensable brāhmaṇas.

Let us examine then how the texts themselves present the fear of disrupting this social hierarchy. Beginning from early Dharmasūtra texts (ca. first century BCE), the *Laws of Āpastamba* (ĀpDh 1.1.4–8) provides a straightforward description: "There are four classes: Brahmin, Kṣatriya, Vaiśya, and Śūdra. Among these, each preceding class is superior by birth (*janmataḥ śreyān*) to each subsequent. Those who are not Śūdras and are not guilty of evil deeds may undergo initiation, undertake vedic study, and set up the sacred fires; and their rites bear fruit. Śūdras are to serve (*śuśrūṣā*) the other classes; the higher the class they serve, the greater their prosperity". Two points deserve emphasis here. First, *varṇa* is determined by birth but also fixed by law. Too often these days, one finds claims that caste in ancient India was a merit-based system. Ideologically, no—it's as simple as that. Second, by birth, the twice-born classes are entitled to the benefits of the Veda: initiation, study and recitation, and ritual rewards. Dharmaśāstra provides the most vigorous defense of class and caste in all of the Hindu traditions.

The fear of the opposite is described in the *Laws of Gautama* (GDh 4.25-28): "Children born to parents in the reverse order of classes, on the other hand, are outside the Law (*pratilomāḥ dharmahīnāḥ*), as also those born to a Śūdra woman. A child of a Śūdra man from a woman of a different class shall be treated like an outcaste, the one listed last being the vilest (*pāpiṣṭhaḥ*)". Clarifying this passage, the medieval commentator Viśvarūpa (on YDh 1.1) states, "Those born against the social order have no class status, as Gautama states" (*pratilomānām avarṇatvam tathā ca gautamaḥ*). According to these rules, being a *pratiloma* child puts you outside *dharma*, just as if you had been born into a Śūdra family. The analogy between *pratiloma* status and Śūdra status is common. Worst of all, however, is being *pratiloma* by a Śūdra father. I want to stress again the harshness of the language—*dharmahīna* and *pāpiṣṭha* are severe insults. But they are hardly the worst.

The *Laws of Vasiṣṭha* (VaDh 18.7) tries to make the matter seem obvious: "You can know by their actions all those who have been secretly conceived and who are tainted with the attributes arising from relationships in the inverse order of class (*prātilomyaguṇāśritāḥ*) because they are devoid of virtue and good conduct". In the same section of the text, the author (VaDh 18.13) continues, "Śūdras, the people of evil conduct (*pāpacārinaḥ*), are manifestly a cremation ground". The text assumes that Śūdras are by nature people who act with evil. Their evil nature and social equivalence with the inauspicious cremation ground encourage other classes to exploit them. And the text (VaDh 18.18) continues, "A wife belonging to the dark class (*kṛṣṇavarṇā*) is only for pleasure, not for the fulfillment of the Law". The text directly says that a man needs a proper wife of his own class to be righteous or dharmic, but that he may take another wife from the lower classes purely for sexual purposes. I emphasize the severity to counter any idea that this tradition viewed lower classes as equal but different—the false division of labor view of caste.

Right from the earliest *dharma* texts, therefore, paranoia about lower classes and *pratiloma* actions and people figured prominently. The tenth chapter of the *Laws of Manu*

considers *varṇasaṃkara*, the mixture of classes, at great length. The basic rule of marriage and class (repeated in *Laws of Yājñavalkya*, YDh 1.89) states:

> Three classes—Brahmin, Kṣatriya, and Vaiśya—are twice-born; the fourth, Śūdra, has a single birth. There is no fifth. In all the classes, children born in the direct order to wives who are of equal class and married as virgins should be recognized as belonging to the same class by birth. Sons fathered by twice-born men on wives of the class immediately below theirs are considered only "similar", disdained as they are due to their mother's defect. (MDh 10.4-6)

This passage contains the important point about hierarchy I mentioned above. Hierarchy needs an enemy beyond. It requires an entity, a viewpoint, or an act to fear and loath. In the *varṇa* hierarchy, Śūdras occupy a liminal place. They are part of the order but have no current access to the true hierarch, the Veda. However, when Manu says "there is no fifth", you know for sure there is a fifth. It means all those social groups outside the idealized class hierarchy, whether mixed classes, outcastes, foreigners, or Dalits. That enemy beyond represents the greatest threat of all to the neat class categories because it comprises the mixed classes in the Dharmaśāstra view. Even *anuloma* unions create troubles, but *pratiloma* unions create acute anxiety because they are thought to create acute problems.

What kinds of problems? First, *pratiloma* unions are a slippery slope: "Having sex in the inverse order, excluded men beget children subject to even greater exclusion, the low-born beget low-born children, generating as many as fifteen classes" (MDh 10.31). Once the *varṇa* hierarchy is breached, *pratiloma* individuals continue to reproduce and exacerbate class mixing. Their danger to proper society worsens with every such union. Second, *pratiloma* unions threaten the welfare of civil society: "Whenever 'delinquent-born' individuals, who corrupt the social classes, are born, that realm quickly comes to ruin together with its inhabitants" (MDh 10.61). An ideal society should comprise only the four social classes, all of whom fit into the scripturally sanctioned hiearchy of *varṇa*. Improper or inverted unions between these classes produce social groups who do not know their place because they have no place. Ideological misfits corrupt normal social roles and sow political dissension.

These issues result first from inversions in the area of marriage. Here is just a small sample of the sprawling categorization of "mixed classes" from *pratiloma* marriages in the *Laws of Manu*:

> From a Śūdra man are born in the inverse order three "low-borns" (*apasada*): Āyogava, Kṣattṛ, and Cāṇḍāla, the worst of all men. Three further "low-borns" are born in the inverse order: from a Vaiśya man, a Māgadha, and a Vaideha; and from a Kṣatriya man, a Sūta. From a Niṣāda man by a Śūdra woman is born a Pulkasa by caste; a son born from a Śūdra man by a Niṣāda woman, tradition tells us, is a Kukkuṭa. A child born from a Kṣattṛ man by an Ugra woman is said to be a Śvapāka; and from a Vaidehaka man by an Ambaṣṭha woman, a Veṇa. (MDh 10.16-19)

In this passage, one can see the beginnings of the complex array of caste labels laid upon various sexual and marital unions of *savarṇa* (same class) and mixed *varṇa* people. The tendency for such calculations to sprawl and grow reveals the desire for hierarchies to "encompass the contrary" in Dumont's sense, to be complete through the absorption of new extremes. To this extent, even ideological hierarchy is about encompassment. But it is also about exclusion. Hierarchy does not work without fear, without an enemy beyond the hierarchical order. Hierarchies purport to include the whole order of sacred things, but not profane things. As the categories of mixed class proliferate (the late eighteenth-century *Bālaṃbhaṭṭī* contains hundreds of labels), the rhetoric continues to excoriate excluded classes. The process of encompassment never finishes, and the failure of completion implies a perpetual enemy beyond, even if that threatening group changes over time.

3. The Fear of Social Inversion in Major Topics of Hindu Law

Beyond marriage, the *varṇa* hierarchy manifests in other sexual matters. The *Laws of Nārada* (NS 12.77) suggests that non-marital sex with certain women of a lower class is permissible, but not a *pratiloma* union: "One may have sex with an independent woman, a non-Brahmin woman, a prostitute, a slave woman, and an unrestrained slave woman in the natural social order of class, not against the social order". Earlier rules in the same text (NS 12.69-70) prescribe fines for illicit intercourse with women of one's own or lower class, but death for illicit sex with a higher-class woman. Sex outside of marriage, therefore, is tolerated when it conforms to the class hierarchy, but it suddenly becomes a heinous offence when it goes against that structure.

Punishments for adultery are also structured according to the fear of *pratiloma*. Both Gautama (GDh 23.14) and Manu (MDh 8.371) prescribe that a woman who has adulterous sex with a low-class man (*nihīnavarṇagamana*) should be devoured by dogs, while the man who commits adultery with a low-class woman should merely perform a fasting penance called the Kṛcchra for a year, or even just twelve days. Along the same lines, the *Laws of Yājñavalkya* says:

> A man should be arrested for a sexual offense when he is caught in intimate contact with someone else's wife, when there are recent bodily marks from lovemaking, and when there is admission from both. When they are of the same caste, the punishment is the highest fine; when they are in the direct order of class (*ānulomye*), the middle fine; and when they are in the inverse order of class (*prātilomye*), the man is executed, while the woman's nose and so forth are cut off. (YDh 2.287-88)

The oldest Hindu law texts emphasize the husband's responsibility and liability for adultery. Over time, women's culpability for adultery grew. In all periods, however, adulterous relations between a woman of higher *varṇa* and a man of lower *varṇa* entailed the harshest punishments.

Beyond marital and sexual restrictions, many other topics are affected by *pratiloma* paranoia. For example, caste status impinges on the law of slavery (Davis 2020). The first rule is that Brahmins may never be enslaved under any circumstances. Their class privilege is sacrosanct in the domain of slavery. Second, enslavement must be *anuloma*—one may only have a slave of lower *varṇa* status (YDh 2.187). And third, slaves and Śūdras share many traits, especially obligatory service, and legal disabilities such that the law pertaining to one may inform the other, and vice-versa. In most slave systems, one loses all semblance of social status prior to enslavement and becomes, in Orlando Patterson's (1982) famous phrase, "socially dead". In Dharmaśāstra, however, the fear of *pratiloma* is so strong as to cause social identity to cross over into and out of slave status.

Pratiloma restrictions affect the qualification of witnesses under the law. While general rules seem to permit witnesses from all castes (MDh 8.62-63), other restrictions require that witnesses be "similar" (*sādṛśa*; *samāna*) in social status to the litigants. *Laws of Manu* (MDh 8.68) states, "For women, women shall give testimony; for the twice-born, twice-born individuals of equal rank; for Śūdras, upright Śūdras; and for the lowest-born, those of the lowest birth". This specific rule overrides the general, ensuring that the preferred witnesses in a trial are those of similar class, gender, occupation, and background (*ye samānā jātiśilpaśīlādibhis*) to the litigants. The concern over *pratiloma* testimony, therefore, closes off the open general rule. Why should witnesses be socially "similar" to the litigants? The ninth-century commentator Medhātithi (on MDh 8.68) argues, first, that people of similar "social station" know their own community and only want to testify regarding people they know. To witness against other groups could threaten their livelihood or business by angering those in other communities. Finally, according to Medhātithi, lower-class witnesses do not give reliable testimony (*na śraddheyavacano bhavati*) because of their inferior qualities. The key point here is that social groups represent semi-autonomous domains within which people should conduct most of their social interactions. Cross-group,

especially cross-*varṇa*, interactions should also conform to the broad rules about acceptable (*anuloma*) and forbidden (*pratiloma*) acts. In this case, witnessing may go down the class hierarchy in some cases, but never up.

In the allowance and assignment of ordeals, not only do different classes receive different ordeals, but the responsibility for their administration to low-class individuals falls outside the normal legal process under the king. In a section of the *Smṛticandrikā* entitled, "The Determination of Ordeals according to the Caste of the Litigants" (*vivādijātyādito divyavyavasthā*), we read the following rules:

> Bṛhaspati states, "In matters of debt, etc., when a legal dispute arises between two parties, the ordeal to be given must take into consideration the amount of property and the people involved". Now, "must take into consideration the people involved" means with consideration of the caste, etc. of the litigants. In this connection, Nārada also states a rule that takes caste into consideration: "A Brahmin should be given the balance; a Kṣatriya, the fire; a Vaiśya, the water; and a Śūdra, the poison. The wise declare that the sacred libation may be given to all in common". (SC, Vyavahāra vol., p. 239)

First, the assignment of different ordeals to different social groups implies that some ordeals are easier or less risky than others. There is a stronger risk of injury or even death in a water-submersion or poison-drinking ordeal. Second, the pervasive idea of separation, of keeping the classes apart, shows up in this distribution of ordeals by social class. One might have thought that "consideration of the people involved" would entail a wider view of the character and reputation of the accused or the nature of the alleged crime. Instead, the commentator Devaṇṇabhaṭṭa understands the phrase to refer to the *varṇa* hierarchy as it maps onto the appropriate ordeal for each class. The fact that this interpretation is natural for the commentator reveals the foundational role of *pratiloma* fears in the worldview of Hindu law authors.

Ordeals, like all legal procedures in Hindu law, normally fall first under the jurisdiction of the king, though the texts frequently recommend that the king appoint Brahmin judges and assessors to adjudicate both criminal and civil disputes. However, for specific categories of people, the administration of ordeals should be handled by their own community. The rule at *Laws of Kātyāyana* (KS 433) reads: "For untouchables, low castes, slaves, foreigners, sinners, and those born of *pratiloma* mixed-caste unions, the determination of an ordeal does not fall to the king. Rather, he should direct them to apply the ordeals known to them in cases of doubt". Explanations of this rule are brief, but they suggest that a group of "folk ordeals" co-existed alongside the standard ordeals in the legal texts, e.g., the snake-in-the-jar. The rule segregates six groups that should not receive an ordeal determined by the king or his appointees. The question is why. Ordeals must be suited to the person involved and performed at the appropriate time and place. Otherwise, according to the *Divyatattva*, they are "not capable of proving what should be proved" (DT 167). The standard ordeals are considered unsuitable for these socially marginalized groups. Social segregation entails legal segregation, and the texts prescribe alternate ordeals both to reveal the truth according to the ritual and to keep socially despised classes, including *pratiloma* individuals, apart from the mainstream law.

Criminal offenses and their punishment are subject to variation according to *pratiloma* fears. Punishments, in fact, regularly vary according to *varṇa* status. Verbal abuse or slander provides an example. *Laws of Gautama* (GDh 12.8-14) describes the fines given for verbal abuse across *varṇa* lines: 100 for a Kṣatriya abusing a Brahmin; 150 for a Vaiśya; only 50 for a Brahmin abusing a Kṣatriya; and just 25 against a Vaiśya. A Brahmin pays zero, no fine, for verbally abusing a Śūdra. The listing goes on accordingly for the twice-born classes. Similarly, *Laws of Yājñavalkya* also differentiates the punishments for verbal abuse:

> The author sets forth the punishment in cases involving people of the same class. He now declares the punishment for verbal abuse up and down the social hierarchy (*pratilomānulomākṣepe*): "The punishments are twice or thrice the

> amount in cases of verbal abuse against a member of a higher class; for abuse of a lower class, the punishment is half or a quarter". (YDh 2.207)

The twelfth-century commentary of Vijñāneśvara on this verse explains these numbers in detail, indicating that they apply only to the twice-born or upper three classes. By contrast, "when a Śūdra abuses a Brahmin", then the punishment is "a beating or cutting out the tongue". In this case, Śūdras fall outside the hierarchy of *varṇa* in that their punishment is corporal, not monetary.

Physical abuse is likewise punished variably, according to class status. *Laws of Gautama* (GDh 12.1-7) describes the punishment for Śūdras who physically abuse a member of a higher class. The basic rule is that the abusing body part should be mutilated or severed. The text takes the time to go into some gory detail about which body parts are to be cut off for which offense—tongue for verbal abuse, hand or leg for physical harm, penis for sexual assault. The same offense committed against someone of a higher class incurs higher and higher punishment.

The performance of the ancestral rites known as *śrāddha* is so important in Dharmaśāstra that the texts provide for myriad substitutes in case the deceased has no son or the son does not carry out the obligation. The right to perform this rite also entitles the performer to inherit the property of the deceased, making the determination of who performs the *śrāddha* critical both symbolically and legally. The texts are careful to emphasize that ancestral offerings by a *pratiloma* person are forbidden. The *Smṛticandrikā* states:

> [The author Vṛddhaśātātapa states:] "The ancestral rite for a father should be performed in all social classes and stages of life. The man who properly does so obtains the greatest glory". "Stages" means the modes of life. This statement intends to say that the rites should be done by a person of the same class, because otherwise the texts declare it to be an offense. For example, Marīci states: "A Brahmin who offers the post-mortem rites for one not of his same social class assumes that class status both in this world and the next". And Pāraskara: "A Brahmin should not perform the post-mortem rites for a Śūdra, nor should a Śūdra for a Brahmin, unless the latter is an outcaste (*pāraśava*)". (SC, Śrāddha vol., p. 11)

This passage concludes the section describing those who are qualified to conduct a *śrāddha*. The living performer and the dead recipient of the offerings should belong to the same class (*savarṇa*), and Devaṇabhaṭṭa makes surethat the ambiguity in the first statement is cleared up by permitting ancestral offerings only within one's own class. Fear of *pratiloma* even crosses the line between living and dead.

To conclude this section, it has been necessary to touch on several major topics of Hindu law in order to show how pervasive the fear of class inversion is in this tradition. However, there is greater depth to the topics mentioned and other areas in which *pratiloma* paranoia is central, not peripheral, to the concept of *dharma* in Dharmaśāstra. Even something as open as pilgrimage is framed by questions about *varṇa* status. In Richard Salomon's study of the medieval *dharma* text on pilgrimage called the *Tristhalīsetu*, the author makes a point to state that *pratiloma* individuals, just like Śūdras, women, and others, are permitted to perform pilgrimage so long as it does not interfere with their service to Brahmins (Salomon 1985, pp. 214–15). The examples, in other words, could go on. In all cases, the hierarchy of social class is not a by-product, not an incidental effect of *dharma*. It is the foundation and the cause of *dharma*. As a result, hierarchy and the fear of its disruption inform the basic ethical orientation of the Hindu law tradition.

4. Class Hierarchy and Conservative Ethics

If we try to set the concept of *pratiloma* in a broader framework of ethical studies, we need an ethical vision that similarly starts from an assumption of hierarchy and social station. The best analogy that I have found is F. H. Bradley's ([1876] 1927) classic essay, "My Station and Its Duties" in his book *Ethical Studies*.[5] In my view, Bradley captures not

only an articulation of ethics that might have been written by a Dharmaśāstra author, but also essential elements in the ethics of conservative thought and conservative people. This fact leads me to describe ethics in Hindu law as a form of conservatism.

Bradley's starting point is the observation that

> the "individual" apart from the community is an abstraction. It is not anything real, and hence not anything that we can realize. . . . What is it then that I am to realize? We have said it in "my station and its duties". To know what a man is (as we have seen), you must not take him in isolation. He is one of a people, he was born in a family, he lives in a certain society, in a certain state. What he has to do depends on what his place is, what his function is, and that all comes from his station in the organism. (Bradley [1876] 1927, p. 173)

Like the pioneers of sociological theory who were his contemporaries (Nisbet 1952), Bradley argues that people are inherently and inescapably social beings. The falsely idealized "individual", therefore, misleads us into grounding ethics on the equality between individuals as a starting premise. To the contrary, Bradley argues that "I and every one else must have some station with duties pertaining to it, and those duties do not depend on our opinion or liking. Certain circumstances, a certain position, call for a certain course. . . .in my station my particular duties are prescribed to me, and I have them whether I wish to or not" (Bradley [1876] 1927, p. 176). Key to Bradley's point here is that birth determines the social location and, thus, the station to which one belongs. We have no choice in the matter; fate places us in the family in which we are born.

Taking inspiration from Hegel's idea of the internalization of the objective, collective spirit of society, Bradley argues that the external conditions of our lives set the basic parameters of moral behavior, by learning to equate our "station and its duties" with the good:

> "[M]y station and its duties" teaches us to identify others and ourselves with the station we fill; to consider that as good, and by virtue of that to consider others and ourselves good too. It teaches us that a man who does his work in the world is good. . .. It tells us that the heart is an idle abstraction; we are not to think of it, nor must we look at our insides, but at our work and our life, and say to ourselves, Am I fulfilling my appointed function or not? (Bradley [1876] 1927, p. 181)

Once people have realized the goodness and the contribution of their station to the wide social order, the question of ethics boils down to measuring our behavior and choices against the socially defined responsibilities of our community, our "station". In this regard, the long, collective experience of a community, according to Bradley, provides the steady guide to moral action:

> What is moral in any particular given case is seldom doubtful. Society pronounces beforehand; or, after some one course has been taken, it can say whether it was right or not. . . . For the final arbiters are the phronimoi, persons with a will to do right, and not full of reflections and theories. If they fail you, you must judge for yourself, but practically they seldom do fail you. Their private peculiarities neutralize each other, and the result is an intuition, which does not belong merely to this or that man or collection of men. (Bradley [1876] 1927, pp. 198–99)

Bradley's notion that the "private peculiarities" of basically good individuals average out to a common good is consistent with Hindu law ideals that the Veda and the Brahmin community represent a fixed standard toward which the continuity of tradition bends. Through this tradition, the Veda replaces individual sensibilities with an orthodox, tradition-approved morality. Brahmins embody the Veda in society and the dissemination of Vedic ideals, including the *varṇa* "stations and their duties", happens through them. The classes, their customs, and their rituals are social institutions that safeguard and preserve the necessary separation of social classes, according to Hindu law.

In the Hindu law tradition, as in Bradley's formulation, ethics is a matter of knowing one's station—one's *varṇa*. By birth and upbringing, individuals are trained and accustomed to particular forms of work and worldviews. They should accept their station ungrudgingly and understand their social function as a virtue and a good. Moral decisions are a function of one's station and, more often than not, people know what to do on that basis. The idea of *varṇadharma* could justly be rendered as "my station and its duties". Theories of ethics at the extremes of universality and individual conscience ignore the straightforward experience of human socialization and ethical inculcation in communities. In this view, communities teach morals; they offer spaces of belonging at a liveable scale in the form of interdependent social stations.

Varṇa, or class, is not just one of these communities in classical Hindu law; it is the master community, the framing hierarchy within which "good people" live. Respect for *varṇa* difference, separation, and hierarchy defines the social order. The *varṇa* of one's birth fixes one's duties, called *svadharma*, the religious and legal duties appropriate to one's station. The scheme is grounded on a self-conscious distinction between those who are good (*sad*/*sādhu*) and those who are low (*adhama*), degraded (*apasada*), or degenerate (*apadhvaṃsa*), or between high (*utkṛṣṭa*) and low (*apakṛṣṭa*). These descriptions make moral judgments about the people described and sometimes point to people who fall beyond the pale of the social order altogether—the fallen outcaste (*patita*) or those bereft of righteousness (*dharmahīna*). This hierarchy, like all hierarchies, is not neutral because it makes distinctions based on an ideology promoted by those at the top. Contrast this perspective on hierarchy with anthropological views that take it to be an inevitable social form that individuals learn to navigate, often to their own advantage. The difference between this perspective and the *dharma*-based ideological view of hierarchy lies in the latter's explicit statements of degradation, inferiority, ineligibility, and incapacity. The rhetoric of Hindu law not only elevates the Brahmin; it insults the Śūdra and the outcaste.

Moral judgments grounded in class hierarchy manifest especially in a fear or paranoia of lower classes usurping the position and privileges of the upper classes. This fear is the flipside of the commitment to social hierarchy, to "my station and its duties". Both positive expressions of class hierarchy and negative paranoia around its breach pervade conservative traditions and writings on conservatism. For that reason, I want to connect *pratiloma* paranoia to the common fear of class inversion among conservative thinkers. I do so not only to bring Hindu law into a wider frame of reference, but also to argue that conservatism can and should be used as an analytic category helpful for understanding traditions like Hindu law.

Fear of class inversion, of disrupting the social hierarchy, has long been recognized as a standard feature of conservatism (Muller 1997, pp. 11, 18; Kirk [1953] 1985, p. 8). Richard Hofstadter's (1964) famous analysis of the "paranoid style in American politics" inspired the title of this essay, and we have seen the conspiratorial fear of Śūdras, outcastes, and foreigners among Hindu law authors more than once in the examples above. More recently, Corey Robin has argued that the fear of class inversion defines conservatism itself: "Conservatism is the theoretical voice of this animus against the agency of the subordinate classes. It provides the most consistent and profound argument as to why the lower orders should not be allowed to exercise their independent will, why they should not be allowed to govern themselves or the polity" (Robin 2018, pp. 7–8). This conservative commitment to social hierarchy implies that even conservatives in the "lower orders" look for groups even lower than themselves to keep in their proper place. In the context of India, we observe conservative habits even among historically marginalized communities in the areas of marriage, commensality, and exchange. This drive among lower classes to "be higher" than at least some others finds a philosophical justification in Hindu law and may derive in part from the pervasiveness of its cultural ideals. Conservative communities both high and low commend the idea that the social orders should embrace and abide by the ethics of their respective stations.

On the question of class hierarchy, conservatives uniformly embrace inequality not just as inevitable, but as positively good and essential for a healthy society. Some will go so far as to insist that class is a function of birth. For example, the eighteenth-century German jurist Justus Möser wrote, "Birth and age are better determinants of rank in this world than is true worth" (cited in Muller 1997, p. 75). For Möser, the experience of growing up in an aristocratic family imparted wisdom and know-how far more than education or any other intellectual gifts one might happen to have.

More typical of the conservative view, David Hume views social hierarchy as essential to generate moral sentiments: "There are certain deferences and mutual submissions, which custom requires of the different ranks of men towards each other. . . . 'Tis necessary, therefore, to know our rank and station in the world, whether it be fix'd by our birth, fortune, employments, talents, or reputation. 'Tis necessary to feel the sentiment and passion of pride in conformity to it, and to regulate our actions accordingly" (2006, p. 168). The idea here is to know your place and do what is expected of someone in your rank. Tradition is thus converted into emotion or sentiment, an idea that Hindu law authors fully accept (Davis 2021). People of the same social rank will "naturally" feel a kinship of experience and moral obligation.

That feeling of similarity between members of the same class informs Alexis de Tocqueville's ([1835–1840] 2004) description of aristocracy:

> In an aristocratic people, each caste has its opinions, its feelings, its rights, its mores, and its own separate existence. Thus, the men who belong to a particular caste do not resemble everyone else. They do not share the same way of thinking or feeling, and they scarcely even think of themselves as belonging to the same humanity. . . . For real sympathies exist only between similar people, and in aristocratic centuries, people saw only members of their own caste as their fellow. (de Tocqueville [1835–1840] 2004, pp. 655–56)

It is not coincidental that both Medhātithi (discussed above) and Tocqueville put forth a feeling of "similarity" as the basis for class solidarity. Conservatives strive to convert the intangible goods of inherited wisdom into moral feelings that guide one's actions, so long as that wisdom remains within established social boundaries.

Instead of similarity within class, Richard Weaver ([1948] 2013, p. 38), a conservative American cultural critic, emphasizes rather the hierarchical bonds that should exist between social ranks: "The comity of peoples in groups large or small rests not upon this chimerical notion of equality but upon fraternity, a concept which long antedates it in history because it goes immeasurably deeper in human sentiment. . . . It calls for respect and protection, for brotherhood is status in family, and family is by nature hierarchical". So, there should be "similarity" within class, but "fraternity" across class, and a fraternity that takes as its model the hierarchical bonds between members of a family. It is typical for conservatives to look to the family as the natural model for society.

Tocqueville in turn describes the influence of family in a way that presages both the birth of modern conservatism and of the fields of sociology and anthropology:

> Go back in time. Examine the babe when still in its mother's arms. See the external world reflected for the first time in the still-dark mirror of his intelligence. Contemplate the first models to make an impression on him. Listen to the words that first awaken his dormant powers of thought. Take note, finally, of the first battles he is obliged to fight. Only then will you understand where the prejudices, habits, and passions that will dominate his life come from. In a manner of speaking, the whole man already lies swaddled in his cradle. (de Tocqueville [1835–1840] 2004, p. 31)

The power of privilege and of disadvantage, the impact of first socialization, and the formation of cultural assumptions are all captured in this statement. Birth is a prime determinant in the future course of the life of an individual because family context predicts

so much about opportunities and obstacles. The guidance of one's own family and others like it lends the primary moral framework to an individual's life.

These examples from just a few major conservative thinkers establish the premise that the defense of class hierarchy is a central conservative ideal. As part of a conservative tradition, Hindu law authors valorize the existing social order as the living embodiment of the past and tradition: "The path trodden by his fathers, the path trodden by his grandfathers—let him tread along that path of good people; no harm will befall him when he travels by that path" (MDh 4.178). The sentiment here runs through all of Dharmaśāstra. As experts dedicated to a textual tradition, *dharma* authors emphasize the guidance of the texts or scriptures above all, but at almost every turn, they acknowledge that the texts do not cover all possible circumstances. To what or to whom do we turn in that case? When the "bath-graduate" who has completed his formal studies is instructed to "avoid prohibited action" at *Laws of Yājñavalkya* (YDh 1.139), the commentator Vijñāneśvara is quick to add that the text means he should avoid things prohibited by the traditional customs of one's region, village, and family. Likewise, if the determination of a mother's lineage in the ancestral-offering ceremony is in doubt, the same commentator insists that "the legal determination comes out of the established practice passed down in a family's tradition". (YDh 1.254). If it is unclear what exact information needs to be in a document, then one should follow the available past models in the locality (Davis 2016). The list of how customary laws (*ācāra*) and the established standards of the prior generations (*vṛddhavyavahāra*) supplement the prescriptions of the texts goes on and on. I would go so far as to say that nearly all topics in Dharmaśāstra (in one text or another) incorporate an appeal to tradition. Whatever is not defined by the textual or scriptural prescriptions should be referred to long-accepted practices. In this way, communal inertia fixes the practical boundaries of ethical action. You should do what other people like you do. In short, Hindu law conforms well to Karl Mannheim's (1993, pp. 296–97, 326–27) observation that the conservative experience of time differs in its obsession with the present relevance of the past. However, the framework through which the past is in principle received is the *varṇa* hierarchy. So, not all tradition is available to all; we are meant to look only to others like ourselves, members of the same social station.

For this reason, *pratiloma* fears animate the Dharmaśāstra's insistence on the *varṇa* hierarchy. The ethical outlook of classical Hindu law works within the social classes defined by the legal texts. Each "station" has its basic duties that begin with specific means of livelihood. Classically, Brahmins should give and receive religious gifts, teach and learn the scriptures, and officiate and offer sacrificial rites; Kṣatriyas should receive gifts, learn the scriptures, and offer sacrifices, as well as protect the subjects, thwart crimes, and adjudicate disputes; Vaiśyas should also receive gifts, learn the scriptures, and offer sacrifices, as well as engage in farming, animal husbandry, and commerce; and Śūdras should "ungrudgingly serve" the upper classes (see MDh 1.88-91 and 10.74-100). These "occupations" are the general blueprint for each class. Deviations from these hierarchically prescribed "livelihoods" consititute a basic breach of social expectations in the *varṇa* ideology. Though *pratiloma* paranoia begins with marriage, it extends to occupation and touches every action that falls under *dharma*.

As conservatives, Dharmaśāstra authors focus first on the protection of established institutions, especially class hierarchy. This focus mirrors what we find among Anglo–American conservatives. Both Hindu and Anglo–American conservatives defend inherent and inherited human differences as the basis of fixed social hierarchies. In Hindu law, moral education and decision-making revolve around class distinction by birth and the naturalization of inequality. Though the precise institutions held in esteem vary somewhat, both Hindu and Anglo–American conservatives place great weight on the need for long-established institutions and their rules for the preservation of moral order—even though both traditions also accept moderate change in principle. For these reasons, Dharmaśāstra and Hindu law should be front and center in the history of conservatism in India.

5. Conclusions

Why turn to conservatism to understand ethics and the religious law of Hinduism? The assumptions and vocabulary of conservative thought provide a sympathetic set of presuppositions and concepts to describe Dharmaśāstra and classical Hindu law. By sympathetic, I mean a theoretical and descriptive language that I think participants in these traditions would themselves agree to or recognize as apt. As I have written elsewhere, "conservatism helps Dharmaśāstra speak English" (Davis 2021, p. 37). For other purposes, there are good reasons to prefer a critical (sometimes even subversive) theoretical framework to analyze Hindu law. But not all theory is equally suited to all tasks. One can and should choose other theories to illuminate parts of this tradition, but every choice misses something. In various publications, I myself have drawn on legal realism and legal positivism, on legal anthropology, and on the frameworks of other religious legal traditions (Muslim, Jewish, and Christian). None is perfect; none unlocks all mysteries. In any case, the goal is not to apply a theory, but to develop one. The parallels I have noted between Hindu law and traditional Anglo-American conservatism suggest that other points of comparison also exist. We should, therefore, consider the possibility of studying conservatisms comparatively. Hindu law provides a good starting point for a non-modern, non-Euro–American conservative tradition.

Let me conclude then by summarizing my arguments. First, class hierarchy is not just another hierarchy. Many hierarchies operate simultaneously in social life, but they are not all equally important or relevant in every moment. Indeed, part of our task should be to rank the relevance or importance, whether practical or ideological, of various hierarchies at work in historical or contemporary contexts. Just as racial ideology is an omnipresent, unavoidable hierarchy in the US, so also is the *varṇa* hierarchy an ideology that supersedes or more frequently impinges on social encounters than others.

Second, the ideological complexity of "caste" derives from the multiple, conflicting values of hierarchy upon which it is based. The rankings differ on the ground and people contest them. Ideologically, however, Śūdras, outcastes, and foreigners are always a problem because they fall outside the hierarchy, the "sacred order". When these groups step outside their social boundaries, therefore, the social order is threatened. *Pratiloma* acts and people disrupt the stability of the hierarchy and generate fear among the privileged. However, other distinctions such as proximity to power, occupation, food exchange and eating habits, and residence also produced stratifications and were, and are, sometimes conflated with the *varṇa* distinction. As a result, caste was always already a mess, no matter when or where we place its point of origin. It is many hierarchies, not one. The *varṇa* scheme is a hierarchy of the mind, not a hierarchy in action. It persisted, and persists, translocally as a deliberately and conservatively cultivated ideology of Dharmaśāstra and other Hindu texts. *Varṇa*'s simplicity and imaginative hold give it ideological sway and persistence.

Finally, as we search for a language to describe and understand Hindu law, conservative thought and the ethics of "my station and its duties" lend themselves easily because they valorize the past, they promote class inequality as natural and necessary, and they link ethical values to social position. Thoughts and actions are deemed moral insofar as they conform to what "people like us" do and have done. Each social group has its role to play in the larger society, but Hindu law insists that people play only that role into which they were born. Individuals find moral goodness in conformity to their "station", to their *varṇa*. The broad parameters of those social distinctions are outlined by the texts, but the details all emerge from experience within a family, a locality, and a community. Ethics in this view is a matter of attunement to the expectations of social station writ large and small. A critical part of that attunement is staying alert to violations or disruptions of the established social hierarchy. The fear of social inversion is an ethical requirement in this system because it helps block or reverse damage to the social order. The conservative paranoia of socially unaccepted groups feeds the ongoing preservation of class distinctions. By drawing on the language of conservatism, therefore, I contend that we discover a useful framework for

probing the motivations and assumptions of an important Indian tradition that may feel antiquated and distant, but that continues to crop up in contemporary contexts.

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Abbreviations

ĀpDh	*Āpastambadharmasūtra*. ed. and trans. (Olivelle 2000)
DT	*Divyatattva*, ed. and trans. (Lariviere 1981)
GDh	*Gautamadharmasūtra*. ed. and trans. (Olivelle 2000)
KS	*Kātyāyanasmṛti*. ed. and trans. (Kane 1933)
MDh	*Mānavadharmaśāstra*. ed. and trans. (Olivelle 2005)
YDh	*Yājñavalkyadharmaśāstra*. ed. and trans. (Olivelle 2019)
NS	*Nāradasmṛti*. ed. and trans. (Lariviere 1989)
SC	*Smṛticandrikā*. ed. (Srinivasacharya 1914–1918)
VaDh	*Vasiṣṭhadharmasūtra*. ed. and trans. (Olivelle 2000)

Notes

1 It is important from the start to recognize that the ideological pretensions of the Dharmaśāstra textual corpus do not necessarily reflect the historical reality of law in India, or even of Hindu law specifically. The influence of Dharmaśāstra on practical law was historically uneven. For this reason, correlating *dharma* texts to legal practice poses severe challenges—independent historical evidence of practice is often not there. Nevertheless, the ideological assumptions and approaches of Dharmaśāstra did impact law on the ground and still do today, particularly in the areas of social stratification and the class or caste anxiety dealt with in this essay.

2 There is a remarkable convergence in well-known primers of conservatism (e.g., Kirk [1953] 1985; Muller 1997; Robin 2018, among many others) about which thinkers and works have had the biggest impact on the Anglo–American conservative tradition. The article cites conservative thinkers about whom few would disagree as to their conservative credentials—Edmund Burke, Alexis de Tocqueville, Thomas Babington Macauley, Joseph de Maistre, Samuel Taylor Coleridge, and so on. However, it should be said that contemporary British and American politicians who call themselves "conservative" often espouse positions that contradict the classic conservative ideals upon which I rely here. One goal of this article is to argue for the need to define conservatism in order to make it useful as an analytic category.

3 The first use of the Greek word *hierarchía* comes in the work of the fifth-century author Pseudo-Dionysius the Areopagite. Dionysius describes both the hierarchy of angels and heavenly beings and the hierarchy of the church. His heavenly hierarchy in particular influenced all later Christian writers, notably Thomas Aquinas. See Luibheid (1987).

4 Abbreviations for Sanskrit sources are listed below, with full bibliographic citations to the editions and translations in the References section. All translations from the now standard editions by Olivelle are his; all other translations are my own.

5 It is only fair to point out that this chapter does not represent Bradley's final position on ethics, which comes in the next and final chapter of the book. He actually critiques the ethics of "my station and its duties" on three grounds: (1) what is does not always justify what ought to be; (2) a particular community may be rotten; and (3) morality means getting above the inconsistencies within and between communities (Bradley [1876] 1927, p. 203ff.). Ironically, Bradley's own formulation has been less influential than his articulation of the ethics of class hierarchy.

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