Legal Diglossia: Modeling Discursive Practices in Premodern Indic Law

Timothy Lubin (Washington and Lee University / Institut français de Pondichéry)

Abstract: The central problem for the study of premodern Indian law is the elusive interplay between the scholastic system of the Dharmaśāstra and the regional, local, and group-specific customary legal standards and practices which generally remained unwritten (i.e., lex non scripta). Inscriptions and other legal documents (formularies like the Lekhapaddhati, legal documents from Nepal, Maratha records) provide precious (if unevenly distributed) evidence of the latter. This paper offers a preliminary comparative analysis of selected examples drawn from a few diverse regions of India and Southeast Asia. I propose a model of a phenomenon that I call ‘legal diglossia’, the use of two distinct registers of language (or even different languages altogether) to express different but ostensibly complementary notions of justice and legality: Sanskrit language to denote overarching ideals and jurisprudential categories, as well as citations of Śāstric authority; and a Prakrit or the local vernacular to frame pragmatic concerns and circumstantial particulars. The well-known epigraphical convention of the ornate Sanskrit praśasti followed by the ‘business portion’ in a Prakrit or a vernacular is only one form this can take; I focus attention on the more fluid interpenetration of Sanskritic and vernacular terminology and idiom that can begin to approach a legalese manipravālam. As compared with examples from India, the relatively more self-conscious adoption of Śāstra-based law in Southeast Asia seems to be the reason for the greater frequency of recorded decisions (e.g., jayapattra), and references to Śāstric texts.